

CJRS 8/2008

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Proposed Amendments to the
Rules of the District Court (Cap. 336H)**

Purpose

This paper introduces the amendments proposed by the Steering Committee on Civil Justice Reform (“the Steering Committee”) to the Rules of the District Court (“RDC”) (Cap. 336H) for the implementation of the recommendations in the Final Report of the Civil Justice Reform (“CJR”) and other related recommendations proposed by of the Steering Committee.

Background

2. The existing practice and procedure in civil proceedings in the District Court (“DC”) largely mirror those in the High Court (“HC”). In December 2005, the Chief Justice decided that the legislative amendment exercise for the implementation of CJR should apply to the DC and the Lands Tribunal where appropriate, and expanded the terms of reference of the Steering Committee to oversee the application of the recommendations in the Final Report to the DC and LT.

Proposed Amendments to the RDC

3. As the existing practice and procedure in civil proceedings in the DC largely mirror those in the HC, the Steering Committee considers it appropriate for the HC and DC to have the same set of procedures consequent on the CJR. The proposed amendments to RDC therefore largely follow those to the Rules of the High Court (“RHC”) (Cap. 4A), unless there are special considerations justifying differences between the two sets of Rules. Amendments are proposed to the RDC to (i) implement the relevant CJR recommendations, and (ii) achieve consistency with the RHC. The objective is to extend CJR to the DC, so as to make improvements in the DC, while at the same time allowing it

to retain certain existing features to give the DC flexibility to deal with cases even more effectively and efficiently.

4. In drawing up the proposed amendments as contained in the latest Draft RDC, the Steering Committee has taking into account the fact that there are relatively more low-end claims and unrepresented cases in the DC, and the consultation response to the two rounds of consultation conducted in April 2006 and October 2007. In this regard, it is important to note that section 72(5) of the District Court Ordinance (“DCO”) (Cap. 336) will be retained to provide the flexibility for the Court to exercise discretion to excuse a party from compliance with any rule.

Draft Rules of the District Court (Amendment) Rules 2008 (“Draft RDC”)

5. The following Annexes are attached –

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|-----|---|----------------|
| (a) | Annex A – Comparison table between the latest Draft RDC and the latest Draft RHC (attached as Annexes B and C to paper CJRS 1/2008 , LC Paper No. CB(2)1000/07-08(01)); | Annex A |
| (b) | Annex B – the latest Draft RDC; and | Annex B |
| (c) | Annex C - the marked-up version of the latest draft RDC. | Annex C |

Major Differences between the Draft RDC and the Draft RHC

6. The major differences between the two sets of Rules are as highlighted below –

- (a) The right of a director to represent a limited company is preserved : RDC O.5A.
- (b) The present position is that leave is generally required to appeal against any decision made in the civil proceedings in the DC. This is to be preserved. It will be different from the HC, where leave to appeal is only required for interlocutory decisions.

- (c) For taxation proceedings, the DC will continue to follow its existing requirement of obtaining a certificate for counsel. The DC scale of costs and the “two-thirds rule” under RDC O.62, r.32(1A) will also be preserved.
 - (d) The judge shall retain the power to frame the issues in lieu of pleadings under RDC O.18, r.22.
 - (e) Interrogatories will continue to be administered only with leave under RDC O.26.
 - (f) The provision relating to revocation of interlocutory orders upon cause shown under RDC O.32 and the provision regarding the charging of partnership property in RDC O.50, r.16 are also retained.
7. In the meantime, the Steering Committee has made certain revised proposals to the latest Draft RHC. Similar amendments would be made to the Draft RDC, where applicable, in due course.

Major Differences between the Draft RDC and the Existing RDC

8. The major differences between the latest Draft RDC and the existing RDC are: -

- (a) The repeal of automatic directions and filing of memorandum of agreed directions under the existing RDC O.23A. The new RDC O.25 will enable the court to have greater case management. However, parties will still be able to agree directions through the questionnaire to be filed prior to the case management conference. (cp. RHC O.25)
- (b) The court will have the power to strike out an action where the plaintiff fails to appear at the pre-trial review : - RDC O.25, r.4(1). (cp. RHC O.25, r.1C(1))
- (c) The master will be given a general power to conduct an assessment of damages : RDC O.37. (cp. RHC O.37)
- (d) Pre-action discovery will apply to all actions rather than just those involving personal injuries or death : RDC O.24, r.7A. (cp. RHC O.24, r.7A)

- (e) The new RDC O.62 will follow the amendment to RHC O.62 with the addition of costs-only proceedings covering amount of or under \$1 million.
- (f) The procedure for appeals to the Court of Appeal (in particular the seeking of leave to appeal) will be aligned with those in the HC and the application for leave will be inter partes (unless the relevant hearing below was ex parte): RDC O.58. (cp. RHC O.59)
- (g) Further evidence can only be adduced on special grounds in appeals from master to judge in chambers, as in the HC: RDC O.58, rr.1(4). (cp. RHC O.58, r.1(5))

Public Consultation

9. As in the case of the latest draft RHC, the proposed amendments to the RDC were contained in the Steering Committee's two consultation papers, namely, (i) the "*Consultation Paper on Proposed Legislative Amendments for the Implementation of the CJR*" issued in April 2006 for a 3-month consultation, and (ii) the "*Revised Proposals for Amendments to Subsidiary Legislation under the CJR*" issued in October 2007 for 1-month consultation. Most of the comments received are technical in nature, and the Steering Committee has adopted many of the suggested amendments in this latest draft RDC.

Judiciary Administration
March 2008

**Proposed Amendments to the
Rules of the District Court (“RDC”) (Cap. 336H)**

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 1 – Citation, etc., Application, Interpretation and Forms		
<p>(1) Amendments in rr.2(3) & (5)</p> <p>(2) —</p> <p>(3) Definitions of “aided person”, “practice direction”, “pre-action protocol” and “Amendment Rules 2007” in r.4</p>	<p>Amendments of RHC not followed as DC has no such jurisdiction.</p> <p>r.2 of RDC is amended –</p> <ol style="list-style-type: none"> 1. to clarify that the practice and procedure for appeal under O.58 of RDC apply to proceedings in DC under the Adoption Ordinance, the Domestic Violence Ordinance and Part III of the Landlord and Tenant (Consolidation) Ordinance; 2. to delete obsolete reference to proceedings under the Business Registration Ordinance. <p>Amendments of RHC followed</p>	<p>Substantially the same, with some variations in RDC on account of the difference in jurisdiction between the High Court (“HC”) and the District Court (“DC”)</p>

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(4) —	Definition of “action for personal injuries” in r.4 of RHC added for consistency between RHC & RDC.	
(5) —	r.7A of RHC added for consistency between RHC & RDC.	
Order 1A – Objectives		
Addition of O.1A on Objectives	Amendments of RHC followed	The same
Order 1B – Case Management Powers		
Addition of O.1B on Case Management Powers	Amendments of RHC followed	The same
Order 2 – Effect of Non-compliance		
(1) Amendments in r.1(3)	Amendments of RHC followed	The same
(2) Amendments in r.2(2)	Amendments of RHC not followed, as motions are not generally available in DC.	
(3) Additions of rr.3, 4 & 5	Amendments of RHC followed	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 3 – Time		
—	No amendment	Substantially the same, with no provision for vacation business in RDC.
Order 4 – Transfer and Consolidation of Proceedings		
—	r.1 amended, consequential to the amendments in s.42 of District Court Ordinance (“DCO”) (Cap. 336).	Substantially the same, with r.1 in RDC to deal with application to transfer proceedings to the Court of First Instance or the Lands Tribunal.
Order 5 – Mode of Beginning Civil Proceedings in Court		
(1) Amendments in r.1	Amendments of RHC not followed, as motions and petitions are not generally available in DC	Substantially the same, with r.6 of RHC (right to sue in person) omitted, given O.5A of RDC and the transitional provision in r.7 (validity of proceedings previously commenced by originating motion & petition) omitted in RDC as motions and petitions are not generally available in DC.
(2) Deletion of rr.2 and 3	Amendments of RHC followed	
(3) Amendments in r.4	Amendments of RHC followed	
(4) Amendments in r.5	The whole r.5 of RHC (with latest amendments) added for consistency between RHC & RDC.	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 5A – Right to Act in Person		
—	No amendment	Specific provision for DC
Order 6 – Writs of Summons : General Provisions		
Amendments in r.2	Amendments of RHC followed	Substantially the same, with r.5(1)(c) in RDC added given O.5A of RDC.
Order 7 – Originating Summonses : General Provisions		
Additions of rr.2(1A), (1B), (1C), 2(3) & 7	Amendments of RHC followed except r.2(3) which is not relevant to DC.	Substantially the same, with r.2(3) of RHC omitted.
Order 8 – Originating and Other Motions : General Provisions		
Amendments in rr.1 & 6	The whole order except r.6 (with latest amendments) and the corresponding forms of RHC added for consistency between RHC & RDC.	The same, with the transitional provision in r.6 of RHC omitted in RDC as motions are not generally available in DC.
Order 9 – Petitions : General Provisions		
Amendments in r.1	The whole order of RHC except r.6 (with latest amendments) added for consistency between RHC & RDC.	Substantially the same, with r.6 of RHC (the right to defend in person) omitted in RDC given O.5A of RDC.

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 10 – Service of Originating Process : General Provisions		
Amendments in r.5(1)	r.5 of RHC (with latest amendments) adopted for consistency between RHC & RDC.	The same
Order 11 – Service of Process, etc., out of Jurisdiction		
(1) Addition of r.1(1)(ob), (oc) and (od)	Amendments of RHC followed, with r.1(1)(oc) omitted as DC has no such jurisdiction.	Substantially the same, with fewer types of cases covered by the rule in RDC.
(2) —	r.9 modified so that it would apply also to notice of motion and petition.	
Order 12 – Acknowledgement of Service of Writ or Originating Summons		
(1) Amendments in r.3	Amendments of RHC followed	Substantially the same, save that rr.1(2A)-(2D) of RHC are not adopted given O.5A of RDC.
(2) Amendments in r.8	Amendments of RHC followed	
(3) Addition of r.11	Amendments of RHC followed r.1(4) modified for consistency with RHC	
Order 13 – Failure to Give Notice of Intention to Defend		
—	r.5 amended for consistency between RHC & RDC.	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 13A : Admissions in Claims for Payment of Money		
Addition of O.13A on Admissions	Amendments of RHC followed	The same
Order 14 – Summary Judgment		
Amendments in r.6	Amendments of RHC followed, with r.6 modified upon the repeal of RDC O.23A.	The same
Order 14A – Disposal of Case on Point of Law		
Amendments in r.2	Amendments of RHC not followed, as motions are not generally available in DC.	The same
Order 15 – Causes of Action, Counterclaims and Parties		
No amendment	No amendment	The same
Order 16 – Third Party and Similar Proceedings		
Amendments in r.7	Amendments of RHC not followed, as motions are not generally available in DC.	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 17 - Interpleader		
(1) Amendments in r.3	Amendments of RHC followed	The same
(2) —	r.10 modified upon the repeal of RDC O.23A.	
Order 18 - Pleadings		
(1) Amendments in rr.2 and 3)	Substantially the same, with r.5 of RHC (vacation business) omitted in RDC and specific power of DC to frame issue in r.22 of RDC.
)	
(2) Amendments in r.12)	
) Amendments of RHC	
(3) Addition of r.12A) followed	
)	
(4) Amendments in rr.13 & 14)	
)	
(5) Amendments in r.19	Amendments of RHC followed, with the provision modified to extend its application to petition	
(6) Amendments in r.20	Amendments of RHC followed	
(7) Addition of r.20A	Amendments of RHC followed	
(8) Amendments in r.21	Amendments of RHC followed, with r.21(3) modified upon the repeal of RDC O.23A.	
(9) Additions of rr.23 & 24	Amendments of RHC followed	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 19 – Default of Pleadings		
Amendments in r.7	Amendments of RHC not followed, as motions are not generally available in DC.	The same
Order 20 - Amendment		
(1) —	Consequential amendment in r.7	The same
(2) Amendments of rr.8 and 9	Amendments of RHC followed	
(3) Addition of r.13	Amendments of RHC followed	
Order 21 - Withdrawal and Discontinuance		
(1) Amendments in r.3(2)	r.3(2) modified upon the repeal of RDC O.23A.	The same
(2) Amendments in r.5(2)	Amendments of RHC not followed as motions are not generally available in DC, with r.3(2) and r.5(2) modified upon the repeal of RDC O.23A.	
Order 22 – Offers to Settle and Payments into Court		
Order substituted by new Order 22 entitled, “Offers to Settle and Payments into Court”.	Amendments of RHC followed	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 22A – Miscellaneous Provisions about Payments into Court		
Addition of O.22A on Miscellaneous Provisions about Payments into Court.	Amendments of RHC followed with modification in r.4 (reference to High Court Suitors' Funds Rules changed to District Court Suitors' Funds Rules).	The same
Order 23 – Security for Costs		
—	No amendment	The same
Order 23A – Directions for Actions Begun by Writ		
—	The whole O.23A repealed given the new O.25.	The same
Order 24 – Discovery and Inspection of Documents		
(1) Amendments in r.2(7)	rr.1 & 2 of RHC (with the latest amendments) added for consistency between RHC & RDC.	The same, except r.17 of RHC which is omitted in RDC given the general power of DC to revoke and vary directions or orders under O.32, r.8 of RDC.
(2) Amendments in r.4(2)—	rr.3, 4 & 5 amended to follow the wordings of RHC (with the latest amendments) to maintain consistency.	
(3) Amendments in rr.7A & 8	Amendments of RHC followed, with modification as to the reference to the	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
<p>(4) —</p> <p>(5) Addition of r.15A</p> <p>(6) —</p> <p>(7) —</p>	<p>provisions in the primary legislation.</p> <p>r.9 amended, following the wordings of RHC to maintain consistency.</p> <p>Amendments of RHC followed</p> <p>r.16 amended, following the wordings of RHC to maintain consistency.</p> <p>Special transitional provision added to cover the transitional arrangement for the newly added rr.1 & 2.</p>	
Order 25 – Case Management Summons and Conference		
<p>(1) Amendments in O.25</p> <p>(2) —</p>	<p>The whole O.25 of RHC (with latest amendments) added for consistency between RHC & RDC.</p> <p>Special transitional provision added to cover the transitional arrangement after the repeal of RDC O.23A & 34.</p>	<p>The same, save that the transitional provision in RDC is specially tailored for DC upon the repeal of O.23A & 34 of RDC.</p>
Order 26 – Interrogatories		
<p>—</p>	<p>r.1(2) modified upon the repeal of RDC O.23A.</p>	<p>Unlike HC, interrogatories can only be administered in DC with the leave of court.</p>

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 27 – Admissions		
(1) — (2) Amendments in r.3	rr.2(1), 4 & 5 modified upon the repeal of RDC O.23A. Amendments in RHC not followed, as motions are not generally available in DC.	The same
Order 28 – Originating Summons Procedure		
(1) Addition of r.3A (2) Amendments in rr.4(4) & 8(2) (3) — (4) Amendments in r.9(4)	Amendments of RHC followed rr.4(4) & 8(2) modified upon the repeal of RDC O.23A with the latest amendments in RHC followed. r.9(3) of RHC added for consistency between RHC & RDC. r.9(4) modified upon the repeal of RDC O.23A and the replacement of O.34, with the latest amendments in RHC followed.	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 29 – Interlocutory Injunctions, Interim Preservation of Property, Interim Payment, etc.		
(1) Amendments in r.1(2)	Amendments of RHC not followed, as motions are not generally available in DC.	Substantially the same, with the omission of the new r.8A (application for interim relief in aid of foreign proceedings) in RDC.
(2) Amendments in r.7(2)—	rr.2(5), 7(2) & 11(2) amended, following the wordings of RHC (with the latest amendments) to maintain consistency.	
(3) Addition of r.8A	Amendments of RHC not followed, as DC has no such jurisdiction.	
(4) —	r.11(3) of RHC added for consistency between RHC & RDC.	
(5) Amendments in r.14—	Amendments of RHC followed, with r.14 modified upon the repeal of RDC O.23A.	
(6) Amendments in r.16	Amendments of RHC followed	
Order 30 - Receivers		
(1) Amendments in r.1(1)	Amendments of RHC not followed as motions are not generally available in DC. r.1(1) amended, following the wordings	Substantially the same, with the omission of the new r.9 (appointment of receiver in aid of proceedings outside Hong Kong) in RDC.

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(2) Addition of r.9	of RHC to maintain consistency. Amendments of RHC not followed, as DC has no such jurisdiction.	
Order 31 – Sales, etc., of Land by Order of Court		
—	No amendment	The same
Order 32 – Interlocutory Applications and Other Proceedings in Chambers		
(1) Amendments in r.11 (2) Additions of rr.11A & 11B	Amendments of RHC regarding s.27 of HCO not followed, as DC has no such jurisdiction. Amendments of RHC followed	Substantially the same, with the following differences - (1) RHC O.32, r.9 (applications under Mental Health Ordinance), r.10 (application to make order of Court of Final Appeal order of Court of First Instance) and the new r.11(1)(da) (application relating to vexatious litigants under s.27 of HCO) are omitted in RDC; and (2) RDC O.32, r.8 (revocation and variation of directions or orders) and r.17(2) (no appeal from Registrar's decision to refer matter to a judge) specific to DC.

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 33 – Place and Mode of Trial		
Amendments in r.4(1)	Amendments of RHC followed	Substantially the same, with no provision for trial by jury in RDC.
Order 34 – Setting Down for Trial Action Begun by Writ		
(1) Amendments in rr.3(1) and 8(3)	The whole O.34 repealed and replaced by the same order in RHC (with the latest amendments) to maintain consistency.	The same, with no provision for trial by jury in DC.
Order 35 – Procedure at Trial		
(1) Addition of r.3A	Amendments of RHC followed	Substantially the same, with no provision for trial by jury in RDC.
(2) —	r.10(b) amended, following the wordings of RHC to maintain consistency.	
(3) Amendments in r.13(1)	Amendments in RHC not followed, as motions are not generally available in DC.	
Order 36 – Trial Before , and Inquiries by, Master		
(1) —	Heading of the Order amended, following that of RHC to maintain consistency.	The same
(2) —	r.9(3)(d) amended,	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
	following the wordings of RHC to maintain consistency.	
Order 37 – Damages : Assessment after Judgment and Orders for Provisional Damages		
(1) —	r.1(1) amended to enable assessments in DC to be done by a judge or a master.	RHC provides that damages shall be assessed by a master if no provision is made by the judgment as to how they are to be assessed.
(2) Amendments in r.1(1A)	Existing r.1(1A) repealed and replaced by the same provision in RHC (with latest amendments) to maintain consistency.	RDC provides that damages shall be assessed by a judge or master as directed by the court.
(3) —	r.2 amended, following the wordings of RHC to maintain consistency.	
(4) Amendments in r.4(3)	r.4 of RHC (with the latest amendments) added for consistency between RHC & RDC, but deleting the reference to jury trial	
(5) Amendments in r.9(3)	Amendments of RHC followed	
(6) Amendments in r.10(4) & (5)	Amendments of RHC followed, r.10(4) modified upon the repeal of RDC O.23A.	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 38 - Evidence		
(1) —	r.2(3) amended, extending its application to “originating motion or petition”.	Substantially the same, with r.19 of RHC (writ of subpoena in aid of inferior court or tribunal) omitted in RDC.
(2) Amendments in r.2A	r.2A amended, following the wordings of RHC with the latest amendments (except : (i) the reference to jury trial be deleted; and (ii) Clerk of Court be substituted by Chief Judicial Clerk).	
(3) Addition of r.4A	Amendments of RHC followed	
(4) —	r.6 of RHC added for consistency between RHC & RDC.	
(5) Amendments in r.7	Amendments of RHC followed with r.7(1)(a) modified upon the repeal of RDC O.23A.	
(6) Amendments in r.35	Amendments of RHC followed, and sub-rule (1) modified upon the repeal of RDC O.23A.	
(7) Addition of r.35A	Amendments of RHC followed	
(8) Amendments of RHC followed	Amendments of RHC followed	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(9) Additions of rr.37A, 37B & 37C (10) Amendments of r.41 (11) Amendments of r.43	Amendments of RHC followed Amendments of RHC not followed, as they are not required for RDC Amendments of RHC followed	
Order 39 – Evidence by Deposition		
—	No amendment	Substantially the same, with r.15 of RHC (perpetuation of testimony) omitted and no provision for ‘letter of request’ proceedings in RDC.
Order 40 – Court Expert		
—	No amendment	The same
Order 41 - Affidavits		
—	No amendment	The same
Addition of new O.41A on Statements of Truth	Amendments of RHC followed	The same
Order 42 – Judgments and Orders		
(1) —	r.4(3)(k) of RHC added for consistency between RHC & RDC.	Substantially the same, with some differences in the wordings of r.5B because of the different governing provisions in the primary

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(2) —	r.4(3)(1) amended, following the wordings of RHC to maintain consistency.	legislation.
(3) Amendments of r.5A(2)(b)(vi)	Amendments of RHC followed	
Order 43 – Accounts and Inquiries		
—	No amendment	The same
Order 44 – Proceedings under Judgments and Orders		
—	r.12(1) of RDC amended and r.12(1A) of RHC added, for consistency between RHC & RDC.	The same
Order 44A –Prohibition Order before and after Judgment and Attachment of Property before Judgment		
—	rr.5 & 12 amended for consistency between RHC & RDC.	The same
Order 45 – Enforcement of Judgments and Order : General		
—	No amendment	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 46 – Writ of Execution : General		
Amendments in r.5	Amendments of RHC not followed, as motions are not generally available in DC.	The same
Order 47 – Writs of Fieri Facias		
—	No amendment	The same
Order 48 – Examination of Judgment Debtor, etc		
—	r.3 amended, following the wordings of RHC to maintain consistency.	The same
Order 49 – Garnishee Proceedings		
—	No amendment	The same
Order 49B – Execution and Enforcement of Judgment for Money by Imprisonment		
—	r.1AA of RHC added for consistency between RHC & RDC.	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 50 – Charging Orders, Stop Orders, etc.		
Amendments in r.15(2)	Amendments of RHC not followed, as motions are not generally available in DC. r.15 amended to maintain consistency with RHC.	Substantially the same, with r.16 of RDC retained to clarify that O.50 shall not affect O.81, r.10 in relation to charging partner's interest in partnership property.
Order 51 – Receivers : Equitable Execution		
—	No amendment	The same
Order 52 - Committal		
(1) Amendments in rr.3 & 6(3)	(2) — (3) —	Amendments of RHC not followed, as motions are not generally available in DC. r.3(1A) of RHC added for consistency between RHC & RDC r.6(3) amended, following the wordings of RHC (except the latest amendments) to maintain consistency.

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 58 - Appeals		
(1) Amendments in r.1	Amendments of RHC followed, with r.1 amended given the amendments in s.63 of DCO	Substantially different, as leave is generally required to appeal against any decision made in the civil proceedings in DC whereas leave to appeal is only required for interlocutory decisions in HC
(2) —	<p>r.2 amended:</p> <p>(1) to clarify that an appeal against an order of a master for imprisonment under O.49B should be to CA as of right, an appeal against a final decision of a master under O.49B should be to CA with the leave of court, and an appeal against an interlocutory decision under O.49B of a master should be to a judge in chambers;</p> <p>(2) to standardize the time limits for appeals to CA from HC & DC; and</p>	
(3) —	r.3 deleted, given O.59, r.13(1) of RHC which is also applicable in relation to an appeal from DC.	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(4) —	r.4 (which is modeled on O.59, r.21 of RHC) added to provide what are interlocutory judgments and orders for the purpose of determining the time limit for appeal	
Order 62 - Costs		
(1) Addition of new definitions in r.1(1)	Amendments of RHC followed	Substantially the same, with the following major differences-
(2) Amendments in r.2(2) and addition of r.2(2A)	Amendments of RHC not followed, as DC has no such jurisdiction	(1) no provision in RDC to deal with taxation of bill of costs of solicitors under the Legal Practitioners Ordinance:
(3) Amendments in r.2(4)	Amendments of RHC followed	(2) no provision in RDC to deal with taxation of costs in arbitration proceedings;
(4) Amendments in r.3	Amendments of RHC followed, with r.3(6) modified for consistency with RHC	(3) scale of costs is usually 2/3 of that awarded in the Court of First Instance (r.32(1A) of RDC);
(5) Amendments in r.4(3)	rr.4(2) and (3) of RHC (with the latest amendments and with modification to suit DC) added for consistency between RHC & RDC	(4) certificate of counsel is required in the District Court for recovery of counsel's fee for a claim less than \$150,000 (Schedule 1, Part II, Item 2(3) of RDC)
(6) Amendments in rr.5, 6A & 7	Amendments of RHC followed	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(7) Amendments in r.8	Amendments of RHC followed, with modification as to the reference to the provisions in the primary legislation	
(8) Additions of rr.8A, 8B, 8C & 8D	Amendments of RHC followed	
(9) Amendments in rr.9 & 9A	Amendments of RHC followed	
(10) Additions of rr.9B, 9C & 9D	Amendments of RHC followed	
(11) Amendments in r.10	Amendments of RHC followed	
(12) —	r.11 modified for consistency with RHC	
(13) Addition of r.11A	Amendments of RHC followed	
(14) Amendments in rr. 12 & 13	Amendments of RHC followed	
(15) Addition of r.13A	Amendments of RHC followed	
(16) Addition of rr.17A & 17B	Amendments of RHC followed	
(17) Amendments in r.21	Amendments of RHC followed	
(18) Addition of rr.21A, 21B, 21C & 21D	Amendments of RHC followed	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(19) Amendments in r.22	Amendments of RHC followed	
(20) Deletion of rr.23 & 25	Amendments of RHC followed	
(21) Amendments in rr.24, 26, 28(6) & 28A	Amendments of RHC followed, except r.28(6) which is not required for RDC	
(22) Amendments in r.32(3)	Amendments not followed, as they are not required for DC	
(23) Addition of rr.32A, 32B & 32C	Amendments of RHC followed Renumbering of the present r.32A	
(24) Amendments in rr.33	Amendments of RHC followed	
(25) Amendments in r.35	Amendments of RHC not followed, as they are not required for RDC	
(26) Addition of rr.36 and 37	Amendments of RHC followed	
(27) Amendments in item 1 & addition of item 1A in Schedule 1, Part I	Amendments of RHC followed	
(28) Amendments in Schedule 1, Part I, Item 2	Amendments of RHC followed, save that the figure is about 2/3 as that in HC	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
<p>(29) Amendments in Schedule 1, Part I, Item 3</p> <p>(30) —</p> <p>(31) Deletion of Schedule 1, Part II, Item 1(1)</p> <p>(32) Amendments in Schedule 1, Part II, Item 2</p> <p>(33) Amendments in the scale costs and fixed costs in Schedule 2</p>	<p>Amendments of RHC not followed, as the figure is considered appropriate for DC</p> <p>Schedule 1, Part I, Item 5(a)(viii) amended, following the wordings of RHC to maintain consistency</p> <p>Amendments of RHC not followed, there is no such provision in RDC</p> <p>Amendments of RHC followed, except item 2(3) as DC has different provision for certificate of counsel.</p> <p>Amendments of RHC generally followed, save that the costs in DC is approximately 2/3 as that in HC.</p>	
Order 62A – Costs Offer and Payments into Court		
Addition of the new O.62A on Costs Offer and Payments into Court.	Amendments of RHC followed	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 63 - Registry		
—	No amendment	Substantially the same, with rr.8 (inspection of powers of attorney) and 10 (enrolment of instrument) of RHC omitted which are not relevant to the District Court.
Order 64 – Court Offices		
—	No amendment	Substantially the same, with no provision for vacations in RDC.
Order 65 – Service of Documents		
—	No amendment	The same
Order 66 – Paper, Printing, Notices and Copies		
—	No amendment	The same
Order 67 – Change of Solicitor		
Amendments in r.5(2)	Amendments of RHC not followed, as motions are not generally available in DC.	The same
Order 68 – Particular Proceedings		
—	No amendment	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 72 – Particular Proceedings		
Amendments in r.8	Amendments of RHC followed, with r.8 modified upon the repeal of RDC O.23A. r.7(2) deleted, as there is no commercial list in DC.	The same
Order 77 – Proceedings by and against Government		
(1) Amendments in rr.9 & 18 (2) —	Amendments of RHC not followed, as motions are not generally available in DC. r.12(1) modified upon the repeal of RDC O.23A	Substantially the same, with rr.14 and 18 of RHC omitted as they are not relevant to the District Court (relating to certain proceedings involving the Government).
Order 78 – Proceedings of Court of First Instance transferred to the Court		
—	r.3(2) modified upon the repeal of RDC O.23A	Substantially different, as the rules deal with proceedings transferred to the court from another court.
Order 79 – Tribunal Proceedings Transferred or Removed to the Court		
—	No amendment	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 80 - Disability		
(1) —	r.3(6) amended and r.6(3) of RHC added for consistency between RHC & RDC	Substantially the same, with the provisions in r.12(3) & r.13 of RHC for HC to direct money to be paid into or transferred to DC omitted in RDC
(2) Amendments in r.11(1)	Amendments of RHC followed	
(3) Amendments in r.15	Amendments of RHC followed	
(4) —	r.16(4) amended for consistency with RHC	
Order 81 – Partners		
—	No amendment	The same
Order 82 – Defamation Actions		
Amendments in r.4	Amendments of RHC followed	Substantially the same, with the omission of r.8 of RHC (for application under s.25 of the Defamation Ordinance) which is not relevant to the District Court.
Order 83A – Money Lenders’ Action		
Amendments in r.2(1)	Amendments of RHC followed	The same

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
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—	No amendment	The same
Order 85 – Administration and Similar Actions		
—	No amendment	The same
Order 86 – Actions for Specific Performance, etc. : Summary Judgment		
Amendments in r.5	Amendments of RHC followed, with r.5 modified upon the repeal of RDC O.23A.	The same
Order 88 – Mortgage Actions		
Amendments in r.7	Amendments of RHC not followed, as motions are not generally available in DC.	The same
Order 89 – Proceedings between Husband and Wife		
(1) Amendments in r.1(1)	Amendments of RHC followed	The same
(2) Amendments in r.2(2)	Amendments of RHC not followed, as motions are not generally available in DC	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
Order 90 – Proceedings Concerning Minor		
(1) Amendments in rr.3(1), 5 & 10(1)	Amendments of RHC not followed, as DC has no such jurisdiction	Different, because of the difference in jurisdiction
(2) —	r.1(1) amended, providing that the application may be made by originating summons	
Order 90A – Proceedings Concerning Judgment Summons		
—	No amendment	Specific rule for RDC
Order 92 – Lodgment, Investment etc. of Funds in Court		
Amendments in r.5(5)	Amendments of RHC followed	The same
Order 93 – Applications under Variation of Trusts ordinance		
—	No amendment	The same
Order 113 – Summary Proceedings for Possession of Land		
—	No amendment	The same
Appendix A - Forms		
(1) Amendments in Form No. 1	Amendments of RHC followed	Substantially the same
(2) Amendments in Form No. 10	Amendments of RHC followed insofar as they are applicable to DC	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(3) —	Form No. 13 of RHC added, with modification to cater for the proceedings in the District Court	
(4) Amendments in Form No. 14	Amendments of RHC followed with modification to cater for DC	
(5) Amendments in Form No. 15	Amendments of RHC followed with modification to cater for DC	
(6) Additions of Forms Nos. 15A, 16, 16A, 16B, 16C, 16D & 16E	Amendments of RHC followed with modification to cater for DC	
(7) Amendments in Form No. 17	Amendments of RHC followed with modification to cater for DC	
(8) Amendments in Form Nos. 23 & 24	Amendments of RHC followed with modification to cater for DC	
(9) Addition of Form Nos. 25 & 25A	Addition of forms followed	
(10) —	Form No. 26 amended, following the wordings of RHC to maintain consistency	

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
<p>(11) —</p> <p>(12) Amendments in Form No.81</p> <p>(13) Amendments in Form No.85</p> <p>(14) Addition of Form Nos.93 & 93A</p>	<p>Form No. 38 of RHC added, with modification to cater for proceedings in the District Court</p> <p>Form No.81 of RHC (with latest amendments) added, with modifications to cater for proceedings in DC</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p>	
Others		
Addition of the new Appendix D on Code of Conduct for Expert Witnesses	Amendments of RHC followed	The same

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RULES OF THE DISTRICT COURT (AMENDMENT) RULES 2008

(Made by the District Court Rules Committee
under sections 72, 72A, 72B, 72C, 72CA,
72D and 72E of the District Court
Ordinance (Cap. 336))

PART 1 PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008).

PART 2 OBJECTIVES AND CASE MANAGEMENT POWERS

Recommendations 2, 3, 4, 81 and 82

2. Orders added

The Rules of the District Court (Cap. 336 sub. leg. H) are amended by adding after Order 1 -

"ORDER 1A OBJECTIVES

1. Underlying objectives (O. 1A, r. 1)

The underlying objectives of these Rules are –

- (a) to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court;
- (b) to ensure that a case is dealt with as expeditiously as is reasonably practicable;
- (c) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) to promote greater equality between the parties;
- (e) to facilitate the settlement of disputes; and
- (f) to ensure that the resources of the Court are distributed fairly.

2. Application by the Court of underlying objectives (O. 1A, r. 2)

(1) The Court shall seek to give effect to the underlying objectives of these Rules when it –

- (a) exercises any of its powers (whether under its inherent jurisdiction or given to it by these Rules or otherwise); or
- (b) interprets any of these Rules or a practice direction.

(2) In giving effect to the underlying objectives of these Rules, the Court shall always recognize that the primary aim in exercising the powers of the Court is to secure the just resolution of disputes in accordance with the substantive rights of the parties.

3. Duty of the parties and their legal representatives (O. 1A, r. 3)

The parties to any proceedings and their legal representatives shall assist the Court to further the underlying objectives of these Rules.

4. Court's duty to manage cases (O. 1A, r. 4)

(1) The Court shall further the underlying objectives of these Rules by actively managing cases.

(2) Active case management includes –

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (d) deciding the order in which the issues are to be resolved;
- (e) encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate, and facilitating the use of such a procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as practicable on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

**ORDER 1B
CASE MANAGEMENT POWERS**

1. Court's general powers of management (O. 1B, r. 1)

(1) The list of powers in this rule is in addition to and not in substitution for any powers given to the Court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the Court may by order –

- (a) extend or shorten the time for compliance with any rule, court order or practice direction (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party's legal representative to attend the Court;

- (d) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
 - (e) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
 - (f) consolidate proceedings;
 - (g) try two or more claims on the same occasion;
 - (h) direct a separate trial of any issue;
 - (i) decide the order in which issues are to be tried;
 - (j) exclude an issue from consideration;
 - (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
 - (l) take any other step or make any other order for the purpose of managing the case and furthering the underlying objectives set out in Order 1A.
- (3) When the Court makes an order, it may –
- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
 - (b) specify the consequences of failure to comply with the order or a condition.

(4) Where a party pays money into court following an order under paragraph (3), the money is security for any sum payable by that party to any other party in the proceedings.

2. Court's power to make order of its own motion (O. 1B, r. 2)

- (1) Except where a rule or some other enactment provides otherwise, the Court may exercise its powers on an application or of its own motion.
- (2) Where the Court proposes to make an order of its own motion –
- (a) it may give any person likely to be affected by the order an opportunity to make representations; and
 - (b) where it does so, it shall specify the time by and the manner in which the representations must be made.
- (3) Where the Court proposes –
- (a) to make an order of its own motion; and
 - (b) to hold a hearing to decide whether to make the order,
- it shall give each party likely to be affected by the order at least 3 days' notice of the hearing.
- (4) The Court may make an order of its own motion, without hearing the parties or giving them an opportunity to make representations.
- (5) Where the Court has made an order under paragraph (4) –
- (a) a party affected by the order may apply to have it set aside, varied or stayed; and
 - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made –
- (a) within such period as may be specified by the Court; or
 - (b) if the Court does not specify a period, not more than 14 days after the date on which notice of the order was sent to the party making the application.

3. Court's power to give procedural directions by way of order nisi

(O. 1B, r. 3)

(1) Where the Court considers that it is necessary or desirable to give a direction on the procedure of the Court and that the direction is unlikely to be objected to by the parties, it may of its own motion and without hearing the parties, give the direction by way of an order nisi.

(2) The order nisi becomes absolute 14 days after the order is made unless a party has applied to the Court for not making the order absolute."

PART 3
PRE-ACTION PROTOCOLS AND COSTS-ONLY PROCEEDINGS

Recommendations 7, 8, 9 and 84

3. Definitions

Order 1, rule 4(1) is amended by adding –

"practice direction" () means –

(a) a direction issued by the Chief Justice as to the practice and procedure of the Court; or

(b) a direction issued by a specialist judge for his specialist list;

"pre-action protocol" () means any code of practice designated as such and approved by a practice direction;"

4. Rules added

Order 2 is amended by adding –

"3. Non-compliance with practice direction, pre-action protocol, etc. (O. 2, r. 3)

(1) Where the Court exercises any of its powers under these Rules or gives any direction, it may take into account whether or not a party has complied with any relevant pre-action protocol.

(2) The Court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, court order, practice direction or pre-action protocol.

(3) When exercising its power under paragraph (2), the Court shall have regard to –

(a) the amount in dispute; and

(b) the costs which the parties have incurred or which they may incur.

(4) Where a party pays money into court following an order under paragraph (2), the money is security for any sum payable by that party to any other party in the proceedings.

4. Sanctions have effect unless defaulting party obtains relief (O. 2, r. 4)

Where a party has failed to comply with a rule, court order, practice direction or pre-action protocol, any sanction for failure to comply imposed by the rule, court order, practice

direction or pre-action protocol has effect unless the party in default applies to the Court for and obtains relief from the sanction.

5. Relief from sanctions (O. 2, r. 5)

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, court order, practice direction or pre-action protocol, the Court shall consider all the circumstances including –

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;
- (e) the extent to which the party in default has complied with other rules, court orders, practice directions and pre-action protocols;
- (f) whether the failure to comply was caused by the party or his legal representative;
- (g) in the case where the party in default is not legally represented, whether he was unaware of the rule, court order, practice direction or pre-action protocol, or if he was aware of it, whether he was able to comply with it without legal assistance;
- (h) whether the trial date or the likely trial date can still be met if relief is granted;
- (i) the effect which the failure to comply had on each party; and
- (j) the effect which the granting of relief would have on each party.

(2) An application for relief must be supported by evidence."

5. Service of originating summons

Order 10, rule 5 is amended by repealing "in Appendix A" and substituting "or 15A in Appendix A, whichever is appropriate".

6. Principal cases in which service of writ out of jurisdiction is permissible

Order 11, rule 1(1) is amended by adding –

- "(o) the claim is for an order for the costs of and incidental to a dispute under section 53A(2) of the Ordinance;"

7. Acknowledgment of service

Order 12, rule 3(1) is amended by repealing "or 15" and substituting ", 15 or 15A".

8. Application

Order 62, rule 2(4) is amended by repealing everything before "and under the enactments" and substituting –

- "(4) The powers and discretion of the Court as to costs under sections 53 and 53A".

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

Order 62, rule 5 is amended –

- (a) by renumbering it as Order 62, rule 5(1);

- (b) in paragraph (1) –
 - (i) in subparagraph (c), by repealing "and" at the end;
 - (ii) by adding –
 - "(e) the conduct of all the 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.";
- (c) by adding –
 - "(2) For the purpose of paragraph (1)(e), the conduct of the parties includes –
 - (a) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (b) the manner in which a party has pursued or defended his case or a particular allegation or issue;
 - (c) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and
 - (d) conduct before, as well as during, the proceedings and in particular, the extent to which the parties followed any relevant 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."

10. Rule added

Order 62 is amended by adding immediately after rule 11 –

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

- (1) Proceedings under section 53A(2) of the Ordinance may be commenced by originating summons in Form No. 10 in Appendix A.
- (2) The originating summons must be accompanied by –
 - (a) an affidavit exhibiting the agreement referred to in section 53A(1) of the Ordinance; and
 - (b) the plaintiff's bill of costs or statement of costs.
- (3) An acknowledgment of service of the originating summons must be in Form No. 15A in Appendix A.
- (4) A master may make a summary assessment of or an order for taxation of the costs that are the subject matter of the proceedings commenced in accordance with paragraph (1).
- (5) Orders 13A, 22 and 27 and Order 28, rules 1A, 4(3) to (5) and 7 to 9 do not apply in relation to the proceedings commenced in accordance with paragraph (1) unless otherwise directed by the Court."

11. Powers of taxing masters to tax costs

Order 62, rule 12 is amended –

- (a) in paragraph (a), by repealing "costs of or arising out of any cause or matter in the Court; and" and substituting "costs of or incidental to any proceedings in the Court;"
- (b) by adding –
 - "(b) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1); and".

12. Forms

(1) Appendix A is amended in Form No. 10, by adding "; Order 62 rule 11A" after "Order 17 rule 3" appearing in parentheses immediately under the heading.

- (2) Appendix A is amended in Form No. 15 by repealing the heading and substituting –
- "Acknowledgment of Service of Originating
Summons – for all cases other than
costs-only proceedings under
section 53A of the District
Court Ordinance";**

- (3) Appendix A is amended by adding –

"No. 15A

**Acknowledgment of Service of Originating Summons –
for costs-only proceedings under section 53A
of the District Court Ordinance**

(Order 10 rule 5; Order 12 rule 3(1); Order 62 rule 11A)

Directions for Acknowledgment of Service

The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a solicitor acting on behalf of the defendant or by the defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the District Court of the following address -

[insert here the address of the Registry of the District Court]

See over for Notes for Guidance

[Back of page (1)]

Notes for Guidance

[As in No. 14 substituting "originating summons" for "writ of summons".]

(Heading as in No. 8 or 10 to be completed by plaintiff)

**ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS**

If you intend to instruct a solicitor to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

See Notes 1,
3, 4 and 5.

1. State the full name of the defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

2. State whether the defendant intends to contest the liability for costs (tick appropriate box)
☐ yes ☐ no

3. State whether the defendant intends to contest the amount of those costs (tick appropriate box)
☐ yes ☐ no

Where words appear
between square
brackets, delete if
inapplicable.

Service of the Originating Summons is
acknowledged accordingly.

(Signed) [Solicitor]()
 [Defendant in person]
 Address for service

Notes as to Address for Service

Solicitor. Where the defendant is represented by a solicitor, state the solicitor's place of business in Hong Kong.

Defendant in person. Where the defendant is acting in person, he must state his residence OR, if he does not reside in Hong Kong, he must state an address in Hong Kong to which communications for him should be sent. In the case of a limited company, "residence" (居所) means its registered or principal office.

(Back of page (1))

Indorsement by plaintiff's solicitors (or by plaintiff if suing in person) of his name, address and reference, if any."

PART 4 COMMENCEMENT OF PROCEEDINGS

Recommendations 11 to 16

13. Definitions

Order 1, rule 4(1) is amended by adding –
 "'Amendment Rules 2008" () means the Rules of the District Court (Amendment)
 Rules 2008 (L.N. of 2008);".

14. Non-compliance with Rules

Order 2, rule 1(3) is repealed and the following substituted –
 "(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings ought to

have begun by an originating process other than the one employed, but shall instead give directions for the continuation of the proceedings in an appropriate manner."

15. Rules repealed

Order 5, rules 2 and 3 are repealed.

16. Proceedings which may be begun by writ or originating summons

Order 5, rule 4(1) is repealed and the following substituted –

"(1) Except in the case of proceedings which under any written law are required or authorized to be begun by a specific form of originating process, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate."

17. Rule added

Order 5 is amended by adding –

"5. Proceedings to be begun by motion or petition (O. 5, r. 5)

Proceedings may be begun by originating motion or petition if, but only if, under any written law the proceedings in question are required or authorized to be so begun."

18. Form of summons, etc.

Order 7, rule 2 is amended by adding –

"(1A) Form No. 8 in Appendix A is to be used in all cases except where another form is prescribed under a written law or there is no party on whom the summons is to be served.

(1B) Form No. 10 in Appendix A is to be used if it is prescribed under a written law.

(1C) Form No. 11 in Appendix A is to be used if there is no party on whom the summons is to be served."

19. Ex parte originating summons

Order 7, rule 7(1) is amended by adding "and (1C)" after "Rules 2(1)".

20. Orders added

The following are added immediately after Order 7 –

"ORDER 8

ORIGINATING AND OTHER MOTIONS:GENERAL PROVISIONS

1. Application (O. 8, r. 1)

The provisions of this Order apply to all motions required or authorized under a written law, subject to any provisions relating to any class of motion made by that written law or any other written law.

2. Notice of motion (O. 8, r. 2)

(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make an order ex parte –

- (a) on such terms as to costs or otherwise; and
 - (b) subject to such undertaking, if any, as it thinks just.
- (2) Any party affected by an order made under paragraph (1) may apply to the Court to set it aside.
- (3) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

3. Form and issue of notice of motion

(O. 8, r. 3)

- (1) The notice of an originating motion must be in Form No. 13 in Appendix A and the notice of any other motion in Form No. 38 in that Appendix.
- (2) Where leave has been given under rule 2(3) to serve short notice of motion, that fact must be stated in the notice.
- (3) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.
- (4) Order 6, rule 5, with the necessary modifications, applies in relation to notice of an originating motion as it applies in relation to a writ.
- (5) The notice of an originating motion by which proceedings are begun must be issued out of the Registry.
- (6) Issue of the notice of an originating motion takes place upon its being sealed by an officer of the Registry.

4. Service of notice of motion with writ, etc. (O. 8, r. 4)

Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of the writ or summons, whether or not the defendant has acknowledged service in the action.

5. Adjournment of hearing (O. 8, r. 5)

The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

ORDER 9
PETITIONS: GENERAL PROVISIONS

1. Application (O. 9, r. 1)

The provisions of this Order apply to all petitions required or authorized under a written law, subject to any provisions relating to any class of petition made by that written law or any other written law.

2. Contents of petition (O. 9, r. 2)

- (1) A petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun by the petition.
- (2) A petition must include at the end of it –
 - (a) a statement of the names of the persons, if any, required to be served with the petition; or
 - (b) if no person is required to be served, a statement to that effect.

(3) Order 6, rule 5, with the necessary modifications, applies in relation to a petition as it applies in relation to a writ.

3. Presentation of petition (O. 9, r. 3)

A petition may be presented by leaving it at the Registry.

4. Fixing time for hearing petition

(O. 9, r. 4)

(1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than seven days before the day fixed for the hearing of the petition.

5. Certain applications not to be made by petition (O. 9, r. 5)

No application in any cause or matter may be made by petition."

21. Service of originating summons, etc.

Order 11, rule 9 is amended –

- (a) in paragraph (1), by repealing "originating summons" and substituting "originating summons, notice of motion or petition";
- (b) in paragraph (4), by repealing "or originating summons" and substituting ", originating summons, motion or petition".

22. Mode of application

Order 17, rule 3(1) is amended by repealing "must be made" where it first appears and substituting "may be made".

23. Amendment of originating summons

Order 20, rule 7 is amended –

- (a) in the heading, by adding ", etc." after "**summons**";
- (b) by adding ", a petition and an originating notice or motion" after "originating summons".

24. Rule added

Order 28 is amended by adding –

"3A. Originating summons to be heard in open court (O. 28, r. 3A)

An originating summons must be heard in open court unless the Court otherwise directs."

25. Application for receiver and injunction

Order 30, rule 1(1) is amended by repealing "shall be" and substituting "may be".

26. Evidence by affidavit

Order 38, rule 2(3) is amended –

- (a) by adding ", originating motion or petition," after "originating summons";

- (b) by repealing "interlocutory application" and substituting "application made by summons or motion".

27. Order prohibiting transfer, etc., of securities

Order 50, rule 15 is amended –

- (a) in paragraph (2), by repealing "by originating summons in Form No. 10 in Appendix A" and substituting "by summons";
- (b) by adding –
 - "(2A) An originating summons under this rule must be in Form No. 10 in Appendix A."

28. When order for taxation of costs not required

Order 62, rule 11(1) is amended –

- (a) by adding ", petition" after "Where an action";
- (b) by adding "or a motion is refused with costs," after "dismissed with costs,".

29. Appointment of next friend or guardian ad litem

Order 80, rule 3(6)(c) is amended by repealing "summons" and substituting "petition, summons or motion".

30. Approval of settlement

Order 80, rule 11(1) is amended by repealing ", notwithstanding anything in Order 5, rule 2,".

31. Service of certain documents on person under disability

Order 80, rule 16(4) is amended by repealing "an originating summons" and substituting "a notice of motion or summons".

32. Commencement of money lender's action

Order 83A, rule 2(1) is amended by repealing "shall be" and substituting "may be".

33. Determination of questions as to property

Order 89, rule 1(1) is amended by repealing "must be" and substituting "may be".

34. Applications under Guardianship of Minors Ordinance and Parent and Child Ordinance

Order 90, rule 1(1) is amended by repealing "must be" and substituting "may be".

35. Forms

(1) Appendix A is amended in Form No. 10, by adding "; Order 50 rule 15" after "Order 17 rule 3".

(2) Appendix A is amended by adding after Form No. 12 –

"No. 13
Notice of originating motion
(Order 8 rule 3)

20____, No. _____

IN THE DISTRICT COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

In the matter of _____
and

In the matter of _____

Take notice that the District Court in Hong Kong will be moved (before His/Her Honour Judge _____) at the expiration of ____ days from the service upon you of this notice (or on _____ day, the ____ day of _____ 20____, at the sitting of the Court) or so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that _____ (or for the following relief, namely _____)

And that the costs of and incidental to this (application) (appeal) may be paid by _____ (And further take notice that the grounds of this (application)(appeal) are: _____)

Dated the ____ day of _____ 20____ .

(Signed) _____

C.D. of _____ solicitor for the above named (applicant)(appellant) A.B. whose address is _____ or A.B. whose address for service is _____
_____ (applicant)(appellant) in person _____

To _____ of _____."

(3) Appendix A is amended by adding after Form No. 32 –

"No. 38
Notice of motion
(Order 8 rule 3)
(Heading as in cause or matter)

Take notice that (pursuant to the leave of _____ given on the ____ day of _____ 20____) the Court (or Judge _____) will be moved _____ the ____ day of _____ 20____ at _____ o'clock, or so soon thereafter as counsel can be heard, by (Mr. _____ of _____) counsel for the above-named plaintiff (or defendant) that _____ and that the costs of the application be _____

Dated the ____ day of _____ 20____.

(Signed) _____
of _____
Solicitor for _____

To

Solicitor for _____".

PART 5
DISPUTE AS TO JURISDICTION

Recommendation 17

36. Dispute as to jurisdiction

Order 12, rule 8 is amended -

- (a) in paragraph (1), by adding –
 - "(ga) an order staying the proceedings; or";
- (b) by adding –

"(2) A defendant who wishes to argue that the Court should not exercise its jurisdiction in the proceedings on one or more of the grounds specified in paragraph (2A) or on any other ground shall also give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for –

- (a) a declaration that in the circumstances of the case the Court should not exercise any jurisdiction it may have; or
- (b) an order staying the proceedings; or
- (c) such other relief as may be appropriate, including the relief specified in paragraph (1)(e) or (f).

(2A) The grounds specified for the purposes of paragraph (2) are that –

- (a) considering the best interests and convenience of the parties to the proceedings and the witnesses in the proceedings, the proceedings should be conducted in another court;
- (b) the defendant is entitled to rely on an agreement to which the plaintiff is a party, excluding the jurisdiction of the Court; and
- (c) in respect of the same cause of action to which the proceedings relate, there are other proceedings pending between the defendant and the plaintiff in another court.";

- (c) in paragraph (3), by adding "or (2)" after "paragraph (1)";
- (d) in paragraph (4), by adding "or (2)" after "paragraph (1)";
- (e) in paragraph (5), by adding "or (2)" after "paragraph (1)";
- (f) in paragraph (6) –
 - (i) by adding "or (2)" after "paragraph (1)";
 - (ii) by repealing everything after "to defend the action;" and substituting "but if the Court makes no order on the application or dismisses it, the notice shall stand unless otherwise directed by the Court and the defendant shall be treated as having given notice of intention to defend the action.";
- (g) by adding –
 - "(6A) If the Court makes no order on an application under paragraph (1) or (2) or dismisses it, it may give such directions as may be appropriate for service of a defence and the further conduct of the proceedings.";
- (h) in paragraph (7), by adding "or (2)" after "paragraph (1)".

37. Rule added

Order 12 is amended by adding –

"11. Transitional provision relating to rule 36 of Amendment Rules 2008

(O. 12, r. 11)

Where an application under rule 8(1) is pending immediately before the commencement of rule 36 ("the amending rule") of the Amendment Rules 2008, then the application is to be determined as if the amending rule had not been made."

38. Service of defence

Order 18, rule 2(3) is amended by adding "or (2)" after "rule 8(1)".

39. Forms

(1) Appendix A is amended in Form No. 14, under the sub-heading "*Directions for Acknowledgment of Service*", by adding –

"4. A Defendant who wishes to dispute the jurisdiction of the District Court in the proceedings and to apply to the District Court for an order staying the proceedings must give notice of intention to defend the proceedings and make the application within the time limited for service of a defence."

(2) Appendix A is amended in Form No. 15, under the sub-heading "*Directions for Acknowledgment of Service*", by adding –

"3. A Defendant who wishes to dispute the jurisdiction of the District Court in the proceedings and to apply to the District Court for an order staying the proceedings must give notice of intention to defend the proceedings and make the application within the time limited for service of a defence."

PART 6
DEFAULT JUDGMENTS AND ADMISSIONS

Recommendation 18

40. Indorsement of claim

Order 6, rule 2 is amended –

- (a) in subparagraph (b), by repealing the full stop and substituting "; and";
- (b) by adding –
 - "(c) with a statement that the defendant may make an admission in accordance with Order 13A within the period fixed for service of his defence."

41. Order added

The following is added –

"ORDER 13A
ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY

1. Interpretation (O. 13A, r. 1)

- (1) In this Order –
"claim" () means –
 - (a) where in an action the plaintiff makes only one claim, that claim; and
 - (b) where in an action the plaintiff makes more than one claim, all the claims in the action.
- (2) For the purposes of rules 6(1)(b) and 7(1)(b), the amount of a claim is treated as unliquidated if the claim consists of a claim for a liquidated amount of money and a claim for an unliquidated amount of money.

2. Making an admission (O. 13A, r. 2)

- (1) Where the only remedy that a plaintiff is seeking is the payment of money, the defendant may make an admission in accordance with –
 - (a) rule 4 (admission of whole of claim for liquidated amount of money);
 - (b) rule 5 (admission of part of claim for liquidated amount of money);
 - (c) rule 6 (admission of liability to pay whole of claim for unliquidated amount of money); or
 - (d) rule 7 (admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim).
- (2) Where the defendant makes an admission as mentioned in paragraph (1), the plaintiff may enter judgment except where –
 - (a) the defendant is a person under disability; or
 - (b) the plaintiff is a person under disability and the admission is made under rule 5 or 7.
- (3) The Court may allow a party to amend or withdraw an admission if the Court considers it just to do so having regard to all the circumstances of the case.
- (4) In this rule, "person under disability" () has the meaning assigned to it in Order 80, rule 1.

3. Period for making admission

(O. 13A, r. 3)

- (1) The period for filing and serving an admission under rule 4, 5, 6 or 7 is –
 - (a) where the defendant is served with a writ, the period fixed by or under these Rules for service of his defence;
 - (b) where the defendant is served with an originating summons, the period fixed by or under these Rules for filing of his affidavit evidence; and
 - (c) in any other case, 14 days after service of the originating process.
- (2) A defendant may file an admission under rule 4, 5, 6 or 7 –
 - (a) after the expiry of the period for filing it specified in paragraph (1)(a) if the plaintiff has not obtained a default judgment under Order 13 or 19; and
 - (b) after the expiry of the period for filing it specified in paragraph (1)(b) if the admission is filed and served before the date or the period fixed under Order 28, rule 2 for the hearing of the originating summons.
- (3) If the defendant does so, this Order applies as if he had made the admission within that period.

4. Admission of whole of claim for liquidated amount of money

(O. 13A, r. 4)

- (1) This rule applies where –
 - (a) the only remedy that the plaintiff is seeking is the payment of a liquidated amount of money; and
 - (b) the defendant admits the whole of the claim.
- (2) The defendant may admit the claim by –
 - (a) filing in the Registry an admission in Form No. 16 in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
- (3) The plaintiff may obtain judgment by filing in the Registry a request in Form No. 16A in Appendix A and, if he does so –
 - (a) where the defendant has not requested time to pay, paragraphs (5), (6) and (7) apply;
 - (b) where the defendant has requested time to pay, rule 9 applies.
- (4) If the plaintiff does not file a request for judgment within 14 days after the copy of the admission is served on him, the claim is stayed until he files the request.
- (5) The plaintiff may specify in his request for judgment –
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (6) Upon receipt of the request for judgment, the Court shall enter judgment.
- (7) Judgment shall be for the amount of the claim (less any payments made) and costs to be paid –
 - (a) by the date or at the times and rate specified in the request for judgment; or
 - (b) if none is specified, immediately.

5. Admission of part of claim for liquidated amount of money

(O. 13A, r. 5)

- (1) This rule applies where –
 - (a) the only remedy that the plaintiff is seeking is the payment of a liquidated amount of money; and
 - (b) the defendant admits part of the claim in satisfaction of the whole claim.
- (2) The defendant may admit part of the claim by –
 - (a) filing in the Registry an admission in Form No. 16 in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
- (3) Within 14 days after the copy of the admission is served on him, the plaintiff shall –
 - (a) file in the Registry a notice in Form No. 16B in Appendix A, stating that –
 - (i) he accepts the amount admitted in satisfaction of the whole claim;
 - (ii) he does not accept the amount admitted by the defendant and wishes the proceedings to continue; or
 - (iii) if the defendant has requested time to pay, he accepts the amount admitted in satisfaction of the whole claim, but not the defendant's proposals as to payment; and
 - (b) serve a copy of the notice on the defendant.
- (4) If the plaintiff does not file the notice in accordance with paragraph (3), the whole claim is stayed until he files the notice.
- (5) If the plaintiff accepts the amount admitted in satisfaction of the whole claim, he may obtain judgment by filing in the Registry a request in Form No. 16B in Appendix A and, if he does so –
 - (a) where the defendant has not requested time to pay, paragraphs (6) to (8) apply;
 - (b) where the defendant has requested time to pay, rule 9 applies.
- (6) The plaintiff may specify in his request for judgment –
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (7) Upon receipt of the request for judgment, the Court shall enter judgment.
- (8) Judgment shall be for the amount admitted (less any payments made) and costs to be paid –
 - (a) by the date or at the times and rate specified in the request for judgment; or
 - (b) if none is specified, immediately.

6. Admission of liability to pay whole of claim for unliquidated amount of money (O. 13A, r. 6)

- (1) This rule applies where –
 - (a) the only remedy that the plaintiff is seeking is the payment of money;
 - (b) the amount of the claim is unliquidated; and

- (c) the defendant admits liability but does not offer to pay a liquidated amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by –
 - (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
- (3) The plaintiff may obtain judgment by filing a request in Form No. 16D in Appendix A.
- (4) If the plaintiff does not file a request for judgment within 14 days after the copy of the admission is served on him, the claim is stayed until he files the request.
- (5) Upon receipt of the request for judgment, the Court shall enter judgment.
- (6) Judgment shall be for an amount to be decided by the Court and costs.

**7. Admission of liability to pay claim
for unliquidated amount of money
where defendant offers a sum in
satisfaction of the claim**

(O. 13A, r. 7)

- (1) This rule applies where –
 - (a) the only remedy that the plaintiff is seeking is the payment of money;
 - (b) the amount of the claim is unliquidated; and
 - (c) the defendant –
 - (i) admits liability; and
 - (ii) offers to pay a liquidated amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by –
 - (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
- (3) Within 14 days after the copy of the admission is served on him, the plaintiff shall –
 - (a) file in the Registry a notice in Form No. 16E in Appendix A, stating whether or not he accepts the amount in satisfaction of the claim; and
 - (b) serve a copy of the notice on the defendant.
- (4) If the plaintiff does not file the notice in accordance with paragraph (3), the claim is stayed until he files the notice.
- (5) If the plaintiff accepts the offer he may obtain judgment by filing a request in Form No. 16E in Appendix A and if he does so –
 - (a) where the defendant has not requested time to pay, paragraphs (6), (7) and (8) apply;
 - (b) where the defendant has requested time to pay, rule 9 applies.
- (6) The plaintiff may specify in his request for judgment –
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (7) Upon receipt of the request for judgment, the Court shall enter judgment.
- (8) Judgment shall be for the amount offered by the defendant (less any payments made) and costs to be paid –
 - (a) by the date or at the times and rate specified in the request for judgment; or

(b) if none is specified, immediately.

(9) If the plaintiff does not accept the amount offered by the defendant, he may obtain judgment by filing a request in Form No. 16E in Appendix A.

(10) Judgment under paragraph (9) shall be for an amount to be decided by the Court and costs.

8. Power of Court to give directions

(O. 13A, r. 8)

Where the Court enters judgment under rule 6 or 7 for an amount to be decided by the Court, it may give such directions as it considers appropriate.

9. Request for time to pay (O. 13A, r. 9)

(1) A defendant who makes an admission under rule 4, 5 or 7 may make a request for time to pay.

(2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.

(3) The defendant's request for time to pay must be filed with his admission.

(4) If the plaintiff accepts the defendant's request for time to pay, he may obtain judgment by filing a request for judgment in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.

(5) Upon receipt of the request for judgment, the Court shall enter judgment.

(6) Judgment shall be –

(a) where rule 4 applies, for the amount of the claim (less any payments made) and costs;

(b) where rule 5 applies, for the amount admitted (less any payments made) and costs; or

(c) where rule 7 applies, for the amount offered by the defendant (less any payments made) and costs,

and (in all cases) shall be for payment by the date or at the times and rate specified in the defendant's request for time to pay.

(7) Where judgment is for payment by instalments at the times and rate specified in the defendant's request for time to pay, then unless the Court otherwise orders and subject to paragraph (8), execution of the judgment is stayed pending payment.

(8) If the defendant fails to pay an instalment or part of an instalment in accordance with the judgment, the stay of execution pursuant to paragraph (7) immediately ceases and the plaintiff may enforce the payment of the whole amount adjudged to be paid or the whole of any unpaid balance.

10. Determination of rate of payment by Court (O. 13A, r. 10)

(1) This rule applies where the defendant makes a request for time to pay under rule 9.

(2) If the plaintiff does not accept the defendant's proposals for payment, he shall file a notice in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.

(3) When the Court receives the plaintiff's notice, it shall enter judgment for the amount admitted (less any payments made) to be paid by the date or at the times and rate of payment determined by the Court.

(4) Where the Court is to determine the date or the times and rate of payment, it may do so without a hearing.

(5) If there is to be a hearing to determine the date or the times and rate of payment, the Court shall give each party at least 7 days' notice of the hearing.

11. Right of re-determination (O. 13A, r. 11)

(1) Where the Court has determined the date or the times and rate of payment under rule 10(4) without a hearing, either party may apply for the decision to be re-determined by the Court.

(2) An application for re-determination must be made within 14 days after the applicant is served with notice of the determination.

12. Interest (O. 13A, r. 12)

(1) Judgment under rule 4, 5 or 7 must include the amount of interest claimed to the date of judgment if –

- (a) the plaintiff is seeking interest and he has stated in the endorsement of the writ or the statement of claim or the originating summons that he is doing so –
 - (i) under the terms of a contract;
 - (ii) under a specified enactment; or
 - (iii) on some other specified basis;
- (b) where interest is claimed under section 49 of the Ordinance, the rate is no higher than the rate of interest payable on judgment debts at the date when the writ or the originating summons was issued; and
- (c) the plaintiff's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the statement of claim or the originating summons to the date of the request for judgment.

(2) In any case where judgment is entered under rule 4, 5 or 7 and the conditions specified in paragraph (1) are not satisfied, judgment shall be for an amount of interest to be decided by the Court.

13. Form for admission to be served with statement of claim or originating summons

(O. 13A, r. 13)

(1) This rule applies where the only remedy that the plaintiff is seeking is the payment of money, whether or not the amount is liquidated.

(2) Where a writ of summons, an originating summons or any other originating process is served on a defendant, it must be accompanied by –

- (a) if the amount of money which the plaintiff is seeking is liquidated, a copy of Form No. 16 in Appendix A for admitting the claim; and
- (b) if the amount of money which the plaintiff is seeking is unliquidated, a copy of Form No. 16C in Appendix A for admitting the claim.

14. Application

(O. 13A, r. 14)

(1) This Order (other than rule 13) applies in relation to a writ of summons, an originating summons or any other originating process served before the commencement of this Order if –

- (a) in the case of a writ of summons, the plaintiff has not obtained a default judgment under Order 13 or 19;
 - (b) in the case of an originating summons, the admission is filed and served before the date or the period fixed under Order 28, rule 2; and
 - (c) in the case of any other originating process, the period specified in rule 3(1)(c) for filing and serving an admission under rule 4, 5, 6 or 7 has not expired.
- (2) This Order applies in relation to a counterclaim with the necessary modifications as if –
- (a) a reference to a claim or statement of claim were a reference to a counterclaim;
 - (b) a reference to a plaintiff were a reference to the party making the counterclaim; and
 - (c) a reference to a defendant were a reference to the defendant to the counterclaim.
- (3) Where a defendant has made a claim against a person not already a party to the action under Order 16, rule 1 or 8, this Order applies in relation to that claim and any other claim made under Order 16, rule 9 with the necessary modifications as if –
- (a) a reference to a plaintiff were a reference to the person who makes the claim; and
 - (b) a reference to a defendant were a reference to the person against whom the claim is made."

42. Forms

- (1) Appendix A is amended in Form No. 1 –
- (a) by adding "or to make an admission" after "to contest these proceedings";
 - (b) by repealing "without further notice." and substituting –
"without further notice.

If you intend to make an admission, you may complete an appropriate form enclosed in accordance with the accompanying Directions for Acknowledgment of Service. *[Insert this paragraph if the only remedy that you are seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money].*";

- (c) by repealing "and, if the Plaintiff obtains an order for substituted service, the additional sum of \$.....".

- (2) Appendix A is amended in Form No. 14, under the sub-heading "*Directions for Acknowledgment of Service*" –

- (a) by adding immediately below paragraph 1 –
"*[here insert the address of the Registry of the District Court]*";
- (b) in paragraph 2, by repealing "14 days" where it twice appears and substituting "28 days";
- (c) by repealing paragraph 3 and substituting –
"3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the Plaintiff's claim in

whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the writ of summons.

A completed Form No. 16 or 16C must be filed with the Registry of the District Court and served on the Plaintiff [or the Plaintiff's Solicitors] within the period for service of the defence."

(3) Appendix A is amended in Form No. 14, under the heading "**Notes for Guidance**", by repealing paragraph 6(ii) and substituting –

- "(ii)(a) if the Company has more than one director, a director of the Company is acting on its behalf and:
 - (A) the director has been authorized by the board of directors of the Company to act on its behalf in the proceedings; and
 - (B) the director has made and filed at the Registry of the District Court an affidavit stating that he has been authorized by the board of directors of the Company to act on its behalf in the proceedings and exhibiting –
 - (I) the original of the resolution authorizing the director to act on behalf of the Company; or
 - (II) a copy of such resolution duly certified by another person who must either be a director or the secretary of the Company; or
- (b) if the Company has only one director, the director of the Company is acting on its behalf."

(4) Appendix A is amended in Form No. 14, under the sub-heading

"ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS", by repealing –

- "See Direction 3. 3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick appropriate box)

☐ Yes ☐ no

and substituting –

- "See Direction 3. 3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state whether the Defendant intends to make an admission (tick appropriate box).

☐ yes ☐ no

If yes, the Defendant may make the admission by completing Form No. 16 or 16C (as the case may require) accompanying the writ of summons."

(5) Appendix A is amended in Form No. 15, under the sub-heading "*Directions for Acknowledgment of Service*" –

- (a) by repealing "The accompanying form" and substituting "1. The accompanying form";
- (b) by adding immediately below paragraph 1 –

"[here insert the address of the Registry of the District Court]";
- (c) by adding –

"2. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the Plaintiff's claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the originating summons.

A completed Form No. 16 or 16C must be filed with the Registry of the District Court and served on the Plaintiff [or the Plaintiff's Solicitors] within the period for filing of the Defendant's affidavit evidence."

(6) Appendix A is amended in Form No. 15, under the sub-heading "ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS", by repealing –

<p>"Where words appear between square brackets, delete if inapplicable.</p>	<p>Service of the Originating Summons is acknowledged accordingly."</p>
---	---

and substituting –

- | | |
|--------------------------|--|
| <p>"See Direction 2.</p> | <p>3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state whether the Defendant intends to make an admission (tick appropriate box).</p> <p style="margin-left: 40px;"> <input type="checkbox"/> yes <input type="checkbox"/> no </p> <p>If yes, the Defendant may make the admission by completing Form No. 16 or 16C (as the case may require) accompanying the originating summons.</p> |
|--------------------------|--|

Where words appear between square brackets, delete if inapplicable.

Service of the Originating Summons is acknowledged accordingly."

(7) Appendix A is amended by adding –

"No. 16

Admission (liquidated amount)
(Order 13A rules 4(2), 5(2) & 13(2))
(*Heading as in action*)

Explanatory Note

1. The only claim the plaintiff has made against you is for a liquidated amount of money. You may admit the plaintiff's claim in whole or in part by completing this form within the period for service of your defence if you have been served with a Writ *or* the period for filing of your affidavit evidence if you have been served with an Originating Summons *or* within 14 days after service of the originating process in any other case.
2. If you do not ask for time to pay, the plaintiff will decide how much and when you should pay.
3. If you ask for time to pay, the plaintiff will decide whether or not to accept your proposal for payment.
4. If the plaintiff accepts your proposal for payment, the plaintiff may, within 14 days after the copy of your admission is served on him, request the Court to enter judgment against you.
5. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made.
6. The completed form should be filed in the Registry of the District Court.

How to fill in this form

- Tick the correct boxes and give as much information as you can. **Then sign and date the form.** If necessary provide details on a separate sheet, add the action number and attach it to this form.
- **If you do not ask for time to pay, you need not complete items 2 to 9 and 11 to 14.**
- If you ask for time to pay, make your offer of payment in item 14.
- **If you are not an individual, you need not complete items 1 to 9 but you should complete items 10 to 12 and ensure that you comply with the requirement specified in item 13 and provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made in item 14.**
- **If you are an individual, you need not complete items 10 to 12 and need not comply with the requirement specified in item 13.**
- You can get help to complete this form at the Registry of the District Court.

How much of the claim do you admit?

- ☐ I admit the full amount claimed as shown on the statement of claim **or**
☐ I admit the amount of \$

1. Personal details

Surname

Forename

☐ Mr☐ Mrs☐ Miss☐ Ms

Address

2. Dependants (*people you look after financially*)(*give details*)

3. Employment

☐ **I am employed as a**

My employer is

Jobs other than main job
(give details)

☐ **I am self employed as a**

Annual turnover is \$

☐ **I am not** in arrears with my mandatory provident fund contributions and income tax

☐ **I am** in arrears and I owe \$

Give details of :

(a) contracts and other work
in hand

(b) any sums due for work
done

☐ **I have been unemployed for** years months

☐ **I am a pensioner**

4. Bank account and savings (please list all)

Bank account	In credit by \$	Overdrawn by \$
<input type="text"/>	<input type="text"/>	<input type="text"/>

5. Residence

- I live in ☐ my own flat
- ☐ my jointly owned flat
- ☐ public housing estate
- ☐ others (please specify)

6. Income

My usual take-home pay (including overtime, commission, bonuses, etc.)	\$	per month
My pension(s)	\$	per month
Others living in my home give me	\$	per month
Other income (give details below)		
<input type="text"/>	\$	per month
<input type="text"/>	\$	per month
<input type="text"/>	\$	per month
Total income	\$	per month

7. Other assets (please list and indicate their location)

--

8. Expenses

(Do not include any payments made by other members of the household out of their own income)

I have regular expenses as follows:

Mortgage (including second mortgage)	\$	per month
Rent	\$	per month
Rates and government rent	\$	per month
Gas	\$	per month
Electricity	\$	per month
Water charges	\$	per month
Housekeeping, food, school meals	\$	per month
Travelling expenses	\$	per month
Children's clothing	\$	per month
Maintenance payments	\$	per month
Court orders	\$	per month
Others		
	\$	per month
	\$	per month
	\$	per month
Total expenses	\$	per month

9. Liabilities

(This section is for arrears only. Do not include regular expenses listed in item 8.)

Rent arrears	\$
Mortgage arrears	\$
Rates and government rent arrears	\$
Water charges arrears	\$
Fuel debts : Gas	\$
Electricity	\$
Other	\$
Maintenance arrears	\$
Loans and credit card debts (please list)	\$
Others (give details below)	
	\$
	\$
Total liabilities	\$

10. Firm, company or corporation

Name

--

Address

--

Tel. no.

--

11. Assets of firm, company or corporation *(please list)*

Property, plant and equipment		\$
Inventories		\$
Goodwill and other intangible assets		\$
Loans and receivables		\$
Bank balances and cash		\$
Others		\$
Total		\$

12. Liabilities of firm, company or corporation *(please list)*

Trade payables		\$
Tax payables		\$
Other payables		\$
Bank loans		\$
Other borrowings		\$
Others		\$
Total		\$

13. Attach to this form a copy of the latest audited profit and loss account and balance sheet of the firm, company or corporation**14. Offer of payment**

<input type="checkbox"/> I can pay the amount admitted on	<input style="width: 100%;" type="text"/>
or	
<input type="checkbox"/> I can pay by [weekly/monthly etc.] instalments of	\$ <input style="width: 100%;" type="text"/>
Starting (date) _____ If you cannot pay immediately, please give brief reasons below :	

15. Declaration I _____ declare that the details I have given above and in the attached sheet(s) (if any) are true to the best of my knowledge

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declaration Ordinance (Cap. 11)

Signed

Position or office held
 (If signing on behalf of
 a firm, company or
 corporation)

With company chop
 (if applicable)

Declared at _____ in Hong Kong on _____ of 20 ____.

Before me,

[Signature and designation, i.e., Justice of
the Peace/Notary Public/Commissioner
for Oaths.]

- Note** — Under section 36 of the Crimes Ordinance (Cap. 200), a person who knowingly and wilfully makes a statement false in a material particular in a declaration or other document which he is authorized or required to make by an enactment is guilty of an offence.
- A defendant who is an individual must sign personally. A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.
- If a plaintiff does not file a request for judgment within 14 days after this form is served on him, his claim is stayed until he files the request.

No. 16A
Request for judgment (admission of liquidated amount)
 (Order 13A rules 4(3), 9(4) & 10(2))
(Heading as in action)

- Remember to sign and date the form. Your signature certifies that the information you have given is correct.
- Return the completed form to the Court.
- The completed form should be filed in the Registry of the District Court.

A The defendant has admitted the whole of my claim

Tick only one box below and follow the instructions given.

☐ **I accept the defendant's proposal for payment**

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the defendant's proposal.

☐ **The defendant has not made any proposal for payment**

Enclose a draft judgment for approval. You can ask for the judgment to be paid by instalments or in one payment.

☐ **I DO NOT accept the defendant's proposal for payment**

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note — The Court will notify you and the defendant of its judgment.

I certify that the information given is correct

Signed

(Plaintiff)(Plaintiff's solicitor)(next friend)

Date

Position or office held

(If signing on behalf of a firm, company or corporation)

**With company chop
(if applicable)**

No. 16B

Reply to part admission of liquidated amount and Request for judgment

(Order 13A rules 5(3) & (5), 9(4) & 10(2))

(Heading as in action)

- Please tell the Court what you wish to do by completing the lower half of this form and filing it in the Registry of the District Court within 14 days after the copy of the defendant's admission is served on you.

At the same time you must serve a copy on the defendant. If you do not file this form in the Registry of the District Court within the prescribed period, your claim will be stayed. No further action will be taken by the Court until the form is received.

- You must tick box A or B.
- Remember to sign and date the notice.

A ☐ I DO NOT accept the defendant's part admission

If you tick box A the claim will proceed as a defended claim.

B ☐ I ACCEPT the amount admitted by the defendant in satisfaction of my whole claim

Tick only **one** box and follow the instructions given.

☐ **I accept the defendant's proposal for payment**

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the offer.

☐ **The defendant has not made any proposal for payment**

Enclose a draft judgment for approval. You can ask for the judgment to be paid by instalments or in one payment.

☐ **I DO NOT accept the defendant's proposal for payment**

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note — The Court will notify you and the defendant of its judgment.

I certify that the information given is correct

Signed

(Plaintiff)(Plaintiff's solicitor)(next friend)

Date

Position or office held

(If signing on behalf of a firm, company or corporation)

**With company chop
(if applicable)**

No. 16C

Admission (unliquidated amount)
(Order 13A rules 6(2), 7(2) & 13(2))
(Heading as in action)

Explanatory Note

1. The only claim the plaintiff has made against you is for an unliquidated amount of money. You may admit the plaintiff's claim in whole or in part by completing this form within the period for service of your defence if you have been served with a Writ *or* the period for filing of your affidavit evidence if you have been served with an Originating Summons *or* within 14 days after service of the originating process in any other case.
2. You may offer a specified amount to satisfy the claim. If the amount you offer is accepted by the plaintiff, the plaintiff may request the Court to enter judgment against you for that amount. Alternatively, the plaintiff may request the Court to enter judgment against you for an amount to be decided by the Court and costs.
3. You may also ask for time to pay. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made.
4. The completed form should be filed in the Registry of the District Court.

How to fill in this form

- Tick the correct boxes and give as much information as you can. **Then sign and date the form.** If necessary provide details on a separate sheet, add the action number and attach it to this form.
- **If you do not ask for time to pay, you need not complete items 2 to 9 and 11 and 12.**
- **If you are not an individual, you need not complete items 1 to 9 but you should complete items 10 to 12 and ensure that you comply with the requirement specified in item 13 and provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made.**
- **If you are an individual, you need not complete items 10 to 12 and need not comply with the requirement specified in item 13.**
- You can get help to complete this form at the Registry of the District Court.

Part A Response to claim (tick one box only)

☐ I admit liability for the whole claim but want the Court to decide the amount I should pay (if you tick this box, you need not complete Part B and items 2 to 9, 11 and 12 and need not comply with the requirement specified in item 13)

OR

☐ I admit liability for the claim and offer to pay in satisfaction of the claim

Part B How are you going to pay the amount you have admitted? (tick one box only)

☐ I offer to pay on (date)

OR

☐ I cannot pay the amount immediately because (state reason)

AND

I offer to pay by instalments of \$ per (week)(month) starting (date)

1. Personal detailsSurname Forename
☐ Mr

 ☐ Mrs

 ☐ Miss

 ☐ Ms
Address **2. Dependants** *(people you look after financially)**(give details)* **3. Employment**☐ **I am employed as a** My employer is Jobs other than main job
(give details) ☐ **I am self employed as a** Annual turnover is \$ ☐ **I am not** in arrears with my mandatory provident fund contributions and income tax☐ **I am** in arrears and I owe \$ Give details of :
(a) contracts and other work
in hand (b) any sums due for work
done ☐ **I have been unemployed for** years months☐ **I am a pensioner****4. Bank account and savings** *(please list all)*

Bank account	In credit by \$	Overdrawn by \$
<input type="text"/>	<input type="text"/>	<input type="text"/>

5. Residence

- I live in ☐ my own flat
- ☐ my jointly owned flat
- ☐ public housing estate
- ☐ others (please specify)

6. Income

My usual take-home pay (including overtime, commission, bonuses etc)	\$	per month
My pension(s)	\$	per month
Others living in my home give me	\$	per month
Other income (give details below)		
	\$	per month
	\$	per month
	\$	per month
Total income	\$	per month

7. Other assets (please list and indicate their location)

--

8. Expenses

(Do not include any payments made by other members of the household out of their own income)

I have regular expenses as follows:		
Mortgage (including second mortgage)	\$	per month
Rent	\$	per month
Rates and government rent	\$	per month
Gas	\$	per month
Electricity	\$	per month
Water charges	\$	per month
Housekeeping, food, school meals	\$	per month
Travelling expenses	\$	per month
Children's clothing	\$	per month
Maintenance payments	\$	per month
Court orders	\$	per month
Others		
	\$	per month
	\$	per month
	\$	per month
Total expenses	\$	per month

9. Liabilities

(This section is for arrears only. Do not include regular expenses listed in item 8.)

Rent arrears	\$
Mortgage arrears	\$
Rates and government rent arrears	\$
Water charges arrears	\$
Fuel debts : Gas	\$
Electricity	\$
Other	\$
Maintenance arrears	\$
Loans and credit card debts (please list)	\$
Others (give details below)	
	\$
	\$
Total liabilities	\$

10. Firm, company or corporation

Name

Address

Tel. no.

11. Assets of firm, company or corporation (please list)

Property, plant and equipment	\$
Inventories	\$
Goodwill and other intangible assets	\$
Loans and receivables	\$
Bank balances and cash	\$
Others	\$
Total	\$

12. Liabilities of firm, company or corporation (please list)

Trade payables	\$
Tax payables	\$
Other payables	\$
Bank loans	\$
Other borrowings	\$
Others	\$
Total	\$

13. Attach to this form a copy of the latest audited profit and loss account and balance sheet of the firm, company or corporation

14. Declaration I _____ declare that the details I have given above and in the attached sheet(s) (if any) are true to the best of my knowledge

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declaration Ordinance (Cap. 11)

Signed

Position or office held
(If signing on behalf of
a firm, company or
corporation)

With company chop
(if applicable)

Declared at _____ in Hong Kong on _____ of 20 ____.

Before me,

[Signature and designation, i.e., Justice of
the Peace/Notary Public/Commissioner
for Oaths.]

- Note** — Under section 36 of the Crimes Ordinance (Cap. 200), a person who knowingly and wilfully makes a statement false in a material particular in a declaration or other document which he is authorized or required to make by an enactment is guilty of an offence.
- A defendant who is an individual must sign personally. A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.
- If a plaintiff does not file a request for judgment within 14 days after this form is served on him, his claim is stayed until he files the request.

No. 16D
Request for judgment (admission of unliquidated amount)
 (Order 13A rule 6(3))
(Heading as in action)

The defendant has admitted liability to pay the whole of my claim but has not made any proposal for payment.

I request judgment to be entered against the defendant for an amount to be decided by the Court and costs.
 [Enclose a draft judgment for approval]

Signed

(Plaintiff)(Plaintiff's solicitor)(next friend)

Position or office held

(If signing on behalf of
a firm, company or
corporation)

Date

**With company chop
(if applicable)**

- The completed form should be filed in the Registry of the District Court.

No. 16E
Reply to admission of unliquidated amount and Request for judgment
 (Order 13A rules 7(3), (5) & (9), 9(4) & 10(2))
(Heading as in action)

Important notes for plaintiff

- You must tick either item A **or** complete item B and file the form in the Registry of the District Court within 14 days after the copy of the defendant's admission is sent to you.

At the same time you must send a copy to the defendant. If you do not return the form within the prescribed period, your claim will be stayed. No further action will be taken by the Court until the form is received.

- Remember to sign and date the notice.

A ☐ I DO NOT accept the amount offered by the defendant in satisfaction of my claim. I wish judgment to be entered for an amount to be decided by the Court.

The Court will give directions for management of the case.

B ☐ I ACCEPT the amount admitted by the defendant in satisfaction of my claim

Tick only **one** box and follow the instructions given.

☐ **I accept the defendant's proposal for payment**

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the offer.

☐ **I DO NOT accept the defendant's proposal for payment**

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note — The Court will notify you and the defendant of its judgment.

I certify that the information given is correct

Signed

(Plaintiff)(Plaintiff's solicitor)(next friend)

Position or office held

(If signing on behalf of a firm, company or corporation)

Date

**With company chop
(if applicable)**

"

(8) Appendix A is amended in Form No. 17 –

- (a) by repealing "Take notice that" and substituting "1. Take notice that";
- (b) by adding –

"2. If the only remedy that the counterclaiming plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the counterclaiming plaintiff's claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the counterclaim.

A completed Form No. 16 or 16C must be filed with the Registry of the District Court and served on the counterclaiming plaintiff [or the counterclaiming plaintiff's solicitors] within the period for service of the defence to counterclaim."

PART 7 PLEADINGS

Division 1 – Recommendations 22 to 24

43. Admissions and denials

Order 18, rule 13 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "Any allegation" and substituting "Subject to paragraph (5), an allegation";
 - (ii) by repealing "denial" and substituting "non-admission";
- (b) in paragraph (2), by repealing "A traverse" and substituting "Subject to paragraph (4), a traverse";
- (c) by adding –
 - "(4) Where an allegation made in a statement of claim or counterclaim is traversed by a denial, the party who denies the allegation shall in his defence or defence to counterclaim –
 - (a) state his reasons for doing so; and
 - (b) if he intends to put forward a different version of events from that given by the claimant, state his own version.
 - (5) A party who –
 - (a) fails to deal with an allegation; but
 - (b) has set out in his defence or defence to counterclaim the nature of his case in relation to the issue to which that allegation is relevant,
 is to be taken to require that allegation to be proved."

44. Denial by joinder of issue

Order 18, rule 14 is amended –

- (a) in the heading, by repealing "**Denial**" and substituting "**Non-admission**";

- (b) in paragraph (4), by repealing "denial" where it twice appears and substituting "non-admission".

45. Rule added

Order 18 is amended by adding –

- "23. Transitional provision relating to rule 43 of Amendment Rules 2008**
(O. 18, r. 23)

Where a statement of claim has been served on a defendant before the commencement of rule 43 ("the amending rule") of the Amendment Rules 2008, then the amending rule does not apply to the defence to the claim and if a counterclaim has been served on the plaintiff, to the defence to the counterclaim, and rule 13 as in force immediately before the commencement continues to apply as if the amending rule had not been made."

Division 2 – Recommendations 26 to 32 and 35

46. Service of defence

Order 18, rule 2(1), (2) and (3) is amended by repealing "14 days" wherever it appears and substituting "28 days".

47. Service of reply and defence to counterclaim

Order 18, rule 3(4) is amended by repealing "14 days" where it twice appears and substituting "28 days".

48. Rule added

Order 18 is amended by adding –

- "12A. Pleading with inconsistent alternatives** (O. 18, r. 12A)

A party may in any pleading make an allegation of fact which is inconsistent with another allegation of fact in the same pleading if –

- (a) the party has reasonable grounds for so doing; and
- (b) the allegations are made in the alternative."

49. Striking out pleadings and indorsements

Order 18, rule 19 is amended –

- (a) in paragraph (1), by adding ", either of its own motion or on application," after "The Court may";
- (b) in paragraph (3), by repealing "as if the summons were a pleading" and substituting "and a petition as if the summons or petition, as the case may be, were a pleading".

50. Close of pleadings

Order 18, rule 20(1)(b) is amended by repealing "14 days" and substituting "28 days".

51. Rule added

Order 18 is amended by adding –

"20A. Pleading, etc. to be verified by statement of truth (O. 18, r. 20A)

(1) A pleading and the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are particulars given by a party to any other party, whether voluntarily or pursuant to –

- (a) a request made by that other party; or
- (b) an order of the Court made under rule 12(3) or (4)."

52. Rule added

Order 18 is amended by adding –

"24. Transitional provision relating to rules 46 and 47 of Amendment Rules 2008 (O. 18, r. 24)

Where a statement of claim has been served on a defendant before the commencement of rules 46 and 47 ("the amending rules") of the Amendment Rules 2008, then the amending rules do not apply in relation to the service of the defence and the reply to that defence and if a counterclaim has been served on the plaintiff, in relation to the service of the defence to the counterclaim, and rules 2 and 3 as in force immediately before the commencement of the amending rules continue to apply as if the amending rules had not been made."

53. Rule added

Order 20 is amended by adding –

"13. Amendment of pleadings or particulars of pleadings to be verified by statement of truth (O. 20, r. 13)

(1) An amendment to a pleading or to the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are particulars given by a party to any other party, whether voluntarily or pursuant to –

- (a) a request made by that other party; or
- (b) an order of the Court made under Order 18, rule 12(3) or (4)."

54. Exchange of witness statements

Order 38, rule 2A(4)(a) is amended by repealing "shall include a statement by him that the contents are true to the best of his knowledge and belief" and substituting "must be verified by a statement of truth in accordance with Order 41A".

55. Rule added

Order 38 is amended by adding –

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

An expert report disclosed under these Rules must be verified by a statement of truth in accordance with Order 41A."

56. Order added

The following is added immediately after Order 41 –

**"ORDER 41A
STATEMENTS OF TRUTH**

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

In this Order, unless the context otherwise requires –

"expert report" () means an expert report disclosed under 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 must 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 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 (6), (7), (8) and (9), a statement of truth must 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 putting forward the verified document 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 (6), (7), (8) and (9), where a party is a body of persons, corporate or unincorporate, the statement of truth must be signed by a person holding a senior position in the body.
- (3) Subject to paragraph (7), where the party is a public officer, the statement of truth must 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.
- (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;
 - (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, that person shall state in the statement of truth the office or position he holds.
- (6) Subject to paragraphs (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.
- (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.
- (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.
- (9) If more than one insurer is conducting proceedings on behalf of a plaintiff or defendant, a statement of truth in or in relation to a pleading may be signed by an officer of the insurer 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 that 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 documents 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 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 or expert report is 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 is 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 that 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) The Court may order to be struck out a pleading which is not verified by a statement of truth.

(2) Any party may apply for an order under paragraph (1).

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 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. False statements (O. 41A, 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 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.

10. Transitional (O. 41A, 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."

Division 3 – Recommendations 33 and 34

57. Particulars of pleading

Order 18, rule 12 is amended by adding –

"(3A) The Court may make an order under paragraph (3) upon the application of a party or of its own motion.

(3B) No order shall be made under paragraph (3) unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs."

58. Amendment of certain other documents

Order 20, rule 8 is amended –

(a) in the heading, by adding "**pleading and**" after "**Amendment of**";

(b) in paragraph (1), by repealing "order any document" and substituting "order a pleading or any other document";

(c) by adding –

"(1A) The Court shall not under paragraph (1) order a pleading to be amended unless it is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs."

59. Failure to amend after order

Order 20, rule 9 is amended –

- (a) by renumbering it as Order 20, rule 9(1);
- (b) by adding –

"(2) Paragraph (1) is subject to any directions given by the Court."

PART 8

SANCTIONED OFFERS AND PAYMENTS

Division 1 - Recommendations 38 to 43

60. Definitions

Order 1, rule 4(1) is amended by adding –

"'aided person' () means an aided person within the meaning of the Legal Aid Ordinance (Cap. 91);".

61. Order substituted

Order 22 is repealed and the following substituted –

"ORDER 22

OFFERS TO SETTLE AND PAYMENTS INTO COURT

I. PRELIMINARY

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

(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;

"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 relating to a sanctioned payment required to be filed under rule 7(2).

(2) Where in an action the plaintiff makes more than one claim, a reference in this Order to –

- (a) the whole claim is to be construed as a reference to all the claims in their entirety;
- (b) a part of a claim is to be construed as a reference to any one or more of the claims or a part of any one or more of the claims; and
- (c) an issue arising from a claim is to be construed as a reference to an issue arising from one or more of the claims.

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

(1) A party to an action containing a money claim or a non-money claim or both arising from any cause or causes of action may make an offer to settle the whole claim, a part of it or any issue arising from it 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) has the consequences specified in rules 16, 17, 18, 19 and 20 (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 does not have the consequences specified in this Order, unless the Court so orders.

**II. MANNER OF MAKING SANCTIONED OFFER
OR SANCTIONED PAYMENT**

3. Defendant's offer to settle (O. 22, r. 3)

(1) An offer by a defendant to settle the whole or part of a claim or an issue arising from the claim does not have the consequences set out in this Order unless it is made by way of a sanctioned offer or sanctioned payment or both.

(2) Where an offer by a defendant involves a payment of money to the Plaintiff, the offer must be made by way of a sanctioned payment.

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

4. Plaintiff's offer to settle (O. 22, r. 4)

An offer by a plaintiff to settle the whole or part of a claim or an issue arising from the claim does not have the consequences set out in this Order unless it is made by way of a sanctioned offer.

5. Form and content of a sanctioned offer (O. 22, r. 5)

(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 arising from it.

(3) A sanctioned offer must –

- (a) state whether it relates to the whole claim or to part of it or to an issue arising from 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 22(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) The offeror shall -
 - (a) serve the sanctioned offer -
 - (i) on the offeree; and
 - (ii) where the offeree is an aided person, on the Director of Legal Aid; and
 - (b) file with the Court a certificate of service of the offer.
- (7) A sanctioned offer made not less than 28 days before the commencement of the trial -
 - (a) may not be withdrawn or diminished before the expiry of 28 days from the date the sanctioned offer is made unless the Court grants leave to withdraw or diminish 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 grants leave to accept it.
- (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 grants leave to accept it.
- (9) A sanctioned offer made less than 28 days before the commencement of the trial may be withdrawn or diminished if the Court grants leave to withdraw or diminish it.
- (10) If there is subsisting an application to withdraw or diminish a sanctioned offer, the sanctioned offer may not be accepted unless the Court grants leave to accept it.
- (11) If the Court dismisses an application to withdraw or diminish a sanctioned offer or grants leave to diminish the sanctioned offer, it may by order specify the period within which the sanctioned offer or diminished sanctioned offer may be accepted.
- (12) If a sanctioned offer is withdrawn, it does not have the consequences set out in this Order.

6. Sanctioned offer to be made after commencement of proceedings

(O. 22, r. 6)

- (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 is to 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.

7. Notice of a sanctioned payment

(O. 22, r. 7)

- (1) A sanctioned payment may relate to the whole claim or to part of it or to an issue arising from 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 arising from 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 22(2); and
 - (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.
- (3) The defendant shall –
 - (a) serve the sanctioned payment notice –
 - (i) on the plaintiff; and
 - (ii) where the plaintiff is an aided person, on the Director of Legal Aid; and
 - (b) file with the Court a certificate of service of the notice.
- (4) A sanctioned payment may not be withdrawn or diminished before the expiry of 28 days from the date the sanctioned payment is made unless the Court grants leave to withdraw or diminish it.
- (5) If there is subsisting an application to withdraw or diminish a sanctioned payment, the sanctioned payment may not be accepted unless the Court grants leave to accept it.
- (6) If the Court dismisses an application to withdraw or diminish a sanctioned payment or grants leave to diminish the sanctioned payment, it may by order specify the period within which the sanctioned payment or diminished sanctioned payment may be accepted.
- (7) If a sanctioned payment is withdrawn, it does not have the consequences set out in this Order.

8. Offer to settle a claim for provisional damages

(O. 22, r. 8)

- (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 11,

the sanctioned payment has the consequences set out in rule 16, unless the Court orders otherwise.

(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 under 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 72E of the Ordinance.

9. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 22, r. 9)

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

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

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

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

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

10. Clarification of a sanctioned offer or a sanctioned payment notice (O. 22, r. 10)

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

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

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

(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**

11. Time for acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 11)

(1) Subject to rules 5(10) and 7(5), 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 files with the Court and serves on the defendant a 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; and
- (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 grants 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.

12. Time for acceptance of a plaintiff's sanctioned offer (O. 22, r. 12)

(1) Subject to rule 5(10), 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 files with the Court and serves on the plaintiff a 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 grants leave, make an order as to costs.

13. Payment out of a sum in court on the acceptance of a sanctioned payment (O. 22, r. 13)

Subject to rules 14(4) and 15 and Order 22A, rule 2, 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.

14. Acceptance of a sanctioned offer or a sanctioned payment made by one or more, but not all, defendants (O. 22, r. 14)

(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 11(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.
- (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 11(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.

15. Other cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment (O. 22, r. 15)

- (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
 - (b) the money in court may not be paid out except in pursuance of an order of the Court.
- (2) Where the Court grants leave to a plaintiff to accept a sanctioned offer or sanctioned payment after the trial has commenced –
 - (a) the money in court may not be paid out except in pursuance of an order of the Court; and
 - (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 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 may not be paid out except in pursuance of an order of the Court.

**IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT**

16. Costs consequences of acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 16)

- (1) Where a defendant's sanctioned offer or sanctioned payment to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is 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 of the claim or an issue arising from the claim is accepted; and
- (b) at the time of serving notice of acceptance the plaintiff abandons the other parts of the claim or other issues arising from the claim,

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

(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.

17. Costs consequences of acceptance of a plaintiff's sanctioned offer (O. 22, r. 17)

(1) Where a plaintiff's sanctioned offer to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is 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.

18. Other consequences of acceptance of a sanctioned offer or a sanctioned payment (O. 22, r. 18)

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

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

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

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

- (a) the claim is stayed as to that part or issue, and in the case of the sanctioned offer, the stay is upon the terms of the offer;
- (b) either party may apply to enforce those terms without the need to commence new proceedings; and
- (c) 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 takes effect only when that approval has been given.

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

- (a) to enforce the terms of a sanctioned offer;
- (b) to deal with any question of costs (including interest on costs) relating to the 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 commence new proceedings unless the Court otherwise orders.

19. Costs consequences where plaintiff fails to do better than a sanctioned offer or a sanctioned payment

(O. 22, r. 19)

- (1) This rule applies where a plaintiff –
 - (a) fails to obtain a judgment better than the sanctioned payment; or
 - (b) fails to obtain a judgment that is more advantageous than a defendant's sanctioned offer.
- (2) The Court 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 on which 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 at which 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.

20. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O. 22, r. 20)

- (1) This rule applies where –

- (a) a defendant is held liable for more than the proposals contained in 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 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 on which 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 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 at which 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

21. Restriction on disclosure of a sanctioned offer or a sanctioned payment

(O. 22, r. 21)

- (1) A sanctioned offer is treated as "without prejudice save as to costs".
- (2) The fact that a sanctioned payment has been made must not be communicated to the trial judge 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 18 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.

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

(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 is to be treated as inclusive of all interest until the last date on which it could be accepted without requiring the leave of the Court.

(2) Where a 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.

23. Money paid into court under order

(O. 22, r. 23)

(1) On making any payment into court under an order of the Court or a certificate of a master, a party making the payment 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 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 applies accordingly.

24. Transitional provision relating to Part 8 of the Amendment Rules 2008

(O. 22, r. 24)

Where –

- (a) a payment into court has been made in accordance with Order 22 ("the repealed Order") repealed by rule 61 ("the repealing rule") of the Amendment Rules 2008; and
- (b) the disposal of the payment is pending immediately before the commencement of the repealing rule,

then nothing in Division 1 of Part 8 of the Amendment Rules applies 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, continue to apply in relation to that payment as if that Division had not been made."

62. Payment into court in satisfaction

Order 29, rule 16 is amended by repealing "Order 22, rule 1" and substituting "Order 22".

63. When costs to follow the event

Order 62, rule 3(8) is repealed.

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

Order 62, rule 5(1) is amended by repealing subparagraph (d) and substituting –

- "(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;".

65. When a party may sign judgment for costs without order

Order 62, rule 10 is amended –

- (a) by repealing paragraphs (2), (3) and (4);
- (b) in paragraph (5) –
 - (i) by repealing "each of";
 - (ii) by repealing "in this rule" and substituting "in this rule, Order 22, rules 16 and 17 and Order 25, rule 4(5)";
 - (iii) by repealing "respectively".

66. Proceedings under Fatal Accidents Ordinance: apportionment by Court

Order 80, rule 15 is amended –

- (a) in paragraph (1), by repealing "Order 22, rule 1, in satisfaction of causes of action arising under the Fatal Accidents Ordinance (Cap. 22) and sections 20 to 25" and substituting "Order 22, in satisfaction of a cause of action under the Fatal Accidents Ordinance (Cap. 22) and a cause of action under Part IV or IVA";
- (b) in paragraph (2), by repealing "Order 22, rule 1" and substituting "Order 22".

67. Provisions as to payment into court

Order 82, rule 4 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "Order 22, rule 3(1)" and substituting "Order 22";
 - (ii) by repealing "rule 3(4),";
- (b) in paragraph (2), by repealing "Order 22, rule 7" and substituting "Order 22, rule 21".

68. Applications with respect to funds in court

Order 92, rule 5(5) is amended by repealing "Order 22" and substituting "Order 22A".

69. Forms

- (1) Appendix A is amended by repealing Form No. 23 and Form No. 24 and substituting -

"No. 23
Notice of sanctioned payment
 (Order 22 rule 7(2))
(Heading as in action)

To the plaintiff('s solicitor) and to the Director of Legal Aid (if applicable)

Take notice that the defendant(s) _____ has/have paid \$ _____ (a further amount of \$ _____) into court in settlement of _____
 (tick as appropriate)

- ☐ the whole of your claim
- ☐ part of your claim *(give details below)*
- ☐ a certain issue or issues arising from your claim *(give details below)*

The (part) (issue or issues) to which it relates is(are): *(give details)*

- ☐ It is in addition to the amount of \$ _____ already paid into court on _____ and the total amount in court now offered in settlement is \$ _____ *(give total of all payments in court to date)*
- ☐ It is not inclusive of interest and an additional amount of \$ _____ is offered for interest *(give details of the rate(s) and period(s) for which the amount of interest is offered)*
- ☐ It takes into account all (part) of the following counterclaim or set off: *(give details of the party and the part of the counterclaim to which the payment relates)*
- ☐ It takes into account the interim payment(s) made in the following amount(s) on the following date(s): *(give details)*
- ☐ It takes into account the following sum(s) of money that has (have) been paid into court: *(give details)*
- ☐ It is part of the terms of a sanctioned offer set out in (identify the document). If you give notice of acceptance of this sanctioned payment, you will be treated as also accepting the sanctioned offer.

Note: This notice will need to be modified where an offer of provisional damages is made (Order 22, rule 8).

Signed

Defendant('s solicitor)

Position or office held
 (If signing on behalf of
 a firm, company or
 corporation)

Date

With company chop
 (if applicable)

Note: To the plaintiff

If you wish to accept the payment made into court and the Court's leave for acceptance is not required, you should complete Form No. 24 and send it to the defendant, and file a copy in the Registry of the District Court.

No. 24
Notice of acceptance of sanctioned payment
(Order 22 rule 11(4))
(*Heading as in action*)

To the defendant('s solicitor) and to the Director of Legal Aid (if applicable)

Take notice that the plaintiff accepts the payment(s) into court totalling \$_____ in settlement of (the whole of) (part of) (certain issue(s) arising from) *the plaintiff's claim as set out in the notice of sanctioned payment received on _____ (and abandons the other part(s) of or issue(s) arising from the plaintiff's claim).

Signed

Plaintiff('s solicitor)

Position or office held

(If signing on behalf of
a firm, company or
corporation)

Date

**With company chop
(if applicable)**

* Delete as appropriate

No. 25
Notice of request for payment
 (Order 22 rule 13)
(Heading as in action)

On _____ I accepted the payment(s) into court totalling \$ _____ in settlement of
 (the whole of) (part of) (certain issue(s) arising from) *my claim as set out in the notice of sanctioned payment received on
 _____ (and abandoned the other part(s) of or issue(s) arising from my claim).*

I declare that:

- ☐ the sanctioned payment has been accepted [within 28 days] [after 28 days but costs have been agreed] [less than 28 days before trial but costs have been agreed]*
- ☐ the payment into court was not made with a defence of tender
- ☐ the offeree is not a person under disability
- ☐ [at no time has the offeree been on legal aid in these proceedings] [the offeree has been on legal aid]*
- ☐ there is no pending application to withdraw or diminish the sanctioned payment
- ☐ [there is only 1 defendant] (the sanctioned payment is made by all defendants) [I have discontinued my claim against those defendants who have not made the sanctioned payment and they have given written consent to the acceptance of the sanctioned payment]*
- ☐ [my claim does not include a claim for provisional damages] [my claim for provisional damages has been disposed of under Order 37, rule 8]*

(If any of the above declarations has not been made, the money in court can only be paid out by order of the Court)

- ☐ a copy of this notice has been served on the defendant(s solicitor) named below and I request payment of this money held in court to be made to:

Plaintiff or solicitor's full name/Director of Legal Aid*

Address and telephone number

Signature

Note: Before signing this form please read the notes for guidance overleaf. Incorrectly signed forms may be returned unactioned.

Signed

Date

DETAILS OF PLAINTIFF'S SOLICITOR

Name of firm

Solicitor for

Defendant or solicitor's full name/Director of Legal Aid*

Address and telephone number

Signature

Note: The plaintiff('s solicitor) should obtain the signature of the defendant('s solicitor) on the box below before serving a copy of this notice on him

Signed

Date

DETAILS OF DEFENDANT'S SOLICITOR

Name of firm

Solicitor for

* Delete as appropriate

Notes for guidance on completion of Form No. 25

In order to request payment out of funds in court, file this form, signed and completed in accordance with these notes for guidance in the Registry of the District Court. A copy of this form should also be sent to the defendant('s solicitors).

- When completing this form, please ensure that you tick all of the boxes under the heading: **'I declare that'**. If you do not tick all of the boxes, the Registry of the District Court will not be able to process your request for payment and will have to return the form to you.
- The form should be signed either by the plaintiff or his solicitor.
- The Accounts Office of the District Court will only issue payment upon receipt of a properly completed Form No. 25 with an original signature. Faxed copies of the form and photocopies of signatures will not be accepted and will be returned to sender.

No. 25A

Notice of payment into court under order or certificate

(Order 22 rule 23(1))

(Heading as in action)

Take notice that the plaintiff/defendant _____ has paid \$ _____ into court in compliance with the order/certificate of _____ dated _____.

Signed

Plaintiff/Defendant('s solicitor)

Position or office held

(If signing on behalf of a firm, company or corporation)

Date

**With company chop
(if applicable)****Solicitors' certificate**

We certify that –

- (a) the payment is made within time.
- * (b) there is no direction in the order for investment of the money.
- * (c) the Court has directed that the money be invested in the following manner –

Signed

Date

SOLICITOR'S DETAILS**Name of firm**

Solicitor for

* Delete as appropriate".

- (2) Appendix A is amended by repealing Form No. 51.

70. Order added

The following is added immediately after Order 22 –

**"ORDER 22A
MISCELLANEOUS PROVISIONS ABOUT
PAYMENTS INTO COURT**

1. Money remaining in court

(O. 22A, r. 1)

(1) Subject to Order 22, rule 13, any money paid into court in an action (whether or not in accordance with Order 22) may 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.

(2) Where an order under paragraph (1) is made before the trial or hearing and the money in court is a sanctioned payment made in accordance with Order 22, the money may not be paid out except –

- (a) in satisfaction of the cause or causes of action in respect of which it was paid in; or
- (b) to the extent to which the sanctioned payment may be withdrawn or diminished pursuant to Order 22.

2. Person to whom payment to be made (O. 22A, r. 2)

(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 Order 22 or under an order of the Court or a certificate of the Registrar.

3. Payment out: small intestate estates (O. 22A, r. 3)

Where –

- (a) a person entitled to a fund in court, or a share of such fund, dies intestate;
- (b) the Court is satisfied that no grant of administration of his estate has been made; and
- (c) the assets of his estate, including the fund or share, do not exceed \$150,000 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.

4. Investment of money in court

(O. 22A, r. 4)

Cash under the control of or subject to the order of the Court may be invested in any manner specified in the District Court Suitors' Funds Rules (Cap. 336 sub. leg. E) and the Trustee Ordinance (Cap. 29).".

Division 2 – Recommendation 132**71. Order added**

The following is added immediately after Order 62 –

**"ORDER 62A
COSTS OFFER AND PAYMENTS INTO COURT**

I. PRELIMINARY

1. Interpretation and application

(O. 62A, r. 1)

(1) In this Order –

"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;

"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 relating to a sanctioned payment required to be filed under rule 6(2).

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

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

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

(2) An offer made under paragraph (1) has the consequences specified in rules 14, 15 and 16 (as may be applicable).

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

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

3. A paying party's costs offer requires a sanctioned payment

(O. 62A, r. 3)

(1) A costs offer by a paying party does 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.

4. A receiving party's costs offer requires a sanctioned offer

(O. 62A, r. 4)

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

5. Form and content of a sanctioned offer

(O. 62A, r. 5)

(1) A sanctioned offer must be in writing.

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

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

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

(5) A sanctioned offer –

(a) may not be withdrawn or diminished before the expiry of 14 days from the date the sanctioned offer is made unless the Court grants leave to withdraw or diminish it; 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 and quantum of costs of taxation incurred after the period; or

(ii) the Court grants leave to accept it.

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

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

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

6. Notice of a sanctioned payment

(O. 62A, 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 it relates;
 - (c) if an interim payment of costs has been made, states that the paying party has taken into account the interim payment;
 - (d) if it is expressed not to be inclusive of interest, states –
 - (i) whether interest is offered; and
 - (ii) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered; and
 - (e) if a sum of money has been paid into court as security for the costs of the action, cause or matter, states whether the sanctioned payment has taken into account that sum of money.
- (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 not be withdrawn or diminished before the expiry of 14 days from the date the sanctioned payment is made unless the Court grants leave to withdraw or diminish it.
- (5) If there is subsisting an application to withdraw or diminish a sanctioned payment, the sanctioned payment may not be accepted unless the Court grants leave to accept it.
- (6) If the Court dismisses an application to withdraw or diminish a sanctioned payment or grants leave to diminish the sanctioned payment, it may by order specify the period within which the sanctioned payment or diminished sanctioned payment may be accepted.
- (7) If a sanctioned payment is withdrawn, it does not have the consequences set out in this Order.

7. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 62A, r. 7)

- (1) A sanctioned offer is made when it is served on the offeree.
- (2) A sanctioned payment is made when a sanctioned payment notice is served on the offeree.
- (3) An amendment to a sanctioned offer is effective when its details are served on the offeree.
- (4) An amendment to a sanctioned payment is effective when notice of the amendment is served on the offeree.
- (5) A sanctioned offer or a sanctioned payment is accepted when written notice of its acceptance is served on the offeror.

8. Clarification of a sanctioned offer or a sanctioned payment notice (O. 62A, r. 8)

- (1) The offeree may, within 7 days of a sanctioned offer or sanctioned payment being made, request the offeror to clarify the offer or payment notice.
- (2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of service of the request, the offeree may, before the relevant date, apply for an order that he does so.

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

III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT

9. Time for acceptance of a paying party's sanctioned payment

(O. 62A, r. 9)

(1) Subject to rule 6(5) and paragraph (2), a receiving party may accept a sanctioned payment at any time before the relevant date without requiring the leave of the Court if he files with the Court and serves on the paying party a written notice of acceptance not later than 14 days after the payment was made.

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

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

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

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

10. Time for acceptance of a receiving party's sanctioned offer

(O. 62A, r. 10)

(1) Subject to rule 5(6) and paragraph (2), a paying party may accept a sanctioned offer at any time before the relevant date without requiring the leave of the Court if he files with the Court and serves on the receiving party a written notice of acceptance not later than 14 days after the offer was made.

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

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

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

11. Payment out of a sum in court on the acceptance of a sanctioned payment

(O. 62A, r. 11)

Subject to rule 12(4), where a sanctioned payment is accepted, the receiving party may obtain payment out of the sum in court by making a request for payment in Form No. 93B in Appendix A.

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

(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 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.

13. Cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment

(O. 62A, 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 may be made without a court order.

**IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT**

14. Consequences of acceptance of a sanctioned offer or a sanctioned payment

(O. 62A, r. 14)

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

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

- (a) the stay is upon the terms of the offer; and
 - (b) either party may apply to enforce those terms without the need to commence new proceedings.
- (3) If a sanctioned offer or a sanctioned payment which relates to part only of the costs is accepted, the taxation is stayed as to that part.
- (4) If the approval of the Court is required before a settlement as to costs can be binding, any stay which would otherwise arise on the acceptance of a sanctioned offer or a sanctioned payment takes effect only when that approval has been given.
- (5) Any stay arising under this rule does not affect the power of the Court –
 - (a) to enforce the terms of a sanctioned offer;
 - (b) to deal with any question of costs (including interest on costs) relating to the taxation; or
 - (c) to order payment out of court of any sum paid into court.
- (6) Where –
 - (a) a sanctioned offer has been accepted; and
 - (b) a party alleges that –
 - (i) the other party has not honoured the terms of the offer; and
 - (ii) he is therefore entitled to a remedy for breach of contract,

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

15. Costs consequences where receiving party fails to better a sanctioned payment (O. 62A, 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 –
 - (a) 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; and
 - (b) order that the paying party is entitled to interest on those costs at a rate not exceeding 10% above judgment rate.
- (3) In considering whether it would be unjust to make the orders 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 at which the sanctioned payment was made;
 - (c) the information available to the parties at the time when the sanctioned payment was made; and
 - (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the payment to be made or evaluated.

16. Costs and other consequences where receiving party does better than he proposed in his sanctioned offer

(O. 62A, 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 judgment rate for some or all of the period starting with the date on which the sanctioned offer was served on the paying party.

(3) The taxing master may also order that the receiving party is entitled to –

- (a) his costs on the indemnity basis from the date on which the sanctioned offer was served on the paying party; and
- (b) interest on those costs at a rate not exceeding 10% above judgment rate.

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

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

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

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

V. MISCELLANEOUS

17. Restriction on disclosure of a sanctioned offer or a sanctioned payment (O. 62A, 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 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.

18. Interest (O. 62A, r. 18)

(1) Unless –

- (a) a receiving party's sanctioned offer; or
- (b) a sanctioned payment notice,

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

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

- (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."

72. Forms

Appendix A is amended by adding –

"No. 93
Notice of sanctioned payment (Order 62A)
 (Order 62A rule 6(2))
(Heading as in action)

To the receiving party('s solicitor)

Take notice that the paying party _____ has paid \$ _____ (a further amount of \$ _____) into court in settlement of
 (tick as appropriate)

- ☐ the whole of your costs including the costs of taxation (for the bill dated _____)
- ☐ part of your costs *(give details below)*
- ☐ It is in addition to the amount of \$ _____ already paid into court on _____ and the total amount in court now offered in settlement of your costs is \$ _____ *(give total of all payments in court to date)*
- ☐ It is not inclusive of interest and an additional amount of \$ _____ is offered for interest *(give details of the rate(s) and period(s) for which the amount of interest is offered)*
- ☐ It takes into account the interim payment(s) of costs made in the following amount(s) on the following date(s): *(give details)*
- ☐ It takes into account the following sum(s) of money that has (have) been paid into court as security for the costs of the action, cause or matter: *(give details)*

Signed

Paying party('s solicitor)

Date

Position or office held

(If signing on behalf of a firm, company or corporation)

**With company chop
(if applicable)**

Note: To the receiving party

If you wish to accept the payment made into court and the Court's leave for acceptance is not required, you should complete Form No. 93B and file it in the Registry of the District Court, and send a copy to the paying party.

No. 93A
Notice of acceptance of sanctioned payment (Order 62A)
 (Order 62A rule 9(4))
(Heading as in action)

To the paying party('s solicitor)

Take notice that the receiving party accepts the payment(s) into court totalling \$_____ in settlement of (the whole of) (part of) the receiving party's costs as set out in the notice of sanctioned payment received on _____ (and abandons the other part(s) of the costs).

Signed

Receiving party('s solicitor)

Position or office held

(If signing on behalf of
a firm, company or
corporation)

Date

**With company chop
(if applicable)**

No. 93B
Notice of request for payment (Order 62A)
 (Order 62A rule 11)
(Heading as in action)

On _____ I accepted the payment(s) into court totalling \$ _____ in settlement of (the whole of) (part of) my costs as set out in the notice of sanctioned payment received on _____.

I declare that:

- ☐ the sanctioned payment has been accepted [within 14 days] [after 14 days but liability for and quantum of costs incurred after the 14-day period have been agreed]*
- ☐ the offeree is not a person under disability
- ☐ [at no time has the offeree been on legal aid in these proceedings] [the offeree has been on legal aid]*
- ☐ there is no pending application to withdraw or diminish the sanctioned payment
- ☐ [there is only one paying party] [the sanctioned payment is made by all paying parties] [I have discontinued the proceedings for taxation against those paying parties who have not made the payment and they have given written consent to the acceptance of the sanctioned payment]*

(If any of the above declarations has not been made, the money in court can only be paid out by order of the Court)

- ☐ a copy of this notice has been served on the paying party's solicitor) named below and I request payment of this money held in court to be made to:

Receiving party or solicitor's full name

Address and telephone number

Signature

Note: Before signing this form please read the notes for guidance overleaf. Incorrectly signed forms may be returned unactioned.

Signed

Date

DETAILS OF RECEIVING PARTY'S SOLICITOR

Name of firm

Solicitor for

Paying party or solicitor's full name/Director of Legal Aid*
Address and telephone number

Signature	
Note: The Receiving party('s solicitor) should obtain the signature of the paying party('s solicitor) on the box below before serving a copy of this notice on him	
Signed	Date
DETAILS OF PAYING PARTY'S SOLICITOR	
Name of firm	
Solicitor for	

* Delete as appropriate

Notes for guidance on completion of Form No. 93B

In order to request payment out of funds in court, file this form, signed and completed in accordance with these notes for guidance in the Registry of the District Court. A copy of this form should also be sent to the paying party's solicitors.

- When completing this form, please ensure that you tick all of the boxes under the heading: **'I declare that'**. If you do not tick all of the boxes, the Registry of the District Court will not be able to process your request for payment and will have to return the form to you.
- The form should be signed either by the receiving party or his solicitor.
- The Accounts Office of the District Court will only issue payment upon receipt of a properly completed Form No. 93B with an original signature. Faxed copies of the form and photocopies of signatures will not be accepted.
- A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company."

PART 9
CASE MANAGEMENT TIMETABLING AND MILESTONES

Recommendations 52 to 60 and 62

73. Directions

Order 14, rule 6(1) is amended by repealing everything after "conduct of the action, and" and substituting "Order 25, rules 5 to 10, with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 of this Order or rule 5 thereof, as the case may be, on which the order was made were a case management summons."

74. Discovery

Order 17, rule 10 is amended by repealing "Orders 23A" and substituting "Orders 24".

75. Trial without pleadings

Order 18, rule 21(3) is amended by repealing everything after "it may," and substituting – "give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 5 to 10 –

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and
- (b) with any other necessary modifications,

apply as if the application under this rule were a case management summons."

76. Discontinuance of action, etc., with leave

Order 21, rule 3(2) is amended by repealing "Order 23A, rule 8(2)" and substituting "Order 25, rule 10".

77. Stay of subsequent action until costs paid

Order 21, rule 5(2) is amended by repealing "Order 23A, rule 8(2)" and substituting "Order 25, rule 10".

78. Directions for Actions Begun by Writ

Order 23A is repealed.

79. Order for discovery

Order 24, rule 3(4) is repealed.

80. Order for determination of issue, etc., before discovery

Order 24, rule 4(2) is amended by repealing everything after "issue or question," and substituting –

"Order 25, rules 5 to 10 –

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and
- (b) with any other necessary modifications,

apply as if the application on which the order was made were a case management summons."

81. Order added

The following is added after Order 24 –

**"ORDER 25
CASE MANAGEMENT SUMMONS AND CONFERENCE**

1. Case management summons and conference (O. 25, r. 1)

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

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

(2) 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 that they wish the Court to make; or
- (b) a timetable for the steps to be taken between the date of the giving of those directions and the date of the trial,

they shall procure an order to that effect by way of a consent summons.

(3) Where there is no agreement on any of the matters specified in paragraph (2)(a) and (b) –

- (a) each party shall in the questionnaire make a proposal on the matter; and
- (b) the plaintiff shall, within the period 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.

(4) 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 a specialist list is pending; and
- (g) actions for personal injuries for which automatic directions are provided by rule 11.

(5) 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 (3)(b), the defendant or any defendant may –

- (a) take out a case management summons; or
- (b) apply for an order to dismiss the action.

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

(7) In the case of an action which is proceeding only as respects a counterclaim, references in this rule and rule 2(1)(c) to the plaintiff and defendant are to be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(8) Notwithstanding anything in paragraph (3), any party to an action to which this rule applies may take out a 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.

2. Case management timetable (O. 25, r. 2)

(1) Subject to paragraph (4), as soon as practicable after the completed questionnaire has been 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 fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the trial;
- (b) fix a case management conference if the Court is of the opinion that it is desirable to do so; or
- (c) direct the plaintiff to take out a case management summons if he has not already done so under rule 1(3)(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 for the steps to be taken between the date of the giving of those directions and the date of the case management conference; and
- (b) 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, and the timetable must include –
 - (i) a date for a pre-trial review; or
 - (ii) the trial date or the period in which the trial is to take place.

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

- (a) a date for a pre-trial review; or
- (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 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 date of the giving of those directions and the date of the trial.

(5) The order nisi becomes 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.

3. Variation of case management timetable (O. 25, r. 3)

(1) The Court may, either of its own motion or on the application of a party, give further directions relating to the management of the case or vary any timetable fixed by it under rule 2.

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

(3) A non-milestone date may be varied by procuring an order to that effect by way of a consent summons.

(4) A party may 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 the period in which the trial is to take place.

(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 period fixed by the Court in which a trial is to take place;

"non-milestone date" () means a date or period fixed by the Court, other than a date or period specified in the definition of "milestone date".

4. Failure to appear at case management conference or pre-trial review (O. 25, r. 4)

(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) 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.

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

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

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

- (a) the action stands 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 is entitled to his costs of the action.

(6) If the plaintiff does not apply for restoration of the action under paragraph (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.

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

5. Duty to consider all matters

(O. 25, r. 5)

(1) When the 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 rules of this Order, are required to be considered 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 case management summons first comes to be determined, the Court considers that it is possible to deal then with all the matters referred to in paragraph (1), it shall -

- (a) deal with them forthwith; and
- (b) 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 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 rules of this Order, are required to be considered at the case management summons, the Court shall -

- (a) 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
- (b) 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 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 rules of this Order, are required to be considered 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, at the determination of the case management summons, an action is ordered to be transferred to the Court of First Instance or some other court, paragraph (4) does not apply and nothing in this Order shall be construed as requiring the Court to make any further order at the case management summons.

(6) If the determination of the case management summons is adjourned without a day being fixed for its resumption, any party may restore the summons to the list on 2 days' notice to the other parties.

6. Particular matters for consideration

(O. 25, r. 6)

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) sections 41 and 42 of the Ordinance.

7. Admissions and agreements to be made (O. 25, r. 7)

At the determination of the case management summons, the Court –

- (a) 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
- (b) may cause the order on the summons to record –
 - (i) any admissions or agreements so made; and
 - (ii) (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.

8. Limitation of right of appeal (O. 25, r. 8)

Nothing in rule 7 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 case management summons may record any such agreement.

9. Duty to give all information at determination of case management summons (O. 25, r. 9)

(1) Subject to paragraph (5), no affidavit shall be used at the determination of the case management summons except by the leave or directions of the Court.

(2) Subject to paragraph (7), it is the duty of the parties to the action and their advisers to give all such information and produce all such documents as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

(3) 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.

(4) In the absence of such authority, any information or document given or produced under paragraph (2) shall be given or produced to all the parties as well as to the Court.

(5) No leave is required by virtue of paragraph (1) for the use of an affidavit by any party 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.

(6) If the Court 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 (7), 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 –

- (i) order the whole or any part of the pleadings of the party concerned to be struck out; or
- (ii) 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.

(7) Notwithstanding anything in this rule, no information or documents which are privileged from disclosure is 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.

10. Duty to make all interlocutory applications at case management summons (O. 25, r. 10)

- (1) Any party to whom the case management summons is addressed must –
 - (a) so far as practicable apply 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
 - (b) not less than 7 days 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 –
 - (a) the determination of the case management summons is adjourned; and
 - (b) any party to the proceedings desires to apply 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 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 notice given under paragraph (1).

(3) Any application subsequent to the case management summons 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.

11. Automatic directions in personal injury actions (O. 25, r. 11)

- (1) When the pleadings in any action to which this rule applies are deemed to be closed, the following directions 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) 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;
 - (c) 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.

- (2) Nothing in paragraph (1) –
 - (a) prevents 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
 - (b) prevents the making of an order for the transfer of the proceedings to the Court of First Instance.

- (3) 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;

"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.
- (4) 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.

12. Application to action in specialist list (O. 25, r. 12)

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.

13. Transitional (O. 25, r. 13)

(1) Where immediately before the commencement of this Order, a summons for directions taken out under rule 7 of the repealed Order 23A is pending, then the summons for directions is deemed to be –

- (a) if it was taken out by the plaintiff, a case management summons taken out under rule 1(3)(b); or
 - (b) if it was taken out by the defendant, a case management summons taken out under rule 1(5).
- (2) Where before the commencement of this Order –
 - (a) the Court has given a direction requiring the plaintiff to apply for a pre-trial review under the repealed Order 34 or a memorandum setting out such a direction has been filed under rule 4 of the repealed Order 23A; and
 - (b) the plaintiff has not made the application in accordance with the direction,

then the direction is deemed to be a direction requiring the plaintiff to take out a case management summons under rule 1(3)(b).

(3) Where immediately before the commencement of this Order, an application for a pre-trial review made under the repealed Order 34 is pending, then the application is deemed to be a case management summons taken out under this Order, irrespective of whether a notice in response has been filed under the repealed Order 34.

(4) Where before the commencement of this Order, the pleadings in an action to which this rule applies are deemed to have been closed and paragraphs (1), (2) and (3) are

not applicable, then 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 this Order".

(5) In this rule –
 "repealed Order 23A" () means Order 23A repealed by rule 78 of the Amendment Rules 2008;
 "repealed Order 34" () means Order 34 repealed by rule 151 of the Amendment Rules 2008."

82. Discovery by interrogatories

Order 26, rule 1(2) is amended by repealing "Order 23A, rule 8(2)" and substituting "Order 25, rule 10".

83. Notice to admit

Order 27, rule 2(1) is amended by repealing everything after "the expiration of" and before ", serve on" and substituting "21 days after the cause or matter is set down for trial".

84. Admission and production of documents specified in list of documents

Order 27, rule 4 is amended –

- (a) in paragraphs (1) and (3), by repealing "any order or direction made or taking effect under Order 23A or 24" and substituting "any provision of Order 24";
- (b) in paragraph (4), by repealing "any order or direction made or taking effect under Order 23A or 24" and substituting "any provision of that Order".

85. Notices to admit or produce documents

Order 27, rule 5 is amended –

- (a) in paragraph (1), by repealing everything after "the expiration of" and before ", serve on" and substituting "21 days after the cause or matter is set down for trial";
- (b) in paragraph (2), by repealing "14 days" and substituting "21 days".

86. Directions, etc., by Court

Order 28, rule 4(4) is amended –

- (a) by repealing "on a directions hearing under Order 23A" and substituting "under Order 25";
- (b) by repealing "summons for directions" and substituting "case management summons".

87. Continuation of proceedings as if cause or matter begun by writ

Order 28, rule 8(2) is repealed and the following substituted –

- "(2) Where the Court decides to make such an order, Order 25, rules 5 to 10 –
- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and
 - (b) with any other necessary modifications,

apply as if there had been a case management summons in the proceedings and that order were one of the orders to be made thereon."

88. Order for hearing or trial

Order 28, rule 9(4) is amended by repealing "a pre-trial review" and substituting "the case management summons".

89. Detention, preservation, etc., of subject-matter of cause or matter

Order 29, rule 2(5) is amended by adding "or by notice under Order 25, rule 10" after "by summons".

90. Directions

Order 29, rule 7(2) is repealed and the following substituted –

"(2) If, in an action begun by writ, not being any such action as is mentioned in subparagraphs (a) to (c) and (e) to (h) of Order 25, rule 1(4), the Court thinks fit to give directions under this rule before the case management summons, then rules 5 to 10 of that Order –

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they desire; and
 - (b) with any other necessary modifications,
- apply as if the application were a case management summons."

91. Rule substituted

Order 29, rule 14 is repealed and the following substituted –

"14. Directions on application under rule 10 (O. 29, r. 14)

Where an application is made under rule 10 –

- (a) the Court may give directions as to the further conduct of the action; and
- (b) so far as may be applicable, Order 25, rules 5 to 10 –
 - (i) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they require; and
 - (ii) with any other necessary modifications,
 apply as if the application were a case management summons; and
- (c) in particular, the Court may order an early trial of the action."

92. Determining the place and mode of trial

Order 33, rule 4(1) is amended by repealing everything after "by writ," and substituting "the Court shall by order determine the place and mode of the trial."

93. Rule added

Order 37 is amended by adding –

"4. Power to order assessment at trial (O. 37, r. 4)

(1) Where judgement is given for damages to be assessed, the Court may order that the action shall proceed to trial before a judge as respects the damages.

(2) Where the Court orders that the action shall proceed to trial, Order 25, rules 5 to 10 –

- (a) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they desire; and

(b) with any other necessary modifications, apply as if the application to the Court in pursuance of which the Court makes the order, were a case management summons under Order 25."

94. Application for award of further damages

Order 37, rule 10 is amended –

- (a) in paragraph (4), by repealing "summons for directions under Order 23A, rule 7," and substituting "case management summons";
- (b) in paragraph (5), by repealing "On the directions hearing" and substituting "At the determination of the case management summons".

95. Exchange of witness statements

Order 38, rule 2A is amended –

- (a) in paragraph (4), by repealing "or Order 23A";
- (b) in paragraph (6), by repealing "paragraph (2) or Order 23A" and substituting "this rule";
- (c) in paragraph (10), by repealing "given under paragraph (2), or as the case may be, under Order 23A" and substituting "for the exchange of witness statements".

96. Evidence of finding on foreign law

Order 38, rule 7(1)(a) is amended by repealing "Order 23A, rule 1(1) applies, within 14 days" and substituting "Order 25, rule 1 applies, within 28 days".

97. Directions in particular proceedings

Order 72, rule 8 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "Order 23A" and substituting "Order 25, rule 1(3)(b)";
 - (ii) by repealing "summons for directions" and substituting "case management summons";
- (b) in paragraph (2) –
 - (i) by repealing "Order 23A, rules 2 and 7 to 13" and substituting "Order 25, rules 5 to 10";
 - (ii) by repealing "summons for directions" and substituting "case management summons".

98. Discovery and interrogatories

Order 77, rule 12(1) is amended by repealing "Order 23A, rule 5" and substituting "Order 24, rules 1 and 2".

99. Procedure in Court after transfer

Order 78, rule 3(2) is amended by repealing "conduct a directions hearing under Order 23A, rule 9" and substituting "set the action or proceeding down before a master who shall make such directions as he sees fit for the further conduct of the action or proceeding".

100. Directions

Order 86, rule 5 is amended by repealing everything after "conduct of the action," and substituting –

"and Order 25, rules 5 to 10 –

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and
 - (b) with any other necessary modifications,
- apply as if the application under rule 1 were a case management summons."

PART 10 DISCOVERY

Division 1 – Recommendations 76 and 79

101. Application under section 47A or 47B(1) of the Ordinance

Order 24, rule 7A is amended –

- (a) in paragraph (3) –
 - (i) in subparagraph (a), by repealing "in which a claim for personal injuries is likely to be made";
 - (ii) in subparagraph (b), by repealing "out of a claim for personal injuries made or likely to be made";
- (b) by adding –

"(3A) In the case of a summons under paragraph (1), paragraph (3)(b) shall be construed as if for the word "relevant", there were substituted the words "directly relevant (within the meaning of section 47A of the Ordinance)";
- (c) by repealing paragraph (7).

102. Discovery to be ordered only if necessary

Order 24, rule 8 is amended –

- (a) by renumbering it as Order 24, rule 8(1);
- (b) in paragraph (1), by repealing "3, 7 or 7A" and substituting "3 or 7";
- (c) by adding –

"(2) No order for the disclosure of documents shall be made under section 47A or 47B 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."

Division 2 – Recommendation 80

103. Rule added

Order 24 is amended by adding –

"15A. Order for limiting discovery (O. 24 r. 15A)

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."

PART 11 INTERLOCUTORY APPLICATIONS

Division 1 - Recommendations 83, 85 and 86

104. Rules added

Order 32 is amended by adding –

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

- (1) A master may –
 - (a) determine an interlocutory application without an oral hearing; or
 - (b) adjourn the application to be heard before him or another master or a judge in chambers.
- (2) The master may fix a date on which he may –
 - (a) in the case of paragraph (1)(a), hand down his determination of the application; and
 - (b) in the case of paragraph (1)(b), make an order that the application be heard before him or another master or a judge in chambers on a date specified in the order.
- (3) The master may give such directions as he thinks necessary or desirable for the purpose of determining the application, including directions for –
 - (a) the setting of a timetable for the steps to be taken between the date of the giving of those directions and the date of the determination of the application;
 - (b) the filing of evidence and arguments;
 - (c) the filing of a statement of costs in respect of the application; and
 - (d) the filing of a statement of grounds in opposition to the statement of costs referred to in subparagraph (c).
- (4) Where the determination of the application is adjourned for the hearing of the summons, no further evidence may be adduced unless it appears to the Court that there are exceptional circumstances making it desirable that further evidence should be adduced.
- (5) This rule does not apply to –
 - (a) an application under Order 2, rule 4 for relief from any sanction imposed by a court order; and
 - (b) an application to extend or shorten the time for compliance with a court order.

16B. Court's power to specify the consequences of failure to comply with court order on interlocutory application

(O. 32, r. 16B)

- (1) Where the Court makes an order on an interlocutory application before –
 - (a) a case management summons in the action is taken out under Order 25; or
 - (b) it gives directions relating to the management of the case under Order 25, rule 2(1)(a), (2)(a) or (4),

it may, if it thinks appropriate to do so, specify the consequences of failing to comply with the order.

- (2) Where the Court makes an order on an interlocutory application after –
 - (a) a case management summons in the action taken out under Order 25 has been dealt with by the Court; or
 - (b) it has given directions relating to the management of the case under Order 25, rule 2(1)(a), (2)(a) or (4),

it shall, unless there are special circumstances which render it inexpedient to do so, specify the consequences of failing to comply with the Order.

- (3) The consequences specified under paragraph (1) or (2) must be appropriate and proportionate in relation to the non-compliance."

Division 2 – Jurisdiction of Registrar and master

105. Rule added

Order 32 is amended by adding immediately after rule 8 –

"8A. Application for a direction under the Limitation

Ordinance (O. 32, r. 8A)

The jurisdiction to direct, under section 30 of the Limitation Ordinance (Cap. 347), that section 27 or 28 of that Ordinance should not apply to an action or to any specified cause of action to which the action relates shall be exercisable by the Court."

106. Jurisdiction of the Registrar and master

Order 32, rule 16 is amended –

- (a) in paragraph (1)(a), by adding "other than matters relating to the conditions of admission to bail" after "criminal proceedings";
- (b) by repealing paragraph (4).

PART 12
INTERLOCUTORY APPLICATIONS AND
SUMMARY ASSESSMENT OF COSTS

Recommendations 88, 89 and 92

107. Fractional or gross sums in place of taxed costs

Order 62, rule 9 is amended –

- (a) by repealing the heading and substituting "**Taxed costs, fractional taxed costs or costs summarily assessed for non-interlocutory applications**";
- (b) by repealing paragraph (4)(b) and substituting –
 - "(b) to a sum of money summarily assessed in lieu of taxed costs.";
- (c) by adding –
 - "(5) This rule does not apply to costs of an interlocutory application.".

108. Rules substituted

Order 62, rule 9A is repealed and the following substituted –

"9A. Summary assessment of costs of interlocutory application

(O. 62, r. 9A)

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

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

(2) Where the Court has made an order under paragraph (1)(b), either party to the interlocutory application 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 amount of 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 amount of 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 amount of the taxed costs in respect of the interlocutory application, the taxing master may –
 - (i) direct the party in whose favour the order was made to pay the difference; or
 - (ii) set off the difference against any other costs to which the party in whose favour the order was made is entitled and direct payment of any balance.
- (4) Where –
 - (a) the amount paid pursuant to an order made under paragraph (1)(b) equals or exceeds the amount of the taxed costs in respect of the interlocutory application; or
 - (b) the taxed costs in respect of the interlocutory application do not materially exceed the amount paid pursuant to an order made under paragraph (1)(b),

the 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.

9B. Time for complying with direction or order for summary assessment

(O. 62, r. 9B)

- (1) A party shall comply with a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) for payment of a sum of money –
 - (a) within 14 days of the date of the direction or order; or
 - (b) by such date as the Court may specify.
- (2) Paragraph (1) does not apply if the party is an aided person.

9C. When summary assessment not allowed

(O. 62, r. 9C)

- (1) No direction or order may be made under rule 9(4)(b) or 9A(1)(a) or (b) for the payment of a sum of money if –
 - (a) the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily;
 - (b) the receiving party is an aided person, and the legal representative acting for the receiving party has not waived the right to any further sum of money in respect of the costs of the interlocutory application; or
 - (c) the receiving party is a person under disability as defined in Order 80, rule 1, and the legal representative (or the next friend or guardian and litem) acting for the person under disability has not waived the right to any further sum of money in respect of the costs of the interlocutory application.
- (2) In this rule –

"paying party" () means the party against whom a direction or an order under rule 9(4)(b) or 9A(1)(a) or (b) is made;

"receiving party" () means the party in whose favour a direction or an order under rule 9(4)(b) or 9A(1)(a) or (b) is made.

9D. When to tax and pay costs

(O. 62, r. 9D)

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

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

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

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

(5) Costs taxed under paragraph (2) or (4) shall be paid forthwith, whether or not the action has concluded.

(6) Paragraph (5) does not apply if the person against whom the costs order is made is an aided person."

109. Costs of a litigant in person

Order 62, rule 28A is amended –

(a) in paragraph (6), by adding "but includes a company or other corporation which is acting without a legal representative" after "practising solicitor";

(b) by adding –

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

PART 13 WASTED COSTS

Recommendations 94 to 97

110. Interpretation

Order 62, rule 1(1) is amended –

(a) in the English text, in the definition of "taxing master", by repealing the full stop and substituting a semicolon;

(b) by adding –

"'legal representative" (), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party;

"wasted costs order" () means an order made under section 53(3) of the Ordinance."

111. Rules substituted

Order 62, rule 8 is repealed and the following substituted –

"8. Personal liability of legal representative for costs – wasted costs order

(O. 62, r. 8)

- (1) The Court may make a wasted costs order against a legal representative, only if –
- (a) the legal representative, whether personally or through his employee or agent, has caused a party to incur wasted costs as defined in section 53(5) of the Ordinance; and
 - (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.
- (2) A wasted costs order may –
- (a) disallow the costs as between the legal representative and his client; and
 - (b) direct the legal representative to –
 - (i) repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
 - (ii) indemnify other parties against costs incurred by them.
- (3) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make the order.
- (4) When the Court makes a wasted costs order, it shall –
- (a) specify the amount to be disallowed or paid; or
 - (b) direct a master to decide the amount of costs to be disallowed or paid.
- (5) The Court may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit.
- (6) The Court may direct that notice must be given to the legal representative's client, in such manner as the Court may direct –
- (a) of any proceedings under this rule; or
 - (b) of any order made under this rule against his legal representative.
- (7) Before making a wasted costs order, the Court may direct a master to inquire into the matter and report to the Court.
- (8) The Court may refer the question of wasted costs to a master, instead of making a wasted costs order.
- (9) The Court may, if it thinks fit, direct or authorize the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

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

- (1) The Court may make a wasted costs order against a legal representative on its own motion.
- (2) A party may apply for a wasted costs order –
- (a) orally in the course of a hearing; or
 - (b) by making an interlocutory application by summons.

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

- (a) the legal representative concerned;
- (b) any party represented by that legal representative; and
- (c) any other person as may be directed by the Court,

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

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

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

8B. Stages of considering whether to make a wasted costs order

(O. 62, r. 8B)

(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)

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

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

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

8D. Personal liability of legal representative for costs – supplementary provisions

(O. 62, r. 8D)

(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 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 the bill of costs and for attending the taxation.

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

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

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

112. Rule added

Order 62 is amended by adding immediately after rule 35 –

"TRANSITIONAL

36. Transitional provision relating to Part 13 of the Amendment Rules

2008 (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 13 of the Amendment Rules 2008, and rule 8 as in force immediately before the commencement continues to apply in relation those costs as if that Part had not been made."

PART 14

WITNESS STATEMENTS AND EVIDENCE

Recommendation 100

113. Exchange of witness statements

Order 38, rule 2A is amended –

- (a) by repealing paragraph (7)(b) and substituting –
 - "(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;"
- (b) by adding –
 - "(7A) The Court may grant 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.".

PART 15

EXPERT EVIDENCE

Recommendations 102, 103 and 107

114. Rule added

Order 38 is amended by adding –

"4A. Evidence by a single joint expert

(O. 38, r. 4A)

- (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 2 or more parties to the action to appoint a single joint expert witness to give evidence on that question.
- (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.
- (5) The circumstances that the Court may take into account include but are 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;
- (c) the value of the claim and the importance of the issue on which expert evidence is sought, 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 –
 - (i) the choosing of the joint expert witness;
 - (ii) the drawing up of his instructions; or
 - (iii) the provision to him of the information and other facilities needed to perform his duties.

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

115. Interpretation

Order 38, rule 35 is amended –

- (a) by renumbering it as Order 38, rule 35(1);
- (b) by adding –

"(2) A reference to an expert witness in this Part or Appendix E is a reference to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court."

116. Rule added

Order 38 is amended by adding –

"35A. Expert witness's overriding duty to Court (O. 38, r. 35A)

- (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."

117. Rules added

Order 38 is amended by adding after rule 37A –

"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 Appendix E.
- (2) Where the Court has under rule 4A(1) ordered that 2 or more parties shall appoint a single joint expert witness, paragraph (1) applies to each of the parties.
- (3) If the instruction is in writing, it must be accompanied by a copy of the code of conduct set out in Appendix E.

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

- (1) An expert report disclosed under these Rules is not admissible in evidence unless the report contains a declaration by the expert witness that –
- (a) he has read the code of conduct set out in Appendix E 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, whether orally or in writing or otherwise, that –
- (a) he has read the code of conduct set out in Appendix E 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) Paragraph (1) does not apply to a report that was disclosed under rule 37 before the commencement of this rule."

118. Time for putting expert report in evidence

Order 38, rule 43 is amended by repealing "a report which has been disclosed in accordance with a direction given under rule 37" and substituting "an expert report which has been disclosed under these Rules".

119. Appendix E added

The following is added after Appendix D –

**"APPENDIX E
Code of conduct for expert witnesses
(Order 38 rules 35, 37B and 37C)**

Application of code

1. This code of conduct applies to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in Court.

General duty to Court

2. An expert witness has an overriding duty to assist the Court impartially and independently on matters relevant to the expert's area of expertise.
3. An expert witness's paramount duty is to the Court and not to the person from whom the expert has received instructions or by whom he is paid.
4. An expert witness is not an advocate for a party.

Declaration of duty to Court

5. A report by an expert witness is not admissible in evidence unless the report contains a declaration by the expert witness that –
- (a) he has read this code of conduct 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.

6. Oral expert evidence is not admissible unless an expert witness has declared in writing, whether in a report or otherwise in relation to the proceedings, that –

- (a) he has read this code of conduct 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.

Expert report to be verified

7. A report by an expert witness must be verified by a statement of truth in accordance with Order 41A of the Rules of the District Court (Cap. 336 sub. leg. H).

Form of expert reports

8. A report by an expert witness must (in the body of the report or in an annexure) specify –

- (a) the person's qualifications as an expert;
- (b) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed);
- (c) the reasons for each opinion expressed;
- (d) if applicable, that a particular question or issue falls outside his field of expertise;
- (e) any literature or other materials utilized in support of the opinions; and
- (f) any examinations, tests or other investigations on which he has relied, and the identity and details of the qualifications of the person who carried them out.

9. If an expert witness who prepares a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.

10. If an expert witness considers that his opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.

11. An expert witness who, after communicating an opinion to the party instructing him (or that party's legal representative), changes his opinion on a material matter shall forthwith provide the party (or that party's legal representative) with a supplementary report to that effect which must contain such of the information referred to in section 8(b), (c), (d), (e) and (f) as is appropriate.

Experts' conference

12. An expert witness shall abide by any direction of the Court to –

- (a) confer with any other expert witness;
- (b) endeavour to reach agreement on material matters for expert opinion; and

- (c) provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non-agreement.

13. An expert witness shall exercise his independent, professional judgment in relation to such a conference and joint report, and shall not act on any instruction or request to withhold or avoid agreement.

Note:- Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false declaration or a false statement in a document verified by a statement of truth without an honest belief in its truth."

PART 16 CASE MANAGING TRIALS

Recommendation 108

120. Rule added

Order 35 is amended by adding –

"3A. Time, etc. limits at trial

(O. 35, r. 3A)

- (1) At any time before or during a trial, the Court may by direction –
 - (a) limit the time to be taken in examining, cross-examining or re-examining a witness;
 - (b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;
 - (c) limit the time to be taken in making any oral submission;
 - (d) limit the time to be taken by a party in presenting its case;
 - (e) limit the time to be taken by the trial; and
 - (f) vary a direction made under this rule.
- (2) In deciding whether to make any such direction, the Court shall have regard to the following matters in addition to any other matters that may be relevant –
 - (a) the time limited for a trial must be reasonable;
 - (b) any such direction must not detract from the principle that each party is entitled to a fair trial;
 - (c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;
 - (d) the complexity or simplicity of the case;
 - (e) the number of witnesses to be called by the parties;
 - (f) the volume and character of the evidence to be led;
 - (g) the state of the Court lists;
 - (h) the time expected to be taken for the trial; and
 - (i) the importance of the issues and the case as a whole."

PART 17
LEAVE TO APPEAL

Recommendation 109

121. Appeals from master to judge in chambers

Order 58, rule 1 is amended –

- (a) in paragraph (1), by repealing "determination of a master" and substituting "decision of a master, irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing";
- (b) in paragraphs (2) and (3), by repealing "determination" and substituting "decision";
- (c) by adding –
 - "(4) No further evidence (other than evidence as to matters which have occurred after the date on which the judgment, order or decision was given or made) may be received on the hearing of an appeal under this rule except on special grounds."

PART 18
APPEALS

122. Appeals to Court of Appeal

Order 58, rule 2 is amended –

- (a) in paragraph (1), by repealing "determination" and substituting "decision";
- (b) by repealing paragraph (2) and substituting –
 - "(2) Subject to the provisions of this rule, an appeal lies to the Court of Appeal from –
 - (a) a judgment, order or decision of a master on any cause, matter, question or issue tried or assessed before him under Order 14, rule 6(2), Order 36, rule 1, Order 37 or Order 84A, rule 3; and
 - (b) a judgment, order or decision (other than an interlocutory judgment, order or decision) of a master given or made under Order 49B.
 - (2A) Notwithstanding paragraph (2)(b), an appeal lies to the Court of Appeal as of right from an order for imprisonment given or made by a master under Order 49B;"
- (c) by repealing paragraph (3);
- (d) by repealing paragraph (4) and substituting –
 - "(4) An application for leave to appeal must be made to a judge, or to a master in the case of an appeal under paragraph (2), within –
 - (a) in the case of an appeal from a judgment, order or decision of a master under paragraph (2), 28 days from the date of the judgment, order or decision;

- (b) in the case of an appeal from a judgment, order or decision (other than an interlocutory judgment, order or decision) of a judge, 28 days from the date of the judgment, order or decision;
- (c) in the case of an appeal from an interlocutory judgment, order or decision of a judge, 14 days from the date of the interlocutory judgment, order or decision.

(4A) If the judge or master (as the case may be) refuses an application for leave made under paragraph (4), a further application for leave may be made to the Court of Appeal within 14 days from the date of refusal.

(4B) An application under paragraph (4) or (4A) must be made inter partes if the proceedings to which the judgment, order or decision relates are inter partes.";

- (e) in paragraph (5), by repealing "determination" and substituting "decision";
- (f) by repealing paragraph (7);
- (g) in paragraph (8), by adding "or (4A)" after "paragraph (4)";
- (h) in paragraph (9) –
 - (i) by adding "or an order for imprisonment given or made under Order 49B" after "the Ordinance";
 - (ii) by repealing "14 days from the date on which the order of the Court was sealed or otherwise perfected" and substituting "28 days from the date of the order of the Court".

123. Rule added

Order 58 is amended by adding –

"4. Non-interlocutory judgments and orders (O. 58, r. 4)

(1) For the purposes of rule 2(4)(b) and (c), the following judgments and orders are not interlocutory –

- (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 53(3) of the Ordinance;
- (c) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);
- (d) an order for the imprisonment of a judgment debtor under Order 49B;
- (e) an order of committal for contempt of court under Order 52, rule 1; and
- (f) 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.

(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 the construction of any document under Order 14A, rule 1(1);

- (d) a judgment or order made 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) may 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) and (e) includes an order refusing, varying or discharging the order."

PART 19 GENERAL APPROACH TO INTER-PARTY COSTS

Recommendation 122

124. When costs to follow the event

Order 62, rule 3 is amended –

- (a) by repealing the heading and substituting "**Order as to entitlement to costs**";
- (b) in paragraph (2), by adding "(other than interlocutory proceedings)" after "proceedings";
- (c) by adding –

"(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."

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

Order 62, rule 5(1) is amended by adding before subparagraph (a) –

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

126. Costs arising from misconduct or neglect

Order 62, rule 7(2) is amended by adding before subparagraph (a) –

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

PART 20
TAXING THE OTHER SIDE'S COSTS

Division 1 – Recommendation 131

127. Schedule 1 amended

Schedule 1 to Order 62 is amended, in Part II, by repealing paragraph 2(5) and substituting –

"(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).".

Division 2 – Recommendation 134

128. Interpretation

Order 62, rule 1(1) is amended by adding –

"party entitled to be heard on taxation" () means –

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

129. Powers of Chief Judicial Clerks to tax costs

Order 62, rule 13 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "rule 21(4)" and substituting "rule 21B";
 - (ii) by repealing "Registrar" and substituting "taxing master";
- (b) by adding –

"(1A) Paragraph (1) only applies if the amount of the bill of costs does not exceed the sum of \$200,000.";
- (c) in paragraph (2), by repealing "in respect of which an appointment to tax has been given" and substituting "the taxation of which is set down for hearing under rule 21B(4) or 21C(1)".

130. Rules substituted

Order 62, rule 21 is repealed and the following substituted –

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

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

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

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

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

(4) Subject to paragraphs (2) and (3), it is not necessary for a copy of the notice of commencement of taxation or of the bill of costs to be served on any party who has not acknowledged service in the proceedings which gave rise to the taxation.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Where the taxing master has taxed the bill of costs without a hearing and made an order nisi under paragraph (1), the party who has applied for setting down the taxation under rule 21A(1) shall serve a copy of the order nisi on every other party entitled to be heard on taxation.

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

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

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

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

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

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

(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 the whole or part of the bill of costs.

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

21D. Withdrawal of bill of costs

(O. 62, r. 21D)

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

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

131. Rule substituted

Order 62, rule 24 is repealed and the following substituted –

"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."

Division 3 – Recommendations 135 and 136

132. Rule added

Order 62 is amended by adding –

"13A. Taxing master may give directions

(O. 62, r. 13A)

- (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."

133. Deposit of papers and vouchers

Order 62, rule 23 is repealed.

134. Provisions as to bills of costs

Order 62, rule 25 is repealed.

135. Power to adjourn

Order 62, rule 26(2) is amended –

- (a) by renumbering it as Order 62, rule 26(1);
- (b) by adding –
 - "(2) If the taxation proceedings are adjourned because a party has failed to comply with any directions given under rule 13A, the taxing master may make such order as he may consider appropriate in relation to costs thrown away by the adjournment."

136. Costs for witnesses

Order 62 is amended –

- (a) by renumbering rule 32A as rule 32D;
- (b) in rule 32D, in the heading, by repealing "r. 32A)" and substituting "r. 32D)".

137. Rule added

Order 62 is amended by adding immediately after rule 32 –

"32A. Liability for costs of taxation

(O. 62, r. 32A)

(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."

138. Rule added

Order 62 is amended by adding –

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

(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."

Division 4 - Miscellaneous**139. Costs arising from misconduct or neglect**

Order 62, rule 7 is amended –

- (a) in paragraph (4), by repealing "and in relation to any failure to procure taxation";
- (b) by repealing paragraph (5).

140. Rules added

Order 62 is amended by adding -

"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; and
- (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.

(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."

141. Rule substituted

Order 62, rule 22 is repealed and the following substituted -

"22. Delay in service of notice of commencement of taxation or in proceeding with taxation

(O. 62, r. 22)

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

- (a) agreed the amount of those costs with the person liable to pay them; nor
- (b) served upon such person a copy of a notice of commencement of taxation in accordance with rule 21(2),

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

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

- (a) agreed the amount of those costs with the person liable to pay them; nor
- (b) proceeded with the taxation,

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

(3) The taxing master -

- (a) may order that the person entitled to payment of the costs must commence taxation proceedings in accordance with rule 21 or

proceed with the taxation, within such period as may be specified in the order; and

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

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

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

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

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

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

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

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

whichever is the later.

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

(9) In this rule, "completion date" () means -

- (a) the date of the judgment or order of the Court which disposes of the action;
- (b) the date on which the Court makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
- (c) the date on which the taxing master orders under rule 9D(4) the person entitled to payment of the costs of any interlocutory proceedings in the Court to commence taxation proceedings; or
- (d) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court directing the taxation of them, the date on which he becomes entitled to tax those costs,

whichever is the later."

142. Cross-heading substituted

The cross-heading immediately before Order 62, rule 28 is repealed and the following substituted -

"BASES AND SCALES FOR TAXATION AND ASSESSMENT OF COSTS".

143. Costs of a litigant in person

Order 62, rule 28A(5) is amended by adding ", unless otherwise specified therein," after "shall".

144. Rule added

Order 62 is amended by adding –

"32B. Reimbursement for taxing fees

(O. 62, r. 32B)

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."

145. Application to taxing master for review

Order 62, rule 33 is amended –

- (a) in paragraph (1), by repealing everything after "allowed by a taxing master" and substituting –

"in respect of any item –

- (a) may apply to the taxing master to review his decision in respect of that item; and
- (b) may not apply to a judge for an order to review the decision until after its review by the taxing master.";

- (b) in paragraph (2) –

- (i) by repealing "14 days after that decision" and substituting "14 days after the conclusion of the taxation in which that decision was made";

- (ii) in the proviso, by repealing "certificate dealing finally" and substituting "final certificate dealing";

- (c) by adding –

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

146. Schedule 1 amended

Schedule 1 to Order 62 is amended, in Part I –

- (a) by repealing item 1 and substituting –

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

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

- (b) in item 2, by repealing "\$65" and substituting "\$72".

147. Fixed costs

Schedule 2 to Order 62 is repealed and the following substituted –

"SCHEDULE 2

[rr. 28A & 32]

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

1. The scale of costs set out in Part II of this Schedule applies in relation to the following cases if the writ of summons therein was issued after the commencement of the Amendment Rules 2008 and was indorsed with a claim for a debt or liquidated demand only, that is to say –
 - (a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;
 - (b) cases in which the plaintiff obtains –
 - (i) judgment on failure to give notice of intention to defend under Order 13, rule 1; or
 - (ii) judgment in default of defence under Order 19, rule 2.
2. 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.
3. Notwithstanding anything in paragraph 1 or 2 of this Schedule or in the scale of costs set out in Part II of this Schedule, no costs shall be allowed in any case to which paragraph 1 or 2 of this Schedule applies unless –
 - (a) the Court orders costs to be allowed; or
 - (b) in a case to which subparagraph (b) of paragraph 1 applies, judgment or an order for judgment, as the case may be, is obtained –
 - (i) within 28 days after the service of the writ; or
 - (ii) within such further time as the Court may allow.
4. In a case to which the scale of costs set out in Part II of this Schedule applies, there shall be added to the basic costs set out in the 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 – subparagraph (a) of paragraph 1	6,000 if the plaintiff is legally represented and 350 if the plaintiff is not legally represented
subparagraph (b) of paragraph 1	6,500 if the plaintiff is legally represented and 300 if the plaintiff is not legally represented

paragraph 2

6,500 if the plaintiff is legally represented and 300 if the plaintiff is not legally represented

Additional Costs

- | | | |
|----|--|-----|
| 1. | For each additional defendant after the first | 350 |
| 2. | Where substituted service is ordered and effected, for each defendant served | 650 |

PART III MISCELLANEOUS

Item		Scale
		\$
1.	Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed cost of the judgment	700
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 by or accruing from him to the debtor, the following costs shall be allowed to the garnishee, to be deducted by him from any debt owing by or accruing from him to the debtor before payments to the applicant – (a) if no affidavit used (b) if affidavit used	70 200
3.	Where a writ of execution within the meaning of Order 46, rule 1 is issued against any party, there shall be allowed cost of issuing execution	400".

Division 5 – Transitional arrangement

148. Rule added

Order 62 is amended by adding –

**"37. Transitional provisions relating to
Part 20 of the Amendment Rules 2008
(O. 62, r. 37)**

(1) Where a party entitled to require any costs to be taxed has filed his bill of costs before the commencement of Part 20 of the Amendment Rules 2008, nothing in that Part applies in relation to the taxation, and Order 62 as in force immediately before the commencement applies in relation to the taxation as if it had not been amended by that Part.

(2) Where –

- (a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of Part 20 of the Amendment Rules 2008; but
- (b) any item of work to which the costs or charges specified in Schedule 1 or Part III of Schedule 2 of this Order relate was undertaken before the commencement,

then Schedule 1 or Part III of Schedule 2 of this Order as in force immediately before the commencement applies in relation to that item of work as if it had not been amended by Part 20 of the Amendment Rules 2008.

(3) Where –

- (a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of Part 20 of the Amendment Rules 2008; but
- (b) the writ of summons was issued before the commencement,

then Part I and Part II of Schedule 2 of this Order as in force immediately before the commencement applies in relation to the writ of summons issued before the commencement as if they had not been amended by Part 20 of the Amendment Rules 2008.

(4) No costs for work undertaken before the commencement of Part 20 of the Amendment Rules 2008 are to be disallowed if those costs would have been allowed under this Order as in force immediately before the commencement."

PART 21 COSTS AGAINST NON-PARTY

149. Principal cases in which service of writ out of jurisdiction is permissible

Order 11, rule 1(1) is amended by adding –

- "(oa) the claim is for a costs order under section 53(2) of the Ordinance against a person who is not a party to the relevant proceedings;"

150. Rule added

Order 62 is amended by adding –

"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 53 or 53A 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 where the Court is considering whether to make –

- (a) a wasted costs order; or
- (b) an order under section 47A or 47B of the Ordinance."

PART 22
REPLACEMENT OF ORDER 34

151. Order substituted

Order 34 is repealed and the following substituted –

"ORDER 34
SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT

1. Application and interpretation

(O. 34, r. 1)

This Order applies to actions begun by writ and, accordingly, references in this Order to an action are to be construed as references to an action so begun.

2. Time for setting down action

(O. 34, r. 2)

(1) Unless the Court has fixed a trial date or a period in which the trial is to take place under Order 25, rule 2(2)(b) or (3)(b), an order made in an action which provides for trial before a judge must fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may –

- (a) set the action down for trial; or
- (b) apply to the Court to dismiss the action for want of prosecution.

(3) On the hearing of an application made under paragraph (2)(b), the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(4) An order made in an action which provides for trial before a judge (otherwise than in any list which may be specified for the purposes of this paragraph by directions under rule 4) must –

- (a) contain an estimate of the length of the trial; and
- (b) subject to any such directions, specify the list in which the action is to be put.

3. Lodging documents when setting down

(O. 34, r. 3)

(1) In order to set down for trial an action which is to be tried before a judge, the party setting it down shall deliver to the Registrar, by post or otherwise, a request that the action may be set down for trial, together with a bundle (for the use of the judge) consisting of one copy each of the following documents that is to say -

- (a) the writ;
- (b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given;
- (c) all orders made –
 - (i) pursuant to the questionnaire completed in accordance with Order 25, rule 1(1);
 - (ii) pursuant to a case management summons; and
 - (iii) at a case management conference;
- (d) the requisite legal aid documents, if any; and
- (e) all witness statements served under the provisions of Order 38, rule 2A.

(2) The bundle must be bound up in the proper chronological order, save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7) applies must be placed immediately after the pleading to which they relate.

(3) In this rule "the requisite legal aid documents" (必需的法律援助文件) means any documents which are required to be filed in the Registry under the Legal Aid Ordinance (Cap. 91) or the regulations made thereunder.

4. Directions relating to lists

(O. 34, r. 4)

Nothing in this Order prejudices any powers of the Chief Justice to give directions -

- (a) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists;
- (b) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and
- (c) as to the making of applications (whether to the Court or an officer of the Court) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

5. Notification of setting down

(O. 34, r. 5)

(1) A party to an action who sets it down for trial shall, within 24 hours after doing so, notify the other parties to the action that he has done so.

(2) It is the duty of all parties to an action entered in any list to –

- (a) furnish without delay to the officer who keeps the list all available information as to the action being or being likely to be settled, or affecting the estimated length of the trial; and
- (b) if the action is settled or withdrawn, notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

(3) In performance of the duty imposed by paragraph (2), a plaintiff who gives notice of acceptance of a sanctioned payment or a sanctioned offer in accordance with Order 22, shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph.

6. Abatement, etc., of action

(O. 34, r. 6)

(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action shall, as soon as practicable after becoming aware of it –

- (a) certify the abatement or change of interest or liability; and
- (b) send the certificate to the officer who keeps the list.

(2) That officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(3) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action must on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides."

152. Order for hearing or trial

Order 28, rule 9(4) is amended by repealing "rules 1 to 8" and substituting "rules 1 to 5".

153. Abatement, etc., of action

Order 28, rule 11 is amended by repealing "rule 9" and substituting "rule 6".

PART 23
MISCELLANEOUS

154. Application

Order 1, rule 2 is amended –

- (a) in paragraph (2), in the Table –

- (i) by repealing –

"3. Proceedings in respect of domestic violence.	Domestic Violence Ordinance (Cap. 189), section 8.";
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- (ii) by repealing –

"5. Proceedings under the Business Registration Ordinance (Cap. 310).	Business Registration Ordinance (Cap. 310), section 17.";
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- (b) in paragraph (2A) –

- (i) by repealing "These Rules" and substituting "Subject to paragraph (2B), these Rules";

- (ii) in subparagraph (b), by repealing "determination" and substituting "decision";
- (iii) by adding –
 - "(ba) domestic violence proceedings (except for an appeal against any judgment, order or decision of a judge to which Order 58 applies);";

- (c) by adding –
 - "(2B) Subject to section 85(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), Order 58 has effect in relation to an appeal against a judgment, order or decision of the Court made under Part III of that Ordinance.".

155. Definitions

Order 1, rule 4(1) is amended by adding –

"'action for personal injuries' (就人身傷害而提出的訴訟) means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, and 'personal injuries' (人身傷害) includes any disease and any impairment of a person's physical or mental condition;".

156. Rule added

Order 1 is amended by adding –

"6A. Construction of references to Registrar (O. 1, r. 6A)

Wherever the word "Registrar" appears in these Rules and forms, there may be substituted the word "master" when and where appropriate.".

157. Transfer to the Court of First Instance

Order 4, rule 1 is amended –

- (a) in the heading, by adding "**or the Lands Tribunal**" after "**Instance**";
- (b) by adding "or the Lands Tribunal" after "Instance".

158. Service of originating summons

Order 10, rule 5 is amended –

- (a) in the heading, by adding ", **notice of motion, or petition**" after "**summons**";
- (b) by renumbering it as Order 10, rule 5(1);
- (c) by adding –

"(2) Rule 1(1), (2), (3) and (4) applies, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.".

159. Mode of acknowledging service

Order 12, rule 1(4) is amended by repealing "1 or more" and substituting "2 or more".

160. Mixed claims

Order 13, rule 5 is amended by repealing "1 or more" and substituting "2 or more".

161. Rules added

Order 24 is amended by adding –

"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 shall make discovery by exchanging lists of documents. Accordingly, each party shall, 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.

(2) Without prejudice to any directions given by the Court under Order 16, rule 4, paragraph (1) does not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(3) 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).

(4) 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.

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

(6) 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 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.

(7) The Court shall make an order under paragraph (6), 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.

(8) An application for an order under paragraph (6) 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.

(9) Any party to whom discovery of documents is required to be made under this rule may, at any time before the 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).

(10) The party on whom the notice is served shall, 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."

162. Order for discovery

Order 24, rule 3 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "Subject to paragraph (3) and" and substituting "Subject to the provisions of this rule and of";
 - (ii) by adding "or otherwise" after "originating summons";
- (b) by adding –
 - "(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 –
 - (a) may make an order against the first-mentioned party under paragraph (1); or
 - (b) 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."

163. Order for determination of issue, etc., before discovery

Order 24, rule 4(1) is amended by repealing "rule 3" and substituting "rule 2 or 3".

164. Form of list and affidavit

Order 24, rule 5 is amended –

- (a) in paragraph (1), by adding "made in compliance with rule 2 or with an order under rule 3" after "A list of documents";
- (b) in paragraph (2), by repealing "claimed" and substituting "desired to claim".

165. Inspection of documents referred to in list

Order 24, rule 9 is amended by adding ", whether in compliance with rule 2 or with an order under rule 3," after "on any other party".

166. Failure to comply with requirement for discovery, etc.

Order 24, rule 16(1) is amended –

- (a) by repealing "any order or direction" and substituting "any of the foregoing rules, or by any order made thereunder,";
- (b) by repealing "that order or direction" and substituting "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)".

167. Rule added

Order 24 is amended by adding –

"17. Transitional provision relating to rules 1 and 2 (O. 24, r. 17)

(1) Where before the commencement of rule 2, the pleadings in an action are deemed to have been closed, rule 2(1) has effect as if for the words "within 14 days after the pleadings in the action are deemed to be closed as between him and any other party", there were substituted the words "within 14 days of the commencement of this rule".

(2) Rules 1 and 2 and paragraph (1) has effect subject to –

- (a) any direction relating to discovery of documents given by the Court before the commencement of those rules; and
- (b) any memorandum filed under Order 23A, rule 4 ("the repealed rule") repealed by rule 78 of the Amendment Rules 2008 which sets out the directions and orders agreed between the parties and taking effect under the repealed rule."

168. Discovery by interrogatories

Order 26, rule 1(2A) is amended by repealing "or to give" and substituting "to give".

169. Order for hearing or trial

Order 28, rule 9 is amended by adding –

"(3) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial."

170. Order for interim payment in respect of damages

Order 29, rule 11 is amended -

(a) by repealing paragraph (2)(a), (b) and (c) and substituting –

"(a) a person who is insured in respect of the plaintiff's claim or whose liability in respect of the plaintiff's claim will be met by the following person –

- (i) an insurer under section 10 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272);
- (ii) an insurer who is a party to an agreement with the Motor Insurers' Bureau of Hong Kong; or
- (iii) the Motor Insurers' Bureau of Hong Kong;

(b) a public authority; or

(c) a person whose means and resources are such as to enable him to make the interim payment.";

(b) by adding –

"(3) In paragraph (2)(a)(ii), "agreement" (協議) means the domestic agreement between the Motor Insurers' Bureau of Hong Kong and the insurance companies and Lloyd's underwriters authorized to carry on motor vehicle insurance business in Hong Kong, made on 1 February 1981, as amended from time to time."

171. Certificate of judicial clerk

Order 35, rule 10(b) is amended by adding "or 6" after "rule 5".

172. Report on reference

Order 36, rule 9(3)(d) is amended by adding "or any other master" after "by him".

173. Assessment of damages

Order 37, rule 1 is amended –

- (a) in paragraph (1) by repealing ", or, if the parties consent, by a master" and substituting "or master as directed by the Court";
- (b) by repealing paragraph (1A) and substituting –
 - "(1A) Upon judgment being given for damages to be assessed, the following directions shall, unless the Court directs otherwise, 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 in accordance with Order 24, rule 9;
 - (b) each party shall serve on the other parties, within 6 weeks, written statements under Order 38, rule 2A of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial;
 - (c) photographs, plans and the contents of any police investigation report shall be receivable in evidence at the hearing and shall be agreed if possible;
 - (d) 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;
 - (e) at the time of making of the application for an appointment, the master shall be notified of the estimated length of the assessment and any other matter which may affect the setting down of the assessment."

174. Certificate of amount of damages

Order 37, rule 2 is amended by repealing ", the judge or master hearing the assessment" and substituting "by a master, he".

175. Offer to submit to an award

Order 37, rule 9(3) is amended by repealing "21 days after receipt of the offer" and substituting "28 days after the offer was made".

176. Exchange of witness statements

Order 38, rule 2A is amended –

- (a) by adding –
 - "(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.";
- (b) by repealing paragraph (2) and substituting –
 - "(2) 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 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.
 - (2A) The Court may give a direction to any party under paragraph (2) at any other stage of the action and at any stage of any other cause or matter.
 - (2B) Order 3, rule 5(3) does not apply to any period specified by the Court under paragraph (2).";
- (c) by repealing paragraph (3) and substituting –
 - "(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.";
- (d) in paragraph (7), by repealing "and unless the Court otherwise orders";
- (e) in paragraph (17), by adding "(1)," after "paragraphs".

177. Rule added

Order 38 is amended by adding –

"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."

178. Restrictions on adducing expert evidence

Order 38, rule 36(1) is amended –

- (a) in subparagraph (a), by repealing "; or" at the end and substituting a full stop;
- (b) by repealing subparagraphs (b) and (c).

179. Orders required to be drawn up

Order 42, rule 4(3) is amended –

- (a) in subparagraph (j), by repealing "and" at the end;
- (b) by adding –
 - "(k) the transfer of an action from one list to another; and";
- (c) in subparagraph (l), by repealing "a cause or matter has been fixed to be tried or heard" and substituting "an action has been set down to be heard".

180. Consent judgments and orders

Order 42, rule 5A(2)(b)(vi) is amended by adding "or the Lands Tribunal" after "Court of First Instance".

181. Appeal against order of master

Order 44, rule 12 is amended –

(a) in paragraph (1) –

- (i) by repealing "this rule" and substituting "rule 11";
- (ii) by repealing the full stop and substituting ", save that the hearing shall be in open court unless the Court directs otherwise."

(b) by adding –

"(1A) The following provisions have effect in the application of Order 58, rule 1 to an order made under rule 11 –

- (a) the notice referred to in Order 58, rule 1(2) shall state the grounds of the appeal;
- (b) no fresh evidence (other than evidence as to matters which occurred after the date of the master's order) shall be admitted except on special grounds;
- (c) the judge hearing the appeal has the same power to draw inferences of fact as has the Court of Appeal under Order 59, rule 10(3) of the Rules of the High Court (Cap. 4 sub. leg. A)."

182. Rule substituted

Order 48, rule 3 is repealed and the following substituted –

"3. Record of judgment debtor's evidence given at examination (O. 48, r. 3)

A master conducting the examination shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor or other person at the examination."

183. Rule added

Order 49B is amended by adding immediately after rule 1A –

"1AA. Record of judgment debtor's evidence given at examination (O. 49B, r. 1AA)

The Court shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor at the examination conducted under rule 1A."

184. Application for order after leave to apply granted

Order 52, rule 3 is amended by adding –

"(1A) The originating summons shall state the grounds in respect of which leave for making an application for an order of committal has been granted."

185. Provisions as to hearing

Order 52, rule 6(3) is amended by repealing "set out in the statement under rule 2" and substituting "as stated in the originating summons under rule 3(1A)".

186. When costs to follow the event

Order 62, rule 3(6)(a) is amended by repealing "in accordance with Order 24, rule 3" and substituting "in pursuance of any provision of Order 24".

187. Stage of proceedings at which costs to be dealt with

Order 62, rule 4 is amended by adding –

"(2) In the case of any proceedings transferred to the Court from any other court or tribunal, the costs of the whole proceedings, both before and after the transfer, may (subject to any order of the court or tribunal ordering the transfer) be dealt with by the Court to which the proceedings are transferred.

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court or tribunal, rules 28, 31 and 32 do not apply in relation to those costs, but, except in relation to costs of proceedings transferred from the Court of First Instance or the Lands Tribunal, the order shall specify the amount of the costs to be allowed."

188. Schedule 1 amended

Schedule 1 to Order 62 is amended, in Part I, in paragraph (a)(viii) of the Note to item 5, by adding "or by virtue of Order 24" after "the Court".

189. Pleadings in particular proceedings

Order 72, rule 7(2) and (3) is repealed.

190. Appointment of guardian where person under disability does not acknowledge service

Order 80, rule 6 is amended by adding –

"(3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian ad litem at the hearing of the petition or motion, as the case may be, the Court hearing it may –

- (a) appoint a guardian ad litem of that person in the proceedings; or
- (b) direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian."

191. Forms

(1) Appendix A is amended, in Form No. 26, by adding "and which is served in compliance with Order 24, rule 2" after "A.B."

(2) Appendix A is amended, in Form No. 85, by repealing everything after "(Heading as in action)" and before "And it appearing" and substituting –

"Upon hearing the originating summons dated the ____ day of _____ 20__ taken out by the solicitor for the plaintiff/plaintiff and upon reading (an affidavit of

_____ filed the _____ day of _____ 20 ____ of service on the defendant
C.D. of a copy of the order of the Court dated the _____ day of
_____ 20 ____ and of notice of hearing of this originating summons):".

Made this ____ day of _____ 2008.

Explanatory Note

Implementation of the majority of recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform requires amendments to the Rules of the High Court (Cap. 4 sub. leg. A)("the RHC"). The principal purpose of these Rules is to make, where applicable, similar amendments to the Rules of the District Court (Cap. 336 sub. leg. H)("the RDC") so that the relevant recommendations may also be implemented at the District Court level. These Rules also makes amendments to the RDC to eliminate certain differences between the RHC and the RDC.

Parts 2 to 8, 10 to 17 and 19 to 21

2. The amendments contained in Parts 2 to 8, 10 to 17 and 19 to 21 are similar to those contained in the relevant Parts of the Rules of the High Court (Amendment) Rules 2008 (L.N. of 2008). Part 4 also adds 2 new Orders (new Orders 8 and 9) to the RDC. The 2 new Orders are similar to Orders 8 and 9 of the RHC.

Part 9

3. Part 9 repeals Order 23A of the RDC and adds a new Order 25 to the RDC to prescribe the procedure and practice regarding case management. The new Order 25 is similar to Order 25 of the RHC.

Part 18

4. Part 18 amends Order 58 of the RDC to –

- (a) provide that an appeal against an order for imprisonment made by a master under Order 49B of the RDC lies to the Court of Appeal as of right;
- (b) extend the period within which an application for leave to appeal against a judgment, order or decision of a master may be made from 14 days to 28 days;
- (c) extend the period within which an appeal to the Court of Appeal may be made from 14 days to 28 days;
- (d) add a new rule to clarify what are not interlocutory judgments or orders for the purpose of determining the time limits for appeal to the Court of Appeal from a judgment or order of a District Judge.

Part 22

5. Part 22 replaces Order 34 of the RDC by a new Order 34. The new Order is similar to Order 34 of the RHC.

Part 23

7. Part 23 makes miscellaneous amendments to the RDC for consistency with the relevant provisions of the RHC.

Rules of the District Court (Amendment) Rules 2008

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

Order 1 - CITATION, ETC., APPLICATION, INTERPRETATION AND FORMS

Remarks

1. Citation (O. 1, r. 1)

(1) These Rules may be cited as the Rules of the District Court.

(2)-(3) (Omitted as spent)

2. Application (O. 1, r. 2)

(1) Subject to this rule, these Rules shall have effect in relation to all proceedings in the Court.

(2) These Rules shall not have effect in relation to proceedings of the kinds specified in column 1 of the following Table (being proceedings in respect of which rules may be made under the enactments specified in column 2 of that Table).

TABLE

Proceedings	Enactments	
1. (Repealed L.N. 221 of 2001)		
2. Adoption proceedings.	Adoption Ordinance (Cap. 290), section 12.	
3. Proceedings in respect of domestic violence.	Domestic Violence Ordinance (Cap. 189), section 8.	Rule 154 Consequential amendment
4. (Repealed L.N. 221 of 2001)		
5. Proceedings under the Business Registration Ordinance (Cap. 310).	Business Registration Ordinance (Cap. 310), section 17.	Rule 154 obsolete
(2A) These Rules <u>Subject to paragraph (2B), these Rules</u> shall not have effect in relation to-		Rule 154 Consequential amendment
(a) proceedings under Part III of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);		
(b) matrimonial proceedings (except for an appeal against any judgment, order or determination <u>decision</u> of a judge to which		

Remarks

Order 58 shall apply);

(ba) domestic violence proceedings (except for an appeal against any judgment, order or decision of a judge to which Order 58 applies);

Rule 154
Consequential
Amendment

(c) proceedings-

- (i) for the recovery of employees' compensation; and
- (ii) in respect of which rules are made under section 50 of the Employees' Compensation Ordinance (Cap. 282). (L.N. 221 of 2001)

(2B) Subject to section 85(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), Order 58 has effect in relation to an appeal against a judgment, order or decision of the Court made under Part III of that Ordinance.

Rule 154
Consequential
Amendment

(3) These Rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 62 applies.

(4) In the case of the proceedings mentioned in paragraphs (2), (2A) and (3), nothing in those paragraphs shall be taken as affecting any provision of any rules (whether made under the Ordinance or any other Ordinance) by virtue of which the Rules of the District Court or any provision thereof is applied in relation to any of those proceedings.

3. Application of Interpretation and General Clauses Ordinance (O. 1, r. 3)

The Interpretation and General Clauses Ordinance (Cap. 1) shall apply to the interpretation of these Rules as it applies to subsidiary legislation made after the commencement of that Ordinance.

4. Definitions (O. 1, r. 4)

(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely-

“action for personal injuries” (就人身傷害而提出的訴訟) means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person’s death, and “personal injuries” (人身傷害) includes any disease and any impairment of a person’s physical or mental condition;

Rule 155
Alignment with RHC

“aided person” () means an aided person within the meaning of the Legal Aid Ordinance (Cap. 91);

Rule 60
Rec 38-43

“Amendment Rules 2008” () means the Rules of the District Court

Rule 13

(Amendment) Rules 2008 (L.N. of 2008);

“bailiff” (執達主任) means a bailiff of the High Court and any person lawfully authorized to execute the process of the Court;

“cause book” (訟案登記冊) means the book or any computer record kept in the Registry in which the letter and number of, and other details relating to, a cause or matter are entered;

“judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 50(1)(b) of the Ordinance; (18 of 2003 s. 22)

“master” (聆案官) means a master of the Court and includes the Registrar, and deputy and assistant registrars;

“money lender’s action” (放債人訴訟) has the meaning assigned to it by Order 83A;

“notice of intention to defend” (擬抗辯通知書) means an acknowledgment of service containing a statement to the effect that the person by whom or on whose behalf it is signed intends to contest the proceedings to which the acknowledgment relates;

“officer” (人員) means an officer of the Court;

“the Ordinance” (本條例) means the District Court Ordinance (Cap. 336);

“originating summons” (原訴傳票) means every summons other than a summons in a pending cause or matter;

“pleading” (狀書) does not include a summons or preliminary act;

“practice direction” () means –

(a) a direction issued by the Chief Justice as to the practice and procedure of the Court; or

(b) a direction issued by a specialist judge for his specialist list;

“pre-action protocol” () means any code of practice designated as such and approved by a practice direction;

“receiver” (接管人) includes a manager and consignee;

“Registrar” (司法常務官) means the Registrar of the Court; and includes a deputy registrar or an assistant registrar;

“Registry” (登記處) means the Registry of the Court;

Rule 3
Alignment with RHC

“writ” (令狀) means a writ of summons;

“written law” (成文法) includes “Ordinance” and “enactment” as defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) In these Rules, unless the context otherwise requires, “the Court” (區域法院) means the District Court or any judge thereof whether sitting in court or in chambers or the Registrar or any master but the foregoing provision shall not be taken as affecting any provision of these Rules and, in particular, Order 32, rule 16 by virtue of which the authority and jurisdiction of the Registrar is defined and regulated.

(3) In these Rules, unless the context otherwise requires, any reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the Registry an acknowledgment of service of that document or, as the case may be, a notice of intention to defend those proceedings.

(4) For the purposes of the definition “cause book”, the book kept in the Registry may be in written form or in such other form or medium which can be reproduced in written form.

5. Construction of references to Orders, rules, etc. (O. 1, r. 5)

(1) Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or that Appendix to, these Rules and any reference to a specified rule, paragraph or subparagraph is a reference to that rule of the Order, that paragraph of the rule or that subparagraph of the paragraph in which the reference occurs.

(2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done under a rule of these Rules before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise requires, any reference in these Rules to any written law shall be construed as a reference to that written law as amended, extended or applied by or under any other written law.

6. Construction of references to action, etc., for possession of land (O. 1, r. 6)

Except where the context otherwise requires, references in these Rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Government for an order declaring that the plaintiff is entitled as against the Government to the land or to the

Remarks

possession thereof.

6A. Construction of references to Registrar (O. 1, r. 6A)

Rule 156
Consequential
amendment

**Wherever the word “Registrar” appears in these Rules and forms,
there may be substituted the word “master” when and where appropriate.**

9. Forms (O. 1, r. 9)

The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

10. Rules not to exclude conduct of business by post (O. 1, r. 10)

Nothing in these Rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

Rules of the District Court (Amendment) Rules 2008

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

Order 1A - OBJECTIVES

Remarks

1. Underlying objectives (O. 1A, r. 1)

Rule 2
Rec 2-4

The underlying objectives of these Rules are –

- (a) to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court;
- (b) to ensure that a case is dealt with as expeditiously as is reasonably practicable;
- (c) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) to promote greater equality between the parties;
- (e) to facilitate the settlement of disputes; and
- (f) to ensure that the resources of the Court are distributed fairly.

2. Application by the Court of underlying objectives (O. 1A, r. 2)

(1) The Court shall seek to give effect to the underlying objectives of these Rules when it –

- (a) exercises any of its powers (whether under its inherent jurisdiction or given to it by these Rules or otherwise); or
- (b) interprets any of these Rules or a practice direction.

(2) In giving effect to the underlying objectives of these Rules, the Court shall always recognize that the primary aim in exercising the powers of the Court is to secure the just resolution of disputes in accordance with the substantive rights of the parties.

3. Duty of the parties and their legal representatives (O. 1A, r. 3)

The parties to any proceedings and their legal representatives shall assist the Court to further the underlying objectives of these Rules.

4. Court's duty to manage cases (O. 1A, r. 4)

(1) The Court shall further the underlying objectives of these Rules by actively managing cases.

(2) Active case management includes –

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;**
- (b) identifying the issues at an early stage;**
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;**
- (d) deciding the order in which the issues are to be resolved;**
- (e) encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate, and facilitating the use of such a procedure;**
- (f) helping the parties to settle the whole or part of the case;**
- (g) fixing timetables or otherwise controlling the progress of the case;**
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;**
- (i) dealing with as many aspects of the case as practicable on the same occasion;**
- (j) dealing with the case without the parties needing to attend at court;**
- (k) making use of technology; and**
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.**

Rules of the District Court (Amendment) Rules 2008

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Order 1B – CASE MANAGEMENT POWERS

Remarks

Rule 2
Rec 2-4, 81-82

1. Court's general powers of management (O. 1B, r. 1)

(1) The list of powers in this rule is in addition to and not in substitution for any powers given to the Court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these Rules provide otherwise, the Court may by order

=

- (a) extend or shorten the time for compliance with any rule, court order or practice direction (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party's legal representative to attend the Court;
- (d) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
- (e) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (f) consolidate proceedings;
- (g) try two or more claims on the same occasion;
- (h) direct a separate trial of any issue;
- (i) decide the order in which issues are to be tried;
- (j) exclude an issue from consideration;
- (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (l) take any other step or make any other order for the purpose of managing the case and furthering the underlying objectives set out in Order 1A.

(3) When the Court makes an order, it may –

- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
- (b) specify the consequences of failure to comply with the order or a condition.

(4) Where a party pays money into court following an order under paragraph (3), the money is security for any sum payable by that party to any other party in the proceedings.

2. Court's power to make order of its own motion (O. 1B, r. 2)

(1) Except where a rule or some other enactment provides otherwise, the Court may exercise its powers on an application or of its own motion.

(2) Where the Court proposes to make an order of its own motion –

(a) it may give any person likely to be affected by the order an opportunity to make representations; and

(b) where it does so, it shall specify the time by and the manner in which the representations must be made.

(3) Where the Court proposes –

(a) to make an order of its own motion; and

(b) to hold a hearing to decide whether to make the order,

it shall give each party likely to be affected by the order at least 3 days' notice of the hearing.

(4) The Court may make an order of its own motion, without hearing the parties or giving them an opportunity to make representations.

(5) Where the Court has made an order under paragraph (4) –

(a) a party affected by the order may apply to have it set aside, varied or stayed; and

(b) the order must contain a statement of the right to make such an application.

(6) An application under paragraph (5)(a) must be made –

(a) within such period as may be specified by the Court; or

(b) if the Court does not specify a period, not more than 14 days after the date on which notice of the order was sent to the party making the application.

3. Court's power to give procedural directions by way of order nisi (O. 1B, r. 3)

(1) Where the Court considers that it is necessary or desirable to give a direction on the procedure of the Court and that the direction is unlikely to be objected to by the parties, it may of its own motion and without hearing the parties, give the direction by way of an order nisi.

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

Rules of the District Court (Amendment) Rules 2008

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

Order 2 - EFFECT OF NON-COMPLIANCE

Remarks

1. Non-compliance with Rules (O. 2, r. 1)

(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

~~(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.~~

Rule 14
Rec 11-16

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings ought to have begun by an originating process other than the one employed, but shall instead give directions for the continuation of the proceedings in an appropriate manner.

2. Application to set aside for irregularity (O. 2, r. 2)

(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons and the grounds of application must be stated in the summons.

Remarks

3. Non-compliance with practice direction, pre-action protocol, etc. (O. 2, r. 3)

Rule 4
Rec 7-9

(1) Where the Court exercises any of its powers under these Rules or gives any direction, it may take into account whether or not a party has complied with any relevant pre-action protocol.

(2) The Court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, court order, practice direction or pre-action protocol.

(3) When exercising its power under paragraph (2), the Court shall have regard to –

(a) the amount in dispute; and

(b) the costs which the parties have incurred or which they may incur.

(4) Where a party pays money into court following an order under paragraph (2), the money is security for any sum payable by that party to any other party in the proceedings.

4. Sanctions have effect unless defaulting party obtains relief (O. 2, r. 4)

Rule 4
Rec 7-9

Where a party has failed to comply with a rule, court order, practice direction or pre-action protocol, any sanction for failure to comply imposed by the rule, court order, practice direction or pre-action protocol has effect unless the party in default applies to the Court for and obtains relief from the sanction.

5. Relief from sanctions (O. 2, r. 5)

Rule 4
Rec 7-9

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, court order, practice direction or pre-action protocol, the Court shall consider all the circumstances including –

(a) the interests of the administration of justice;

(b) whether the application for relief has been made promptly;

(c) whether the failure to comply was intentional;

(d) whether there is a good explanation for the failure;

(e) the extent to which the party in default has complied with other rules, court orders, practice directions and pre-action protocols;

(f) whether the failure to comply was caused by the party or his legal representative;

(g) in the case where the party in default is not legally represented, whether he was unaware of the rule, court order, practice direction or pre-action protocol, or if he was aware of it,

Remarks

- whether he was able to comply with it without legal assistance;
- (h) whether the trial date or the likely trial date can still be met if relief is granted;
- (i) the effect which the failure to comply had on each party; and
- (j) the effect which the granting of relief would have on each party.
- (2) An application for relief must be supported by evidence.

Rules of the District Court (Amendment) Rules 2008

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

Order 4 - TRANSFER AND CONSOLIDATION OF PROCEEDINGS

Remarks

1. Transfer to the Court of First Instance or the Lands Tribunal
(O. 4, r. 1)

An application under section 41 or 42 of the Ordinance for an order transferring proceedings to the Court of First Instance or the Lands Tribunal shall be made by summons and shall be supported by an affidavit stating the grounds on which the application is made and verifying the facts relied on.

Rule 157
Consequential
Amendment

9. Consolidation, etc., of causes or matters (O. 4, r. 9)

(1) Where 2 or more causes or matters are pending, then, if it appears to the Court-

- (a) that some common question of law or fact arises in both or all of them; or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
- (c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time, or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

(2) Where the Court makes an order under paragraph (1) that 2 or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then a party to one of those causes or matters may be treated as if it were a party to any of those other causes or matters for the purpose of making an order for costs against him or in his favour.

Rules of the District Court (Amendment) Rules 2008

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

Order 5 - MODE OF BEGINNING CIVIL PROCEEDINGS IN THE COURT

Remarks

1. Mode of beginning civil proceedings (O. 5, r. 1)

Subject to the provisions of any written law and of these Rules, civil proceedings in the Court may be begun by writ or originating summons.

~~2. Proceedings which must be begun by writ (O. 5, r. 2)~~

Rule 15
Rec 11-16

~~Subject to any provision of any written law, or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings—~~

- ~~(a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;~~
- ~~(b) in which a claim made by the plaintiff is based on an allegation of fraud; or~~
- ~~(c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law, or independently of any contract or of any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property.~~

~~3. Proceedings which must be begun by originating summons (O. 5, r. 3)~~

~~Proceedings by which an application is to be made to the Court or a judge thereof under any written law must be begun by originating summons except where by these Rules or by or under any written law the application in question is expressly required or authorized to be made by some other means. This rule does not apply to an application made in pending proceedings.~~

4. Proceedings which may be begun by writ or originating summons (O. 5, r. 4)

~~(1) Except in the case of proceedings which by these Rules or by or under any written law are required to be begun by writ or by originating summons, proceedings may be begun either by writ or by originating summons as the~~

Rule 16
Rec 11-16

~~plaintiff considers appropriate.~~

(1) Except in the case of proceedings which under any written law are required or authorized to be begun by a specific form of originating process, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

(2) Proceedings-

(a) in which the sole or principal question at issue is, or is likely to be, one of the construction of any written law or of any instrument made under any written law or of any deed, will, contract or other document, or some other question of law; or

(b) in which there is unlikely to be any substantial dispute of fact, are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

5. Proceedings to be begun by motion or petition (O. 5, r. 5)

Rule 17
Rec 11-16

Proceedings may be begun by originating motion or petition if, but only if, under any written law the proceedings in question are required or authorized to be so begun.

Rules of the District Court (Amendment) Rules 2008

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

Order 6 - WRITS OF SUMMONS: GENERAL PROVISIONS

Remarks

1. Form of writ (O. 6, r. 1)

Every writ must be in Form No. 1 in Appendix A.

2. Indorsement of claim (O. 6, r. 2)

Before a writ is issued, it must be indorsed-

- (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;
- (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for acknowledging service, the defendant pays the amount so claimed to the plaintiff, his solicitor or agent- **; and**
- (c) with a statement that the defendant may make an admission in accordance with Order 13A within the period fixed for service of his defence.**

Rule 40
Rec 18

3. Indorsement as to capacity (O. 6, r. 3)

Before a writ is issued, it must be indorsed-

- (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
- (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

5. Indorsement as to solicitor and address (O. 6, r. 5)

(1) Before a writ is issued, it must be indorsed-

- (a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction and also (if the solicitor is the agent of another) the name or firm and a business address of his principal;
- (b) where the plaintiff other than a corporation sues in person, with the

address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent;

- (c) where the plaintiff which is a corporation sues in person, with the address of its registered or principal office and, if its registered or principal office is not within the jurisdiction, the address of a place within the jurisdiction at or to which documents for it may be delivered or sent.

(2) The address for service of a plaintiff shall be-

- (a) where he sues by a solicitor, the business address to which may be added a numbered box at a document exchange of the solicitor indorsed on the writ;
- (b) where he sues in person, the address within the jurisdiction indorsed on the writ.

(3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has acknowledged service of the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.

(4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has acknowledged service of the writ, stay all proceedings in the action begun by the writ.

6. Concurrent writ (O. 6, r. 6)

(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Without prejudice to the generality of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which is to be served out of the jurisdiction and a writ which is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

7. Issue of writ (O. 6, r. 7)

(1) No writ which is to be served out of the jurisdiction shall be issued without the leave of the Court:

Provided that if every claim made by a writ is one which by virtue of any written law the Court 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, the foregoing provision shall not apply to the writ.

(3) Issue of a writ takes place upon its being sealed by an officer of the Registry.

(4) The officer by whom a concurrent writ is sealed must mark it as a concurrent writ with an official stamp.

(5) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the office at which it is tendered a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by or on behalf of his solicitor.

8. Duration and renewal of writ (O. 6, r. 8)

(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

Rules of the District Court (Amendment) Rules 2008

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

Order 7 - ORIGINATING SUMMONSES: GENERAL PROVISIONS

Remarks

1. Application (O. 7, r. 1)

The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any written law.

2. Form of summons, etc. (O. 7, r. 2)

(1) Every originating summons (other than an ex parte summons) shall be in Form No. 8 in Appendix A or, if so authorized or required, in Form No. 10 in Appendix A, and every ex parte originating summons shall be in Form No. 11 in Appendix A.

(1A) Form No. 8 in Appendix A is to be used in all cases except where another form is prescribed under a written law or there is no party on whom the summons is to be served.

Rule 18
Rec 11-16

(1B) Form No. 10 in Appendix A is to be used if it is prescribed under a written law.

(1C) Form No. 11 in Appendix A is to be used if there is no party on whom the summons is to be served.

(2) The party taking out an originating summons (other than an ex parte summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

3. Contents of summons (O. 7, r. 3)

(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

(2) Order 6, rules 3 and 5, shall apply in relation to an originating summons

as they apply in relation to a writ.

4. Concurrent summons (O. 7, r. 4)

Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

5. Issue of summons (O. 7, r. 5)

(1) An originating summons shall be issued out of the Registry.

(3) Order 6, rule 7, shall apply in relation to an originating summons as it applies in relation to a writ.

6. Duration and renewal of summons (O. 7, r. 6)

Order 6, rule 8, shall apply in relation to an originating summons as it applies in relation to a writ.

7. Ex parte originating summonses (O. 7, r. 7)

(1) Rules 2(1) **and (1C)**, 3(1) and 5(1) shall, so far as applicable, apply to ex parte originating summonses; but, save as aforesaid, the foregoing rules of this Order shall not apply to ex parte originating summonses.

Rule 19
Rec 11-16

(2) Order 6, rule 7(3) and (5), shall, with the necessary modifications, apply in relation to an ex parte originating summons as they apply in relation to a writ.

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 20
Rec 11-16

Order 8 – ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

1. Application (O. 8, r. 1)

The provisions of this Order apply to all motions required or authorized under a written law, subject to any provisions relating to any class of motion made by that written law or any other written law.

2. Notice of motion (O. 8, r. 2)

(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make an order ex parte –

- (a) on such terms as to costs or otherwise; and
- (b) subject to such undertaking, if any, as it thinks just.

(2) Any party affected by an order made under paragraph (1) may apply to the Court to set it aside.

(3) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

3. Form and issue of notice of motion (O. 8, r. 3)

(1) The notice of an originating motion must be in Form No. 13 in Appendix A and the notice of any other motion in Form No. 38 in that Appendix.

(2) Where leave has been given under rule 2(3) to serve short notice of motion, that fact must be stated in the notice.

(3) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.

(4) Order 6, rule 5, with the necessary modifications, applies in relation

to notice of an originating motion as it applies in relation to a writ.

(5) The notice of an originating motion by which proceedings are begun must be issued out of the Registry.

(6) Issue of the notice of an originating motion takes place upon its being sealed by an officer of the Registry.

4. Service of notice of motion with writ, etc. (O. 8, r. 4)

Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of the writ or summons, whether or not the defendant has acknowledged service in the action.

5. Adjournment of hearing (O. 8, r. 5)

The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 20
Rec 11-16

Order 9 – PETITIONS : GENERAL PROVISIONS

1. Application (O. 9, r. 1)

The provisions of this Order apply to all petitions required or authorized under a written law, subject to any provisions relating to any class of petition made by that written law or any other written law.

2. Contents of petition (O. 9, r. 2)

(1) A petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun by the petition.

(2) A petition must include at the end of it –

(a) a statement of the names of the persons, if any, required to be served with the petition; or

(b) if no person is required to be served, a statement to that effect.

(3) Order 6, rule 5, with the necessary modifications, applies in relation to a petition as it applies in relation to a writ.

3. Presentation of petition (O. 9, r. 3)

A petition may be presented by leaving it at the Registry.

4. Fixing time for hearing petition (O. 9, r. 4)

(1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than seven days before the day fixed for the hearing of the petition.

5. Certain applications not to be made by petition (O. 9, r. 5)

No application in any cause or matter may be made by petition.

Rules of the District Court (Amendment) Rules 2008

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

Order 10 - SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

Remarks

1. General provisions (O. 10, r. 1)

- (1) A writ must be served personally on each defendant by the plaintiff or his agent.
- (2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served-
 - (a) by sending a copy of the writ by registered post to the defendant at his usual or last known address; or
 - (b) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant.
- (3) Where a writ is served in accordance with paragraph (2)-
 - (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to, or as the case may be, inserted through the letter box for, the address in question;
 - (b) any affidavit proving due service of the writ must contain a statement to the effect that-
 - (i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to, or as the case may be, inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and
 - (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.
- (4) Where a defendant's solicitor endorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the endorsement was made.
- (5) Subject to Order 12, rule 7, where a writ is not duly served on a defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service.

(6) Every copy of a writ for service on a defendant shall be sealed with the seal of the Court and shall be accompanied by a form of acknowledgment of service in Form No. 14 in Appendix A in which the title of the action and its number have been entered.

(7) This rule shall have effect subject to the provisions of any Ordinance and these Rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.

2. Service of writ on agent of overseas principal (O. 10, r. 2)

- (1) Where the Court is satisfied on an ex parte application that-
- (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction; and
 - (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate; and
 - (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the Court may authorize service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorizing service of a writ on a defendant's agent must limit a time within which the defendant must acknowledge service.

(3) Where an order is made under this rule authorizing service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction.

3. Service of writ in pursuance of contract (O. 10, r. 3)

- (1) Where-
- (a) a contract contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Court has jurisdiction to hear and determine any such action; and
 - (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,
- then, if an action in respect of the contract is begun in the Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

- (2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ out of the jurisdiction has been granted under Order 11, rule 1(1) or service of the writ is permitted without leave under Order 11, rule 1(2).

4. Service of writ in certain actions for possession of premises or land
(O. 10, r. 4)

- (1) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, the Court may-
- (a) if satisfied on an ex parte application that no person appears to be in possession of the premises or land and that service cannot be otherwise effected on any defendant, authorize service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the premises or land;
 - (b) if satisfied on such an application that no person appears to be in possession of the premises or land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the premises or land shall be treated as good service on that defendant.
- (2) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, in addition to, and not in substitution for any other mode of service, a copy of the writ shall be posted in a conspicuous place on or at the entrance to the premises or land recovery or possession of which is claimed.

5. Service of originating summons, notice of motion, or petition
(O. 10, r. 5)

Rule 158
Rec 11-16

(1) The foregoing rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than an ex parte originating summons or an originating summons under Order 113) as they apply in relation to a writ, except that an acknowledgment of service of an originating summons shall be in Form No. 15 ~~in Appendix A~~ or 15A in Appendix A, whichever is appropriate.

Rule 5

(2) Rule 1(1), (2), (3) and (4) applies, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.

Rule 158
Rec 11-16

Rules of the District Court (Amendment) Rules 2008

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

Order 11 – SERVICE OF PROCESS, ETC., OUT OF 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) 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–

- (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 shall have jurisdiction to hear and determine any action in respect of the contract;
- (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 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;
- (n) the claim is brought under the Carriage by Air Ordinance (Cap 500);

(o) the claim is for an order for the costs of and incidental to a dispute under section 53A(2) of the Ordinance;

Rule 6
Rec 9

(oa) the claim is for a costs order under section 53(2) of the Ordinance against a person who is not a party to the relevant proceedings;

Rule 149
Rec 9

- (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.

(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 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.

(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).

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(1) 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(1), (4), (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 or in 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.

- (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, 6 or 7.

(5) An official certificate stating that a writ as regards which rule 5A or 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 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.

(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.

(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” (《海牙公約》) 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 of the High Court 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.

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

(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 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 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, the writ may be served–

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a 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 consular authority on a subject of the country of that consular authority, 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 qualifications for making the translation.

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

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 foreign State, wishes to have the writ served on that State, he must lodge in the Registry–

- (a) a request for service of the writ 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 State is, or the official languages of that State 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) 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 of the High Court to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arranges for the writ to be served on the foreign State or the government in question, as the case may be.

(4) Where the foreign 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)

(1) Where a person to whom leave has been granted under rule 1 to serve a writ on a High Contracting Party or State Party, as may be appropriate, within the meaning of section 2(1) of the 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– (22 of 2005 s. 27)

- (a) a request for service of the writ 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 or State Party, as may be appropriate, 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 that Party. (22 of 2005 s. 27).

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) 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 of the High Court to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arranges for the writ to be served on the High Contracting Party or State Party, as may be appropriate. (22 of 2005 s. 27)

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

Every request lodged under rule 6(4), 7 or 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 of the High Court.

8A. Undertaking to pay expenses of service by Registrar of the High Court (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 of the High Court 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 of the High Court.

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

(1) Rule 1 shall apply to the service out of the jurisdiction of an ~~originating summons~~ **originating summons, notice of motion or petition** as it applies to service of a writ.

Rule 21
Rec 11-16

(4) 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 ~~or originating summons~~ **originating summons, motion or petition** may by these Rules or under any written law be served out of the jurisdiction without leave.

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(5) Rule 4(1) and (2) 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 an originating summons out of the jurisdiction 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.

Rules of the District Court (Amendment) Rules 2008

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

Order 12 - ACKNOWLEDGMENT OF SERVICE OF WRIT OR ORIGINATING SUMMONS

Remarks

1. Mode of acknowledging service (O. 12, r. 1)

(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and give notice of intention to defend the action by a solicitor or in person.

(2) The defendant to such an action which is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorized to act on the defendant's behalf.

(3) Service of a writ may be acknowledged by properly completing an acknowledgment of service as defined by rule 3 and handing it in at, or sending it by post to, the Registry.

(4) If ~~1 or more~~ **2 or more** defendants to an action acknowledge service by the same solicitor and at the same time, only one acknowledgment of service need be completed and delivered for those defendants.

Rule 159
Alignment with RHC

(5) The date on which service is acknowledged is the date on which the acknowledgment of service is received at the Registry.

3. Acknowledgment of service (O. 12, r. 3)

(1) An acknowledgment of service must be in Form No. 14 ~~or 15~~, **15 or 15A** in Appendix A, whichever is appropriate, and except as provided in rule 1(2), must be signed by the solicitor acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant.

Rule 7
Consequential
Amendment

(2) An acknowledgment of service must specify-

- (a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent; and
- (b) in the case of a defendant acknowledging service by a solicitor, a

business address to which may be added a numbered box at a document exchange of his solicitor within the jurisdiction, and where the defendant acknowledges service in person the address within the jurisdiction specified under subparagraph (a) shall be his address for service, but otherwise his solicitor's business address shall be his address for service.

In relation to a body corporate the references in subparagraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered or principal office.

(3) Where the defendant acknowledges service by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the acknowledgment of service must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.

(4) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment for service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgment shall nevertheless have effect for the purpose of Order 10, rule 1(5) and Order 65, rule 9.

4. Procedure on receipt of acknowledgment of service (O. 12, r. 4)

On receiving an acknowledgment of service an officer of the Registry must-

- (a) affix to the acknowledgment an official stamp showing the date on which he received it;
- (b) enter the acknowledgment in the cause book with a note showing, if it be the case, that the defendant has indicated in the acknowledgment an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him in the proceedings; and
- (c) make a copy of the acknowledgment, having affixed to it an official stamp showing the date on which he received the acknowledgment, and send by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service.

5. Time limited for acknowledging service (O. 12, r. 5)

References in these Rules to the time limited for acknowledging service are references-

- (a) in the case of a writ served within the jurisdiction, to 14 days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and

- (b) in the case of a writ served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3), or Order 11, rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

6. Late acknowledgment of service (O. 12, r. 6)

- (1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.
- (2) Except as provided by paragraph (1), nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendant from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he had acknowledged service within that time.

7. Acknowledgment not to constitute waiver (O. 12, r. 7)

The acknowledgment by a defendant of service of a writ shall not be treated as a waiver by him of any irregularity in the writ or service thereof or in any order giving leave to serve the writ or extending the validity of the writ for the purpose of service.

8. Dispute as to jurisdiction (O. 12, r. 8)

- (1) A defendant who wishes to dispute the jurisdiction of the Court in the proceedings by reason of any such irregularity as is mentioned in rule 7 or on any other ground shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for:
 - (a) an order setting aside the writ or service of the writ on him; or
 - (b) an order declaring that the writ has not been duly served on him; or
 - (c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction; or
 - (d) the discharge of any order extending the validity of the writ for the purpose of service; or
 - (e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings; or
 - (f) the discharge of any order made to prevent any dealing with any property of the defendant; or
 - (g) a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject-matter of the claim or the relief or remedy sought in the action; or
 - (ga) an order staying the proceedings; or**
 - (h) such other relief as may be appropriate.

(2) A defendant who wishes to argue that the Court should not exercise its jurisdiction in the proceedings on one or more of the grounds specified in paragraph (2A) or on any other ground shall also give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for –

- (a) a declaration that in the circumstances of the case the Court should not exercise any jurisdiction it may have; or
- (b) an order staying the proceedings; or
- (c) such other relief as may be appropriate, including the relief specified in paragraph (1)(e) or (f).

(2A) The grounds specified for the purposes of paragraph (2) are that –

- (a) considering the best interests and convenience of the parties to the proceedings and the witnesses in the proceedings, the proceedings should be conducted in another court;
- (b) the defendant is entitled to rely on an agreement to which the plaintiff is a party, excluding the jurisdiction of the Court; and
- (c) in respect of the same cause of action to which the proceedings relate, there are other proceedings pending between the defendant and the plaintiff in another court.

(3) An application under paragraph (1) or (2) must be made by summons which must state the grounds of the application.

(4) An application under paragraph (1) or (2) must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the summons by which the application is made.

(5) Upon hearing an application under paragraph (1) or (2), the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

(6) A defendant who makes an application under paragraph (1) or (2) shall not be treated as having submitted to the jurisdiction of the Court by reason of his having given notice of intention to defend the action; ~~and if the Court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to rule 6(1), lodge a further acknowledgment of service and in that case paragraph (7) shall apply as if the defendant had not made any such application.~~ but if the Court makes no order on the application or dismisses it, the notice shall stand unless otherwise directed by the Court and the defendant shall be treated as having given notice of intention to defend the action.

(6A) If the Court makes no order on an application under paragraph (1) or (2) or dismisses it, it may give such directions as may be appropriate for service of a defence and the further conduct of the proceedings.

(7) Except where the defendant makes an application in accordance with

paragraph (1) **or (2)**, the acknowledgment by a defendant of service of a writ shall, unless the acknowledgment is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.

8A. Application by defendant where writ not served (O. 12, r. 8A)

(1) Any person named as a defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring him within a specified period not less than 14 days after service of the notice either to serve the writ on the defendant or to discontinue the action as against him.

(2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified the Court may, on the application of the defendant by summons, order the action to be dismissed or make such other order as it thinks fit.

(3) A summons under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the summons.

(4) Where the plaintiff serves the writ in compliance with a notice under paragraph (1) or with an order under paragraph (2) the defendant must acknowledge service within the time limited for so doing.

9. Acknowledgment of service of originating summons (O. 12, r. 9)

(1) Each defendant named in and served with an originating summons (other than an ex parte originating summons or an originating summons under Order 113) must acknowledge service of the summons as if it were a writ.

(3) The foregoing rules of this Order shall apply in relation to an originating summons (other than an ex parte originating summons or an originating summons under Order 113) as they apply to a writ except that after the word "extended" wherever it occurs in rule 5(a), there shall be inserted the words "or abridged" and for the reference in rule 5(b) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).

10. Acknowledgment of service to be treated as entry of appearance (O. 12, r. 10)

For the purpose of any enactment referring expressly or impliedly to the entry of appearance as a procedure provided by rules of court for responding to a writ or other process issuing out of the Court, or of any rule of law, the acknowledgment of service of the writ or other process in accordance with

Remarks

these Rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.

11. Transitional provision relating to rule 36 of Amendment Rules 2008 (O. 12, r. 11)

Rule 37
Transitional

Where an application under rule 8(1) is pending immediately before the commencement of rule 36 (“the amending rule”) of the Amendment Rules 2008, then the application is to be determined as if the amending rule had not been made.

Rules of the District Court (Amendment) Rules 2008

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

Order 13 –FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND

Remarks

1. Claim for liquidated demand (O. 13, r. 1)

(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any. (See Appendix A, Form 39)

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest under section 49 of the Ordinance at a rate which is not higher than that applicable to judgment debts under section 50(1)(b) of the Ordinance at the date of the issue of the writ.

2. Claim for unliquidated damages (O. 13, r. 2)

Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any. (See Appendix A, Form 40)

3. Claim for detention of goods (O. 13, r. 3)

(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time and subject to Order 42, rule 1A-

- (a) at his option enter either-
 - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs; or
 - (ii) interlocutory judgment for the value of the goods to be assessed and costs; or
- (b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any.

(See Appendix A, Form 41)

(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

4. Claim for possession of land (O. 13, r. 4)

(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any. (See Appendix A, Form 42)

(5) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

5. Mixed claims (O. 13, r. 5)

Where a writ issued against any defendant is indorsed with ~~1 or more~~ **2 or more** of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ and proceed with the action against the other defendants, if any.

Rule 160
Alignment with
RHC

6. Other claims (O. 13, r. 6)

(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time and, if that defendant has not acknowledged service, upon filing an affidavit proving due service of the writ on him and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had given notice of intention to defend.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter judgment against that defendant for costs.

6A. Prescribed time (O. 13, r. 6A)

In the foregoing rules of this Order, “the prescribed time” (訂明的時限), in relation to a writ issued against a defendant, means the time limited for the defendant to acknowledge service of the writ or, if within that time the defendant has returned to the Registry an acknowledgment of service containing a statement to the effect that he does not intend to contest the proceedings, the date on which the acknowledgment was received at the Registry.

7. Proof of service of writ (O. 13, r. 7)

(1) Judgment shall not be entered against a defendant under this Order unless-

- (a) the defendant has acknowledged service on him of the writ; or
- (b) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant; or
- (c) the plaintiff produces the writ indorsed by the defendant’s solicitor with a statement that he accepts service of the writ on the defendant’s behalf.

(2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to give notice of intention to defend, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party failed to give such notice.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either-

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served; or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the Registry and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the Registry for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made ex parte by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the Court may-

- (a) set aside the judgment; or
- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served; or

- (c) make such other order and give such other direction as the circumstances may require.

7A. Judgment against a State (O. 13, r. 7A)

(1) Where the defendant is a foreign state, the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court. (L.N. 217 of 2000)

(2) An application for leave to enter judgment shall be supported by an affidavit-

- (a) stating the grounds of the application;
- (b) verifying the facts relied on as excepting the State from immunity; and
- (c) verifying that the writ has been served by being transmitted to the Chief Secretary for Administration and by him to the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region for onward transmission to the State concerned, or in such other manner as may have been agreed to by the State, and that the time for acknowledging service has expired.

(3) The application may be made ex parte but the Court hearing the application may direct a summons to be issued and served on that State, for which purpose such a direction shall include leave to serve the summons and a copy of the affidavit out of the jurisdiction.

(4) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction-

- (a) a copy of the judgment; and
- (b) a copy of the affidavit, where not already served.

(5) The procedure for effecting service out of the jurisdiction pursuant to leave granted in accordance with this rule shall be the same as for the service of the writ under Order 11, rule 7(1), except where the State has agreed to some other manner of service.

8. Stay of execution on default judgment (O. 13, r. 8)

Where judgment for a debt or liquidated demand is entered under this Order against a defendant who has returned to the Registry an acknowledgment of service containing a statement to the effect that, although he does not intend to contest the proceedings, he intends to apply for a stay of execution of the judgment by writ of fieri facias, execution of the judgment by such a writ shall be stayed for a period of 14 days from the acknowledgment of service and, if within that time the defendant issues and

Remarks

serves on the plaintiff a summons for such a stay supported by an affidavit in accordance with Order 47, rule 1, the stay imposed by this rule shall continue until the summons is heard or otherwise disposed of, unless the Court after giving the parties an opportunity of being heard otherwise directs.

9. Setting aside judgment (O. 13, r. 9)

Without prejudice to rule 7(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

Rules of the District Court (Amendment) Rules 2008

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

Order 13A – ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY

Remarks

1. Interpretation (O. 13A, r. 1)

Rule 41
Rec 18

(1) In this Order – “claim” () means –

- (a) where in an action the plaintiff makes only one claim, that claim; and
- (b) where in an action the plaintiff makes more than one claim, all the claims in the action.

(2) For the purposes of rules 6(1)(b) and 7(1)(b), the amount of a claim is treated as unliquidated if the claim consists of a claim for a liquidated amount of money and a claim for an unliquidated amount of money.

2. Making an admission (O. 13A, r. 2)

(1) Where the only remedy that a plaintiff is seeking is the payment of money, the defendant may make an admission in accordance with –

- (a) rule 4 (admission of whole of claim for liquidated amount of money);
- (b) rule 5 (admission of part of claim for liquidated amount of money);
- (c) rule 6 (admission of liability to pay whole of claim for unliquidated amount of money); or
- (d) rule 7 (admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim).

(2) Where the defendant makes an admission as mentioned in paragraph (1), the plaintiff may enter judgment except where –

- (a) the defendant is a person under disability; or
- (b) the plaintiff is a person under disability and the admission is made under rule 5 or 7.

(3) The Court may allow a party to amend or withdraw an admission if the Court considers it just to do so having regard to all the circumstances of the case.

(4) In this rule, “person under disability” () has the meaning assigned to it in Order 80, rule 1.

3. Period for making admission (O. 13A, r. 3)

(1) The period for filing and serving an admission under rule 4, 5, 6 or 7 is –

- (a) where the defendant is served with a writ, the period fixed by or under these Rules for service of his defence;
- (b) where the defendant is served with an originating summons, the period fixed by or under these Rules for filing of his affidavit evidence; and
- (c) in any other case, 14 days after service of the originating process.

(2) A defendant may file an admission under rule 4, 5, 6 or 7 –

- (a) after the expiry of the period for filing it specified in paragraph (1)(a) if the plaintiff has not obtained a default judgment under Order 13 or 19; and
- (b) after the expiry of the period for filing it specified in paragraph (1)(b) if the admission is filed and served before the date or the period fixed under Order 28, rule 2 for the hearing of the originating summons.

(3) If the defendant does so, this Order applies as if he had made the admission within that period.

4. Admission of whole of claim for liquidated amount of money (O. 13A, r. 4)

(1) This rule applies where –

- (a) the only remedy that the plaintiff is seeking is the payment of a liquidated amount of money; and
- (b) the defendant admits the whole of the claim.

(2) The defendant may admit the claim by –

- (a) filing in the Registry an admission in Form No. 16 in Appendix A; and
- (b) serving a copy of the admission on the plaintiff.

(3) The plaintiff may obtain judgment by filing in the Registry a request in Form No. 16A in Appendix A and, if he does so –

- (a) where the defendant has not requested time to pay, paragraphs (5), (6) and (7) apply;
- (b) where the defendant has requested time to pay, rule 9 applies.

(4) If the plaintiff does not file a request for judgment within 14 days after the copy of the admission is served on him, the claim is stayed until he files the request.

- (5) The plaintiff may specify in his request for judgment –
(a) the date by which the whole of the judgment debt is to be paid;
or
(b) the times and rate at which it is to be paid by instalments.

(6) Upon receipt of the request for judgment, the Court shall enter judgment.

- (7) Judgment shall be for the amount of the claim (less any payments made) and costs to be paid –
(a) by the date or at the times and rate specified in the request for judgment; or
(b) if none is specified, immediately.

5. Admission of part of claim for liquidated amount of money
(O. 13A, r. 5)

- (1) This rule applies where –
(a) the only remedy that the plaintiff is seeking is the payment of a liquidated amount of money; and
(b) the defendant admits part of the claim in satisfaction of the whole claim.

- (2) The defendant may admit part of the claim by –
(a) filing in the Registry an admission in Form No. 16 in Appendix A; and
(b) serving a copy of the admission on the plaintiff.

- (3) Within 14 days after the copy of the admission is served on him, the plaintiff shall –
(a) file in the Registry a notice in Form No. 16B in Appendix A, stating that –
(i) he accepts the amount admitted in satisfaction of the whole claim;
(ii) he does not accept the amount admitted by the defendant and wishes the proceedings to continue; or
(iii) if the defendant has requested time to pay, he accepts the amount admitted in satisfaction of the whole claim, but not the defendant's proposals as to payment; and
(b) serve a copy of the notice on the defendant.

(4) If the plaintiff does not file the notice in accordance with paragraph (3), the whole claim is stayed until he files the notice.

(5) If the plaintiff accepts the amount admitted in satisfaction of the whole claim, he may obtain judgment by filing in the Registry a request in Form No. 16B in Appendix A and, if he does so –

- (a) where the defendant has not requested time to pay, paragraphs (6) to (8) apply;
 - (b) where the defendant has requested time to pay, rule 9 applies.
 - (6) The plaintiff may specify in his request for judgment –
 - (a) the date by which the whole of the judgment debt is to be paid;
 - or
 - (b) the times and rate at which it is to be paid by instalments.
 - (7) Upon receipt of the request for judgment, the Court shall enter judgment.
 - (8) Judgment shall be for the amount admitted (less any payments made) and costs to be paid –
 - (a) by the date or at the times and rate specified in the request for judgment; or
 - (b) if none is specified, immediately.
6. Admission of liability to pay whole of claim for unliquidated amount of money (O. 13A, r. 6)
- (1) This rule applies where –
 - (a) the only remedy that the plaintiff is seeking is the payment of money;
 - (b) the amount of the claim is unliquidated; and
 - (c) the defendant admits liability but does not offer to pay a liquidated amount of money in satisfaction of the claim.
 - (2) The defendant may admit the claim by –
 - (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
 - (3) The plaintiff may obtain judgment by filing a request in Form No. 16D in Appendix A.
 - (4) If the plaintiff does not file a request for judgment within 14 days after the copy of the admission is served on him, the claim is stayed until he files the request.
 - (5) Upon receipt of the request for judgment, the Court shall enter judgment.
 - (6) Judgment shall be for an amount to be decided by the Court and costs.

7. Admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim (O. 13A, r. 7)

(1) This rule applies where –

- (a) the only remedy that the plaintiff is seeking is the payment of money;
- (b) the amount of the claim is unliquidated; and
- (c) the defendant –
 - (i) admits liability; and
 - (ii) offers to pay a liquidated amount of money in satisfaction of the claim.

(2) The defendant may admit the claim by –

- (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
- (b) serving a copy of the admission on the plaintiff.

(3) Within 14 days after the copy of the admission is served on him, the plaintiff shall –

- (a) file in the Registry a notice in Form No. 16E in Appendix A, stating whether or not he accepts the amount in satisfaction of the claim; and
- (b) serve a copy of the notice on the defendant.

(4) If the plaintiff does not file the notice in accordance with paragraph (3), the claim is stayed until he files the notice.

(5) If the plaintiff accepts the offer he may obtain judgment by filing a request in Form No. 16E in Appendix A and if he does so –

- (a) where the defendant has not requested time to pay, paragraphs (6), (7) and (8) apply;
- (b) where the defendant has requested time to pay, rule 9 applies.

(6) The plaintiff may specify in his request for judgment –

- (a) the date by which the whole of the judgment debt is to be paid;
or
- (b) the times and rate at which it is to be paid by instalments.

(7) Upon receipt of the request for judgment, the Court shall enter judgment.

(8) Judgment shall be for the amount offered by the defendant (less any payments made) and costs to be paid –

- (a) by the date or at the times and rate specified in the request for judgment; or
- (b) if none is specified, immediately.

(9) If the plaintiff does not accept the amount offered by the defendant, he may obtain judgment by filing a request in Form No. 16E in Appendix A.

(10) Judgment under paragraph (9) shall be for an amount to be decided by the Court and costs.

8. Power of Court to give directions (O. 13A, r. 8)

Where the Court enters judgment under rule 6 or 7 for an amount to be decided by the Court, it may give such directions as it considers appropriate.

9. Request for time to pay (O. 13A, r. 9)

(1) A defendant who makes an admission under rule 4, 5 or 7 may make a request for time to pay.

(2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.

(3) The defendant's request for time to pay must be filed with his admission.

(4) If the plaintiff accepts the defendant's request for time to pay, he may obtain judgment by filing a request for judgment in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.

(5) Upon receipt of the request for judgment, the Court shall enter judgment.

(6) Judgment shall be –

(a) where rule 4 applies, for the amount of the claim (less any payments made) and costs;

(b) where rule 5 applies, for the amount admitted (less any payments made) and costs; or

(c) where rule 7 applies, for the amount offered by the defendant (less any payments made) and costs,

and (in all cases) shall be for payment by the date or at the times and rate specified in the defendant's request for time to pay.

(7) Where judgment is for payment by instalments at the times and rate specified in the defendant's request for time to pay, then unless the Court otherwise orders and subject to paragraph (8), execution of the judgment is stayed pending payment.

(8) If the defendant fails to pay an instalment or part of an instalment in accordance with the judgment, the stay of execution pursuant to paragraph (7) immediately ceases and the plaintiff may enforce the payment of the whole amount adjudged to be paid or the whole of any unpaid balance.

10. Determination of rate of payment by Court (O. 13A, r. 10)

(1) This rule applies where the defendant makes a request for time to pay under rule 9.

(2) If the plaintiff does not accept the defendant's proposals for payment, he shall file a notice in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.

(3) When the Court receives the plaintiff's notice, it shall enter judgment for the amount admitted (less any payments made) to be paid by the date or at the times and rate of payment determined by the Court.

(4) Where the Court is to determine the date or the times and rate of payment, it may do so without a hearing.

(5) If there is to be a hearing to determine the date or the times and rate of payment, the Court shall give each party at least 7 days' notice of the hearing.

11. Right of re-determination (O. 13A, r. 11)

(1) Where the Court has determined the date or the times and rate of payment under rule 10(4) without a hearing, either party may apply for the decision to be re-determined by the Court.

(2) An application for re-determination must be made within 14 days after the applicant is served with notice of the determination.

12. Interest (O. 13A, r. 12)

(1) Judgment under rule 4, 5 or 7 must include the amount of interest claimed to the date of judgment if –

- (a) the plaintiff is seeking interest and he has stated in the endorsement of the writ or the statement of claim or the originating summons that he is doing so –
 - (i) under the terms of a contract;
 - (ii) under a specified enactment; or
 - (iii) on some other specified basis;

- (b) where interest is claimed under section 49 of the Ordinance, the rate is no higher than the rate of interest payable on judgment debts at the date when the writ or the originating summons was issued; and
- (c) the plaintiff's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the statement of claim or the originating summons to the date of the request for judgment.

(2) In any case where judgment is entered under rule 4, 5 or 7 and the conditions specified in paragraph (1) are not satisfied, judgment shall be for an amount of interest to be decided by the Court.

13. Form for admission to be served with statement of claim or originating summons (O. 13A, r. 13)

(1) This rule applies where the only remedy that the plaintiff is seeking is the payment of money, whether or not the amount is liquidated.

(2) Where a writ of summons, an originating summons or any other originating process is served on a defendant, it must be accompanied by–

- (a) if the amount of money which the plaintiff is seeking is liquidated, a copy of Form No. 16 in Appendix A for admitting the claim; and
- (b) if the amount of money which the plaintiff is seeking is unliquidated, a copy of Form No. 16C in Appendix A for admitting the claim.

14. Application (O. 13A, r. 14)

(1) This Order (other than rule 13) applies in relation to a writ of summons, an originating summons or any other originating process served before the commencement of this Order if –

- (a) in the case of a writ of summons, the plaintiff has not obtained a default judgment under Order 13 or 19;
- (b) in the case of an originating summons, the admission is filed and served before the date or the period fixed under Order 28, rule 2; and
- (c) in the case of any other originating process, the period specified in rule 3(1)(c) for filing and serving an admission under rule 4, 5, 6 or 7 has not expired.

(2) This Order applies in relation to a counterclaim with the necessary modifications as if –

- (a) a reference to a claim or statement of claim were a reference to

a counterclaim;

(b) a reference to a plaintiff were a reference to the party making the counterclaim; and

(c) a reference to a defendant were a reference to the defendant to the counterclaim.

(3) Where a defendant has made a claim against a person not already a party to the action under Order 16, rule 1 or 8, this Order applies in relation to that claim and any other claim made under Order 16, rule 9 with the necessary modifications as if –

(a) a reference to a plaintiff were a reference to the person who makes the claim; and

(b) a reference to a defendant were a reference to the person against whom the claim is made.

Rules of the District Court (Amendment) Rules 2008

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

Order 14 - SUMMARY JUDGMENT

Remarks

1. Application by plaintiff for summary judgment (O. 14, r. 1)

(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ other than-

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment or seduction; or
- (b) an action which includes a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 86 or 88 applies.

2. Manner in which application under rule 1 must be made (O. 14, r. 2)

(1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

3. Judgment for plaintiff (O. 14, r. 3)

(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to

the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed. (See Appendix A, Form 44)

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

4. Leave to defend (O. 14, r. 4)

(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) Rule 2(2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity-

- (a) to produce any document;
- (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

5. Application for summary judgment on counterclaim (O. 14, r. 5)

(1) Where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3), the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say-

- (a) references to the plaintiff and defendant shall be construed as

- references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted; and
- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

6. Directions (O. 14, r. 6)

- (1) Where the Court-
 - (a) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim; or
 - (b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court shall give directions as to the further conduct of the action, and ~~Order 23A, rules 9 to 13, shall apply as if the Court were conducting a directions hearing under that Order.~~ Order 25, rules 5 to 10, with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 of this Order or rule 5 thereof, as the case may be, on which the order was made were a case management summons.

Rule 73
Rec 52-60, 62

- (2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by a master under the provisions of these Rules relating to the trial of causes or matters or questions or issues by masters.

7. Costs (O. 14, r. 7)

- (1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62 and in particular to rule 4(1) thereof, the Court may dismiss the application with costs and may require the costs to be paid by him forthwith.
- (2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

8. Right to proceed with residue of action or counterclaim (O. 14, r. 8)

(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or a part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

9. Judgment for delivery up of chattel (O. 14, r. 9)

Where the claim to which an application under rule 1 or 5 relates is for the delivery up of a specific chattel and the Court gives judgment under this Order for the applicant, it shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

10. Relief against forfeiture (O. 14, r. 10)

A tenant shall have the same right to apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

11. Setting aside judgment (O. 14, r. 11)

Any judgment given against a party who does not appear at the hearing of an application under rule 1 or 5 may be set aside or varied by the Court on such terms as it thinks just.

Rules of the District Court (Amendment) Rules 2008

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

Order 17 - INTERPLEADER

Remarks

1. Entitlement to relief by way of interpleader (O. 17, r. 1)

(1) Where-

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by 2 or more persons making adverse claims thereto; or
- (b) a claim is made to any money, goods or chattels taken or intended to be taken by a bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under a liability as mentioned in subparagraph (a), or (subject to rule 2) the bailiff, may apply to the Court for relief by way of interpleader.

(2) References in this Order to a bailiff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the Court.

2. Claim to goods, etc., taken in execution (O. 17, r. 2)

(1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the bailiff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule the bailiff must forthwith give notice thereof to the execution creditor and the execution creditor must, within 7 days after receiving the notice, give notice to the bailiff informing him whether he admits or disputes the claim.

An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the bailiff for any fees and expenses incurred by the bailiff before receipt of that notice.

(3) Where-

- (a) the bailiff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice; and

(b) the claim made under this rule is not withdrawn, the bailiff may apply to the Court for relief under this Order.

(4) A bailiff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

3. Mode of application (O. 17, r. 3)

(1) An application for relief under this Order ~~must be made~~ **may be made** by originating summons unless made in a pending action, in which case it must be made by summons in the action.

Rule 22
Rec 11-16

(2) Where the applicant is a bailiff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4), the summons must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

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

(4) Subject to paragraph (5), a summons under this rule must be supported by evidence that the applicant-

- (a) claims no interest in the subject-matter in dispute other than for charges or costs;
- (b) does not collude with any of the claimants to that subject-matter; and
- (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

(5) Where the applicant is a bailiff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court to do so.

(6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall within 14 days serve on the execution creditor and the bailiff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) Where the applicant is a bailiff a summons under this rule must give notice of the requirement in paragraph (6).

5. Powers of Court hearing summons (O. 17, r. 5)

(1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as “the claimants”) appear, the Court may order-

- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order; or
- (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where-

- (a) the applicant on a summons under this Order is a bailiff; or
- (b) all the claimants consent or any of them so requests; or
- (c) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

6. Power to order sale of goods taken in execution (O. 17, r. 6)

Where an application for relief under this Order is made by a bailiff who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

7. Power to stay proceedings (O. 17, r. 7)

Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

8. Other powers (O. 17, r. 8)

Subject to this Order, the Court may in or for the purposes of any

interpleader proceedings make such order as to costs or any other matter as it thinks just.

9. One order in several causes or matters (O. 17, r. 9)

Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters pending before the Court, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

10. Discovery (O. 17, r. 10)

~~Orders 23A~~ **Orders 24** and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

Rule 74
Rec 52-60,62

11. Trial of interpleader issue (O. 17, r. 11)

(1) Order 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

Rules of the District Court (Amendment) Rules 2008

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

Order 18 – PLEADINGS

Remarks

1. Service of statement of claim (O. 18, r. 1)

Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

2. Service of defence (O. 18, r. 2)

(1) Subject to paragraphs (2) and (3), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby before the expiration of ~~14 days~~ **28 days** after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later. (L.N. 217 of 2000)

Rule 46
Rec 30

(2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within ~~14 days~~ **28 days** after the making of the order or within such other period as may be specified therein.

Rule 46
Rec 30

(3) Where an application is made by a defendant under Order 12, rule 8(1) **or (2)**, paragraph (1) shall not have effect in relation to him unless the application is dismissed or no order is made on the application and, in that case, shall have effect as if it required him to serve his defence within ~~14 days~~ **28 days** after the final determination of the application or within such other period as may be specified by the Court.

Rule 38
Rec 17

Rule 46
Rec 30

3. Service of reply and defence to counterclaim (O. 18, r. 3)

(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8; and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of ~~14 days~~ **28 days** after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of ~~14 days~~ **28 days** after the service on him of the counterclaim to which it relates.

Rule 47
Rec 30

4. Pleadings subsequent to reply (O. 18, r. 4)

No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

5A. Filing of pleadings and originating process (O. 18, r. 5A)

(1) Subject to Order 3, rule 5(3) and subject to this rule, every pleading and originating process shall be filed in the Registry within the time during which that pleading or originating process may be served by him on any other party.

(2) A party may apply to the Court for further time to file a pleading or originating process on a summons stating the further time required.

(3) If a party fails to file a pleading or originating process within the time allowed under paragraph (1) or further time allowed under paragraph (2), he shall not be at liberty to file that pleading or originating process without the leave of the Court.

6. Pleadings: formal requirements (O. 18, r. 6)

(1) Every pleading in an action must bear on its face—

- (a) the year in which the writ in the action was issued and the number of the action;
- (b) the title of the action;
- (d) the description of the pleading; and
- (e) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

- (3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.
- (4) Every pleading must be indorsed–
- (a) where the party sues or defends in person, with his name and address;
 - (b) in any other case, with the name or firm and business address of the solicitor by whom it was served, and also (if the solicitor is the agent of another) the name or firm and business address of his principal.
- (5) Every pleading must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

7. Facts, not evidence, to be pleaded (O. 18, r. 7)

- (1) Subject to this rule and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.
- (2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation must not be stated, except in so far as those words are themselves material.
- (3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.
- (4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

7A. Conviction, etc., to be adduced in evidence: matters to be pleaded (O. 18, r. 7A)

- (1) If in any action which is to be tried with pleadings any party intends, in reliance on section 62 of the Evidence Ordinance (Cap. 8) (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in Hong Kong, he must include in his pleading a statement of his intention with particulars of–
- (a) the conviction and the date thereof;
 - (b) the court which made the conviction; and

- (c) the issue in the proceedings to which the conviction is relevant.
- (2) If in any action which is to be tried with pleadings any party intends, in reliance on section 63 of the Evidence Ordinance (Cap. 8) (findings of adultery as evidence in civil proceedings) to adduce evidence that a person was found guilty of adultery in matrimonial proceedings, he must include in his pleading a statement of his intention with particulars of–
 - (a) the finding and the date thereof;
 - (b) the court which made the finding and the proceedings in which it was made; and
 - (c) the issue in the proceedings to which the finding is relevant.
- (3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party–
 - (a) denies the conviction or finding of adultery to which the statement relates; or
 - (b) alleges that the conviction or finding was erroneous; or
 - (c) denies that the conviction or finding is relevant to any issue in the proceedings,he must make the denial or allegation in his pleading.

8. Matters which must be specifically pleaded (O. 18, r. 8)

- (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality–
 - (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
 - (b) which, if not specifically pleaded, might take the opposite party by surprise; or
 - (c) which raises issues of fact not arising out of the preceding pleading.
- (2) Without prejudice to paragraph (1), a defendant to an action for recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.
- (3) A claim for exemplary damages or for provisional damages must be specifically pleaded together with the facts on which the party pleading relies.
- (4) A party must plead specifically any claim for interest under section 49 of the Ordinance or otherwise.

9. Matter may be pleaded whenever arising (O. 18, r. 9)

Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any

matter which has arisen at any time, whether before or since the issue of the writ.

10. Departure (O. 18, r. 10)

- (1) A party shall not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.
- (2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

11. Points of law may be pleaded (O. 18, r. 11)

A party may by his pleading raise any point of law.

12. Particulars of pleading (O. 18, r. 12)

- (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—
- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies;
 - (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies; and
 - (c) where a claim for damages is made against a party pleading, particulars of any facts on which the party relies in mitigation of, or otherwise in relation to, the amount of damages.
- (1A) Subject to paragraph (1B), a plaintiff in an action for personal injuries shall serve with his statement of claim—
- (a) a medical report; and
 - (b) a statement of the special damages claimed.
- (1B) Where the documents to which paragraph (1A) applies are not served with the statement of claim, the Court may—
- (a) specify the period of time within which they are to be provided; or
 - (b) make such other order as it thinks fit (including an order dispensing with the requirements of paragraph (1A) or staying the proceedings).

(1C) For the purposes of this rule—
“medical report” (醫學報告) means a report substantiating all the personal

injuries alleged in the statement of claim which the plaintiff proposes to adduce in evidence as part of his case at the trial;

“a statement of the special damages claimed” (關於所申索的專項損害賠償的陳述書) means a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings and of pension rights).

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served, and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(3A) The Court may make an order under paragraph (3) upon the application of a party or of its own motion.

Rule 57
Rec 33, 34

(3B) No order shall be made under paragraph (3) unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party—

- (a) where he alleges knowledge, particulars of the facts on which he relies; and
- (b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

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12A. Pleading with inconsistent alternatives (O. 18, r. 12A)

Rule 48
Rec 26-32,35

A party may in any pleading make an allegation of fact which is inconsistent with another allegation of fact in the same pleading if –

- (a) the party has reasonable grounds for so doing; and
- (b) the allegations are made in the alternative.

13. Admissions and denials (O. 18, r. 13)

(1) ~~Any allegation~~ Subject to paragraph (5), an allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a ~~denial~~ non-admission of it.

Rule 43
Rec 22-24

(2) ~~A traverse~~ Subject to paragraph (4), a traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Where an allegation made in a statement of claim or counterclaim is traversed by a denial, the party who denies the allegation shall in his defence or defence to counterclaim –

- (a) state his reasons for doing so; and
- (b) if he intends to put forward a different version of events from that given by the claimant, state his own version.

(5) A party who –

- (a) fails to deal with an allegation; but
- (b) has set out in his defence or defence to counterclaim the nature of his case in relation to the issue to which that allegation is relevant,

is to be taken to require that allegation to be proved.

14. ~~Denial~~ Non-admission by joinder of issue (O. 18, r. 14)

Rule 44
Rec 22-24

(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3)–

- (a) there is at the close of pleadings an implied joinder of issue on the

- pleading last served; and
- (b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or expressed, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a ~~denial~~ **non-admission** of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a ~~denial~~ **non-admission** of every other such allegation.

15. Statement of claim (O. 18, r. 15)

(1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the endorsement of the writ without amending the endorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

16. Defence of tender (O. 18, r. 16)

Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

17. Defence of set-off (O. 18, r. 17)

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

18. Counterclaim and defence to counterclaim (O. 18, r. 18)

Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically—

- (a) rules 12(1A), (1B) and (1C) and 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;
- (b) rules 8(2), 16 and 17 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

19. Striking out pleadings and indorsements (O. 18, r. 19)

(1) The Court may, **either of its own motion or on application**, at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—

Rule 49
Rec 26-32,35

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons ~~as if the summons were a pleading~~ **and a petition as if the summons or petition, as the case may be, were a pleading**.

Rule 49
Rec 11-16

20. Close of pleadings (O. 18, r. 20)

(1) The pleadings in an action are deemed to be closed—

- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of ~~14 days~~ **28 days** after service of the defence.

Rule 50
Rec 26-32,35

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

Remarks

Rule 51
Rec 26-32,35

20A. Pleading, etc. to be verified by statement of truth (O. 18, r. 20A)

(1) A pleading and the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are particulars given by a party to any other party, whether voluntarily or pursuant to –

(a) a request made by that other party; or

(b) an order of the Court made under rule 12(3) or (4).

21. Trial without pleadings (O. 18, r. 21)

(1) Where in an action to which this rule applies any defendant has given notice of intention to defend in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule or at any stage of the proceedings of its own motion, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, ~~give directions as to the future conduct of the action, and Order 23A, rules 9 to 13, shall apply as if the Court were conducting a directions hearing under that Order.~~ give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 5 to 10 –

(a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and

(b) with any other necessary modifications, apply as if the application under this rule were a case management summons.

(4) This rule applies to every action begun by writ other than one which includes–

(a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or

(b) a claim by the plaintiff based on an allegation of fraud.

Rule 75
Rec 52-60,62

Remarks

22. Framing of issues (O. 18, r. 22)

At any stage of the proceedings the Court may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree the statement, may settle the statement itself.

23. Transitional provision relating to rule 43 of Amendment Rules 2008 (O. 18, r. 23)

Rule 45
Transitional

Where a statement of claim has been served on a defendant before the commencement of rule 43 (“the amending rule”) of the Amendment Rules 2008, then the amending rule does not apply to the defence to the claim and if a counterclaim has been served on the plaintiff, to the defence to the counterclaim, and rule 13 as in force immediately before the commencement continues to apply as if the amending rule had not been made.

24. Transitional provision relating to rules 46 and 47 of Amendment Rules 2008 (O. 18, r. 24)

Rule 52
Transitional

Where a statement of claim has been served on a defendant before the commencement of rules 46 and 47 (“the amending rules”) of the Amendment Rules 2008, then the amending rules do not apply in relation to the service of the defence and the reply to that defence and if a counterclaim has been served on the plaintiff, in relation to the service of the defence to the counterclaim, and rules 2 and 3 as in force immediately before the commencement of the amending rules continue to apply as if the amending rules had not been made.

Rules of the District Court (Amendment) Rules 2008

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

Order 20 – AMENDMENT

Remarks

1. Amendment of writ without leave (O. 20, r. 1)

(1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.

(3) This rule shall not apply in relation to an amendment which consists of—
(a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued; or
(b) the addition or substitution of a new cause of action; or
(c) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ,
unless the amendment is made before service of the writ on any party to the action.

2. Amendment of acknowledgment of service (O. 20, r. 2)

(1) Subject to paragraph (2), a party may not amend his acknowledgment of service without leave of the Court.

(2) A party whose acknowledgment of service contains a statement to the effect that—

- (a) he does; or
- (b) he does not,

intend to contest the proceedings to which the acknowledgment relates may, without the leave of the Court, amend the acknowledgment by substituting for that statement a statement to the opposite effect, provided that in a case falling under subparagraph (b) the amendment is made before judgment has been obtained in the proceedings.

(3) Where an acknowledgment of service is authorized to be amended under this rule, a fresh acknowledgment, amended as so authorized, must be handed in at or sent by post to the Registry, and Order 12, rule 4, shall apply.

3. Amendment of pleadings without leave (O. 20, r. 3)

- (1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.
- (2) Where an amended statement of claim is served on a defendant—
 - (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence; and
 - (b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.
- (3) Where an amended defence is served on the plaintiff by a defendant—
 - (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply; and
 - (b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.
- (4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.
- (5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.
- (6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to reply on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

4. Application for disallowance of amendment made without leave (O. 20, r. 4)

- (1) Within 14 days after the service on a party of a writ amended under rule 1(1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.
- (2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or 3(1)

leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

5. Amendment of writ or pleading with leave (O. 20, r. 5)

(1) Subject to Order 15, rules 6, 7 and 8 and this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleadings, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in those paragraphs if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

7. Amendment of originating summons, etc. (O. 20, r. 7)

Rule 23
Rec 11-16

Rule 5 shall have effect in relation to an originating summons, a petition and an originating notice or motion as it has effect in relation to a writ.

8. Amendment of pleading and certain other documents (O. 20, r. 8)

Rule 58
Rec 33, 34

(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any

Remarks

proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings ~~order any document~~ order a pleading or any other document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

Rule 58
Rec 33, 34

(1A) The Court shall not under paragraph (1) order a pleading to be amended unless it is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) This rule shall not have effect in relation to a judgment or order.

9. Failure to amend after order (O. 20, r. 9)

(1) Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

Rule 59
Rec 33, 34

(2) Paragraph (1) is subject to any directions given by the Court.

10. Mode of amendment of writ, etc. (O. 20, r. 10)

(1) Where the amendments authorized under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorized, must be prepared and, in the case of a writ or originating summons, re-issued, but, except as aforesaid and subject to any direction given under rule 5 or 8, the amendments so authorized may be effected by making in writing the necessary alterations of the document and in the case of a writ or originating summons, causing it to be resealed and filing a copy.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the judge or master by whom the order (if any) authorizing the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

11. Amendment of judgment and orders (O. 20, r. 11)

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on summons without an appeal.

12. Amendment of pleadings by agreement (O. 20, r. 12)

(1) Notwithstanding the foregoing provisions of this Order any pleading in any cause or matter may, by written agreement between the parties, be amended at any stage of the proceedings.

(1A) Order 18, rule 5A, shall apply to a pleading amended under this rule as if, for the period referred to in paragraph (1) of that rule, there were substituted the period of 7 days after the date of the written agreement referred to in paragraph (1) of this rule or the day immediately preceding the trial of the cause or matter, whichever be the earlier.

(2) This rule shall not have effect in relation to an amendment which consists of the addition, omission or substitution of a party.

13. Amendment of pleadings or particulars of pleadings to be verified by statement of truth (O. 20, r. 13)

Rule 53
Rec 26-32,35

(1) An amendment to a pleading or to the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are particulars given by a party to any other party, whether voluntarily or pursuant to –

(a) a request made by that other party; or

(b) an order of the Court made under Order 18, rule 12(3) or (4).

Rules of the District Court (Amendment) Rules 2008

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

Order 21 - WITHDRAWAL AND DISCONTINUANCE

Remarks

1. Withdrawal of acknowledgment of service (O. 21, r. 1)

A party who has acknowledged service in an action may withdraw the acknowledgment at any time with the leave of the Court.

2. Discontinuance of action, etc., without leave (O. 21, r. 2)

(1) Subject to paragraph (2A) the plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are 2 or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) Subject to paragraph (2A), a defendant to an action begun by writ may, without the leave of the Court-

- (a) withdraw his defence or any part of it at any time;
- (b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to counterclaim or, if the counterclaim is made against 2 or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned.

(2A) A party in whose favour an interim payment has been ordered, in accordance with Order 29, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.

(3) Where there are 2 or more defendants to an action begun by writ not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action begun by writ with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to

counterclaim, to the defendant and to paragraph (2) respectively.

(3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(2) or, if there are 2 or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(3B) When there are 2 or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties.

3. Discontinuance of action, etc., with leave (O. 21, r. 3)

(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or by notice under ~~Order 23A, rule 8(2)~~ **Order 25, rule 10**.

Rule 76
Rec 52-60, 62

4. Effect of discontinuance (O. 21, r. 4)

Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

5. Stay of subsequent action until costs paid (O. 21, r. 5)

(1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then, if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons or by notice under ~~Order 23A, rule 8(2)~~ **Order 25, rule 10**.

Rule 77
Rec 52-60,62

6. Withdrawal of summons (O. 21, r. 6)

A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 61
Rec 38-43

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

~~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 2 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 2 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 2 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 2 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 49 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 2 or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.~~

~~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.~~

~~(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.~~

~~(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.~~

~~(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 appropriated 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.~~

~~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.~~

~~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 District Court Suitors' Funds Rules (Cap 336 sub. leg.) and the Trustee Ordinance (Cap 29).~~

~~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:~~

~~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 this Order.~~

ORDER 22 - OFFERS TO SETTLE AND PAYMENTS INTO COURT

I. PRELIMINARY

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

(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;

“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 relating to a sanctioned payment required to be filed under rule 7(2).

(2) Where in an action the plaintiff makes more than one claim, a reference in this Order to –

- (a) the whole claim is to be construed as a reference to all the claims in their entirety;
- (b) a part of a claim is to be construed as a reference to any one or more of the claims or a part of any one or more of the claims;
and
- (c) an issue arising from a claim is to be construed as a reference to an issue arising from one or more of the claims.

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

(1) A party to an action containing a money claim or a non-money claim or both arising from any cause or causes of action may make an offer to settle the whole claim, a part of it or any issue arising from it 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) has the consequences specified in rules 16, 17, 18, 19 and 20 (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 does not have the consequences specified in this Order, unless the Court so orders.

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

3. Defendant’s offer to settle (O. 22, r. 3)

(1) An offer by a defendant to settle the whole or part of a claim or an issue arising from the claim does not have the consequences set out in this Order unless it is made by way of a sanctioned offer or sanctioned payment or both.

(2) Where an offer by a defendant involves a payment of money to the Plaintiff, the offer must be made by way of a sanctioned payment.

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

4. Plaintiff's offer to settle (O. 22, r. 4)

An offer by a plaintiff to settle the whole or part of a claim or an issue arising from the claim does not have the consequences set out in this Order unless it is made by way of a sanctioned offer.

5. Form and content of a sanctioned offer (O. 22, r. 5)

(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 arising from it.

(3) A sanctioned offer must –

- (a) state whether it relates to the whole claim or to part of it or to an issue arising from 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 22(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) The offeror shall -

- (a) serve the sanctioned offer –
 - (i) on the offeree; and
 - (ii) where the offeree is an aided person, on the Director of Legal Aid; and
- (b) file with the Court a certificate of service of the offer.

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

- (a) may not be withdrawn or diminished before the expiry of 28 days from the date the sanctioned offer is made unless the Court grants leave to withdraw or diminish 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 grants leave to accept it.

(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 grants leave to accept it.

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

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

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

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

6. Sanctioned offer to be made after commencement of proceedings (O. 22, r. 6)

(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 is to 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.

7. Notice of a sanctioned payment (O. 22, r. 7)

(1) A sanctioned payment may relate to the whole claim or to part of it or to an issue arising from 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 arising from 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 22(2); and
- (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.

(3) The defendant shall –

- (a) serve the sanctioned payment notice –
 - (i) on the plaintiff; and
 - (ii) where the plaintiff is an aided person, on the Director of Legal Aid; and
- (b) file with the Court a certificate of service of the notice.

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

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

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

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

8. Offer to settle a claim for provisional damages (O. 22, r. 8)

(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 11, the sanctioned payment has the consequences set out in rule 16, unless the Court orders otherwise.

(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 under 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 72E of the Ordinance.

9. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 22, r. 9)

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

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

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

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

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

10. Clarification of a sanctioned offer or a sanctioned payment notice (O. 22, r. 10)

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

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

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

(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

11. Time for acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 11)

(1) Subject to rules 5(10) and 7(5), 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 files with the Court and serves on the defendant a 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; and

(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 grants 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.

12. Time for acceptance of a plaintiff's sanctioned offer (O. 22, r. 12)

(1) Subject to rule 5(10), 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 files with the Court and serves on the plaintiff a 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 grants leave, make an order as to costs.

13. Payment out of a sum in court on the acceptance of a sanctioned payment (O. 22, r. 13)

Subject to rules 14(4) and 15 and Order 22A, rule 2, 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.

14. Acceptance of a sanctioned offer or a sanctioned payment made by one or more, but not all, defendants (O. 22, r. 14)

(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 11(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.

(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 11(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.

15. Other cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment (O. 22, r. 15)

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

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

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

IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

16. Costs consequences of acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 16)

(1) Where a defendant's sanctioned offer or sanctioned payment to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is 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 of the claim or an issue arising from the claim is accepted; and

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

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

(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.

17. Costs consequences of acceptance of a plaintiff's sanctioned offer (O. 22, r. 17)

(1) Where a plaintiff's sanctioned offer to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is 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.

18. Other consequences of acceptance of a sanctioned offer or a sanctioned payment (O. 22, r. 18)

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

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

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

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

- (a) the claim is stayed as to that part or issue, and in the case of the sanctioned offer, the stay is upon the terms of the offer;
- (b) either party may apply to enforce those terms without the need to commence new proceedings; and
- (c) 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 takes effect only when that approval has been given.

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

- (a) to enforce the terms of a sanctioned offer;
- (b) to deal with any question of costs (including interest on costs) relating to the 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 commence new proceedings unless the Court otherwise orders.

19. Costs consequences where plaintiff fails to do better than a sanctioned offer or a sanctioned payment (O. 22, r. 19)

(1) This rule applies where a plaintiff –

- (a) fails to obtain a judgment better than the sanctioned payment;
- or
- (b) fails to obtain a judgment that is more advantageous than a defendant's sanctioned offer.

(2) The Court 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 on which 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 at which 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.

20. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O. 22, r. 20)

(1) This rule applies where –

- (a) a defendant is held liable for more than the proposals contained in 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 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 on which

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 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 at which 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

21. Restriction on disclosure of a sanctioned offer or a sanctioned payment (O. 22, r. 21)

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

(2) The fact that a sanctioned payment has been made must not be communicated to the trial judge 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 18 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.

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

(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 is to be treated as inclusive of all interest until the last date on which it could be accepted without requiring the leave of the Court.

(2) Where a 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.

23. Money paid into court under order (O. 22, r. 23)

(1) On making any payment into court under an order of the Court or a certificate of a master, a party making the payment 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 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 applies accordingly.

24. Transitional provision relating to Part 8 of the Amendment Rules 2008 (O. 22, r. 24)

Where –

(a) a payment into court has been made in accordance with Order 22 (“the repealed Order”) repealed by rule 61 (“the repealing rule”) of the Amendment Rules 2008; and

(b) the disposal of the payment is pending immediately before the

Remarks

commencement of the repealing rule,
then nothing in Division 1 of Part 8 of the Amendment Rules applies 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, continue to apply in relation to that payment
as if that Division had not been made.

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 70
Rec 38-43

ORDER 22A - MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

1. Money remaining in court (O. 22A, r. 1)

(1) Subject to Order 22, rule 13, any money paid into court in an action (whether or not in accordance with Order 22) may 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.

(2) Where an order under paragraph (1) is made before the trial or hearing and the money in court is a sanctioned payment made in accordance with Order 22, the money may not be paid out except –

- (a) in satisfaction of the cause or causes of action in respect of which it was paid in; or
- (b) to the extent to which the sanctioned payment may be withdrawn or diminished pursuant to Order 22.

2. Person to whom payment to be made (O. 22A, r. 2)

(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 Order 22 or under an order of the Court or a certificate of the Registrar.

3. Payment out : small intestate estates (O. 22A, r. 3)

Where –

- (a) a person entitled to a fund in court, or a share of such fund, dies intestate;
- (b) the Court is satisfied that no grant of administration of his estate has been made; and

(c) the assets of his estate, including the fund or share, do not exceed \$150,000 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.

4. Investment of money in court (O. 22A, r. 4)

Cash under the control of or subject to the order of the Court may be invested in any manner specified in the District Court Suitors' Funds Rules (Cap. 336 sub. leg. E) and the Trustee Ordinance (Cap. 29).

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 78
Rec 52-60, 62

~~Order 23A – DIRECTIONS FOR ACTIONS BEGUN BY WRIT~~

~~1. — Application and interpretation (O. 23A, r. 1)~~

- ~~(1) — This Order 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 for, or the Court has on its own motion ordered under Order 18, rule 21, 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; and~~
 - ~~(e) — actions in which an order for the taking of an account has been made under Order 43, rule 1.~~

~~(2) — In this Order—~~

~~“agreed directions” (協定指示) means directions or orders agreed between the parties and taking effect under rule 4;~~

~~“automatic directions” (自動指示) means directions taking effect automatically under rule 5;~~

~~“direction” (指示) and “order” (命令) mean any direction or order as to any matter capable of being dealt with by interlocutory application in the action under these Rules;~~

~~“directions hearing” (指示聆訊) means a directions hearing under rule 9;~~

~~“summons for directions” (要求作指示的傳票) means a summons under rule 7 for a directions hearing.~~

~~2. — Duties of the parties: general (O. 23A, r. 2)~~

~~— As soon as the pleadings are closed, it shall be the duty of every party to the action—~~

- ~~(a) to consider what directions and orders are required for the future course of the action so as to secure the just, expeditious and economic disposal of the action; and~~
- ~~(b) to endeavour to reach agreement with the other parties as to the directions and orders required.~~

3. ~~Agreed and automatic directions: application~~ (O. 23A, r. 3)

- ~~The provisions of rules 4 and 5 apply except where—~~
 - ~~(a) the Court has of its own motion ordered a directions hearing; or~~
 - ~~(b) there is a pending application for any such direction or order as is mentioned in rule 1(1).~~

4. ~~Agreed directions~~ (O. 23A, r. 4)

- ~~(1) Subject to rule 6 and paragraphs (3) and (4), where all parties agree either—~~
 - ~~(a) that the only direction or order required is a direction that, within 3 months of the close of pleadings, the plaintiff shall apply for a pre-trial review under Order 34; or~~
 - ~~(b) that such directions and orders as are agreed, including a direction as to the time within which the plaintiff shall apply for a pre-trial review under Order 34, are the only directions and orders required;~~~~a memorandum filed in the Registry which sets out the agreed directions and orders and is indorsed by each of the parties shall take effect as if the directions and orders set out in the memorandum had been made by the Court.~~
- ~~(2) Where such agreement has been reached—~~
 - ~~(a) the plaintiff shall, as soon as practicable thereafter, draw up such a memorandum and take all steps necessary to ensure that it is promptly indorsed by the other parties and is filed in the Registry; and~~
 - ~~(b) the other parties shall, as soon as practicable after receipt of the memorandum, indorse their consent on it.~~
- ~~(3) Nothing in this rule shall require any step to be taken where all the parties agree that the only directions or orders required are automatic directions.~~
- ~~(4) Nothing in this rule shall be construed as enabling the parties to rescind or vary any direction or order made by the Court.~~

5. ~~Automatic directions~~ (O. 23A, r. 5)

- ~~(1) Subject to rule 6 and paragraphs (3) and (5), where, upon the expiry of 21~~

~~days after the close of pleadings, no memorandum has been filed under rule 4 and no summons for directions has been issued, the following directions shall thereupon take effect automatically-~~

- ~~(a) — there shall be discovery of documents within 14 days in accordance with Order 24, rule 3, and inspection within 7 days thereafter in accordance with Order 24, rule 9;~~
- ~~(b) — each party to serve on the other parties, within 6 weeks, written statements under Order 38, rule 2A of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial;~~
- ~~(c) — 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;~~
- ~~(d) — unless the expert evidence is 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 paragraph, except that the number of expert witness shall be limited to one for each party;~~
- ~~(e) — 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; and~~
- ~~(f) — within 3 months after the time for inspection of documents has expired under subparagraph (a) the plaintiff shall apply for a pre-trial review under Order 34.~~

~~(2) — Where paragraph (1)(c) 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) — In a personal injury action, other than an action in which the pleadings contain an allegation of a negligent act or omission in the course of medical treatment, paragraph (1) shall have effect with the following modifications-~~

- ~~(a) — where liability is admitted or where the action arises out of a road accident, discovery under paragraph (1)(a) shall be limited to disclosure by the plaintiff of any documents relating to special damages;~~
- ~~(b) — the number of expert witnesses limited by paragraph (1)(d) shall be 2 medical experts and one expert of any other kind for each party; and~~
- ~~(c) — 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.~~

~~(4) — For the purposes of this rule-~~

~~“documents relating to special damages” (關乎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;~~

~~“a road accident” (道路意外) means an accident on land due to a collision or apprehended collision involving a vehicle.~~

~~(5) Where, prior to the expiry of the period referred to in paragraph (1), the Court has made a direction or order dealing with any matter referred to in paragraph (1), (2) or (3), nothing in this rule shall affect such direction or order and the automatic directions taking effect under this rule shall be limited to such directions (if any) under paragraph (1), (2) or (3) as relate to matters not dealt with by such direction or order.~~

~~6. Agreed and automatic directions: further provisions (O. 23A, r. 6)~~

~~(1) Where, after automatic directions have taken effect, there are agreed directions, the agreed directions shall, upon the filing of a memorandum under rule 4, take effect in the place of the automatic directions.~~

~~(2) Where, after automatic directions have taken effect, a party takes out a summons for directions, automatic directions not already complied with shall cease to have effect.~~

~~(3) Nothing in rule 4 or 5 shall limit the power of the Court, of its own motion or on the application of any party, to hold a directions hearing or otherwise to make such directions and orders as it thinks fit.~~

~~7. Summons for directions (O. 23A, r. 7)~~

~~(1) Except where the Court otherwise allows, an application for a directions hearing shall be by summons for directions.~~

~~(2) Where—~~

- ~~(a) neither subparagraph (a) nor subparagraph (b) of rule 3 applies; and~~
- ~~(b) upon the expiration of 14 days after the close of pleadings, no memorandum has been filed under rule 4,~~

~~any party who contends that automatic directions are inappropriate and that the Court should make other directions or orders shall, within 21 days after the close of pleadings, take out a summons for directions.~~

~~(3) Any party may at any stage of the proceedings take out a summons for directions.~~

~~(4) A party who takes out a summons for directions shall apply, so far as it~~

~~practicable to do so, for all the directions and orders he desires for the future course of the action.~~

8.—Duty of parties to whom summons for directions is addressed

~~(O. 23A, r. 8)~~

~~(1)—Every party to whom a summons for directions is addressed must, so far as it is practicable to do so, apply at the directions hearing for all such directions and orders which have not been applied for in the summons for directions as he desires for the future course of the action.~~

~~(2)—Any such application shall be by notice served on all the other parties and filed in the Registry not less than 7 days before the directions hearing.~~

~~(3)—For the purposes of these Rules, a notice under this rule shall be treated as a summons for the directions and orders specified in the notice.~~

9.—Directions hearing (O. 23A, r. 9)

~~(1)—At any stage of the proceedings, the Court may of its own motion and shall on the application of any party by a summons for directions, conduct a directions hearing for the making of all such directions and orders for the future course of the action as appear best adapted to serve the just, expeditious and economical disposal of the action.~~

~~(2)—Subject to paragraph (3), the Court shall endeavour to secure that all matters which shall be or are likely to be necessary or desirable to be dealt with by interlocutory application in the action, and which have not already been dealt with, are disposed of at the directions hearing.~~

~~(3)—Where an order for the transfer of the action to the Court of First Instance is made at the directions hearing, nothing in this Order shall be construed as requiring the Court to make any further order.~~

10.—Adjournment of hearing (O. 23A, r. 10)

~~(1)—If the Court is of the opinion at the directions hearing that it is not possible to give all the directions and orders which ought to be given for the future course of the action, the Court shall deal forthwith with such of those matters as it considers can be conveniently dealt with forthwith and shall adjourn the hearing to allow the remaining matters to be dealt with, and the Court may adjourn the hearing more than once.~~

~~(2)—If the directions hearing is adjourned and any party desires to apply at the resumed hearing for any orders or directions not applied for at the directions~~

~~hearing, he shall, not less than 7 days before the resumed hearing, serve on all the other parties and file at the Registry a notice specifying the additional orders or directions he will apply for at the resumed hearing.~~

~~(3) Rule 8(3) shall apply to a notice under paragraph (2) as it applies to that rule.~~

~~11.—Admissions and agreements to be made (O. 23A, r. 11)~~

~~—At the directions hearing the Court shall endeavour to secure that the parties make all admissions and all agreements as to the future course of the action which ought reasonably to be made by them and may cause the order on the directions hearing, or, if the hearing is adjourned, the resumed hearing, 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.~~

~~12.—Duty to give all information at hearing (O. 23A, r. 12)~~

~~(1) Subject to paragraph (3), no affidavit shall be used on the directions hearing except by the leave or direction of the Court, but, subject to paragraph (5), it shall be the duty of the parties and their advisers at the directions hearing to give all such information and produce all such documents as the Court may reasonably require.~~

~~(2) 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 at the directions hearing as well as to the Court.~~

~~(3) No leave shall be required by virtue of paragraph (1) for the use of an affidavit at a directions hearing where the affidavit is used to support an application for an order which, under any of these Rules, is required to be supported by an affidavit.~~

~~(4) If the Court at a directions hearing requires a party 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 (5), the Court may—~~

- ~~(a) cause the facts to be recorded in the order on the directions hearing or, if the directions hearing is adjourned, the resumed hearing, 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 the plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.~~

~~(5) 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.~~

~~13. Direction for pre-trial review (O. 23A, r. 13)~~

~~— Subject to rule 9(3), the order made on the directions hearing, or, if the hearing is adjourned, the resumed hearing, shall—~~

- ~~(a) fix a period within which the plaintiff shall apply for a pre-trial review under Order 34; and~~
- ~~(b) record each party's estimate of the length of the trial.~~

~~14. Costs (O. 23A, r. 14)~~

~~(1) If the Court is of the opinion—~~

- ~~(a) that a directions hearing was rendered necessary because of the unreasonable refusal or failure of a party to agree directions or to take any step required under rule 4(2); or~~
- ~~(b) that a party acted unreasonably in taking out a summons for directions,~~

~~the Court may order that party to pay all the costs wasted by his unreasonable conduct including the cost of the directions hearing.~~

~~(2) Subject to paragraph (3), where any interlocutory application in the action is made otherwise than at a directions hearing, if the Court is of the opinion that the application ought to have been made at a directions hearing, the Court may order the applicant to pay the costs of the application irrespective of the outcome of the application or make such other order as to costs as the Court thinks fit having regard to the failure of the applicant to make the application at a directions hearing.~~

~~(3) Paragraph (2) shall not apply to an application under Order 14, Order 16, rule 2, Order 19, Order 21, Order 23 or Order 86.~~

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Order 24 - DISCOVERY AND INSPECTION OF DOCUMENTS

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

Rule 161
Alignment with RHC

(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 shall make discovery by exchanging lists of documents. Accordingly, each party shall, 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.

(2) Without prejudice to any directions given by the Court under Order 16, rule 4, paragraph (1) does not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(3) 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).

(4) 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.

(5) Paragraphs (3) and (4) apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in

paragraph (3) to the plaintiff, of a reference to the party making the counterclaim.

(6) 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 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.

(7) The Court shall make an order under paragraph (6), 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.

(8) An application for an order under paragraph (6) 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.

(9) Any party to whom discovery of documents is required to be made under this rule may, at any time before the 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).

(10) The party on whom the notice is served shall, 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.

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

(1) ~~Subject to paragraph (3) and~~ 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 or 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.

(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

Rule 162

made –

(a) may make an order against the first-mentioned party under paragraph (1); or

(b) 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.

~~(4) — A direction for discovery taking effect under Order 23A, rule 4 or 5, shall be deemed to be an order under this rule.~~

Rule 79
Rec 52-60, 62

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

(1) Where on an application for an order under ~~rule 3~~ **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.

Rule 163

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, ~~Order 23A, rules 9 to 12 and 14, shall apply as if the Court were conducting a directions hearing under that Order.~~ **Order 25, rules 5 to 10 –**

Rule 80
Rec 52-60, 62

(a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and

(b) with any other necessary modifications,
apply as if the application on which the order was made were a case management summons.

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.

Rule 164

(2) If it is ~~claimed~~ **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 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 proceedings 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.

(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.

(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 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 47A or 47B(1) of the Ordinance
(O. 24, r. 7A)

(1) An application for an order under section 47A 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.

(2) An application after the commencement of proceedings for an order under section 47B(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 ~~in which a claim for personal injuries is likely to be made;~~
- (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.

Rule 101
Rec 75-79

(3A) In the case of a summons under paragraph (1), paragraph (3)(b) shall be construed as if for the word “relevant”, there were substituted the words “directly relevant (within the meaning of section 47A of the Ordinance)”;

(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 47A or 47B(1) of the Ordinance 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-

Remarks

- (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” (就人身傷害提出申索) means a claim for personal injuries or arising out of the death of a person. (L.N. 217 of 2000)~~

Rule 102
Rec 75-79

(8) For the purposes of rules 10 and 11 an application for an order under section 47A or 47B(1) of the Ordinance shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

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, 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.

Rule 102
Rec 75-79

(2) No order for the disclosure of documents shall be made under section 47A or 47B 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.

Rule 165

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.

(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.

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

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.

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)

Rule 103
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 order or direction~~ **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 ~~that order or direction~~ **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.

Rule 166

(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. Transitional provision relating to rules 1 and 2 (O. 24, r. 17)

Rule 167
Transitional

(1) Where before the commencement of rule 2, the pleadings in an action are deemed to have been closed, rule 2(1) has effect as if for the words "within 14 days after the pleadings in the action are deemed to be closed as between him and any other party", there were substituted the words "within 14 days of the commencement of this rule".

(2) Rules 1 and 2 and paragraph (1) has effect subject to –
(a) any direction relating to discovery of documents given by the Court before the commencement of those rules; and
(b) any memorandum filed under Order 23A, rule 4 ("the repealed rule") repealed by rule 78 of the Amendment Rules 2008 which sets out the directions and orders agreed between the parties and taking effect under the repealed rule.

Rules of the District Court (Amendment) Rules 2008

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

Order 25 - CASE MANAGEMENT SUMMONS AND CONFERENCE

Remarks

1. Case management summons and conference (O. 25, r. 1)

Rule 81
Rec 52-60, 62

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

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

(2) 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 that they wish the Court to make; or
- (b) a timetable for the steps to be taken between the date of the giving of those directions and the date of the trial,

they shall procure an order to that effect by way of a consent summons.

(3) Where there is no agreement on any of the matters specified in paragraph (2)(a) and (b) –

- (a) each party shall in the questionnaire make a proposal on the matter; and
- (b) the plaintiff shall, within the period 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.

(4) 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 a specialist list is pending; and
- (g) actions for personal injuries for which automatic directions are provided by rule 11.

(5) 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 (3)(b), the defendant or any defendant may –

- (a) take out a case management summons; or
- (b) apply for an order to dismiss the action.

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

(7) In the case of an action which is proceeding only as respects a counterclaim, references in this rule and rule 2(1)(c) to the plaintiff and defendant are to be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(8) Notwithstanding anything in paragraph (3), any party to an action to which this rule applies may take out a 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.

2. Case management timetable (O. 25, r. 2)

(1) Subject to paragraph (4), as soon as practicable after the completed questionnaire has been 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 fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the trial;
- (b) fix a case management conference if the Court is of the opinion that it is desirable to do so; or
- (c) direct the plaintiff to take out a case management summons if he has not already done so under rule 1(3)(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 for the steps to be taken between the date of the giving of those directions and the date of the case management conference; and

(b) 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, and the timetable must include –

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

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

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

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

(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 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 date of the giving of those directions and the date of the trial.

(5) The order nisi becomes 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.

3. Variation of case management timetable (O. 25, r. 3)

(1) The Court may, either of its own motion or on the application of a party, give further directions relating to the management of the case or vary any timetable fixed by it under rule 2.

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

(3) A non-milestone date may be varied by procuring an order to that effect by way of a consent summons.

(4) A party may 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 the period in which the trial is to take place.

(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 period fixed by the Court in which a trial is to take place;

“non-milestone date” () means a date or period fixed by the Court, other than a date or period specified in the definition of “milestone date”.

4. Failure to appear at case management conference or pre-trial review
(O. 25, r. 4)

(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) 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.

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

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

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

(a) the action stands 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 is entitled to his costs of the action.

(6) If the plaintiff does not apply for restoration of the action under paragraph (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.

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

5. Duty to consider all matters (O. 25, r. 5)

(1) When the 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 rules of this Order, are required to be considered 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 case management summons first comes to be determined, the Court considers that it is possible to deal then with all the matters referred to in paragraph (1), it shall –

- (a) deal with them forthwith; and
- (b) 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 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 rules of this Order, are required to be considered at the case management summons, the Court shall –

- (a) 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
- (b) 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 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 rules of this Order, are required to be considered 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, at the determination of the case management summons, an action is ordered to be transferred to the Court of First Instance or some other court, paragraph (4) does not apply and nothing in this Order shall be construed as requiring the Court to make any further order at the case management summons.

(6) If the determination of the case management summons is adjourned without a day being fixed for its resumption, any party may restore the summons to the list on 2 days' notice to the other parties.

6. Particular matters for consideration (O. 25, r. 6)

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) sections 41 and 42 of the Ordinance.

7. Admissions and agreements to be made (O. 25, r. 7)

At the determination of the case management summons, the Court –

- (a) 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
- (b) may cause the order on the summons to record –
 - (i) any admissions or agreements so made; and
 - (ii) (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.

8. Limitation of right of appeal (O. 25, r. 8)

Nothing in rule 7 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 case management summons may record any such agreement.

9. Duty to give all information at determination of case management summons (O. 25, r. 9)

(1) Subject to paragraph (5), no affidavit shall be used at the determination of the case management summons except by the leave or directions of the Court.

(2) Subject to paragraph (7), it is the duty of the parties to the action and their advisers to give all such information and produce all such documents as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

(3) 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.

(4) In the absence of such authority, any information or document given or produced under paragraph (2) shall be given or produced to all the parties as well as to the Court.

(5) No leave is required by virtue of paragraph (1) for the use of an affidavit by any party 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.

(6) If the Court 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 (7), 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 –
 - (i) order the whole or any part of the pleadings of the party concerned to be struck out; or
 - (ii) 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.

(7) Notwithstanding anything in this rule, no information or documents which are privileged from disclosure is 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.

10. Duty to make all interlocutory applications at case management summons (O. 25, r. 10)

(1) Any party to whom the case management summons is addressed must –

- (a) so far as practicable apply 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
- (b) not less than 7 days 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 –

- (a) the determination of the case management summons is adjourned; and
- (b) any party to the proceedings desires to apply 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 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 notice given under paragraph (1).

(3) Any application subsequent to the case management summons 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.

11. Automatic directions in personal injury actions (O. 25, r. 11)

(1) When the pleadings in any action to which this rule applies are deemed to be closed, the following directions 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) 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;
- (c) 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.

(2) Nothing in paragraph (1) -

- (a) prevents 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
- (b) prevents the making of an order for the transfer of the proceedings to the Court of First Instance.

(3) 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;

“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.

(4) 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.

12. Application to action in specialist list (O. 25, r. 12)

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.

13. Transitional (O. 25, r. 13)

(1) Where immediately before the commencement of this Order, a summons for directions taken out under rule 7 of the repealed Order 23A is pending, then the summons for directions is deemed to be –

(a) if it was taken out by the plaintiff, a case management summons taken out under rule 1(3)(b); or

(b) if it was taken out by the defendant, a case management summons taken out under rule 1(5).

(2) Where before the commencement of this Order –

(a) the Court has given a direction requiring the plaintiff to apply for a pre-trial review under the repealed Order 34 or a memorandum setting out such a direction has been filed under rule 4 of the repealed Order 23A; and

(b) the plaintiff has not made the application in accordance with the direction,

then the direction is deemed to be a direction requiring the plaintiff to take out a case management summons under rule 1(3)(b).

(3) Where immediately before the commencement of this Order, an application for a pre-trial review made under the repealed Order 34 is pending, then the application is deemed to be a case management summons taken out under this Order, irrespective of whether a notice in response has been filed under the repealed Order 34.

(4) Where before the commencement of this Order, the pleadings in an action to which this rule applies are deemed to have been closed and paragraphs (1), (2) and (3) are not applicable, then 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 this Order”.

(5) In this rule –

“repealed Order 23A” () means Order 23A repealed by rule 78 of the Amendment Rules 2008;

“repealed Order 34” () means Order 34 repealed by rule 151 of the Amendment Rules 2008.

Rules of the District Court (Amendment) Rules 2008

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

Order 26 – INTERROGATORIES

Remarks

1. Discovery by interrogatories (O. 26, r. 1)

- (1) A party to any cause or matter may apply to the Court for an order–
- (a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter; and
 - (b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) An application under this rule shall be made by summons or by notice under ~~Order 23A, rule 8(2)~~ **Order 25, rule 10** and a copy of the proposed interrogatories shall be served with the summons or notice.

Rule 82
Rec 52-60, 62

(2A) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for savings costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated ~~or to give~~ **to give** particulars, make admissions or produce documents relating to any matter in question.

Rule 168

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

2. Interrogatories where party is a body of persons (O. 26, r. 2)

Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

3A. Statement as to party, etc., required to answer (O. 26, r. 3A)

Where interrogatories are to be served on 2 or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, as the

case may be, an agent or servant is required to answer, and which agent or servant.

5. Objections and insufficient answers (O. 26, r. 5)

- (1) Where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.
- (2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, either by affidavit or on oral examination as the Court may direct.

6. Failure to comply with order (O. 26, r. 6)

- (1) If a party against whom an order is made under rule 1 or 5(2) fails to comply with it, 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 a party against whom an order is made under rule 1 or 5(2) 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 to answer interrogatories made against the 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 an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

7. Use of answers to interrogatories at trial (O. 26, r. 7)

A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

8. Revocation and variation of orders (O. 26, r. 8)

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.

Rules of the District Court (Amendment) Rules 2008

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

Order 27 - ADMISSIONS

Remarks

1. Admission of case of other party (O. 27, r. 1)

Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

2. Notice to admit (O. 27, r. 2)

(1) A party to a cause or matter may, not later than the expiration of ~~the period fixed by any order or direction made or taking effect under Order 23A, rule 4, 5 or 9, or otherwise, for applying for a pre-trial review under Order 34~~ 21 days after the cause or matter is set down for trial, serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, such facts or such part of his case as may be specified in the notice.

Rule 83
Rec 52-60, 62

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

3. Judgment on admissions (O. 27, r. 3)

(1) Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

(2) An application for an order under this rule may be made by summons.

4. Admission and production of documents specified in list of documents (O. 27, r. 4)

(1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of ~~any order or direction made or taking effect under Order 23A or 24~~ **any provision of Order 24** shall, unless the Court otherwise orders, be deemed to admit-

Rule 84
Rec 52-60, 62

- (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and
- (b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of ~~any order or direction made or taking effect under Order 23A or 24~~ **any provision of Order 24** shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Order 24, rule 7, as they apply in relation to a list of documents served in pursuance of ~~any order or direction made or taking effect under Order 23A or 24~~ **any provision of that Order**.

5. Notices to admit or produce documents (O. 27, r. 5)

(1) Except where rule 4(1) applies, a party to a cause or matter may, not later than the expiration of ~~the period fixed by any order or direction made or taking effect under Order 23A, rule 4, 5 or 9, or otherwise, for applying a pre-trial review under Order 34~~ **21 days after the cause or matter is set down for trial**, serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

Rule 85
Rec 52-60, 62

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within ~~14 days~~ **21 days** after service of the notice, serve on the party by whom it was

Remarks

given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

Rules of the District Court (Amendment) Rules 2008

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

Order 28 – ORIGINATING SUMMONS PROCEDURE

Remarks

1. Application (O. 28, r. 1)

The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any written law; and subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as they apply in relation to other summonses.

1A. Affidavit evidence (O. 28, r. 1A)

- (1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are 2 or more defendants, at least one of them has acknowledged service, file with the Court the affidavit evidence on which he intends to rely.
- (2) In the case of an ex parte summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.
- (3) Copies of the affidavit evidence filed in the Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are 2 or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.
- (4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence in the Court and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.
- (5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file in the Court further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.
- (6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.

2. Fixing time for attendance of parties before Court (O. 28, r. 2)

(1) In the case of an originating summons which is in Form No. 8 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A, obtain an appointment for the attendance of the parties before the Court sitting in chambers for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 12 in Appendix A) sealed with the seal of the Court.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 10 in Appendix A, or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before the day so fixed, and the time limits for lodging affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has acknowledged service of the originating summons.

3. Notice of hearing (O. 28, r. 3)

(1) Not less than 14 days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 8 in Appendix A, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party.

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons which is in Form No. 10 in Appendix A, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice

of the day fixed for the hearing.

(3) Where notice in Form No. 12 in Appendix A is served in accordance with paragraph (1), such notice shall specify what orders or directions the party serving the notice intends to seek at the hearing, and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek.

(4) If the hearing of an originating summons which is in Form No. 8 or 10 in Appendix A is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, he must, not less than 7 days before the resumed hearing of the summons, serve on every other party a notice specifying those orders and directions.

(5) Where a party is required by any provision of this rule or rule 5(2) to serve a notice or a copy of a notice on “every other party” he must-

- (a) where he is the plaintiff, serve it on every defendant who has acknowledged service of the originating summons; and
- (b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby.

3A. Originating summons to be heard in open court (O. 28, r. 3A)

Rule 24
Rec 15

An originating summons must be heard in open court unless the Court otherwise directs.

4. Directions, etc., by Court (O. 28, r. 4)

(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) In any case where the Court does not dispose of any originating summons altogether at a hearing or order the cause or matter begun by it to be transferred to the Court of First Instance or some other court or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and

whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give ~~on a directions hearing under Order 23A~~ under Order 25 if the cause or matter had been begun by writ and the summons were a ~~summons for directions~~ case management summons under that Order.

Rule 86
Rec 52-60, 62

(5) The Court may at any stage of the proceedings order that any affidavit, or any particulars of any claim, defence or other matters stated in any affidavit, shall stand as pleadings or that points of claim, defence or reply be delivered and stand as pleadings.

5. Adjournment of summons (O. 28, r. 5)

(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party and rule 3(4) shall apply in relation to any such adjourned hearing.

6. Applications affecting party who has failed to acknowledge service (O. 28, r. 6)

Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to acknowledge service of the summons, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party has so failed.

7. Counterclaim by defendant (O. 28, r. 7)

(1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

8. Continuation of proceedings as if cause or matter begun by writ

(O. 28, r. 8)

(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

~~(2) Where the Court decides to make such an order, Order 23A, rules 9 to 13, shall apply as if the Court were conducting a directions hearing under that Order.~~

Rule 87
Rec 52-60, 62

(2) Where the Court decides to make such an order, Order 25, rules 5 to 10 –

(a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and

(b) with any other necessary modifications,
apply as if there had been a case management summons in the proceedings and that order were one of the orders to be made thereon.

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these Rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

Remarks

9. Order for hearing or trial (O. 28, r. 9)

(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be transferred to the Court of First Instance or some other court or makes an order in relation to it under rule 8 or some other provision of these Rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make such order as to the hearing or trial of the cause or matter as may be appropriate.

(3) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

Rule 169
Alignment with RHC

(4) Order 33, rule 4(2) and Order 34, ~~rules 1 to 8~~ **rules 1 to 5**, shall apply in relation to a cause or matter begun by originating summons and to an order made therein under this rule as they apply in relation to an action begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with any necessary modifications and with the further modification that for references therein to ~~a pre-trial review~~ **the case management summons** there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

Rule 152
Consequential
amendment

Rule 88
Rec 52-60, 62

10. Failure to prosecute proceedings with despatch (O. 28, r. 10)

(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

11. Abatement, etc., of action (O. 28, r. 11)

Order 34, ~~rule 9~~ **rule 6**, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

Rule 153
Consequential
amendment

Rules of the District Court (Amendment) Rules 2008

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

Order 29 - INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

Remarks

I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.

1. Application for injunction (O. 29, r. 1)

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

2. Detention, preservation, etc., of subject-matter of cause or matter (O. 29, r. 2)

(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

Remarks

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons **or by notice under Order 25, rule 10.**

Rule 89
Rec 52-60, 62

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun.

3. Power to order samples to be taken, etc. (O. 29, r. 3)

(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorize or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

4. Sale of perishable property, etc. (O. 29, r. 4)

(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph “land” (土地) includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

5. Order for early trial (O. 29, r. 5)

Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the place and mode of trial.

6. Recovery of personal property subject to lien, etc. (O. 29, r. 6)

Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

7. Directions (O. 29, r. 7)

(1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

~~(2) If, in an action begun by writ, not being any such action as is mentioned in paragraphs (a) to (c) and (e) of Order 23A, rule 1(1), the Court thinks fit to give directions under this rule, rules 9 to 13 of that Order shall apply as if the Court were conducting a directions hearing under that Order.~~

Rule 90
Rec 52-60, 62

(2) If, in an action begun by writ, not being any such action as is mentioned in subparagraphs (a) to (c) and (e) to (h) of Order 25, rule 1(4), the Court thinks fit to give directions under this rule before the case management summons, then rules 5 to 10 of that Order –

(a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they desire; and

(b) with any other necessary modifications,

apply as if the application were a case management summons.

7A. Inspection, etc. of property under sections 47B(2) and 47D of the Ordinance (O. 29, r. 7A)

(1) An application for an order under section 47D of the Ordinance in respect of property which may become the subject-matter of subsequent proceedings in the Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 47B(2) of the Ordinance in respect of property which is not the property of or in the possession of any party to the proceedings shall be made by summons, which must be served on the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property 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 or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.

(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 made under section 47B(2) or 47D of the Ordinance 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.

(6) No such order shall be made if it appears to the Court-

- (a) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings; and
- (b) that the application would have been refused on that ground if-
 - (i) in the case of a summons under paragraph (1), the subsequent proceedings had already been begun; or
 - (ii) in the case of a summons under paragraph (2), the person against whom the order is sought were a party to the proceedings.

8. Allowance of income of property pendente lite (O. 29, r. 8)

Where any real or personal property forms the subject-matter of any

proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

II. INTERIM PAYMENTS

9. Interpretation of Part II (O. 29, r. 9)

In this Part of this Order-
“interim payment” (中期付款), in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; and any reference to the plaintiff or the defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant.

10. Application for interim payment (O. 29, r. 10)

- (1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring that defendant to make an interim payment.
- (2) An application under this rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.
- (3) An application under this rule shall be supported by an affidavit which shall-
 - (a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;
 - (b) exhibit any documentary evidence relied on by the plaintiff in support of the application; and
 - (c) if the plaintiff's claim is made under the Fatal Accidents Ordinance (Cap 22), contain the particulars mentioned in section 5(4) of that Ordinance.
- (4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.
- (5) Notwithstanding the making or refusal of an order for an interim

payment, a second or subsequent application may be made upon cause shown.

11. Order for interim payment in respect of damages (O. 29, r. 11)

(1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied-

- (a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's damages; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are 2 or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

(2) No order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely-

- ~~(a) a person who is insured in respect of the plaintiff's claim;~~
- ~~(b) a public authority; or~~
- ~~(c) a person whose means and resources are such as to enable him to make the interim payment.~~

Rule 170
Alignment with RHC

- (a) a person who is insured in respect of the plaintiff's claim or whose liability in respect of the plaintiff's claim will be met by the following person –
 - (i) an insurer under section 10 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272);
 - (ii) an insurer who is a party to an agreement with the Motor Insurers' Bureau of Hong Kong; or
 - (iii) the Motor Insurers' Bureau of Hong Kong;
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable him to make the interim payment.

(3) In paragraph (2)(a)(ii), "agreement" (協議) means the domestic agreement between the Motor Insurers' Bureau of Hong Kong and the insurance companies and Lloyd's underwriters authorized to carry on motor vehicle insurance business in Hong Kong, made on 1 February 1981, as amended from time to time.

12. Order for interim payment in respect of sums other than damages
(O. 29, r. 12)

If, on the hearing of an application under rule 10, the Court is satisfied-

- (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or
- (b) that the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

13. Manner of payment (O. 29, r. 13)

- (1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.
- (2) An application under paragraph (1) for money in court to be paid out may be made ex parte, but the Court hearing the application may direct a summons to be issued.
- (3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.
- (4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

~~14. Directions on application under rule 10~~ (O. 29, r. 14)

~~Where an application is made under rule 10, the Court may give directions as to the further conduct of the action, and, so far as may be~~

Rule 91
Rec 52-60, 62

~~applicable, Order 23A, rules 9 to 13, shall apply as if the Court were conducting a directions hearing under that Order, and, in particular, the Court may order an early trial of the action.~~

14. Directions on application under rule 10 (O. 29, r. 14)

Where an application is made under rule 10 –

- (a) the Court may give directions as to the further conduct of the action; and**
- (b) so far as may be applicable, Order 25, rules 5 to 10 –**
 - (i) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they require; and**
 - (ii) with any other necessary modifications, apply as if the application were a case management summons; and**
- (c) in particular, the Court may order an early trial of the action.**

15. Non-disclosure of interim payment (O. 29, r. 15)

The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

16. Payment into court in satisfaction (O. 29, r. 16)

Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into court under ~~Order 22, rule 4~~ **Order 22**, the notice of payment must state that the defendant has taken into account the interim payment.

Rule 62
Consequential
Amendment

17. Adjustment on final judgment or order or on discontinuance (O. 29, r. 17)

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make such order with respect to the interim payment as may be just, and in particular-

- (a) an order for the repayment by the plaintiff of all or part of the

- interim payment; or
- (b) an order for the payment to be varied or discharged; or
- (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

18. Counterclaims and other proceedings (O. 29, r. 18)

The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.

Rules of the District Court (Amendment) Rules 2008

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

Order 30 - RECEIVERS

Remarks

1. Application for receiver and injunction (O. 30, r. 1)

- (1) An application for the appointment of a receiver ~~shall be~~ may be made by summons.
- (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.
- (3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit.
- (4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

Rule 25
Rec 11-16

2. Giving of security by receiver (O. 30, r. 2)

- (1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the person appointed.
- (2) Where by virtue of any judgment or order appointing a person named therein to be a receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.
- (3) Unless the Court otherwise directs, the security shall be by guarantee.
- (4) The guarantee must be filed in the Registry, and it shall be kept as of record until duly vacated.

3. Remuneration of receiver (O. 30, r. 3)

A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorized by the Court and the Court may direct that such

remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

4. Service of order and notice (O. 30, r. 4)

A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause or matter in which the receiver has been appointed.

5. Receiver's accounts (O. 30, r. 5)

(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to the accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court and a copy of such notice shall be lodged in the Registry.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by the Registrar and an order may thereupon be made as to the incidence of any costs or expenses incurred.

6. Payment into Court by receiver (O. 30, r. 6)

The Court may fix the amounts and frequency of payments into court to be made by a receiver.

7. Default by receiver (O. 30, r. 7)

(1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into court, charge him with interest at the rate currently payable in respect of judgment debts in the Court on that sum while in his possession as receiver.

8. Directions to receivers (O. 30, r. 8)

A receiver may at any time request the Court to give him directions and such a request shall state in writing the matters with regard to which directions are required.

Rules of the District Court (Amendment) Rules 2008

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

Order 32 – INTERLOCUTORY APPLICATIONS AND OTHER PROCEEDINGS IN CHAMBERS

Remarks

I. INTERLOCUTORY APPLICATIONS

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

Except as otherwise provided in these Rules, every interlocutory application not made ex parte must be made by summons, and where, under the provisions of these Rules, such summons must be supported by affidavit, such affidavit shall be filed at the same time as the summons.

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

(1) Issue of a summons by which an interlocutory application is made takes place on its being sealed with the Seal of the Court.

(2) A summons may not be amended after issue without the leave of the Court.

3. Service of summons (O. 32, r. 3)

A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

4. Adjournment of hearing (O. 32, r. 4)

(1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

5. Proceeding in absence of party failing to attend (O. 32, r. 5)

(1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having

regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

6. Order made ex parte may be set aside (O. 32, r. 6)

The Court may set aside an order made ex parte.

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

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

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

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

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

Rule 105

The jurisdiction to direct, under section 30 of the Limitation Ordinance (Cap. 347), that section 27 or 28 of that Ordinance should not apply to an action or to any specified cause of action to which the action relates shall be exercisable by the Court.

II. PROCEEDINGS IN CHAMBERS

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

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

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

(1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the Registry, if the party who desires the attendance of the witness produces a note from a judge or from the Registrar or any master authorizing the issue of the writ.

(2) The Registrar or any master may give such a note or may direct the application for it be made to the judge before whom the proceedings are to be heard.

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

If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

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

Any party-

- (a) filing an affidavit intended to be used by him in any proceedings in chambers; or
- (b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,

must give notice to every other party of the filing or, as the case may be, of his intention to do so.

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

The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

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

A note shall be kept of all proceedings in chambers with the dates thereof so that all such proceedings in any cause or matter are noted in chronological order with a short statement of the matters decided at each hearing.

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

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

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

(1) The Registrar and any master shall have power to hear and determine all interlocutory applications and transact all such business and exercise all such authority and jurisdiction as under any Ordinance or by these Rules may be transacted and exercised by a judge in chambers, except in respect of the following matters and proceedings, that is to say-

- (a) matters relating to criminal proceedings **other than matters relating to the conditions of admission to bail;**
- (b) matters relating to the liberty of the subject other than orders for arrest and imprisonment to enforce, secure or pursue civil claims for the payment of money and orders prohibiting persons from leaving Hong Kong;
- (d) subject to paragraph (2), proceedings for the grant of an injunction or other order under Part I of Order 29;
- (f) any other matter or proceeding which by any of these Rules is required to be heard only by a judge.

Rule 106
Clarification

(2) The Registrar and any master shall have power to grant an injunction, or to make an order for the detention, custody or preservation of any property, in the terms agreed by the parties to the proceedings in which the injunction or order is sought.

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

~~(4) The jurisdiction to direct, under section 30 of the Limitation Ordinance (Cap. 347), that section 27 or 28 of that Ordinance should not apply to an action or to any specified cause of action to which the action relates shall be exercisable by the Court.~~

Rule 106
Clarification

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

Rule 104
Rec 83, 85 to 86

(1) A master may –

- (a) determine an interlocutory application without an oral**

- hearing; or
- (b) adjourn the application to be heard before him or another master or a judge in chambers.
- (2) The master may fix a date on which he may –
- (a) in the case of paragraph (1)(a), hand down his determination of the application; and
- (b) in the case of paragraph (1)(b), make an order that the application be heard before him or another master or a judge in chambers on a date specified in the order.
- (3) The master may give such directions as he thinks necessary or desirable for the purpose of determining the application, including directions for –
- (a) the setting of a timetable for the steps to be taken between the giving of these directions and the determination of the application;
- (b) the filing of evidence and arguments;
- (c) the filing of a statement of costs in respect of the application; and
- (d) the filing of a statement of grounds in opposition to the statement referred to in subparagraph (c).
- (4) Where the determination of the application is adjourned for the hearing of the summons, no further evidence may be adduced unless it appears to the Court that there are exceptional circumstances making it desirable that further evidence should be adduced.
- (5) This rule does not apply to –
- (a) an application under Order 2, rule 4 for relief from any sanction imposed by a court order; and
- (b) an application to extend or shorten the time for compliance with a court order.

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

Rule 104
Rec 83, 85 & 86

- (1) Where the Court makes an order on an interlocutory application before –
- (a) a case management summons in the action is taken out under Order 25; or
- (b) it gives directions relating to the management of the case under Order 25, rule 2(1)(a), (2)(a) or (4),
- it may, if it thinks appropriate to do so, specify the consequences of failing to comply with the order.
- (2) Where the Court makes an order on an interlocutory application after –
- (a) a case management summons in the action taken out under

Order 25 has been dealt with by the Court; or
(b) it has given directions relating to the management of the case
under Order 25, rule 2(1)(a), (2)(a) or (4).
it shall, unless there are special circumstances which render it
inexpedient to do so, specify the consequences of failing to comply with
the Order.

(3) The consequences specified under paragraph (1) or (2) must be
appropriate and proportionate in relation to the non-compliance.

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

- (1) The Registrar and any master may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the Registrar or to any master, with such directions as he thinks fit.
- (2) No appeal shall lie from an order of the Registrar or any master made under paragraph (1).

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

- (1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.
- (2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

Rules of the District Court (Amendment) Rules 2008

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

Order 33 – PLACE AND MODE OF TRIAL

Remarks

TRIAL

1. Place of trial (O. 33, r. 1)

Subject to the provisions of these Rules, the place of trial of a cause or matter, or of any question or issue arising therein, shall be determined by the Court and shall be one of such courthouses or other place or places as are for the time being designated by the Chief Justice.

2. Mode of trial (O. 33, r. 2)

Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein may be tried before-

- (a) a judge alone;
- (b) a judge with the assistance of assessors; or
- (c) the master.

3. Time, etc. of trial of questions or issues (O. 33, r. 3)

The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

4. Determining the place and mode of trial (O. 33, r. 4)

(1) In every action begun by writ, ~~an order made at the pre-trial review under Order 34 shall determine the place and mode of the trial.~~ the Court shall by order determine the place and mode of the trial.

Rule 92
Rec 52-60, 62

(2) In any such action different questions or issues may be ordered to be tried at different places and one or more questions or issues may be ordered to be tried before the others.

(2A) In an action for personal injuries, the Court may at any stage of the proceedings and of its own motion make an order for the issue of liability to be tried before any issue or question concerning the amount of damages to be

awarded and-

- (a) notwithstanding the provisions of Order 42, rule 5(5), an order so made in the absence of the parties shall be drawn up by an officer of the Court who shall serve a copy of the order on every party; and
- (b) where a party applies within 14 days after service of the order upon him, the Court may confirm or vary the order or set it aside.

4A. Split trial : offer on liability (O. 33, r. 4A)

(1) This rule applies where an order is made under rule 4(2) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the judge after the issue of liability has been decided, but not before.

6. Trial with assistance of assessors (O. 33, r. 6)

A trial of a cause or matter with the assistance of assessors under section 58 of the Ordinance shall take place in such manner and on such terms as the Court may direct.

7. Dismissal of action, etc., after decision of preliminary issue (O. 33, r. 7)

If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just. (See Appendix A, Form No. 48)

Rules of the District Court (Amendment) Rules 2008

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

~~Order 34 – PRE-TRIAL REVIEW AND FIXING DATE FOR TRIAL OF ACTIONS BEGUN BY WRIT~~

Remarks

Rule 151
Alignment with
RHC

~~1. Application and interpretation (O. 34, r. 1)~~

~~(1) This Order applies to all actions begun by writ.~~

~~(2) In this Order–~~

~~“notice of application” (申請通知書) means a notice under rule 3 applying for a pre-trial review;~~

~~“notice in response” (回應通知書) means a notice under rule 4 responding to a notice of application;~~

~~“pre-trial review” (審訊前的覆核) means a pre-trial review under rule 7.~~

~~2. Plaintiff’s default in applying for pre-trial review (O. 34, r. 2)~~

~~—Where the plaintiff fails to apply for a pre-trial review within the period fixed by a direction made or taking effect under Order 23A, rule 4, 5 or 9, or otherwise, any defendant may apply for a pre-trial review or may apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed or may make such order as it thinks just.~~

~~3. Application for pre-trial review (O. 34, r. 3)~~

~~(1) Except where the Court otherwise allows, an application for a pre-trial review shall be made by a notice of application filed in the Registry which must be served on all the other parties within 2 days of the date of filing.~~

~~(2) A notice of application shall state–~~

- ~~—(a) whether all the directions or orders which have been made or have taken effect in the action have been fully complied with and, if not, which of them have not been complied with and in what respects there has been non-compliance;~~
- ~~—(b) whether the applicant desires any further direction or order for the future course of the action and, if so, what further direction or order he desires;~~
- ~~—(c) whether the applicant intends to call any witnesses other than expert~~

~~witnesses, and, if so—~~

- ~~—— (i) how many witnesses will be called and in what language each of them will give his evidence; and~~
- ~~—— (ii) where no order has been made for the exchange of witness statements under Order 38, rule 2A, whether there is any and if so what good reason for there to be no such order;~~
- ~~—— (d) where any party has served an expert's report pursuant to any direction therefor, whether the report has been agreed, and, if not, what steps have been taken to secure such agreement;~~
- ~~—— (e) the applicant's estimate of the length of trial;~~
- ~~—— (f) whether the applicant contends that it is appropriate in all the circumstances to fix a date for trial and, if not, why not; and~~
- ~~—— (g) any other matters which the applicant considers to be material for the pre-trial review.~~

~~(3) Where a notice of application states that a further direction or order is desired, the notice shall be treated for the purposes of these Rules as a summons for the further direction or order specified in the notice.~~

~~(4) The applicant shall, when filing the notice of application, lodge in the Registry a bundle of all the documents (if any) which are material to the pre-trial review and have not been filed in the Registry, including any experts' reports and any material correspondence between the parties, and the applicant shall serve written notice of the lodging of all such documents to all the other parties at the same time as he serves the notice of application.~~

~~**4.— Duty of parties on whom notice of application is served (O. 34, r. 4)**~~

~~(1) Every party whom a notice of application is served shall, within 14 days after service thereof, file in the Registry and, within 2 days thereafter, serve on all the other parties, a notice in response.~~

~~(2) Rule 3(2) and (3) shall apply to a notice in response, with the modifications that the expressions “notice of application” and “the applicant” shall be taken to refer to a notice in response and the party issuing such a notice.~~

~~**5.— Default by party on whom notice of application is served (O. 34, r. 5)**~~

~~—— Where a party on whom a notice of application is served fails to serve a notice of response within the period fixed under rule 4(1) or such further time as may be agreed between all the parties or allowed by the Court, the applicant for a pre-trial review may apply to the Court to dismiss the action or strike out the defence, as the case may be, and, on the hearing of any such application, the Court may order the action to be dismissed or the defence struck out as the case may be and judgment to be entered accordingly or may make such other order as it thinks just.~~

6. ~~Circumstances in which an oral hearing of a pre-trial review to take place~~ (O. 34, r. 6)

~~(1) The Court shall conduct a pre-trial review without an oral hearing except where—~~

- ~~— (a) the Court orders an oral hearing of its own motion; or~~
- ~~— (b) within 7 days after the filing of a notice in response (or, if there is more than one notice in response, the date of the filing of the notice in response last filed) any of the parties, by written notice to the Registrar and all the other parties, requests an oral hearing.~~

~~(2) Where a pre-trial review is conducted without an oral hearing, any party may, within 7 days after the expiry of the period of notice referred to in paragraph (1)(b), make representations in writing to the Court and the Court shall conduct the pre-trial review as soon as practicable thereafter.~~

7. ~~Pre-trial review~~ (O. 34, r. 7)

~~(1) At the pre-trial review, if the Court is satisfied that the action is ready for trial, the Court shall grant leave for the action to be set down or fix a date for trial and specify the place and mode of trial.~~

~~(2) At the pre-trial review, if the Court is not satisfied that the action is ready for trial, the Court shall—~~

- ~~— (a) give all such directions and make all such orders as are required in order to get the action ready for trial; and~~
- ~~— (b) adjourn the pre-trial review to a fixed date and on that date proceed in accordance with paragraph (1) or this paragraph.~~

~~(3) In exercising its powers under paragraph (2)(a), Order 23A, rules 9 to 12 and 14, shall apply as if the pre-trial review were a directions hearing under that Order.—~~

8. ~~Costs~~ (O. 34, r. 8)

~~(1) If, at a pre-trial review, the Court is of the opinion that a party acted unreasonably in requesting an oral hearing of the pre-trial review, the Court may order that party to pay all the costs wasted by his unreasonableness, including the cost of the oral hearing.~~

~~(2) If, at a pre-trial review, the Court is of the opinion that the action is not ready for trial because of the failure by any party to comply with any direction or order, the Court may order that party to pay the costs of the pre-trial review and make such other order as to costs as the Court thinks fit having regard to the failure of that party to comply with the direction or order.~~

~~9. Abatement, etc., of action (O. 34, r. 9)~~

~~(1) Where after a pre-trial review the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar who shall cause the appropriate entry to be made in the list of actions set down for trial.~~

~~(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.~~

**ORDER 34 - SETTING DOWN FOR TRIAL ACTION
BEGUN BY WRIT**

1. Application and interpretation (O. 34, r. 1)

This Order applies to actions begun by writ and, accordingly, references in this Order to an action are to be construed as references to an action so begun.

2. Time for setting down action (O. 34, r. 2)

(1) Unless the Court has fixed a trial date or a period in which the trial is to take place under Order 25, rule 2(2)(b) or 3(b), an order made in an action which provides for trial before a judge must fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may –

(a) set the action down for trial; or

(b) apply to the Court to dismiss the action for want of prosecution.

(3) On the hearing of an application made under paragraph (2)(b), the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(4) An order made in an action which provides for trial before a judge (otherwise than in any list which may be specified for the purposes of this paragraph by directions under rule 4) must –

(a) contain an estimate of the length of the trial; and

(b) subject to any such directions, specify the list in which the action is to be put.

3. Lodging documents when setting down (O. 34, r. 3)

(1) In order to set down for trial an action which is to be tried before a judge, the party setting it down shall deliver to the Registrar, by post or otherwise, a request that the action may be set down for trial, together with a bundle (for the use of the judge) consisting of one copy each of the following documents that is to say -

(a) the writ;

(b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given;

(c) all orders made –

(i) pursuant to the questionnaire completed in accordance with Order 25, rule 1(1);

(ii) pursuant to a case management summons; and

(iii) at a case management conference;

(d) the requisite legal aid documents, if any; and

(e) all witness statements served under the provisions of Order 38, rule 2A.

(2) The bundle must be bound up in the proper chronological order, save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7) applies must be placed immediately after the pleading to which they relate.

(3) In this rule “the requisite legal aid documents” (必需的法律援助文件) means any documents which are required to be filed in the Registry under the Legal Aid Ordinance (Cap. 91) or the regulations made thereunder.

4. Directions relating to lists (O. 34, r. 4)

Nothing in this Order prejudices any powers of the Chief Justice to give directions -

(a) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists;

(b) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and

(c) as to the making of applications (whether to the Court or an officer of the Court) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

5. Notification of setting down (O. 34, r. 5)

(1) A party to an action who sets it down for trial shall, within 24 hours after doing so, notify the other parties to the action that he has done so.

(2) It is the duty of all parties to an action entered in any list to –

- (a) furnish without delay to the officer who keeps the list all available information as to the action being or being likely to be settled, or affecting the estimated length of the trial; and
- (b) if the action is settled or withdrawn, notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

(3) In performance of the duty imposed by paragraph (2), a party who gives notice of acceptance of a sanctioned payment or a sanctioned offer in accordance with Order 22, shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph.

6. Abatement, etc., of action (O. 34, r. 6)

(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action shall, as soon as practicable after becoming aware of it –

- (a) certify the abatement or change of interest or liability; and
- (b) send the certificate to the officer who keeps the list.

(2) That officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(3) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action must on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

Rules of the District Court (Amendment) Rules 2008

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

Order 35 – PROCEDURE AT TRIAL

Remarks

1. Failure to appear by both parties or one of them (O. 35, r. 1)

(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party.

2. Judgment, etc., given in absence of party may be set aside (O. 35, r. 2)

(1) Any judgment or order obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

3. Adjournment of trial (O. 35, r. 3)

The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

3A. Time, etc. limits at trial (O. 35, r. 3A)

Rule 120
Rec 108

(1) At any time before or during a trial, the Court may by direction –

(a) limit the time to be taken in examining, cross-examining or re-examining a witness;

(b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;

(c) limit the time to be taken in making any oral submission;

(d) limit the time to be taken by a party in presenting its case;

(e) limit the time to be taken by the trial; and

(f) vary a direction made under this rule.

(2) In deciding whether to make any such direction, the Court shall have regard to the following matters in addition to any other matters that may be relevant –

- (a) the time limited for a trial must be reasonable;**
- (b) any such direction must not detract from the principle that each party is entitled to a fair trial;**
- (c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;**
- (d) the complexity or simplicity of the case;**
- (e) the number of witnesses to be called by the parties;**
- (f) the volume and character of the evidence to be led;**
- (g) the state of the Court lists;**
- (h) the time expected to be taken for the trial; and**
- (i) the importance of the issues and the case as a whole.**

7. Order of speeches (O. 35, r. 7)

- (1) The judge before whom an action is tried may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.
- (2) Subject to paragraph (6), the plaintiff shall begin by opening his case.
- (3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.
- (4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.
- (5) Where there are 2 or more defendants who appear separately or are separately represented, then—
 - (a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;
 - (b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;
 - (c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.
- (6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are 2 or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3)

and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

8. Inspection by judge (O. 35, r. 8)

The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.

9. Death of party before giving of judgment (O. 35, r. 9)

Where a party to any action dies after the finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 7(2), before giving judgment.

10. Certificate of judicial clerk (O. 35, r. 10)

At the conclusion of the trial of any action, the judicial clerk or other officer in attendance at the trial shall make a certificate in which he shall certify-

- (a) the time actually occupied by the trial;
- (b) any order made by the judge under Order 38, rule 5 **or 6**;
- (d) the judgment given by the judge; and
- (e) any order made by the judge as to costs.

Rule 171
Alignment with
RHC

11. List of exhibits (O. 35, r. 11)

(1) The judicial clerk or other officer in attendance at the trial shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series.

In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The judicial clerk or other officer in attendance at the trial shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

12. Exhibits retained by Registrar pending appeal (O. 35, r. 12)

(1) Unless the Court otherwise directs, the Registrar shall retain in his custody all exhibits duly marked and labelled until—

- (a) the expiration of the time limited by these Rules for appealing to the Court of Appeal, or such extended period therefor as may be allowed; and thereafter
- (b) in the event of an appeal to the Court of Appeal, the final disposal of such appeal; and thereafter
- (c) the expiration of the time limited for applying to the Court of Appeal for leave to appeal to the Court of Final Appeal, or such extended period therefor as may be allowed; and thereafter
- (d) in the event of the Court of Appeal or the Court of Final Appeal giving leave to appeal to the Court of Final Appeal, the non-fulfilment of any condition for such leave to appeal or the final disposal of such appeal.

(2) Unless the Court otherwise directs, upon the expiration of the time limited for retention of exhibits fixed under paragraph (1) it shall be the duty of every party to an action who has put in any exhibits, and where represented, of his solicitor on the record, to apply to the Registrar for the return of the exhibits and to collect the same.

13. Impounded documents (O. 35, r. 13)

(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by summons. If the Secretary for Justice makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(2) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorized to do so by an order signed by a judge.

Rules of the District Court (Amendment) Rules 2008

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

Order 36 – TRIALS BEFORE AND INQUIRIES BY MASTER WITH CONSENT OF PARTIES

Remarks

1. Trial before and inquiry by Master (O. 36, r. 1)

In any cause or matter other than a criminal proceeding by the Government, the Court may, with the consent of the parties, order that the cause or matter, or any question or issue of fact arising therein, be tried before a master or that the master do inquire and report thereon and, in the case of inquiry and report, giving consequential directions.

4. Powers of Master (O. 36, r. 4)

- (1) Subject to any directions contained in the order made pursuant to rule 1–
 - (a) the master shall for the purposes of the trial or inquiry (including any interlocutory application therein) have the same jurisdiction, powers and duties (including the power of committal and discretion as to costs) as a judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit, in the like cases, in the like manner and subject to the like limitations; and
 - (b) every trial and all other proceedings before a master shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.
- (2) Without prejudice to the generality of paragraph (1) but subject to any such directions as are mentioned therein the master before whom any cause or matter is tried shall have the like powers as the Court with respect to claims relating to or connected with the original subject-matter of the cause or matter by any party thereto against any other person and Order 15, rule 5(2) and Order 16 shall with any necessary modifications apply in relation to any such claim accordingly.

9. Report on reference (O. 36, r. 9)

- (1) The report made by a master in pursuance of a reference under rule 1 shall be made to the Court and notice thereof served on the parties to the reference.
- (2) The master may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

Remarks

- (3) On receipt of the master's report the Court may–
- (a) adopt the report in whole or in part;
 - (b) vary the report;
 - (c) require an explanation from him;
 - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him **or any other master**; or
 - (e) decide the question originally referred to him on the evidence taken before him either with or without additional evidence.
- (4) When the report of the master has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court of further consideration of the cause or matter, after giving not less than 4 days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.

Rule 172
Alignment with
RHC

Rules of the District Court (Amendment) Rules 2008

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

Order 37 - DAMAGES: ASSESSMENT AFTER JUDGMENT AND ORDERS FOR PROVISIONAL DAMAGES

Remarks

I. ASSESSMENT OF DAMAGES AFTER JUDGMENT

1. Assessment of damages (O. 37, r. 1)

(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by a judge, ~~or, if the parties consent, by a master~~ **or master as directed by the Court**, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment and, at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

Rule 173
Alignment with RHC

~~(1A) Upon application to obtain an appointment for an assessment of damages being made, the directions set out in Order 23A, rule 5(1)(a) to (e), (2) and (3), shall, unless the Court otherwise directs, take effect automatically.~~

(1A) Upon judgment being given for damages to be assessed, the following directions shall, unless the Court directs otherwise, take effect automatically -

Rule 173
Alignment with RHC

- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter in accordance with Order 24, rule 9;**
- (b) each party shall serve on the other parties, within 6 weeks, written statements under Order 38, rule 2A of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial;**
- (c) photographs, plans and the contents of any police investigation report shall be receivable in evidence at the hearing and shall be agreed if possible;**
- (d) 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;**
- (e) at the time of making of the application for an appointment, the master shall be notified of the estimated length of the assessment and any other matter which may affect the setting down of the assessment.**

(2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) The attendance of witnesses and the production of documents in proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

1A. Assessment of costs as damages (O. 37, r. 1A)

Where damages to be assessed pursuant to a judgment to which this Order applies consist solely of costs claimed on an indemnity basis, such assessment shall proceed as for a taxation of costs under Order 62 and the provisions of that Order shall apply as if an order for taxation of costs on the indemnity basis had been made.

2. Certificate of amount of damages (O. 37, r. 2)

Where in pursuance of this Order or otherwise damages are assessed, ~~the judge or master hearing the assessment~~ by a master, he shall certify the amount of the damages and the certificate shall, when judgment is entered, be filed in the Registry.

Rule 174

3. Default judgment against some but not all defendants (O. 37, r. 3)

Where any such judgment as is mentioned in rule 1 is given on failure to give notice of intention to defend or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

4. Power to order assessment at trial (O. 37, r. 4)

Rule 93
Consequential
amendment

(1) Where judgement is given for damages to be assessed, the Court may order that the action shall proceed to trial before a judge as respects the damages.

(2) Where the Court orders that the action shall proceed to trial, Order 25, rules 5 to 10 –

(a) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they desire; and

(b) with any other necessary modifications,
apply as if the application to the Court in pursuance of which the Court

makes the order, were a case management summons under Order 25.

5. Assessment of value (O. 37, r. 5)

The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

6. Assessment of damages to time of assessment (O. 37, r. 6)

Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

**II. ORDERS FOR PROVISIONAL DAMAGES FOR
PERSONAL INJURIES**

7. Application and interpretation (O. 37, r. 7)

(1) This Part of this Order applies to actions to which section 72E of the Ordinance (in this Part of this Order referred to as “section 72E”) applies.

(2) In this Part of this Order “award of provisional damages” (暫定損害賠償裁決) means an award of damages for personal injuries under which-

- (a) damages are assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 72E; and
- (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

8. Order for provisional damages (O. 37, r. 8)

(1) The Court may on such terms as it thinks just and subject to the provisions of this rule make an award of provisional damages if-

- (a) the plaintiff has pleaded a claim for provisional damages; and
- (b) the Court is satisfied that the action is one to which section 72E applies.

(2) An order for an award of provisional damages shall specify the disease or type of deterioration in respect of which an application may be made at a

future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

(3) The Court may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so, and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one disease or type of deterioration and may in respect of each disease or type of deterioration specify a different period within which an application may be made at a future date.

(5) Orders 13 and 19 shall not apply in relation to an action in which the plaintiff claims provisional damages.

9. Offer to submit to an award (O. 37, r. 9)

(1) Where an application is made for an award of provisional damages, any defendant may at any time (whether or not he makes a payment into court) make a written offer to the plaintiff-

- (a) to tender a sum of money (which may include an amount, to be specified, in respect of interest) in satisfaction of the plaintiff's claim for damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 72E and identifying the disease or deterioration in question; and
- (b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the Court until after the Court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (1), the plaintiff may, within ~~21 days after receipt of the offer~~ **28 days after the offer was made**, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the Court for an order in accordance with the provisions of rule 8(2).

Rule 175

10. Application for award of further damages (O. 37, r. 10)

(1) This rule applies where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 8(2), or of such period as extended under rule 8(3).

Remarks

(3) The plaintiff shall give not less than 3 months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiff's knowledge insured in respect of the plaintiff's claim, to the insurers.

(4) The plaintiff must, within 21 days after the expiration of the period of notice referred to in paragraph (3), take out a ~~summons for directions under Order 23A, rule 7,~~ case management summons as to the future conduct of the action.

Rule 94
Consequential
amendment

(5) ~~On the directions hearing~~ At the determination of the case management summons the Court shall give such directions as may be appropriate for the future conduct of the action, including, but not limited to, the disclosure of medical reports and the place, mode and date of the hearing of the application for further damages.

Rule 94
Consequential
amendment

(6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.

(7) The provisions of Order 29 with regard to the making of interim payments shall, with the necessary modifications, apply where an application is made under this rule.

(8) The Court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff's intention to apply for further damages and the date of the award.

Rules of the District Court (Amendment) Rules 2008

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

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 ~~interlocutory application~~ 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.

Rule 26
Rec 11-16

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) –

Rule 176
Alignment with RHC

- (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.

~~(2) At any stage in any cause or matter, the Court may, if it thinks fit for the purpose of disposing fairly and expeditiously of the cause or matter and saving costs, direct any party to serve on the other parties, on such terms as the Court shall think just, written statements of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial.~~

(2) 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 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.

(2A) The Court may give a direction to any party under paragraph (2) at any other stage of the action and at any stage of any other cause or matter.

(2B) Order 3, rule 5(3) does not apply to any period specified by the Court under paragraph (2).

- ~~(3) Directions given under paragraph (2) may-~~
- ~~(a) make different provision with regard to different issues of fact or different witnesses;~~
 - ~~(b) require that statements be filed with the Court.~~

Rule 176
Rec 52-60, 62

(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 ~~or Order 23A~~ 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;
 - (b) sufficiently identify any documents referred to therein; and
 - (c) where they are to be served by more than one party, be exchanged simultaneously.

Rule 95
Consequential
amendment

Rule 54
Rec 26-32, 35

(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

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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 ~~paragraph (2) or Order 23A~~ this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

Rule 95
Consequential
amendment

(7) Subject to paragraph (9) ~~and unless the Court otherwise orders~~, where the party serving the statement does call such a witness at the trial-

Rule 176

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

~~(b) that 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-~~

Rule 113
Rec 100

~~(i) where 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;~~

(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 served 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 grant 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.

(10) Where a party fails to comply with a direction ~~given under paragraph (2); or as the case may be, under Order 23A~~ for the exchange of witness

Rule 95
Consequential
amendment

statements, he shall not be entitled to adduce evidence to which such 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 Chief Judicial Clerk 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 Chief Judicial Clerk 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.

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.

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)

Rule 114
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 2 or more parties to the action to appoint a single joint expert witness to give evidence on that question.**
- (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.

(5) The circumstances that the Court may take into account include but are 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;
- (c) the value of the claim and the importance of the issue on which expert evidence is sought, 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 –
 - (i) the choosing of the joint expert witness;
 - (ii) the drawing up of his instructions; or
 - (iii) the provision to him of the information and other facilities needed to perform his duties.

(6) Where the Court is satisfied that an order made under paragraph (1) is inappropriate, it may 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.

Rule 177
Alignment with RHC

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

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Rule 96
Rec 52-60, 62

Evidence Ordinance (Cap. 8) shall-

- (a) in the case of an action to which ~~Order 23A, rule 1(1) applies,~~
within 14 days Order 25, rule 1 applies, within 28 days after the pleadings in the action are deemed to be closed; and
- (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. Court documents admissible or receivable in evidence (O. 38, r. 10)

- (1) Office copies of writs, records, pleadings and documents filed in the Court or 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 Court or 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.

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.

(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 the 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.

(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.

(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.

(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.

(9) The deposit (or such part of it as shall remain after payment to the witness under paragraph (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 2 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 the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than 4 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)

A writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

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.

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 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.

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

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

IV. EXPERT EVIDENCE

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

(1) 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.

Rule 115
Rec 102, 103 & 107

(2) A reference to an expert witness in this Part or Appendix E is a reference to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court.

35A. Expert witness's overriding duty to Court (O. 38, r. 35A)

Rule 116
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.

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

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Rule 178

given under rule 37 or 41 (whichever is appropriate) and has complied with any direction given on the application;~~or:~~

- ~~(b) has complied with agreed directions for expert evidence taking effect under Order 23A, rule 4(1)(b) or automatic directions taking effect under Order 23A, rule 5(1)(c); or~~
~~(c) has complied with the automatic directions, or any other directions ordered under Order 37, rule 1(1A).~~

(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.

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.

(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).

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

Rule 55
Rec 26-32, 35

An expert report disclosed under these Rules must be verified by a statement of truth in accordance with Order 41A.

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

Rule 117
Rec 102, 103 & 107

(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 Appendix E.

(2) Where the Court has under rule 4A(1) ordered that 2 or more parties shall appoint a single joint expert witness, paragraph (1) applies to each of the parties.

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

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

Rule 117
Rec 102, 103 & 107

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

- (a) he has read the code of conduct set out in Appendix E 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, whether orally or in writing or otherwise, that –

- (a) he has read the code of conduct set out in Appendix E 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) Paragraph (1) does not apply to a report that was disclosed under rules 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 cannot or should not be called as a witness, the Court may direct that the provisions of rules 20 to 22 shall apply with such modifications as the Court thinks fit.

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.

Rule 118
Consequential
Amendment

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.

Rules of the District Court (Amendment) Rules 2008

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

Order 41A – STATEMENTS OF TRUTH

Remarks

Rule 56
Rec 26-32, 35

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

In this Order, unless the context otherwise requires –

“expert report” () means an expert report disclosed under 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 must 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 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 (6), (7), (8) and (9), a statement of truth must 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 putting forward the verified document 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 (6), (7), (8) and (9), where a party is a body of persons, corporate or unincorporate, the statement of truth must be signed by a person holding a senior position in the body.

(3) Subject to paragraph (7), where the party is a public officer, the statement of truth must 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.

(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;
- (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, that person shall state in the statement of truth the office or position he holds.

(6) Subject to paragraphs (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.

(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.

(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.

(9) If more than one insurer is conducting proceedings on behalf of a plaintiff or defendant, a statement of truth in or in relation to a pleading may be signed by an officer of the insurer 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 that 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 documents 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 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 or expert report is 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 is 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 that 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) The Court may order to be struck out a pleading which is not verified by a statement of truth.

(2) Any party may apply for an order under paragraph (1).

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 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. False statements (O. 41A, 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 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.

10. Transitional (O. 41A, 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 District Court (Amendment) Rules 2008

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

Order 42 – JUDGMENTS AND ORDERS

Remarks

JUDGMENTS, ORDERS, ACCOUNTS AND INQUIRIES

1. Form of judgment and interest thereon, etc. (O. 42, r. 1)

(1) If, in the case of any judgment, a form thereof is prescribed by Appendix A the judgment must be in that form. (See Appendix A, Forms 39-45, 48, 49)

(2) The party entering any judgment shall be entitled to have recited therein a statement of the manner in which, and the place at which, the writ or other originating process by which the cause or matter in question was begun was served.

(3) An order other than a consent order to which rule 5A applies must be marked with the name of the judge or the master by whom it was made and must be sealed.

1A. Judgment in favour of reversioner for detention of goods (O. 42, r. 1A)

(1) Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall be for the payment of damages only.

In this paragraph “partial owner” (部分擁有人) means one of 2 or more persons having interest in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

2. Judgment, etc. requiring act to be done: time for doing it (O. 42, r. 2)

(1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing

provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

3. Date from which judgment or order takes effect (O. 42, r. 3)

- (1) A judgment or order of the Court takes effect from the day of its date.
- (2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.
- (3) A judgment or order shall take effect for the purposes of this rule notwithstanding that the reasons therefor may not be given until a later date.

4. Orders required to be drawn up (O. 42, r. 4)

- (1) Subject to paragraph (2), every order of the Court shall be drawn up unless the Court otherwise directs.
- (2) An order—
 - (a) which—
 - (i) extends the period within which a person is required or authorized by these Rules, or by any judgment, order or direction, to do any act; or
 - (ii) grants leave for the doing of any of the acts mentioned in paragraph (3); and
 - (b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,need not be drawn up unless the Court otherwise directs.
- (3) The acts referred to in paragraph (2)(a)(ii) are—
 - (a) the issue of any writ, other than a writ of summons for service out of the jurisdiction;
 - (b) the amendment of a writ of summons or other originating process or a pleading;
 - (c) the filing of any document;
 - (d) any act to be done by an officer of the Court other than a solicitor;
 - (e) the extension of the validity of a writ;
 - (f) the abridgement of time for service of a summons;
 - (g) the adjournment of the hearing of a summons;
 - (h) the adjournment of the trial of an action;
 - (i) an order made by a judge ordering that an application or summons shall be heard by the master or a similar order made by the master that an application or summons shall be heard by a judge;
 - (j) leave to inspect and take copies of documents filed in the Registry;
~~and~~

Remarks

- (k) the transfer of an action from one list to another; and**
(l) the vacation or variation of the dates upon which ~~a cause or matter has been fixed to be tried or heard~~ **an action has been set down to be heard.**

Rule 179
Alignment with RHC

5. Drawing up and entry of judgments and orders (O. 42, r. 5)

- (1) Where a judgment given in a cause or matter is presented for entry in accordance with this rule at the Registry, it shall be entered in the book kept for the purpose by the Registrar.
- (2) The party seeking to have such a judgment entered must draw up the judgment and present it to the Registrar for entry.
- (3) A party presenting a judgment for entry must produce any certificate, order or other document needed to satisfy the Registrar that he is entitled to have the judgment entered.
- (4) On entering any such judgment the Registrar shall file the judgment.
- (5) Every order made and required to be drawn up must be drawn up by the party initiating the application upon which the order was made and if that party fails to draw up the order within 7 days after it is made any other party affected by the order may draw it up.
- (6) The order referred to in paragraph (5) must, when drawn up, be produced at the Registry, together with a copy thereof, and when passed by the Registrar the order, after it has been sealed, shall be returned to the party producing it and the copy shall be lodged in the Registry.

5A. Consent judgments and orders (O. 42, r. 5A)

- (1) Subject to paragraphs (2), (3) and (5), where all the parties to a cause or matter are agreed upon the terms in which a judgment should be given, or an order should be made, a judgment or order in such terms may be given effect as a judgment or order of the Court by the procedure provided in rule 5.
- (2) This rule applies to any judgment or order which consists of one or more of the following-
- (a) any judgment or order for—
 - (i) the payment of a liquidated sum, or damages to be assessed, or the value of goods to be assessed;
 - (ii) the delivery up of goods, with or without the option of paying the value of the goods to be assessed, or the agreed value;
 - (iii) the possession of land where the claim does not relate to a dwelling-house;

- (b) any order for–
 - (i) the dismissal, discontinuance or withdrawal of any proceedings, wholly or in part;
 - (ii) the stay of proceedings, either unconditionally or upon conditions as to the payment of money;
 - (iii) the stay of proceedings upon terms which are scheduled to the order but which are not otherwise part of it (a “Tomlin order”);
 - (iv) the stay of enforcement of a judgment, either unconditionally or upon condition that the money due under judgment is paid by instalments specified in the order;
 - (v) the setting aside of a judgment in default;
 - (vi) the transfer of any proceedings to the Court of First Instance **or the Lands Tribunal** pursuant to section 42 of the Ordinance;
 - (vii) the payment out of money in court;
 - (viii) the discharge from liability of any party;
 - (ix) the payment, taxation or waiver of costs, or such provision for costs as may be agreed;
- (c) any order, to be included in a judgment or order to which the preceding paragraphs apply, for–
 - (i) the extension of the period required for the service or filing of any pleading or other document;
 - (ii) the withdrawal of the record;
 - (iii) liberty to apply, or to restore.

Rule 180
Consequential
Amendment

(3) Before any judgment, or order to which this rule applies may be entered, or sealed, it must be drawn up in the terms agreed and expressed as being “By Consent” and it must be endorsed by solicitors acting for each of the parties.

(5) This rule shall not apply to any judgment or order in proceedings in which any of the parties is a litigant in person or a person under a disability.

5B. Handing down reasons for judgment or order (O. 42, r. 5B)

(1) Where it has been announced that a judgment or order and reasons therefor or the reasons for a judgment or order previously pronounced will be given in writing, the Court may on the date fixed, instead of reading in full the judgment or order and reasons therefor or the reasons, as the case may be, hand down a copy thereof for each of the parties and endorse the record accordingly.

(2) Where a date has been fixed for handing down a judgment or order and reasons therefor or the reasons for a judgment or order previously pronounced, notice thereof shall be given to the parties, but it shall not be necessary for them to appear by counsel or solicitor or in person.

(3) Where a written judgment is handed down pursuant to this rule the Court

Remarks

may make therein an order nisi as to costs and, unless an application has been made to vary that order, that order shall become absolute 14 days after the decision is pronounced.

(4) Where the judgment or order and reasons therefor or the reasons are given at a later date and, being recorded in writing, are not read in full, the Court shall—

- (a) lodge a copy thereof in the High Court Library; and
- (b) make a copy thereof available for public inspection in the Registry.

Rules of the District Court (Amendment) Rules 2008

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

Order 44 – PROCEEDINGS UNDER JUDGMENTS AND ORDERS

Remarks

1. Application to orders (O. 44, r. 1)

In this Order references to a judgment include references to an order.

2. Service of notice of judgment on person not a party (O. 44, r. 2)

(1) Where in an action for–

- (a) the administration of the estate of a deceased person; or
- (b) the execution of a trust; or
- (c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the action.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.

(2A) Order 6, rule 7(3) and (5) shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.

(3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 52 in Appendix A and accompanied by a form of acknowledgment of service in Form No. 15 in Appendix A with such modifications as may be appropriate and the copy of the notice to be served shall be a sealed copy.

(4) A person served with notice of a judgment may, within one month after service of the notice on him, and after acknowledging service, apply to the Court to discharge, vary or add to the judgment.

(5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.

(6) Order 12, rules 1, 3 and 4, shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

3. Directions by the Court (O. 44, r. 3)

(1) Where a judgment given in a cause or matter contains directions which make it necessary to proceed in chambers under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted;
 - (b) the evidence to be adduced in support thereof;
 - (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft;
 - (d) without prejudice to Order 15, rule 17, the parties required to attend all or any part of the proceedings;
 - (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented; and
 - (f) the time within which each proceeding is to be taken,
- and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under the rule.

4. Application of rules 5 to 8 (O. 44, r. 4)

Rules 5 to 8 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made; and
 - (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,
- and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

5. Advertisements for creditors and other claimants (O. 44, r. 5)

The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

6. Examination of claims (O. 44, r. 6)

- (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—
 - (a) examine the claims of persons claiming to be creditors of the estate;
 - (b) determine, so far as he is able, to which of such claims the estate is liable; and
 - (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.
- (2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—
 - (a) examine the claims;
 - (b) determine, so far as he is able, which of them are valid; and
 - (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.
- (3) If the personal representative or trustee concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

7. Adjudication on claims (O. 44, r. 7)

For the purpose of adjudicating on claims the Court may—

- (a) direct any claim to be investigated in such manner as it thinks fit;
- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it; or
- (c) allow any claim after or without proof thereof.

8. Notice of adjudication (O. 44, r. 8)

The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

9. Interest on debts (O. 44, r. 9)

(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

- (a) on any such debt as carries interest, at the rate it carries; and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule “debt” (債項) includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

10. Interest on legacies (O. 44, r. 10)

Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of 8 per cent per annum beginning at the expiration of one year after the testator's death.

11. Master's Order (O. 44, r. 11)

(1) Subject to Order 37, rule 2, the result of proceedings before a master under a judgment shall be stated in the form of an order.

(2) Subject to any direction of the master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the cause or matter in which it is made.

(3) An order under this rule shall contain such directions as the master thinks fit as to the further consideration, either in court or in chambers, of the cause or matter in which it is made.

(4) Every order made under this rule shall have immediate binding effect on

the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the master may direct.

12. Appeal against order of master (O. 44, r. 12)

(1) Subject to paragraph (2), Order 58, rule 1 shall apply to an order under ~~this rule~~ **rule 11** as it applies to any judgment, order or decision of the master: **save that the hearing shall be in open court unless the Court directs otherwise.**

Rule 181
Alignment with RHC

(1A) The following provisions have effect in the application of Order 58, rule 1 to an order made under rule 11 –

- (a) the notice referred to in Order 58, rule 1(2) shall state the grounds of the appeal;**
- (b) no fresh evidence (other than evidence as to matters which occurred after the date of the master's order) shall be admitted except on special grounds;**
- (c) the judge hearing the appeal has the same power to draw inferences of fact as has the Court of Appeal under Order 59, rule 10(3) of the Rules of the High Court (Cap. 4 sub. leg. A).**

(2) If the order is to be acted on by the Judiciary Accountant or is an order passing a receiver's account, notice of appeal must be issued not later than 2 clear days after the making of the order and, where the order is to be acted on by the Judiciary Accountant, a duplicate of it must be served on the Judiciary Accountant as soon as practicable after it is made.

Rules of the District Court (Amendment) Rules 2008

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

Order 48 – EXAMINATION OF JUDGMENT DEBTOR, ETC.

Remarks

1. Order for examination of judgment debtor (O. 48, r. 1)

(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as “the judgment debtor”) of money, the Court may, on an application made ex parte by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a corporation, an officer thereof, to attend before a master and be orally examined on the questions—

- (a) whether any and, if so, what debts are owing to the judgment debtor; and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

(2) An order under this rule must be served personally on the judgment debtor and on any officer of a corporation ordered to attend for examination.

(3) Any difficulty arising in the course of an examination under this rule before a master may be referred to a judge and he may determine it or give such directions for determining it as he thinks fit.

2. Examination of party liable to satisfy other judgment (O. 48, r. 2)

Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

~~**3. Examiner to make record of debtor’s statement (O. 48, r. 3)**~~

~~—The master conducting the examination shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other~~

Rule 182
Alignment with RHC

Remarks

~~person at the examination, read it to him and ask him to sign it; and if he refuses the master shall sign the statement.~~

3. Record of judgment debtor's evidence given at examination
(O. 48, r. 3)

A master conducting the examination shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor or other person at the examination.

Rules of the District Court (Amendment) Rules 2008

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

Order 49B - EXECUTION AND ENFORCEMENT OF JUDGMENT FOR MONEY BY IMPRISONMENT

Remarks

1. Securing attendance at examination (O. 49B, r. 1)

(1) Where a judgment for the payment of a specified sum of money is, wholly or partly, unsatisfied, the Court, on an ex parte application of the judgment creditor, may order that the judgment debtor be examined under rule 1A and shall, for the purpose of securing the attendance of the judgment debtor at an examination under rule 1A either-

- (a) order the judgment debtor, by an order which shall be served personally upon him, to appear before the Court at a time appointed by the Court, with such documents or records as the Court may specify; or
- (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including the conduct of the judgment debtor, to believe that an order under subparagraph (a) may be ineffective to secure the attendance of the judgment debtor for examination, order that he be arrested and brought before the Court before the expiry of the day after the day of arrest.

(2) On an application under paragraph (1), the Court may make an order prohibiting the judgment debtor from leaving Hong Kong.

(3) Where a judgment debtor fails to appear as ordered under paragraph (1)(a), the Court may order that he be arrested and brought before the Court for examination before the expiry of the day after the day of arrest.

(4) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to this rule.

(5) The order for arrest under paragraph (3) shall be in Form No. 102 in Appendix A.

1A. Examination of judgment debtor (O. 49B, r. 1A)

(1) Upon appearance of the judgment debtor for examination, he shall give evidence and he may be examined on oath by the judgment creditor and the Court; and the Court may receive such other evidence as it thinks fit.

- (2) The judgment debtor shall, at his examination, make a full disclosure of all his assets, liabilities, income and expenditure and of the disposal of any assets or income and shall, subject to the directions of the Court, answer all questions put to him.
- (3) Where the examination is adjourned, the Court shall order that the judgment debtor appear at the resumption of the examination and may-
- (a) order that he be prohibited from leaving Hong Kong; or
 - (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including any evidence heard by the Court and the conduct of the judgment debtor, to believe that he may not appear at the resumption of the examination, order that he be imprisoned until that resumption.
- (4) The order for imprisonment under paragraph (3)(b) shall be in Form No. 103 in Appendix A.

1AA. Record of judgment debtor's evidence given at examination (O. 49B, r. 1AA)

Rule 183
Alignment with RHC

The Court shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor at the examination conducted under rule 1A.

1B. Power of Court following examination (O. 49B, r. 1B)

- (1) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor-
- (a) is able to satisfy the judgment, wholly or partly; or
 - (b) has disposed of assets with a view to avoiding satisfaction of the judgment or the liability which is the subject of the judgment, wholly or partly; or
 - (c) has wilfully failed to make a full disclosure as required under rule 1A(2) or at the examination under Order 48 or to answer any question as provided under that rule or Order,
- the Court may, in its discretion, order the imprisonment of the judgment debtor for a period not exceeding 3 months.
- (2) (a) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor is able or will be able to satisfy the judgment, wholly or partly, by instalments or otherwise, it may order him to satisfy the judgment in such manner as it thinks fit.
- (b) The Court may, on application, discharge, vary or suspend an order made under subparagraph (a), either absolutely or subject to such

- conditions as it thinks fit.
- (3) (a) Where the judgment debtor fails to comply with an order made under paragraph (2), the judgment creditor may apply to the Court, on not less than 2 clear days notice to the judgment debtor, for an order for the imprisonment of the judgment debtor and the Court may, unless the judgment debtor shows good cause, order the imprisonment of the judgment debtor for a period not exceeding 3 months.
- (b) Notwithstanding rule 7, the Court may order the imprisonment of the judgment debtor on each occasion of a failure to comply with an order made under paragraph (2) or more than once in respect of a continuing failure to comply with an order made under that paragraph.
- (4) The order for imprisonment under paragraph (1) shall be in Form No. 104 in Appendix A.
- (5) The application under paragraph (3)(a) shall be in Form No. 105 in Appendix A.
- (6) An order under paragraph (1), (2) or (3) shall not prevent execution of the judgment by other means unless the Court so directs.
- (7) An order for imprisonment of a judgment debtor shall be made in open court.

1C. Imprisonment not to satisfy debt (O. 49B, r. 1C)

An order for imprisonment under this Order shall not satisfy or extinguish any judgment debt.

2. Support and maintenance allowance to prisoner for debt (O. 49B, r. 2)

When a judgment debtor is committed to prison in execution of the judgment the Court shall fix whatever monthly allowance it may think sufficient for his support and maintenance, not exceeding \$660 per diem, which shall be paid by the person at whose instance the judgment has been executed to the Commissioner of Correctional Services by monthly payments in advance, the second and subsequent such payments to be made not less than 7 days before the last preceding such payment is exhausted.

3. Removal to hospital of prisoner for debt in case of serious illness
(O. 49B, r. 3)

(1) In case of the serious illness of any person imprisoned in execution of a judgment it shall be lawful for the Court, on the certificate of the medical officer of the prison in which he is confined or of the Director of Health, to make an order for the removal of the judgment debtor to a hospital and for his treatment there under custody until further order.

(2) In any such case the period of the judgment debtor's stay in hospital shall be counted as part of his term of imprisonment and his support and maintenance money shall be paid as if no such order had been made.

4. Release of prisoner for debt (O. 49B, r. 4)

Every person arrested or imprisoned in execution of a judgment shall be released at any time on the judgment being fully satisfied, or at the request of the person at whose instance the judgment has been executed, or on such person omitting to pay his support and maintenance money.

5. Recovery of amount of support and maintenance money
(O. 49B, r. 5)

All sums paid by a plaintiff for the support and maintenance of a person imprisoned in execution of a judgment shall be added to the costs of the judgment and shall be recoverable by the attachment and sale of the property of the judgment debtor; but the judgment debtor shall not be detained in custody or arrested on account of any sum so paid.

6. Recovery of costs of execution (O. 49B, r. 6)

The costs of obtaining and executing the order and warrant of arrest or imprisonment shall be added to the costs of the judgment and shall be recoverable accordingly.

7. Effect of discharge of prisoner for debt (O. 49B, r. 7)

Subject to rule 1B(3)(b), when any person imprisoned in execution of a judgment has been once discharged he shall not again be imprisoned on account of the same judgment, but his property shall continue liable, under the ordinary rules, to attachment and sale until the judgment is fully satisfied.

8. Meaning of “judgment creditor” (O. 49B, r. 8)

In this Order “judgment creditor” (判定債權人) includes any person entitled to enforce the judgment.

Rules of the District Court (Amendment) Rules 2007

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

Order 50 - CHARGING ORDERS, STOP ORDERS, ETC.

Remarks

1. Order imposing a charge on a beneficial interest (O. 50, r. 1)

(2) An application by a judgment creditor for a charging order in respect of a judgment debtor's beneficial interest may be made ex parte, and any order made on such an application shall in the first instance be an order, made in Form No. 75 in Appendix A, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.

(3) The application shall be supported by an affidavit-

- (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
- (b) stating the name of the judgment debtor and of any creditor of his whom the applicant can identify;
- (ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating-
 - (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap. 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; and
 - (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap. 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap. 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), as the case may be; (18 of 2003 s. 24)
- (c) giving full particulars of the subject-matter of the intended charge, including, in the case of securities other than securities in court, the full title of the securities, their amount and the name in which they stand and, in the case of funds in court, the number of the account; and
- (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.

(4) Unless the Court otherwise directs, an affidavit for the purposes of this

rule may contain statements of information or belief with the sources and grounds thereof.

(5) An application may be made for a single charging order in respect of more than one judgment or order against the judgment debtor.

2. Service of notice of order to show cause (O. 50, r. 2)

(1) On the making of an order to show cause, notice of the order shall, unless the Court otherwise directs, be served as follows-

- (a) a copy of the order, together with a copy of the affidavit in support, shall be served on the judgment debtor;
- (b) where the order relates to securities other than securities in court, copies of the order shall also be served-
 - (iii) in the case of stock of any body incorporated within Hong Kong, on that body;
 - (iv) in the case of stock of any body incorporated outside Hong Kong, being stock registered in a register kept in Hong Kong, on the keeper of the register;
 - (v) in the case of units of any unit trust in respect of which a register of unit holders is kept in Hong Kong, on the keeper of the register;
- (c) where the order relates to a fund in court, a copy of the order shall be served on the Registrar at the Registry; and
- (d) where the order relates to an interest under a trust, copies of the order shall be served on such of the trustees as the Court may direct.

(2) Without prejudice to the provisions of paragraph (1) the Court may, on making the order to show cause, direct the service of copies of the order, and of the affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

(3) Documents to be served under this rule must be served at least 7 days before the time specified for the further consideration of the matter.

3. Order made on further consideration (O. 50, r. 3)

(1) On the further consideration of the matter the Court shall either make the order absolute, with or without modifications, or discharge it.

(2) Where the order is made absolute, it shall be in Form No. 76 in Appendix A, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

4. Order imposing charge on interest held by trustee (O. 50, r. 4)

- (1) Save as provided by this rule, the provisions of rules 1 to 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.
- (2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the affidavit required by rule 1(3) shall state the ground on which the application is based and shall verify the material facts.
- (3) On making the order to show cause, the Court shall give directions for copies of the order, and of the affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.
- (4) Rules 5 to 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under section 52AA(1)(b)(ii) or (iii) of the Ordinance references in those rules to "the judgment debtor" shall be references to the trustee.
- (5) Forms No. 75 and 76 in Appendix A shall be modified so as to indicate that the interest to be charged is held by the judgment debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the judgment debtor beneficially.

5. Effect of order in relation to securities out of Court (O. 50, r. 5)

- (1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.
- (2) Until such order is discharged or made absolute, the person or body served in accordance with rule 2(1)(b) shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the Court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.
- (3) If the Court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 76 in Appendix A, shall be served on the person or body specified in rule 2(1)(b) as may be appropriate and, save as provided in rule 7(5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.

- (4) This rule does not apply to orders in respect of securities in court.

6. Effect of order in relation to funds in Court (O. 50, r. 6)

- (1) Where an order to show cause has been made in relation to funds in court (including securities in court) and a copy thereof has been served on the Registrar in accordance with rule 2, no disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.
- (2) If the Court makes the order absolute, a copy of the order shall be served on the Registrar at the Registry.

7. Discharge, etc., of charging order (O. 50, r. 7)

- (1) Subject to paragraph (2) on the application of the judgment debtor or any other person interested in the subject-matter of the charge, the Court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks just.
- (2) Where an application is made for the discharge of a charging order in respect of the judgment debtor's land on the ground that the judgment debt has been satisfied, the applicant shall state in his application, and the Court shall specify in its order the lot number of the land and the memorial number of any relevant charge registered against the land.
- (3) Notice of an application for the discharge or variation of a charging order shall be served on such interested parties as the Court may direct.
- (4) Where an order is made for the discharge or variation of a charging order in respect of funds in court, a copy thereof shall be served on the Registrar at the Registry.
- (5) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in court, a copy thereof shall be served on the person or body specified in rule 2(1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary, any stop notice in respect of such securities which may be in force pursuant to the original order.

9. Jurisdiction of master to grant injunction (O. 50, r. 9)

A master shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1, 3 or 4 and an application for

an injunction under this rule may be joined with the application for the order under rule 1, 3 or 4 to which it relates.

9A. Enforcement of charging order by sale (O. 50, r. 9A)

- (1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by originating summons.
- (2) The provisions of Order 88 shall apply to all such proceedings.

10. Funds in Court: stop order (O. 50, r. 10)

- (1) The Court, on the application of any person-
 - (a) who has a mortgage or charge on the interest of any person in funds in court; or
 - (b) to whom that interest has been assigned; or
 - (c) who is a judgment creditor of the person entitled to that interest,may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant. (See Appendix A, Form 79)
- (2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.
- (3) The summons must be served on every person whose interest may be affected by the order applied for but shall not be served on any other person.
- (4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds occasioned by the application.

11. Securities not in Court: stop notice (O. 50, r. 11)

- (1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 52AA(2)(b) of the Ordinance, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.
- (2) A person claiming to be so entitled must file in the Registry-
 - (a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
 - (b) a notice in Form No. 80 in Appendix A (a stop notice), signed by

the deponent to the affidavit, and annexed to it, addressed to the body or unit trust concerned, and must serve an office copy of the affidavit, and a copy of the notice sealed with the Seal of the Court on that person or body specified in rule 2(1)(b).

(3) There must be endorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the person or body concerned, a notice to that effect, and as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

12. Effect of stop notice (O. 50, r. 12)

Where a stop notice has been served in accordance with rule 11 then, so long as the stop notice is in force, the person or body on which it is served shall not register a transfer of the securities or take any other steps restrained by the stop notice until 14 days after sending notice thereof, by ordinary pre-paid post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other steps, after the expiry of that period.

13. Amendment of stop notice (O. 50, r. 13)

If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

14. Withdrawal, etc., of stop notice (O. 50, r. 14)

(1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the person or body on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 11 relates,

may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by originating summons, and the summons must be served on the person on whose behalf a stop notice was filed.

The summons shall be in Form No. 10 in Appendix A.

15. Order prohibiting transfer, etc., of securities (O. 50, r. 15)

(1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 52AA(2)(b) of the Ordinance, may by order prohibit the person or body concerned from registering any transfer of the securities or taking any other steps to which section 72C(4) of the Ordinance applies.

The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which may not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.

(2) An application for an order under this rule must be made ~~by originating summons in Form No. 10 in Appendix A~~ **by summons**.

Rule 27
Alignment to RHC

(2A) An originating summons under this rule must be in Form No. 10 in Appendix A.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

16. Partner's interest in partnership property (O. 50, r. 16)

Nothing in this Order shall affect the provisions of Order 81, rule 10.

Rules of the District Court (Amendment) Rules 2008

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

Order 52 – COMMITTAL

Remarks

1. Committal for contempt of Court (O. 52, r. 1)

The power of the Court to punish for contempt of court may be exercised by an order of committal made by a judge. (See Appendix A, Forms No. 85, 85A)

2. Grant of leave to apply for committal (O. 52, r. 2)

(1) No application for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a judge, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Registrar and must at the same time lodge with the Registrar copies of the statement and affidavit.

(4) 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.

(5) 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 after such order.

(6) Without prejudice to the powers conferred by Order 20, rule 8, the judge hearing an application for leave may allow the applicant's statement to be amended on such terms, if any, as the judge thinks fit.

(7) If the judge grants leave he may impose such terms as to costs and as to giving of security as he thinks fit.

3. Application for order after leave to apply granted (O. 52, r. 3)

(1) When leave has been granted to make an application for an order of committal, the application shall be made by originating summons to a judge and unless the judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the originating summons and the day named therein for the hearing.

(1A) The originating summons shall state the grounds in respect of which leave for making an application for an order of committal has been granted.

Rule 184
Alignment with RHC

(2) Unless within 14 days after such leave was granted the originating summons is entered for hearing the leave shall lapse.

(3) The originating summons, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, and the notice of hearing of the originating summons must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court under Order 65, rule 4, the judge may dispense with service under this rule if he thinks it just to do so.
(L.N. 217 of 2000)

5. Saving for power to commit without application for purpose
(O. 52, r. 5)

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court.

6. Provisions as to hearing (O. 52, r. 6)

(1) Subject to paragraph (2), the judge hearing an application for an order of committal may sit in private in the following cases, that is to say–

- (a) where the application arises out of proceedings relating to the adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Ordinance (Cap. 136);
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) where it appears to the judge that in the interests of the administration of justice or for reasons affecting the security of Hong Kong the application should be heard in private, but, except as aforesaid, the application shall be heard in open court.

(2) If the judge hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, he shall in open court state—

- (a) the name of that person;
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c) the length of the period for which he is being committed.

(3) Except with the leave of the judge hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds **set out in the statement under rule 2 as stated in the originating summons under rule 3(1A).**

Rule 185
Alignment with RHC

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

7. Power to suspend execution of committal order (O. 52, r. 7)

(1) The judge by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as he may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the judge otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

8. Discharge of person committed (O. 52, r. 8)

(1) The judge may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power

of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the judge may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as he thinks fit.

9. Saving for other powers (O. 52, r. 9)

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any written law in like manner as if he had been guilty of contempt of the Court of First Instance, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

Rules of the District Court (Amendment) Rules 2008

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

Order 58 – APPEALS

Remarks

1. Appeals from master to judge in chambers (O. 58, r. 1)

(1) Except as provided by rule 2 and Order 32 rule 17, an appeal shall lie to a judge in chambers from any judgment, order or ~~determination of a master~~ decision of a master, irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing.

Rule 121
Rec 109

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or ~~determination~~ decision was given or made a notice to attend before the judge on a day specified in the notice or as on such other day as may be directed.

(3) Unless the Court otherwise orders, the notice must be issued within 14 days after the judgment, order or ~~determination~~ decision appealed against was given or made and must be served within 5 days after issue and an appeal to which this rule applies shall not be heard sooner than 2 clear days after such service.

(4) No further evidence (other than evidence as to matters which have occurred after the date on which the judgment, order or decision was given or made) may be received on the hearing of an appeal under this rule except on special grounds.

2. Appeals to Court of Appeal (O. 58, r. 2)

(1) Subject to the provisions of this rule, an appeal shall lie to the Court of Appeal from any judgment, order or ~~determination~~ decision of a judge.

Rule 122
Consequential
amendment

~~(2) Subject to the provisions of this rule, an appeal shall lie to the Court of Appeal from any judgment, order or determination of a master on the hearing or determination of any cause, matter, question or issue tried or assessed before him under Order 14, rule 6(2), Order 36, rule 1, Order 37, Order 49B or Order 84A, rule 3.~~

(2) Subject to the provisions of this rule, an appeal lies to the Court of Appeal from –

Rule 122
Alignment with RHC

(a) a judgment, order or decision of a master on any cause,

matter, question or issue tried or assessed before him under Order 14, rule 6(2), Order 36, rule 1, Order 37 or Order 84A, rule 3; and

- (b) a judgment, order or decision (other than an interlocutory judgment, order or decision) of a master given or made under Order 49B.

(2A) Notwithstanding paragraph (2)(b), an appeal lies to the Court of Appeal as of right from an order for imprisonment given or made by a master under Order 49B;

~~(3) Subject to the provisions of the Ordinance, an appeal under this rule shall lie only with the leave of the Court or the Court of Appeal.~~

~~(4) An application for leave must be made to the judge, or to the master in the case of an appeal under paragraph (2), 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 was sealed or otherwise perfected, that is to say—~~

- ~~—— (a) in the case of an appeal from any judgment, order or determination of a master under paragraph (2), 14 days;~~
~~—— (b) in the case of an appeal from any interlocutory order, or any judgment or order given or made under Order 14 or Order 86 by a judge, 14 days;~~
~~—— (c) in any other case, 28 days;~~
~~or if leave is refused, within a further 14 days from the date of such refusal to the Court of Appeal.~~

(4) An application for leave to appeal must be made to a judge, or to a master in the case of an appeal under paragraph (2), within –

- (a) in the case of an appeal from a judgment, order or decision of a master under paragraph (2), 28 days from the date of the judgment, order or decision;
(b) in the case of an appeal from a judgment, order or decision (other than an interlocutory judgment, order or decision) of a judge, 28 days from the date of the judgment, order or decision;
(c) in the case of an appeal from an interlocutory judgment, order or decision of a judge, 14 days from the date of the interlocutory judgment, order or decision.

(4A) If the judge or master (as the case may be) refuses an application for leave made under paragraph (4), a further application for leave may be made to the Court of Appeal within 14 days from the date of refusal.

(4B) An application under paragraph (4) or (4A) must be made inter partes if the proceedings to which the judgment, order or decision relates are inter partes.

(5) So far as is practicable, every application for leave to appeal made to a

Remarks

judge or a master shall be made to the judge or the master against whose judgment, order or ~~determination~~ decision the appeal is sought.

(6) In any case in which the Court of Appeal may so allow, any such application may be made direct to the Court of Appeal.

~~(7) On any such application, the Court or the Court of Appeal, as the case may be, may in its discretion grant leave to appeal on such terms as to costs, payment of money into court, giving security for the prosecution of the appeal or otherwise as it may think fit.~~

(8) Where leave to appeal is granted under paragraph (4) or (4A), the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap. 4 sub. leg. A), not later than 7 days after the date when leave is granted.

(9) In the case of an appeal from an order specified in section 63(3) of the Ordinance or an order for imprisonment given or made under Order 49B, the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap. 4 sub. leg. A), not later than ~~14 days from the date on which the order of the Court was sealed or otherwise perfected~~ 28 days from the date of the order of the Court.

Rule 122
Consequential
amendment

Rule 122
Alignment with RHC

(10) The Court or the Court of Appeal may, at any time, and notwithstanding that the time for an appeal or an application for leave to appeal may have already expired, extend the time for the appeal or for applying for leave to appeal.

3. Appeal not to operate as stay of proceedings (O. 58, r. 3)

Except so far as the Court may otherwise direct, an appeal under this Order shall not operate as a stay of the proceedings in which the appeal is brought.

4. Non-interlocutory judgments and orders (O. 58, r. 4)

Rule 123
Alignment with RHC

(1) For the purposes of rule 2(4)(b) and (c), the following judgments and orders are not interlocutory –

- (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 53(3) of the Ordinance;**
- (c) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);**
- (d) an order for the imprisonment of a judgment debtor under Order 49B;**
- (e) an order of committal for contempt of court under Order 52, rule 1; and**
- (f) 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.

(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 the construction of any document under Order 14A, rule 1(1);
- (d) a judgment or order made 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) may 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) and (e) includes an order refusing, varying or discharging the order.

Rules of the District Court (Amendment) Rules 2008

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

Order 62 - COSTS

Remarks

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

(1) In this Order-

“certificate” (證明書) includes allocatur;

“contentious business” (爭議事務) means any business done, whether as a barrister, solicitor or advocate, in or for the purpose of proceedings begun before the Court; (10 of 2005 s. 180)

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

“the Court” (區域法院) means the District Court or any one or more judges thereof, whether sitting in court or in chambers, the Registrar or master;

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

Rule 110
Rec 94-97

“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;

“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 –

Rule 128

(a) a party entitled to payment of costs;

(b) a party who has acknowledged service or taken any part in the proceedings which gave rise to the taxation proceedings, and who is directly liable under a costs order made against him;

(c) a person who has given the party entitled to payment of costs and the Registrar written notice that he has a financial interest in the outcome of the taxation; or

(d) a person in respect of whom a direction has been given under rule 21(3);

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

Remarks

“taxing master” (訟費評定官) means the Registrar as taxing master-~~3~~

Rule 110
Rec 94-97

“wasted costs order” () means an order made under section 53(3) of the Ordinance.

(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)

(1) This Order shall apply to all proceedings in the Court.

(4) ~~The powers and discretion of the Court as to costs under section 53 of the Ordinance (which provides that the costs of and incidental to any proceedings in the Court shall be in the discretion of the Court and that the Court shall have full power to determine by whom and to what extent the costs are to be paid)~~ The powers and discretion of the Court as to costs under section 53 and 53A 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.

Rule 8
Rec7-9, 84

ENTITLEMENT TO COSTS

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

Rule 124
Rec 122

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

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

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

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

Remarks

(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 accordance with Order 24, rule 3~~ **in pursuance of any provision of Order 24**; or

(b) on whom a notice to admit documents is served in accordance with 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.

Rule 186
Alignment with
RHC

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

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

Rule 63
Consequential
Amendment

(9) Where any person claiming to be a creditor seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, 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 2 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 47A, 47B or 47D of the Ordinance, the person against whom the order is sought shall be entitled, unless the Court otherwise directs, to his costs of and incidental to the application and of complying with any order made thereon and he may, after giving the applicant 7 days' notice of his intention to do so, tax such costs and, if they are not paid within 4 days after taxation, sign judgment for them.

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

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

(2) In the case of any proceedings transferred to the Court from any other court or tribunal, the costs of the whole proceedings, both before and after the transfer, may (subject to any order of the court or tribunal ordering the transfer) be dealt with by the Court to which the proceedings are transferred.

Rule 187
Alignment with
RHC

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court or tribunal, rules 28, 31 and 32 do not apply in relation to those costs, but, except in relation to costs of proceedings transferred from the Court of First Instance or the Lands Tribunal, the order shall specify the amount of the costs to be allowed.

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-

Rule 9

(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;

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

Rule 125
Rec 122

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

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

~~(d) any written offer made under Order 22, rule 14, provided that the Court shall not take such an offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a payment into court under Order 22.~~

Rule 64
Rec 38 to 43

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

Rule 9
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;
 - (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.

(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)

(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)

Rule 150
Consequential
Amendment

- (1) Where the Court is considering whether to exercise its power under section 53 or 53A 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 where the Court is considering whether to make –

(a) a wasted costs order; or

(b) an order under section 47A or 47B of the Ordinance.

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

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

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

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

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

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

(c) any unnecessary delay in the proceedings.

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

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

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

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

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

Rule 126
Rec 122

Rule 139
Rec 135-136

Rule 111
Rec 94-97

- ~~(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 proceedings 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.~~

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

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

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

~~(8) In any proceedings 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.~~

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

Rule 111
Rec 94-97

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

- (a) the legal representative, whether personally or through his employee or agent, has caused a party to incur wasted costs as defined in section 53(5) of the Ordinance; and**
- (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.**

(2) A wasted costs order may –

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

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

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

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

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

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

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

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

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

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

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

Rule 111
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.

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

Rule 111
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)

Rule 111
Rec 94-97

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

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

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

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

Rule 111
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 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 the bill of costs and for attending the taxation.

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

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

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

9. Fractional or gross sums in place of taxed costs Taxed costs, fractional taxed costs or costs summarily assessed for non-interlocutory applications
(O. 62, r. 9)

Rule 107
Rec 88, 89, 92

(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 under section 52B of the Ordinance in respect of his remuneration, disbursements or expenses; or

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

(3) Where a writ in an action is endorsed in accordance with Order 6, rule 2(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. (L.N. 217 of 2000)~~

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

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

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

Rule 108
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.~~

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

Rule 108
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 amount of 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 amount of 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 amount of the taxed costs in respect of the interlocutory application, the taxing master may –
 - (i) direct the party in whose favour the order was made to pay the difference; or
 - (ii) set off the difference against any other costs to which the party in whose favour the order was made is entitled and direct payment of any balance.

(4) Where –

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

the 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.

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

Rule 108
Rec 88, 89, 92

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

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

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

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

Rule 108
Rec 88, 89, 92

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

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

(2) In this rule –

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

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

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

Rule 108
Rec 88, 89, 92

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

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

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

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

(5) Costs taxed under paragraph (2) or (4) shall be paid forthwith, whether or not the action has concluded.

(6) Paragraph (5) does not apply if the person against whom the costs order is made is an aided person.

10. When a party may sign judgment for costs without 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 Appendix A, Form No. 50)

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

Rule 65
Consequential
Amendment

~~(3) Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into court by one of the defendants, he may, subject to paragraph (4), tax his costs and sign judgment for them against that defendant in accordance with paragraph (2). (See Appendix A, Form 51)~~

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

(5) In ~~each of the circumstances mentioned in this rule~~ in this rule, Order 22, rule 16 and 17 and Order 25, rule 4(5) an order for costs shall be deemed to have been made to the effect ~~respectively~~ described and, for the purposes of section 50 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.

Rule 65
Consequential
Amendment

Remarks

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 proceedings 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.

Rule 28
Rec 11-16

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

Rule 10
Rec 7-9, 84

- (1) Proceedings under section 53A(2) of the Ordinance may be commenced by originating summons in Form No. 10 in Appendix A.
- (2) The originating summons must be accompanied by–
(a) an affidavit exhibiting the agreement referred to in section 53A(1) of the Ordinance; and
(b) the plaintiff's bill of costs or statement of costs.
- (3) An acknowledgment of service of the originating summons must be in Form No. 15A in Appendix A.
- (4) A master may make a summary assessment of or an order for taxation of the costs that are the subject matter of the proceedings commenced in accordance with paragraph (1).
- (5) Orders 13A, 22 and 27 and Order 28, rules 1A, 4(3) to (5) and 7 to 9 do not apply in relation to the proceedings commenced in accordance with paragraph (1) unless otherwise directed by the Court.

POWERS OF TAXING OFFICERS

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

A taxing master shall have power to tax–

- (a) ~~the costs of or arising out of any cause or matter in the Court; and~~ costs of or incidental to any proceedings in the Court;
- (b) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1); and
- (c) any other costs the taxation of which is directed by an order of the Court.

Rule 11
Rec 7-9, 84

13. Powers of Chief Judicial Clerks to tax costs (O. 62, r. 13)

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

Rule 129
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~~ **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.

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

Rule 132
Rec 135-136

(1) A taxing master may give directions –

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

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

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

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

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

- (a) take an account of any dealing in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings;

- (e) correct any clerical mistake in any certificate or order, or any error arising therein from any accidental slip or omission.

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

- (1) If, apart from this paragraph, a taxing master has power to tax any costs, the taxation of which has been assigned to some other taxing master, he may tax those costs and if, apart from this paragraph, he has power to issue a certificate for the taxed costs he shall issue a certificate for them.
- (2) Any taxing master may assist any other taxing master in the taxation of any costs the taxation of which has been assigned to that other officer.
- (3) On an application in that behalf made by a party to any cause or matter, a taxing master may, and if the circumstances require it shall, hear and dispose of any application in the cause or matter on behalf of the taxing master by whom the application would otherwise be heard.

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

- (1) A taxing master may-
 - (a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with such proceedings before that master;
 - (b) extend the period provided by rule 33(2) beyond the signing of the taxing master'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)

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.

Remarks

Rule 140
Clarification

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; and**
- (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.

(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)

Rule 140
Clarification

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

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

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

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

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

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

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

PROCEDURE OF TAXATION

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

Rule 130
Rec 134

~~(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.~~

~~(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.~~

~~(3) 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.~~

~~(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.~~

~~(4A) Costs in the amount specified in any notice under paragraph (4) shall be allowed unless within 14 days after the service of such notice any person entitled to be heard on taxation applies for an appointment to tax.~~

~~(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.~~

~~(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.~~

~~(7) The fee payable under paragraph (6) shall be deducted by the Court from the amount deposited under paragraph (5).~~

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

Rule 130
Rec 134-136

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

(a) a notice of commencement of taxation; and

(b) his bill of costs.

(2) The party shall serve a copy of the notice of commencement of taxation and of the bill of costs on every other party entitled to be heard on taxation

within 7 days after the notice and the bill of costs were filed in the Court.

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

(4) Subject to paragraphs (2) and (3), it is not necessary for a copy of the notice of commencement of taxation or of the bill of costs to be served on any party who has not acknowledged service in the proceedings which gave rise to the taxation.

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

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

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

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

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

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

Rule 130
Rec 134-136

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

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

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

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

Rule 130
Rec 134

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

- (a) tax the bill of costs without a hearing; and
- (b) make an order nisi as to –

- (i) the amount which he allows in respect of the whole or part of the bill of costs; and
- (ii) the costs of the taxation.

(2) Where the taxing master has taxed the bill of costs without a hearing and made an order nisi under paragraph (1), the party who has applied for setting down the taxation under rule 21A(1) shall serve a copy of the order nisi on every other party entitled to be heard on taxation.

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

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

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

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

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

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

Rule 130
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 the whole or part of the bill of costs.

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

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

Rule 130
Clarification

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

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

Rule 141

~~(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 that paragraph, the taxing master, if he is satisfied that there has been undue delay in the filing of the bill of costs or in the service of the notice of appointment to tax, may make such order as he shall consider appropriate as to the costs of any application or of any order or as to the costs of the taxation and may disallow any item contained in the bill of costs.~~

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

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

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

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

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

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

- (a) agreed the amount of those costs with the person liable to pay them;
nor
- (b) proceeded with the taxation,

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

(3) The taxing master –

- (a) may order that the person entitled to payment of the costs must commence taxation proceedings in accordance with rule 21 or proceed with the taxation, within such period as may be specified in the order; and
- (b) may further order that that person shall not be entitled to commence those taxation proceedings or proceed with the taxation unless the person does commence those taxation proceedings or proceed with the taxation within the specified period or such extended period as may be allowed by the taxing master.

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

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

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

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

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

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

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

whichever is the later.

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

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

- (a) the date of the judgment or order of the Court which disposes of the action;
- (b) the date on which the Court makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
- (c) the date on which the taxing master orders under rule 9D(4) the person entitled to payment of the costs of any interlocutory proceedings in the Court to commence taxation proceedings; or
- (d) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court directing the taxation of them, the date on which he becomes entitled to tax those costs,

whichever is the later.

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

Rule 133
Rec 135-136

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

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

24.— Notice of taxation (O. 62, r. 24)

Rule 131
Rec 134

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

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

Remarks

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

Rule 131
Rec 134

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

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

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

- (a) must adjourn the hearing for such period as he may consider necessary to enable service of the notice of the adjourned hearing or of the bill of costs or both to be effected on the party; and
- (b) may make such order as he may consider appropriate in relation to costs thrown away by the adjournment.

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

Rule 134
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)

Rule 135
Rec 135-136

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

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

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

(1) Where any costs are to be paid out of a fund the taxing master may give

directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

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

- (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

Rule 142
Alignment with
RHC

28. Costs payable to one party by another or out of 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.

(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 in so far 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.

(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).

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(b), or rule 32(4) of this Order or Schedule 2 to this Order shall, **unless otherwise specified therein** apply to the costs of a litigant in person.

Rule 143

(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.**

Rule 109
Clarification

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

Rule 109
Rec 88, 89, 92

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

Order 62, rule 30 of the Rules of the High Court (Cap. 4 sub. leg.) shall, where appropriate, apply 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.

31. Costs payable to a trustee out of 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 Schedule 1 to 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.

(1A) The Court shall not, on taxation, allow as costs under items 5 and 6 of Schedule 1 to this Order an amount which exceeds two thirds of the amount which it would have allowed in respect of such items had the taxation been carried out by it in accordance with the scale applicable to a taxation of costs in the High Court.

- (2) On a taxation in relation to which 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, 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 Schedule 1 to this Order.

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which Schedule 2 to this Order applies in accordance with the provisions of that Schedule.

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

Rule 137
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)

Rule 144
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)

Rule 138
Alignment with
RHC

(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.

32A 32D. Costs for witnesses (O. 62, r. 32A 32D)

There may be allowed on taxation in respect of the attendance of witnesses such reasonable amounts as the taxing master thinks fit.

Rule 136
Consequential
Amendment

REVIEW

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

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

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

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

(2) An application under this rule for review of a taxing master's decision in respect of any item 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:

Rule 145
Clarification

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)

(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 judge (O. 62, r. 35)

(1) Any party who is dissatisfied with the decision of a taxing master to allow or to disallow in whole or in part of any item on review under rule 34, or with the amount allowed by a taxing master in respect of any item 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 him in accordance with rule 34(4) to state the reasons for his decision in respect of that item or part of an item 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 call assessors under section 58 of the Ordinance, the judge shall call 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.

TRANSITIONAL

36. Transitional provision relating to Part 13 of the Amendment Rules 2008 (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 13 of the Amendment Rules 2008, and rule 8 as in force immediately before the commencement continues to apply in relation those costs as if that Part had not been made.

37. Transitional provisions relating to Part 20 of the Amendment Rules 2008 (O. 62, r. 37)

(1) Where a party entitled to require any costs to be taxed has filed his bill of costs before the commencement of Part 20 of the Amendment Rules 2008, nothing in that Part applies in relation to the taxation, and Order 62 as in force immediately before the commencement applies in relation to the taxation as if it had not been amended by that Part.

(2) Where –

(a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of Part 20 of the Amendment Rules 2008; but

(b) any item of work to which the costs or charges specified in Schedule 1 or Part III of Schedule 2 of this Order relate was undertaken before the commencement,

then Schedule 1 or Part III of Schedule 2 of this Order as in force immediately before the commencement applies in relation to that item of work as if it had not been amended by Part 20 of the Amendment Rules 2008.

(3) Where –

(a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of Part 20 of the Amendment Rules 2008; but

(b) the writ of summons was issued before the commencement, then Part I and Part II of Schedule 2 of this Order as in force immediately before the commencement applies in relation to the writ of summons issued before the commencement as if they had not been amended by Part 20 of the Amendment Rules 2008.

(4) No costs for work undertaken before the commencement of Part 20 of the Amendment Rules 2008 are to be disallowed if those costs would have been allowed under this Order as in force immediately before the commencement.

Remarks

SCHEDULE 1 [r.32]

PART I
SCALE OF COSTS

Item	Particulars	Charges	
1.	Mechanical preparation of documents-		Rule 146
	(a) for the top copy, per page-		Alignment with
	(i) quarto size or above.....	\$50	RHC
	(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	
<u>1.</u>	<u>Preparation of a bundle of copies of documents, including the costs of copying and collating the documents and compiling (including indexing and pagination) the bundle, per page of whatever size</u>	<u>\$4 per page in respect of the first bundle, and \$1 per page in respect of each subsequent bundle</u>	
<u>1A.</u>	<u>Copying of documents, per page of whatever size</u>	<u>\$1</u>	
2.	Attendance suitable for unqualified staff, such as for filing of documents, delivery or collection of papers and to make appointments, whether such attendances are made by qualified or unqualified persons, for each attendance	\$65 <u>\$72</u>	
3.	Attendance for necessary search and inquiries – such fee as the Registrar thinks proper but not less than \$25 for each attendance		
4.	Service of any documents – such fee as the Registrar thinks proper but not less than \$25 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, counterclaim, 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

Rule 188

- 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.
6. Taxation of costs—obtaining the appointment, preparing bill of costs and copies and attending to lodge; attending taxation, paying taxing fee and lodging certificate or order Discretionary

PART II

GENERAL

1. Discretionary costs

- (2) In exercising his discretion 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.

2. Fees to counsel

- (1) Except in the case of taxation under the Legal Aid Ordinance (Cap. 91) and taxation of fees payable by the Government, 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 the Court unless—
- (a) where counsel appears for a plaintiff, the amount recovered exceeds \$150,000; (L.N. 94 of 2004)
 - (b) where counsel appears for a defendant, the amount claimed by the plaintiff exceeds \$150,000; (L.N. 94 of 2004)
 - (c) where counsel appears for a party making a counterclaim, the amount recovered exceeds \$150,000; (L.N. 94 of 2004)
 - (d) where counsel appears for a party against whom a counterclaim is made, the amount of the counterclaim exceeds \$150,000; (L.N. 94 of 2004)
 - (e) where counsel appears for a party to third party proceedings who issues the third party notice, the amount recovered exceeds \$150,000; (L.N. 94 of 2004)
 - (f) where counsel appears for a party to third party proceedings against whom the third party notice is issued, the amount claimed in the third party notice exceeds \$150,000; (L.N. 94 of 2004)
 - (g) where counsel appears for a party to proceedings on a notice issued by that party under Order 16, rule 8, the amount recovered exceeds \$150,000; (L.N. 94 of 2004)
 - (h) where counsel appears for a party to proceedings on a notice issued against that party under Order 16, rule 8, the amount claimed in the notice exceeds \$150,000; or (L.N. 94 of 2004)
 - (i) the Court has certified the attendance of counsel as being proper in the circumstances of the case. (L.N. 94 of 2004)
- (3A) Where a party appearing by counsel is awarded costs, but the costs of employing counsel are not allowed, the taxing master may, on taxation, allow such costs as may have been allowed if the party had appeared by a solicitor and not by counsel.
- (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 5 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.

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

(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).

4. Items to be authorized, certified, etc.

(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 subparagraph (a) the taxing master 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 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.

5. Attendances in chambers-equity jurisdiction

(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.

Remarks

Rule 147
Alignment with
RHC

**SCHEDULE 2 [rules 28A & 32]
FIXED COSTS**

**PART I
WRITS**

1. The Table hereunder shows the amount to be indorsed on the writ in respect of the solicitor's charges in an action for the recovery of money for the purpose of Order 6, rule 2(b) and of Part II of this Schedule. (L.N. 221 of 2001)
2. The amount indorsed in accordance with the Table hereunder shall be increased by (L.N. 221 of 2001)
- (a) a sum equal to the appropriate court fees;
 - (b) \$40 for every defendant after the first defendant;
 - (c) \$350 for substituted service effected on every defendant. (L.N. 221 of 2001)
3. (Repealed L.N. 221 of 2001)

TABLE OF FIXED COSTS

1. On Writ
- (a) where service is not by a solicitor \$300
 - (b) where service is by a solicitor \$450

**PART II
JUDGMENT**

The amount to be included in the judgment in respect of the plaintiff's solicitor's charges shall be the amount indorsed on the writ and in addition the amount shown below (L.N. 221 of 2001)

- (1) Where judgment is entered or given \$300
 - (a) on failure to give notice of intention to defend (L.N. 221 of 2001)
 - (b) in default of defence (L.N. 221 of 2001) \$300
 - (c) upon the defendant's admission or consent, or summarily \$300

Remarks

(d) — under Order 14, rule 3, either unconditionally or unless the debt or liquidated demand indorsed on the writ is paid into court or to the plaintiff's solicitors (L.N. 221 of 2001)	\$300
(2) Where judgment is upon a trial ex parte—	
(a) — where no defence has been filed	\$500
(b) — where a defence has been filed	\$700
(3) In the case of judgment in default of defence and the plaintiff makes an affidavit of service for the purpose of the judgment (the allowance to include the search fee) (L.N. 221 of 2001)	\$80
(4) In the case of judgment under Order 14, rule 3, where an affidavit of service of summons is required (L.N. 221 of 2001)	\$80
(5) In the case of judgment on failure to give notice of intention to defend on all applications by summons under Order 83A, rule 4 (which applies to money lender's 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	\$80
(b) — in any other case	\$40
(c) — for every defendant after the first defendant (L.N. 221 of 2001)	\$20
(6) Where service out of the jurisdiction is ordered and effected (L.N. 221 of 2001)	\$150 for every defendant

~~Note: Subject to any order as to costs, where the plaintiff's solicitor has necessarily attended Court more than once, a further sum of \$300 shall be allowed in respect of each such additional attendance.~~

**PART III
EXECUTIONS**

**~~Fixed Costs on the Issue of Execution
to Enforce a Judgment or Order~~**

~~Where execution is issued against a judgment debtor or garnishee for the purpose of enforcing a judgment or order obtained against him, fixed costs of \$350 shall be allowed to the judgment creditor's solicitor and be indorsed on the writ of execution. (L.N. 221 of 2001)~~

**PART IV
~~GARNISHEE ORDERS AND CHARGING ORDERS~~**

~~1. 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 is used \$40~~

~~——(ii) if an affidavit is used \$70~~

~~(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—~~

~~(i) basic costs \$100~~

~~(ii) additional costs where the garnishee fails to attend the hearing of the application and an affidavit of service is required \$40~~

~~2. Where a charging order is made—~~

~~(a) in respect of any stock, funds, annuities or shares, or any dividends or interest thereon or produce thereof, under Order 50; or~~

~~(b) in respect of any partnership property or profits, under section 25 of the Partnership Ordinance (Cap. 38);~~

~~there shall be allowed –~~

~~(i) — basic costs~~ \$400

~~(ii) — additional costs where an affidavit of service is required~~ \$40

~~(Part IV added L.N. 221 of 2001)~~

SCHEDULE 2

[rr. 28A & 32]

Rule 147
Alignment with
RHC

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

1. The scale of costs set out in Part II of this Schedule applies in relation to the following cases if the writ of summons therein was issued after the commencement of the Amendment Rules 2008 and was indorsed with a claim for a debt or liquidated demand only, that is to say –

- (a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;**
- (b) cases in which the plaintiff obtains –**
 - (i) judgment on failure to give notice of intention to defend under Order 13, rule 1; or**
 - (ii) judgment in default of defence under Order 19, rule 2.**

2. 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.

3. Notwithstanding anything in paragraph 1 or 2 of this Schedule or in the scale of costs set out in Part II of this Schedule, no costs shall be allowed in any case to which paragraph 1 or 2 of this Schedule applies unless –

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

4. In a case to which the scale of costs set out in Part II of this Schedule applies, there shall be added to the basic costs set out in the scale the fee which would have been payable on the issue of a writ for the amount recovered.

PART II
SCALE OF COSTS

<u>Item</u>	<u>Scale</u>
<u>Basic Costs</u>	<u>\$</u>
<u>To be allowed in cases under –</u>	
<u>subparagraph (a) of paragraph 1</u>	<u>6,000 if the plaintiff is legally represented and 350 if the plaintiff is not legally represented</u>
<u>subparagraph (b) of paragraph 1</u>	<u>6,500 if the plaintiff is legally represented and 300 if the plaintiff is not legally represented</u>
<u>paragraph 2</u>	<u>6,500 if the plaintiff is legally represented and 300 if the plaintiff is not legally represented</u>
<u>Additional Costs</u>	
<u>1. For each additional defendant after the first</u>	<u>350</u>
<u>2. Where substituted service is ordered and effected, for each defendant served</u>	<u>650</u>

PART III
MISCELLANEOUS

<u>Item</u>	<u>Scale</u>
	<u>\$</u>
<u>1. Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed cost of the judgment</u>	<u>700</u>

- | | | |
|---------------|---|----------------|
| <u>2.</u> | <u>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 by or accruing from him to the debtor, the following costs shall be allowed to the garnishee, to be deducted by him from any debt owing by or accruing from him to the debtor before payments to the applicant –</u> | |
| | <u>(a) if no affidavit used</u> | <u>70</u> |
| | <u>(b) if affidavit used</u> | <u>200</u> |
|
<u>3.</u> |
<u>Where a writ of execution within the meaning of Order 46, rule 1 is issued against any party, there shall be allowed cost of issuing execution</u> |
<u>400</u> |

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 71
Rec 132

Order 62A - COSTS OFFER AND PAYMENTS INTO COURT

I. PRELIMINARY

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

(1) In this Order –

“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;

“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;

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

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

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

(2) An offer made under paragraph (1) has the consequences specified

in rules 14, 15 and 16 (as may be applicable).

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

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

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

(1) A costs offer by a paying party does 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.

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

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

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

(1) A sanctioned offer must be in writing.

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

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

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

(5) A sanctioned offer –

(a) may not be withdrawn or diminished before the expiry of 14 days from the date the sanctioned offer is made unless the Court grants leave to withdraw or diminish it; 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 and quantum of costs of taxation incurred after the period; or

(ii) the Court grants leave to accept it.

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

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

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

6. Notice of a sanctioned payment (O. 62A, 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 it relates;
- (c) if an interim payment of costs has been made, states that the paying party has taken into account the interim payment;
- (d) if it is expressed not to be inclusive of interest, states –
 - (i) whether interest is offered; and
 - (ii) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered; and
- (e) if a sum of money has been paid into court as security for the costs of the action, cause or matter, states whether the sanctioned payment has taken into account that sum of money.

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

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

(6) If the Court dismisses an application to withdraw or diminish a

sanctioned payment or grants leave to diminish the sanctioned payment, it may by order specify the period within which the sanctioned payment or diminished sanctioned payment may be accepted.

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

7. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 62A, r. 7)

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

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

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

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

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

8. Clarification of a sanctioned offer or a sanctioned payment notice (O. 62A, r. 8)

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

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

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

III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT

9. Time for acceptance of a paying party's sanctioned payment (O. 62A, r. 9)

(1) Subject to rule 6(5) and paragraph (2), a receiving party may

accept a sanctioned payment at any time before the relevant date without requiring the leave of the Court if he files with the Court and serves on the paying party a written notice of acceptance not later than 14 days after the payment was made.

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

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

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

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

10. Time for acceptance of a receiving party's sanctioned offer (O. 62A, r. 10)

(1) Subject to rule 5(6) and paragraph (2), a paying party may accept a sanctioned offer at any time before the relevant date without requiring the leave of the Court if he files with the Court and serves on the receiving party a written notice of acceptance not later than 14 days after the offer was made.

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

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

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

11. Payment out of a sum in court on the acceptance of a sanctioned payment (O. 62A, r. 11)

Subject to rule 12(4), where a sanctioned payment is accepted, the receiving party may obtain payment out of the sum in court by making a

request for payment in Form No. 93B in Appendix A.

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

(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 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.

13. Cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment (O. 62A, 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 may be made without a court order.

IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

14. Consequences of acceptance of a sanctioned offer or a sanctioned payment (O. 62A, r. 14)

(1) If a sanctioned offer or a sanctioned payment relates to the whole

costs and is accepted, the taxation is stayed.

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

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

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

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

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

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

(6) Where –

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

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

15. Costs consequences where receiving party fails to better a sanctioned payment (O. 62A, 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 –

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

(3) In considering whether it would be unjust to make the orders 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 at which the sanctioned payment was made;
- (c) the information available to the parties at the time when the sanctioned payment was made; and
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the payment to be made or evaluated.

16. Costs and other consequences where receiving party does better than he proposed in his sanctioned offer (O. 62A, 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 judgment rate for some or all of the period starting with the date on which the sanctioned offer was served on the paying party.

(3) The taxing master may also order that the receiving party is entitled to –

- (a) his costs on the indemnity basis from the date on which the sanctioned offer was served on the paying party; and
- (b) interest on those costs at a rate not exceeding 10% above judgment rate.

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

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

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

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

V. MISCELLANEOUS

17. Restriction on disclosure of a sanctioned offer or a sanctioned payment (O. 62A, 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 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.

18. Interest (O. 62A, r. 18)

(1) Unless –

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

(b) a sanctioned payment notice,

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

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

(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.

Rules of the District Court (Amendment) Rules 2008

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

Order 72 – PARTICULAR PROCEEDINGS

Remarks

1. Application and interpretation (O. 72, r. 1)

- (1) This Order applies to particular proceedings, and the other provisions of these Rules apply to those actions subject to the provisions of this Order.
- (2) In this Order “particular proceedings” (特定法律程序) means a type of proceedings for which provision has been made by the Chief Justice for separate listing.

2. The various lists (O. 72, r. 2)

- (1) There may be lists, in which actions and other proceedings may be entered in accordance with the provisions of this Order, and a judge shall be in charge of each list.
- (2) In this Order references to the judge shall be construed as references to the judge for the time being in charge of a particular list.
- (3) The judge shall have control of the proceedings in his particular list and, subject to the provisions of this Order and to any directions of the judge, the powers of a judge in chambers (including those exercisable by the Registrar) shall, in relation to any proceedings in such an action (including any appeal from any judgment, order or decision of the Registrar, given or made prior to the transfer of the action or proceedings to the relevant list) be exercisable by the judge.
- (4) Paragraph (3) shall not be construed as preventing the powers of the judge being exercised by some other judge.

4. Entry of action in particular list when action begun (O. 72, r. 4)

- (1) Before a writ or originating summons by which particular proceedings are to be begun is issued out of the Registry, it may be marked in the top left hand corner with words identifying the relevant list, and on the issue of a writ or summons so marked the action begun thereby shall be entered in that list.
- (2) If the plaintiff intends to issue the writ or originating summons by which particular proceedings are to be begun out of the Registry and to mark it in accordance with paragraph (1), and the writ or the originating summons, as the

case may be, is to be served out of the jurisdiction, an application for leave to issue the writ or summons and to serve the writ or summons out of the jurisdiction may be made to the judge.

(3) The affidavit in support of an application made to the judge by virtue of paragraph (2) must, in addition to the matters required by Order 11, rule 4(1), to be stated, state that the plaintiff intends to mark the writ or the originating summons in accordance with paragraph (1).

(4) If the judge hearing an application made to him by virtue of paragraph (2) is of opinion that the action in question should not be entered in the list in question, he may adjourn the application to be heard by the Registrar.

5. Transfer of action to particular list after action begun (O. 72, r. 5)

(1) At any stage of the proceedings in any action any party thereto may apply by summons to the judge to transfer the action to a particular list.

(3) If, at any stage of the proceedings in any action, it appears to the Court that the action may be one suitable for trial in a particular list and any party wishes the action to be transferred to that list, then the Court may adjourn any hearing so that it can proceed before the judge and be treated by him as a summons to transfer the action to that list.

6. Removal of action from particular list (O. 72, r. 6)

(1) The judge may, of his own motion or on the application of any party, order an action in a particular list to be removed from that list.

(2) Where an action is in a particular list by virtue of rule 4, an application by a defendant or third party for an order under this rule must be made within 7 days after giving notice of intention to defend.

7. Pleadings in particular proceedings (O. 72, r. 7)

(1) The pleadings in an action in a particular list may be in the form of points of claim, or of defence, counterclaim, defence to counterclaim or reply, as the case may be, and must be as brief as possible.

~~(2) Without prejudice to Order 18, rule 12(1), no particulars shall be applied for or ordered in an action in the particular list designated the commercial list except such particulars as are necessary to enable the party applying to be informed of the case he has to meet or as are for some other reason necessary to secure the just, expeditious and economical disposal of any question at issue in the proceedings.~~

Rule 189

~~(3) The foregoing provisions are without prejudice to the power of the judge to~~

~~order that an action in a particular list shall be tried without pleadings or further pleadings, as the case may be.~~

8. Directions in particular proceedings (O. 72, r. 8)

(1) Notwithstanding anything in ~~Order 23A~~ **Order 25, rule 1(3)(b)**, any party to particular proceedings may take out a ~~summons for directions~~ **case management summons** before the pleadings are deemed to be closed.

Rule 97
Rec 52-60, 62

(2) Where an application is made to transfer an action to a particular list, ~~Order 23A, rules 2 and 7 to 13~~ **Order 25, rules 5 to 10**, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a ~~summons for directions~~ **case management summons**.

10. Production of certain documents in marine insurance actions
(O. 72, r. 10)

(1) Where in an action in a particular list relating to a marine insurance policy an application for an order under Order 24, rule 3, is made by the insurer, then, without prejudice to its powers under that rule, the Court, if satisfied that the circumstances of the case are such that it is necessary or expedient to do so, may make an order, either in Form No. 94 in Appendix A or in such other form as it thinks fit, for the production of such documents as are therein specified or described.

(2) An order under this rule may be made on such terms, if any, as to staying proceedings in the action or otherwise, as the Court thinks fit.

(3) In this rule “the Court” (區域法院) means the judge.

Rules of the District Court (Amendment) Rules 2008

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

Order 77 – PROCEEDINGS BY AND AGAINST GOVERNMENT

Remarks

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

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

(2) In this Order-

“civil proceedings by the Government” (由政府提出的民事法律程序) and

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

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

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

“order against the Government” (針對政府的命令) means any order (including an order for costs) made in any civil proceedings by or against the Government, or in connection with any arbitration to which the Government is a party, in favour of any person against the Government or against a government department or against an officer of the Government as such.

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

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

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

(3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the writ shall not expire until 4 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice, or 4 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7 days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

4. Service on Government (O. 77, r. 4)

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

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

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

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

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

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

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

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

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

- (1) No application shall be made against the Government-
 - (a) under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Government;
 - (b) under Order 14, rule 5, in any proceedings by the Government; or
 - (c) under Order 14A, rule 1, in any proceedings by or against the Government.
- (2) Where an application is made by the Government under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by-
 - (a) the solicitor acting for the Government; or
 - (b) an officer duly authorized by the solicitor so acting or by the department concerned,and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

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

- (1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the Government in civil proceedings against the Government or in third party proceedings against the Government.
- (2) Except with the leave of the Court, Order 16, rule 5(1)(a), shall not apply in the case of third party proceedings against the Government.
- (3) An application for leave under this rule may be made by summons and the summons must be served not less than 7 days before the return day.

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

- (1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the Government shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Government.
- (2) Leave to issue such a notice for service on the Government shall not be granted unless the Court is satisfied that the Government is in possession of all such information as it reasonably requires as to the circumstances in which the Government's liability is alleged to have arisen and as to the government departments and officers of the Government concerned.

11. Interpleader: application for order against Government

(O. 77, r. 11)

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

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

(1) ~~Order 23A, rule 5~~ **Order 24, rules 1 and 2**, shall not apply in civil proceedings to which the Government is a party.

Rule 98
Rec 52-60, 62

(2) In any civil proceedings to which the Government is a party any order of the Court made under the power conferred by section 24(1) of the Crown Proceedings Ordinance (Cap. 300), shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of the Chief Secretary for Administration, be injurious to the public interest to disclose.

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Government shall be verified by affidavit, the affidavit shall be made by such officer of the Government as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 24 for interrogatories to be answered by the Government, the Court shall direct by what officer of the Government the interrogatories are to be answered.

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

(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Government. <* Note - Exp. X-Ref.: Orders 45, 46, 47, 48, 49, 49B, 50, 51, 52 *>

(2) An application under the proviso to section 21(1) of the Crown Proceedings Ordinance (Cap. 300), for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court ex parte without summons.

(3) Any such certificate must be in Form No. 95 or 96 in Appendix A, whichever is appropriate.

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

- (1) No order-
- (a) for the attachment of debts under Order 49; or
 - (b) for the appointment of a sequestrator under Order 45; or

(c) for the appointment of a receiver under Order 30 or 51, shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Government.

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

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

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

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

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

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

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

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

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

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

Rules of the District Court (Amendment) Rules 2008

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

Order 78 – PROCEEDINGS OF COURT OF FIRST INSTANCE TRANSFERRED TO THE COURT

Remarks

1. Duties of Registrar of High Court and the Court after order for transfer to the Court (O. 78, r. 1)

(1) Where the Court of First Instance has made an order for the transfer of any action or proceedings to the Court pursuant to section 43 or 44 of the Ordinance (in this Order referred to as a “transfer order”, the Registrar of the High Court shall, as soon as practicable after the transfer order has been perfected, send to the Registrar of the Court–

- (a) all documents issued out of or filed or lodged in the Court of First Instance; and
- (b) any notes made by a judge of the Court of First Instance or master of the High Court, and any transcripts or other records, of any proceedings in court or in chambers,

in the action or proceeding transferred.

(2) As soon as practicable after receipt of the documents pursuant to paragraph (1), the Registrar of the court shall notify all the parties to the action or proceeding of his receipt of the documents.

2. Effects of transfer (O. 78, r. 2)

(1) Upon the making of a transfer order the action or proceeding shall be deemed to be transferred to the Court.

(2) Subject to paragraph (4), upon transfer, the writ or other originating process by which the action or proceeding was commenced in the Court of First Instance and all pleadings, counterclaims, notices and other documents, issued, served, filed or lodged in the action or proceeding and all other steps taken by the parties therein before the transfer order was made shall have effect in the Court as if they had been issued, served, filed, lodged or taken in the Court on the dates they were issued, served, filed, lodged or taken in the Court of First Instance.

(3) Subject to paragraphs (4) and (5), upon transfer, all orders and directions, if any, made in the action or proceeding before the transfer order was made shall have effect in the Court as if they had been made by the Court on the dates they were made in the Court of First Instance.

(4) The Court may, at any stage of the proceedings in the action or

proceeding transferred, either on its own motion or on the application of any party, order that any such document or step as is mentioned in paragraph (2) or any such order or direction as is mentioned in paragraph (3)-

- (a) shall not have effect in the Court; or
- (b) shall have effect in the Court subject to such modifications as the Court shall specify.

(5) A transfer order shall not affect—

- (a) any right of appeal in the Court of First Instance or to the Court of Appeal from the transfer order itself or any judgment, order or direction made in the action or proceeding before the transfer order was made;
- (b) the right to enforce in the Court of First Instance any judgment or order made in that Court before the transfer.

(6) Where, before the transfer order was made, an application had been issued but not yet determined in the action or proceeding, the application shall be deemed to have been issued out of the Court and shall be dealt with by the Court accordingly.

(7) Where any such application as is mentioned in paragraph (6) has been part-heard in the Court of First Instance, the Court may either—

- (a) continue to hear the application as if the earlier proceedings in the application had taken place before the Court; or
- (b) require the application to be heard de novo.

3. Procedure in Court after transfer (O. 78, r. 3)

(1) Subject to paragraph (2) and rule 2, after transfer, the action or proceeding shall proceed in the Court as if, before transfer, it had been commenced and had proceeded in the Court.

(2) Where the special circumstances of the case may require, as soon as practicable after the Registrar has given notice pursuant to rule 1(2), the Court of its own motion may, and on the application of any party shall, ~~conduct a directions hearing under Order 23A, rule 9~~ **set the action or proceeding down before a master who shall make such directions as he sees fit for the further conduct of the action or proceeding.**

Rule 99
Rec 52-60, 62

Rules of the District Court (Amendment) Rules 2008

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

Order 80 – DISABILITY

Remarks

1. Interpretation (O. 80, r. 1)

In this Order–

“mentally incapacitated person” (精神上無行為能力的人) means a mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap. 136)) who, by reason of mental disorder or mental handicap, as the case may be, is incapable of managing and administering his property and affairs;

“the Ordinance” (條例) means the Mental Health Ordinance (Cap. 136);

“person under disability” (無行為能力的人) means a person who is a minor or a mentally incapacitated person.

2. Person under disability must sue, etc., by next friend or guardian ad litem (O. 80, r. 2)

(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not acknowledge service, defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem.

(2) Subject to the provision of these Rules, anything which in the ordinary conduct of any proceedings is required or authorized by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

(3) Except where the Official Solicitor is acting as next friend or guardian ad litem, a next friend or guardian ad litem of a person under disability must act by a solicitor.

3. Appointment of next friend or guardian ad litem (O. 80, r. 3)

(2) Except as provided by paragraph (4) or (5) or by rule 6, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.

(3) Where a person is authorized under Part II of the Ordinance to conduct

legal proceedings in the name of a mentally incapacitated person or on his behalf, that person shall be entitled to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in any proceedings to which his authority extends unless, in a case to which paragraph (4) or (5) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in those proceedings.

(4) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(5) Where, after any proceedings have been begun, a party to the proceedings becomes a mentally incapacitated person, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party.

(6) Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court—

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability;
- (b) service shall not be acknowledged in a cause or matter for a person under disability; and
- (c) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a ~~summons~~ **petition, summons or motion** which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (8) have been filed in the Registry.

Rule 30
Rec 11-16

(8) The documents referred to in paragraph (6) are the following-

- (a) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian; and
- (b) where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized under Part II of the Ordinance to conduct legal proceedings in the cause or matter in question in the name of the mentally incapacitated person or on his behalf, an office copy, sealed with the seal of the High Court, of the order or other authorization made or given under that Part by virtue of which he is so authorized; and
- (c) except where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized as mentioned in subparagraph (b), a certificate made by the solicitor for the person under disability certifying-

- (i) that he knows or believes, as the case may be, that the person to whom the certificate relates is a minor or a mentally incapacitated person, giving (in the case of a mentally incapacitated person) the grounds of his knowledge or belief; and
- (ii) where the person under disability is a mentally incapacitated person, that there is no person authorized as aforesaid; and
- (iii) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the Official Solicitor, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

6. Appointment of guardian where person under disability does not acknowledge service (O. 80, r. 6)

(1) Where—

- (a) in an action against a person under disability begun by writ, or by originating summons, no acknowledgment of service is given in the action for that person; or
- (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgment of service is given for that person,

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for acknowledging service and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgment of service is given for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limited (as respects that person) for acknowledging service and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian ad litem at the hearing of the petition or motion, as the case may be, the Court hearing it may –

- (a) appoint a guardian ad litem of that person in the proceedings;**
or
- (b) direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.**

(5) An application under paragraph (1) or (2) must be supported by evidence proving—

Rule 190
Rec 11-16

- (a) that the person to whom the application relates is a person under disability;
- (b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability;
- (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability; and
- (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for acknowledging service and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court must be supported by evidence proving the matters referred to in paragraph (5)(b).

7. Application to discharge or vary certain orders (O. 80, r. 7)

An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, for the discharge or variation of the order must be made—

- (a) if a next friend or guardian ad litem is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian ad litem acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

8. Admission not to be implied from pleading of person under disability (O. 80, r. 8)

Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

9. Discovery and interrogatories (O. 80, r. 9)

Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

10. Compromise, etc., by person under disability (O. 80, r. 10)

Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

11. Approval of settlement (O. 80, r. 11)

(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, ~~notwithstanding anything in Order 5, rule 2,~~ the claim may be made in proceedings begun by originating summons, and in the summons an application may also be made for—

Rule 30
Rec 11-16

- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under rule 12; or
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Ordinance (Cap. 22), the originating summons must include the particulars mentioned in section 5(4) of that Ordinance.

(4) An originating summons under this rule shall be in Form No. 10 in Appendix A.

(5) In this rule “settlement” (和解) includes a compromise.

12. Control of money recovered by person under disability (O. 80, r. 12)

(1) Where in any proceedings—

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or
- (b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to

be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into court to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively.

15. Proceedings under Fatal Accidents Ordinance: apportionment by Court (O. 80, r. 15)

(1) Where a single sum of money is paid into court under ~~Order 22, rule 1, in satisfaction of causes of action arising under the Fatal Accidents Ordinance (Cap. 22) and sections 20 to 25~~ Order 22, in satisfaction of 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), and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 12 (if that rule applies) or when authorizing its payment out of court.

Rule 66
Consequential
Amendment

(2) Where, in an action in which a claim under the Fatal Accidents Ordinance (Cap. 22) is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under ~~Order 22, rule 1~~ Order 22, is accepted in satisfaction of the cause of action under that Ordinance, then it shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under those Ordinances.

16. Service of certain documents on person under disability (O. 80, r. 16)

(1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, rule 1(2) on any person and that person is a person under disability this rule shall apply.

Remarks

- (2) Subject to the following provisions of this rule and to Order 24, rule 16(3) and Order 26, rule 6(3) the document must be served—
- (a) in the case of a minor who is not also a mentally incapacitated person, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
 - (b) in the case of a mentally incapacitated person, on the person (if any) who is authorized under Part II of the Ordinance to conduct legal proceedings in the name of the mentally incapacitated person or on his behalf in connection with which the document is to be served or, if there is no person so authorized, on the person with whom he resides or in whose care he is,
- and must be served in the manner required by these Rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, ~~an originating summons~~ **a notice of motion or summons** for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.

Rule 31
Rec 11-16

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

Rules of the District Court (Amendment) Rules 2008

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

Order 82 – DEFAMATION ACTIONS

Remarks

1. Application (O. 82, r. 1)

These Rules apply to actions for libel or slander subject to the following rules of this Order.

2. Indorsement of claim in libel action (O. 82, r. 2)

Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

3. Obligation to give particulars (O. 82, r. 3)

(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

4. Provisions as to payment into Court (O. 82, r. 4)

(1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with ~~Order 22, rule 3(1)~~ **Order 22**, accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in Order 22, ~~rule 3(4)~~, the action shall be stayed as against that defendant only, but—

Rule 67
Consequential
Amendment

- (a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed; and
- (b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which section 4 of the Defamation Ordinance (Cap. 21) provides, ~~Order 22, rule 7~~ **Order 22, rule 21**, shall not apply in relation to that pleading.

5. Statement in open Court (O. 82, r. 5)

(1) Where a party wishes to accept money paid into court in satisfaction of a cause of action for libel or slander, malicious prosecution or false imprisonment, that party may before or after accepting the money apply to a judge in chambers by summons for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander, malicious prosecution or false imprisonment which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that an action be set down for trial, and before the date fixed for the trial a statement must be submitted for the approval of the judge before whom it is to be made.

6. Interrogatories not allowed in certain cases (O. 82, r. 6)

In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

7. Evidence in mitigation of damages (O. 82, r. 7)

In an action for libel or slander in which the defendant does not by his

Remarks

defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Rules of the District Court (Amendment) Rules 2008

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

Order 83A – MONEY LENDERS’ ACTIONS

Remarks

1. Application and interpretation (O. 83A, r. 1)

(1) These Rules apply to a money lender’s action subject to the following rules of this Order.

(2) In this Order–

“money lender” (放債人) has the meaning assigned to it by section 2 of the Money Lenders Ordinance (Cap. 163);

“money lender’s action” (放債人訴訟) means an action for the recovery of money lent by a money lender or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee.

2. Commencement of money lender’s action (O. 83A, r. 2)

(1) Every money lender’s action ~~shall be~~ **may be** begun by writ.

Rule 32
Rec 11-16

(2) Before a writ beginning a money lender's action is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a money lender.

3. Particulars to be included in statement of claim (O. 83A, r. 3)

Every statement of claim in a money lender’s action (whether indorsed on the writ or not) must state–

- (a) the date on which the loan was made;
- (b) the amount actually lent to the borrower;
- (c) the rate per cent per annum of interest charged;
- (d) the date when the contract for repayment was made;
- (g) the amount repaid;
- (h) the amount due but unpaid;
- (i) the date upon which such unpaid sum or sums became due; and
- (j) the amount of interest accrued due and unpaid on every such sum.

4. Judgment on failure to give notice of intention to defend or in default of defence (O. 83A, r. 4)

(1) In a money lender's action judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

(2) (a) An application for the grant of leave under this rule must be made by summons supported by an affidavit which must-

- (i) prove that the money is due and payable;
- (ii) give the particulars required by rules 2 and 3; and
- (iii) exhibit a true copy of any agreement or security relating to the money lent,

and the original agreement or security must be produced at the hearing of the summons.

(b) The summons and a copy of the affidavit in support and of any exhibits referred to therein must, notwithstanding anything in Order 65, rule 9, be served on the defendant not less than 4 clear days before the day fixed for the hearing of the summons.

(3) If the application is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued until after the time limited for acknowledgment of service of the writ.

(4) On the hearing of such application, whether the defendant appears or not, the Court—

- (a) may exercise the powers of the Court under section 25 of the Money Lenders Ordinance (Cap. 163);
- (b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

Rules of the District Court (Amendment) Rules 2008

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

Order 86 –ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT

Remarks

1. Application by plaintiff for summary judgment (O. 86, r. 1)

- (1) In any action begun by writ indorsed with a claim–
- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages; or
 - (b) for rescission of such an agreement; or
 - (c) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

- (2) An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ.

2. Manner in which application under rule 1 must be made (O. 86, r. 2)

- (1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action.

Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.

- (2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.
- (3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

3. Judgment for plaintiff (O. 86, r. 3)

- (1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for

some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against the defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

4. Leave to defend (O. 86, r. 4)

(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

- (a) to produce any document;
- (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

5. Directions (O. 86, r. 5)

Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action, ~~and Order 23A, rules 9 to 13, shall apply as if the Court were conducting a directions hearing under that Order.~~ **and Order 25, rules 5 to 10 –**

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and**
 - (b) with any other necessary modifications,**
- apply as if the application under rule 1 were a case management summons.**

Rule 100
Rec 52-60, 62

6. Costs (O. 86, r. 6)

If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an aided person, require the costs to be paid by him forthwith.

7. Setting aside judgment (O. 86, r. 7)

Any judgment given against a defendant who does not appear at the hearing of an application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

8. Application for summary judgment on counterclaim (O. 86, r. 8)

(1) Where a defendant to an action begun by writ has served a counterclaim claiming against the plaintiff such relief as appears in rule 1(1) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or that part.

(2) Rules 2, 3, 4, 5, 6 and 7 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications—

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted;
- (c) the reference in rule 4(2) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

9. Right to proceed with residue of action or counterclaim (O. 86, r. 9)

(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 8 a defendant obtains judgment on a claim or a part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or against any other defendant to the counterclaim.

Rules of the District Court (Amendment) Rules 2008

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

Order 89 – PROCEEDINGS BETWEEN HUSBAND AND WIFE

	<u>Remarks</u>
1. Determination of questions as to property (O. 89, r. 1)	
(1) Proceedings under section 3 of the Separation and Maintenance Orders Ordinance (Cap. 16) and section 6 of the Married Persons Status Ordinance (Cap. 182) must be <u>may be</u> begun by originating summons.	Rule 33 Rec 11-16
2. Provisions as to actions in tort (O. 89, r. 2)	
(1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.	
(2) On the first application by summons in an action to which this rule applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 5(2) of the Married Persons Status Ordinance (Cap. 182) should or should not be exercised.	
(3) Notwithstanding anything in Order 13 or 19, in an action to which this rule applies judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.	
(4) An application for the grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.	
(5) If the summons is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued before the time limited for acknowledging service of the writ.	

Rules of the District Court (Amendment) Rules 2008

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

Order 90 – PROCEEDINGS CONCERNING MINORS

Remarks

1. Applications under Guardianship of Minors Ordinance and Parent and Child Ordinance (O. 90, r. 1)

(1) Any application under the Guardianship of Minors Ordinance (Cap. 13) and the Parent and Child Ordinance (Cap. 429) ~~must be~~ may be made by originating summons.

Rule 34
Rec 11-16

(2) Where the minor with respect to whom an application under the Guardianship of Minors Ordinance (Cap. 13) and the Parent and Child Ordinance (Cap. 429) is made is not the plaintiff he shall not, unless the Court otherwise directs, be made a defendant to the summons but, subject to paragraph (3), any other person appearing to be interested in, or affected by, the application shall be made a defendant.

(3) The Court may dispense with service of the summons on any person and may order it to be served on any person not originally served.

(4) Every application under paragraph (1) shall be heard by a judge who may dispose of the application in chambers.

2. Verification and passing of guardians accounts (O. 90, r. 2)

A guardian's account must be verified and passed in the same manner as that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

3. Application of Matrimonial Causes Rules (O. 90, r. 3)

(1) The provisions of the Matrimonial Causes Rules (Cap. 179 sub. leg.) relating to proceedings under section 48 of the Matrimonial Causes Ordinance (Cap. 179) shall apply, with the necessary modifications, to proceedings under sections 13(1), 14 and 15 of the Guardianship of Minors Ordinance (Cap. 13).

(2) The provisions of the Matrimonial Causes Rules (Cap. 179 sub. leg.) relating to the drawing up and service of orders shall apply to proceedings under this Order as if they were proceedings under those Rules.

4. Further provisions as to orders for supervision or care of a child

(O. 90, r. 4)

An application by the Director of Social Welfare under the Guardianship of Minors Ordinance (Cap. 13) for the variation or discharge of an order made under that Ordinance or for directions as to the exercise of the powers of the Director under that order may, in case of urgency or where the application is unlikely to be opposed, be made by letter addressed to the Court and the Director shall, whenever practicable, notify any interested party of his intention to make the application.

5. Removal of a child out of Hong Kong (O. 90, r. 5)

(1) This rule and rules 6 and 7 shall apply to proceedings under the Guardianship of Minors Ordinance (Cap. 13) and the Separation and Maintenance Orders Ordinance (Cap. 16).

(2) An application for leave to remove a child under 18 permanently out of Hong Kong must be made to a judge unless the application is unopposed, in which case it may be made to the Registrar.

(3) The father or mother of a child under 18 may apply ex parte to a judge for an injunction restraining the other of them or any other person from removing the said child out of Hong Kong or out of the custody, care or control of any person named in the application.

6. Reference to the Director of Social Welfare (O. 90, r. 6)

(1) A judge or the Registrar may at any time refer to the Director of Social Welfare for investigation and report any matter concerning the welfare of a child which may arise in proceedings in the Court.

(2) Where a reference is made under this rule—

- (a) the Director may inspect and, with the approval of the judge or Registrar, copy from the Court file;
- (b) after completing his investigation, the Director shall file his report and the Registrar shall thereupon notify the parties that they may inspect it and may bespeak copies on payment of the prescribed fee; and
- (c) the Registrar shall give notice to the Director of the date of hearing of the application or other proceedings.

7. Statement of other proceedings on application relating to child (O. 90, r. 7)

If, at the time when an application to the Court relating to a child is made in any cause, any proceedings relating to the said child and brought after the cause was begun are pending in the High Court or the Court, the applicant must file a statement of the nature of those proceedings when he makes his application.

Rules of the District Court (Amendment) Rules 2008

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

Order 92 – LODGMENT, INVESTMENT, ETC. OF FUNDS IN COURT

Remarks

2. Payment into Court under Trustee Ordinance (O. 92, r. 2)

(1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 62 of the Trustee Ordinance (Cap. 29) must make and file an affidavit setting out–

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him;
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct; and
- (d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy or residue or any share thereof, to which a minor or a person resident outside Hong Kong is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by the District Court Suitors' Funds Rules (Cap. 336 sub. leg.) for the time being in force.

4. Notice of lodgment (O. 92, r. 4)

Any person who has lodged money or securities in court in accordance with rule 2 must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

5. Applications with respect to funds in Court (O. 92, r. 5)

(1) Where an application to the Court–

- (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
- (b) for the investment, or change of investment, of any funds in court;
- (c) for payment of the dividends of or interest on any funds in court

Remarks

representing or comprising money or securities lodged in court under any enactment; or

- (d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c),

is made the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application must be made by summons and, unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by originating summons, the summons must be an originating summons.

(3) Where an application under paragraph (1)(d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed \$50,000 in value, the application may be made ex parte to a master and the master may dispose of the application or may direct it to be made by originating summons. Unless otherwise directed, an ex parte application under this paragraph shall be made by affidavit.

(5) This rule does not apply to any application for an order under ~~Order 22~~ **Order 22A**.

Rule 68
Consequential
Amendment

Rules of the District Court (Amendment) Rules 2008

Rules of the District Court (Cap. 336H)

Appendix A – Forms

Remarks

No. 1

Writ of Summons

(Order 6 rule 1)

20, No.

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
NO. OF 20

Between A.B. Plaintiff

 AND

 C.D. Defendant

TO THE DEFENDANT (name) of
(address)

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within (14 days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registry of the District Court the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest these proceedings **or to make an admission**.

Rule 42
Rec 18

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith ~~without further notice~~ **without further notice**.

If you intend to make an admission, you may complete an appropriate form enclosed in accordance with the accompanying Directions for Acknowledgment of Service. [Insert this paragraph if the only remedy that you are seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money].

Issued from the Registry of the District Court this day of
20

Note: —This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

(Back of No. 1)

*[Statement of Claim]

The Plaintiff's claim is for

*Where words appear between square brackets delete if inapplicable.

*(Signed if statement of claims indorsed.)

(Where the Plaintiff's claim is for a debt or liquidated demand only: If, within the time for returning the Acknowledgment of Service, the Defendant pays the amount claimed and \$ for costs ~~and, if the Plaintiff obtains an order for substituted service, the additional sum of \$~~, further proceedings will be stayed. The money must be paid to the Plaintiff or his Solicitor.)

THIS WRIT was issued by
ofSolicitors for
the said Plaintiff whose address
is

*(or where the Plaintiff sues in person:

THIS WRIT was issued by the said Plaintiff who resides
atand (if the Plaintiff
does not reside within the jurisdiction) whose address for service
is).

No. 10

Originating summons—expedited form

(Order 7 rule 2; Order 17 rule 3; **Order 50 rule 15; Order 62 rule 11A**)

Rule 12
Rec 7-9, 84
Rule 35
Rec 11-16

20, No.

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
NO. OF 20

(IN THE MATTER OF)

Between	A.B.	Plaintiff
	AND	
	C.D.	Defendant

Let C.D. of attend before His/Her Honour
Judge/Master in Chambers, at the District Court, Hong Kong,
on.....day, theday of.....
20....., at..... o'clock in the noon, (or, if
no application has yet been made for a day to be fixed, on a day to be fixed) on the
hearing of an application by the plaintiff A.B. of.....
that.....

And let the defendant within (14 days) after service of this summons on him counting
the day of service, return the accompanying Acknowledgment of Service to the
Registry of the District Court.

Dated the day of 20

Note:—This summons may not be served later than 12 calendar months beginning with
the above date unless renewed by order of the Court.

This summons was taken out by of solicitors for
the said plaintiff whose address is as stated above (or where the plaintiff sues in person:

This summons was taken out by the said plaintiff who resides
at and (if the plaintiff does not reside within the jurisdiction)
whose address for service is).

Note: —If a defendant does not attend personally or by his counsel or solicitor at the
time and place above-mentioned such order will be made as the Court may think just
and expedient.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

No. 13

Notice of originating motion

(Order 8 rule 3)

20, No.....

**IN THE DISTRICT COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION**

In the matter of

and

In the matter of

**Take notice that the District Court in Hong Kong will be moved (before
His/Her Honour Judge.....) at the expiration of.....days
from the service upon you of this notice (or on..... day, the
day of.....20....., at the sitting of the Court) or so soon thereafter as
counsel can be heard, by counsel on behalf of A.B. for an order that.....
(or for the following relief, namely.....)
And that the costs of and incidental to this (application) (appeal) may be paid
by (And further take notice that the grounds of this (application
(appeal) are:.....)**

Dated the..... day of 20.....

(Signed)

**C.D. of.....solicitor for the
above named (applicant)(appellant) A.B. whose address is
.....or A.B. whose address for service
is..... (applicant)(appellant) in
person**

Toof.....

No. 14

Acknowledgment of Service of Writ of Summons

(Order 12 rule 3)

Directions for Acknowledgment of Service

1. The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the District Court at the following address: –

[here insert the address of the Registry of the District Court]

Rule 42
Rec 18

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings MUST ALSO file a DEFENCE which must be written in either the Chinese or the English language with the Registry and serve a copy thereof on the Solicitor for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words “Statement of Claim” appear at the top of the back), the Defence must be filed and served within ~~14 days~~ **28 days** after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If a Statement of Claim is not indorsed on the Writ, the Defence must be filed and served within ~~14 days~~ **28 days** after a Statement of Claim has been served on the Defendant.

If the Defendant fails to file and serve his Defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

~~3. — A STAY OF EXECUTION against the Defendant’s goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must within that time, ISSUE A SUMMONS for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.~~

3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the Plaintiff’s claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the writ of summons.

A completed Form No. 16 or 16C must be filed with the Registry of the District Court and served on the Plaintiff [or the Plaintiff’s Solicitors] within the period for service of the defence.

4. A Defendant who wishes to dispute the jurisdiction of the District Court in the proceedings and to apply to the District Court for an order staying the proceedings must give notice of intention to defend the proceedings and make the application within the time limited for service of a defence.

**See attached Notes for Guidance
Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Registry of the District Court.

[2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him and a writ served by post or by insertion through the Defendant's letter box is treated as having been served on the seventh day after the date of posting or insertion.]

(Note: Not applicable if the defendant is a company served at its registered office.)

3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4. Where the Defendant is a FIRM and a Solicitor is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "partner in the firm of (.....)" after his name.

5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.

6. Where the Defendant is a LIMITED COMPANY the form must be completed by a Solicitor or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings unless:

- (i) a Solicitor is acting on its behalf; or
- ~~(ii) a director of the Company is acting on its behalf and:~~
 - ~~(a) such director has been authorized by the board of directors of the Company to act on its behalf in the proceedings; and~~
 - ~~(b) such director has made and filed at the Registry of the District Court an affidavit stating that he has been authorized by the board of directors of the Company to act on its behalf in the proceedings and exhibited a copy of such resolution certified by its secretary.~~
- (ii) (a) if the Company has more than one director, a director of the Company is acting on its behalf and:**
 - (A) the director has been authorized by the board of directors of the Company to act on its behalf in the proceedings; and**
 - (B) the director has made and filed at the Registry of the District Court an affidavit stating that he has been**

authorized by the board of directors of the Company to act on its behalf in the proceedings and exhibiting –

(I) the original of the resolution authorizing the director to act on behalf of the Company; or

(II) a copy of such resolution duly certified by another person who must either be a director or the secretary of the Company; or

(b) if the Company has only one director, the director of the Company is acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL Patient, the form must be completed by a Solicitor acting for a guardian ad litem.

8. A Defendant acting in person may obtain help in completing the form at the Registry of the District Court.

9. These notes deal only with the more usual cases. In case of difficulty a Defendant in person should refer to paragraph 8 above.

(Heading as in No. 1 to be completed by plaintiff)

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct a Solicitor to act for you, give him this form IMMEDIATELY.

Important: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he or his Solicitor may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

☐ yes ☐ no

See Direction 3.

~~3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick appropriate box)~~

☐ yes ☐ no

See Direction 3.

If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state whether the Defendant intends to make an admission (tick appropriate box).

☐ yes ☐ no

If yes, the Defendant may make the admission by completing Form No. 16 or 16C (as the case may require) accompanying the writ of summons.

Where words appear between square brackets, delete if inapplicable

Service of the Writ is acknowledged accordingly.

(Signed) [Solicitor] ()
[Defendant in person]
Address for service

Notes as to Address for Service

Solicitor. Where the Defendant is represented by a Solicitor, state the Solicitor's place of business in Hong Kong.

Defendant in person. Where the Defendant is acting in person, he must give his residence OR, if he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, “residence” (居所) means its registered or principal office.

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Indorsement by plaintiff's solicitor (or by plaintiff if suing in person) of his name, address and reference, if any.

No. 15

Rule 12
Rec7-9, 84

Acknowledgment of Service of Originating Summons
Acknowledgment of Service of Originating Summons – for all cases other than
costs-only proceedings under section 53A of the District Court Ordinance

(Order 10 rule 5; Order 12 rule 3)

Directions for Acknowledgment of Service

1. The accompanying form ~~The accompanying form~~ of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the District Court of the following address:—

Rule 42
Rec 18

[here insert the address of the Registry of the District Court]

2. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the Plaintiff's claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the originating summons.

A completed Form No. 16 or 16C must be filed with the Registry of the District Court and served on the Plaintiff [or the Plaintiff's Solicitors] within the period for filing of the Defendant's affidavit evidence.

3. A Defendant who wishes to dispute the jurisdiction of the District Court in the proceedings and to apply to the District Court for an order staying the proceedings must give notice of intention to defend the proceedings and make the application within the time limited for service of a defence.

Rule 39
Rec 11-16

See over for Notes for Guidance

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Notes for Guidance

[As in No. 14 substituting “originating summons” for “writ of summons”.]

(Heading as in No. 8 or 10 to be completed by plaintiff)

**ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS**

If you intend to instruct a Solicitor to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

see Notes 1,
3, 4 and 5.

1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

☐ yes

☐ no

~~Where words appear
between square brackets,
delete if
inapplicable~~

~~Service of the Originating Summons is acknowledged
accordingly.~~

See Direction 2.

3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state whether the Defendant intends to make an admission (tick appropriate box).

☐ yes

☐ no

If yes, the Defendant may make the admission by completing Form No. 16 or 16C (as the case may require) accompanying the originating summons.

Where words appear
between square
brackets, delete if
inapplicable.

Service of the Originating Summons is
acknowledged accordingly.

(Signed) [Solicitor] ()
[Defendant in person]
Address for service

Notes as to Address for Service

Solicitor. Where the Defendant is represented by a Solicitor, state the Solicitor's place of business in Hong Kong.

Rule 42
Rec 18

Defendant in person. Where the Defendant is acting in person, he must give his residence OR, if he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, “residence” (居所) means its registered or principal office.

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Indorsement by plaintiff’s Solicitors (or by plaintiff if suing in person) of his name, address and reference, if any.

No. 15A

**Acknowledgment of Service of Originating Summons –
for costs-only proceedings under section 53A
of the District Court Ordinance
(Order 10 rule 5; Order 12 rule 3(1); Order 62 rule 11A)**

Directions for Acknowledgment of Service

**The accompanying form of ACKNOWLEDGMENT OF SERVICE should
be detached and completed by a solicitor acting on behalf of the defendant or by
the defendant if acting in person. After completion it must be delivered or sent
by post to the Registry of the District Court of the following address -**

[insert here the address of the Registry of the District Court]

See over for Notes for Guidance

[Back of page (1)]

Notes for Guidance

**[As in No. 14 substituting “originating summons” for “writ of summons”.]
(Heading as in No. 8 or 10 to be completed by plaintiff)**

**ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS**

**If you intend to instruct a solicitor to act for you, give him this form
IMMEDIATELY.**

**Important. Read the accompanying directions and notes for guidance
carefully before completing this form. If any information required is omitted or
given wrongly, THIS FORM MAY HAVE TO BE RETURNED.**

**See Notes 1,
3, 4 and 5.**

**1. State the full name of the defendant by
whom or on whose behalf the service of the
Originating Summons is being
acknowledged.**

**2. State whether the defendant intends to
contest the liability for costs (tick
appropriate box)**

☐ yes ☐ no

3. State whether the defendant intends to contest the amount of those costs (tick appropriate box)

☐ yes ☐ no

Where words appear between square brackets, delete if inapplicable.

Service of the Originating Summons is acknowledged accordingly.

(Signed) [Solicitor]()
[Defendant in person]
Address for service

Notes as to Address for Service

Solicitor. Where the defendant is represented by a solicitor, state the solicitor's place of business in Hong Kong.

Defendant in person. Where the defendant is acting in person, he must state his residence OR, if he does not reside in Hong Kong, he must state an address in Hong Kong to which communications for him should be sent. In the case of a limited company, "residence" (居所) means its registered or principal office.

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Indorsement by plaintiff's solicitors (or by plaintiff if suing in person) of his name, address and reference, if any.

No. 16
Admission (liquidated amount)
(Order 13A rules 4(2), 5(2) & 13(2))
(Heading as in action)

Explanatory Note

1. The only claim the plaintiff has made against you is for a liquidated amount of money. You may admit the plaintiff's claim in whole or in part by completing this form within the period for service of your defence if you have been served with a Writ or the period for filing of your affidavit evidence if you have been served with an Originating Summons or within 14 days after service of the originating process in any other case.
2. If you do not ask for time to pay, the plaintiff will decide how much and when you should pay.
3. If you ask for time to pay, the plaintiff will decide whether or not to accept your proposal for payment.
4. If the plaintiff accepts your proposal for payment, the plaintiff may, within 14 days after the copy of your admission is served on him, request the Court to enter judgment against you.
5. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made.
6. The completed form should be filed in the Registry of the District Court.

How to fill in this form

- Tick the correct boxes and give as much information as you can. Then sign and date the form. If necessary provide details on a separate sheet, add the action number and attach it to this form.
- If you do not ask for time to pay, you need not complete items 2 to 9 and 11 to 14.
- If you ask for time to pay, make your offer of payment in item 14.
- If you are not an individual, you need not complete items 1 to 9 but you should complete items 10 to 12 and ensure that you comply with the requirement specified in item 13 and provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made in item 14.
- If you are an individual, you need not complete items 10 to 12 and need not comply with the requirement specified in item 13.
- You can get help to complete this form at the Registry of the District Court.

How much of the claim do you admit?

- ☐ I admit the full amount claimed as shown on the statement of claim or
- ☐ I admit the amount of \$

1. Personal details

<u>Surname</u>	
<u>Forename</u>	
	<input type="checkbox"/> <u>Mr</u> <input type="checkbox"/> <u>Mrs</u> <input type="checkbox"/> <u>Miss</u> <input type="checkbox"/> <u>Ms</u>
<u>Address</u>	

2. Dependants (people you look after financially)

(give details)

--

3. Employment

<input type="checkbox"/> <u>I am employed as a</u>	
<u>My employer is</u>	
<u>Jobs other than main job</u> <u>(give details)</u>	
<input type="checkbox"/> <u>I am self employed as a</u>	
<u>Annual turnover is</u>	\$
<input type="checkbox"/> <u>I am not in arrears with my mandatory provident fund contributions and income tax</u>	
<input type="checkbox"/> <u>I am in arrears and I owe</u>	\$
<u>Give details of :</u>	
<u>(a) contracts and other work in hand</u>	
<u>(b) any sums due for work done</u>	
<input type="checkbox"/> <u>I have been unemployed for</u>	<u> years months</u>
<input type="checkbox"/> <u>I am a pensioner</u>	

4. Bank account and savings (please list all)

<u>Bank account</u>	<u>In credit by</u> \$	<u>Overdrawn by</u> \$

5. Residence

I live in ☐ my own flat
☐ my jointly owned flat
☐ public housing estate
☐ others (please specify)

6. Income

<u>My usual take-home pay (including overtime, commission, bonuses, etc.)</u>	\$ <u> </u> <u>per month</u>
<u>My pension(s)</u>	\$ <u> </u> <u>per month</u>
<u>Others living in my home give me</u>	\$ <u> </u> <u>per month</u>
<u>Other income (give details below)</u>	
	\$ <u> </u> <u>per month</u>
	\$ <u> </u> <u>per month</u>
	\$ <u> </u> <u>per month</u>
<u>Total income</u>	\$ <u> </u> <u>per month</u>

7. Other assets (please list and indicate their location)

--

8. Expenses

(Do not include any payments made by other members of the household out of their own income)

I have regular expenses as follows:

Mortgage (including second mortgage)

Rent

Rates and government rent

Gas

Electricity

Water charges

Housekeeping, food, school meals

Travelling expenses

Children's clothing

Maintenance payments

Court orders

Others

	\$ _____ per month
	\$ _____ per month
	\$ _____ per month
<u>Total expenses</u>	\$ _____ per month

9. Liabilities

(This section is for arrears only. Do not include regular expenses listed in item 8.)

Rent arrears

Mortgage arrears

Rates and government rent arrears

Water charges arrears

Fuel debts : Gas

Electricity

Other

Maintenance arrears

Loans and credit card debts (please list)

Others (give details below)

	\$ _____
	\$ _____
<u>Total liabilities</u>	\$ _____

10. Firm, company or corporation**Name**

--

Address

--

Tel. no.

--

11. Assets of firm, company or corporation (please list)

<u>Property, plant and equipment</u>		\$
<u>Inventories</u>		\$
<u>Goodwill and other intangible assets</u>		\$
<u>Loans and receivables</u>		\$
<u>Bank balances and cash</u>		\$
<u>Others</u>		\$
<u>Total</u>		\$

12. Liabilities of firm, company or corporation (please list)

<u>Trade payables</u>		\$
<u>Tax payables</u>		\$
<u>Other payables</u>		\$
<u>Bank loans</u>		\$
<u>Other borrowings</u>		\$
<u>Others</u>		\$
<u>Total</u>		\$

13. Attach to this form a copy of the latest audited profit and loss account and balance sheet of the firm, company or corporation

14. Offer of payment

<input type="checkbox"/>	<u>I can pay the amount admitted on</u>	
	<u>or</u>	
<input type="checkbox"/>	<u>I can pay by [weekly/monthly etc.] instalments of</u>	<u>\$</u>

Starting (date)

If you cannot pay immediately, please give brief reasons below :

15. Declaration I _____ declare that the details I have given above and in
the attached sheet(s) (if any) are true to the best of my knowledge
And I make this solemn declaration conscientiously believing the same to be true and by
virtue of the Oaths and Declaration Ordinance (Cap. 11)

<u>Signed</u>	<u>Position or office held</u> <u>(If signing on behalf of</u> <u>a firm, company or</u> <u>corporation)</u> <u>With company chop</u> <u>(if applicable)</u>	
---------------	---	--

Declared at _____ in Hong Kong on _____ of 20 ____.

Before me,

[Signature and designation, i.e., Justice of the Peace/Notary Public/Commissioner for Oaths.]

Note — Under section 36 of the Crimes Ordinance (Cap. 200), a person who knowingly and wilfully makes a statement false in a material particular in a declaration or other document which he is authorized or required to make by an enactment is guilty of an offence.

— A defendant who is an individual must sign personally. A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.

— If a plaintiff does not file a request for judgment within 14 days after this form is served on him, his claim is stayed until he files the request.

No. 16A

Request for judgment (admission of liquidated amount)

(Order 13A rules 4(3), 9(4) & 10(2))

(Heading as in action)

- **Remember to sign and date the form. Your signature certifies that the information you have given is correct.**
- **Return the completed form to the Court.**
- **The completed form should be filed in the Registry of the District Court.**

A The defendant has admitted the whole of my claim

Tick only one box below and follow the instructions given.

☐ **I accept the defendant's proposal for payment**

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the defendant's proposal.

☐ **The defendant has not made any proposal for payment**

Enclose a draft judgment for approval. You can ask for the judgment to be paid by instalments or in one payment.

☐ **I DO NOT accept the defendant's proposal for payment**

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note — The Court will notify you and the defendant of its judgment.

I certify that the information given is correct

Signed

(Plaintiff)(Plaintiff's solicitor)(next friend)

Position or office held

(If signing on behalf of a firm, company or corporation)

Date

With company chop (if applicable)

No. 16B

Reply to part admission of liquidated amount and Request for judgment

(Order 13A rules 5(3) & (5), 9(4) & 10(2))

(Heading as in action)

- **Please tell the Court what you wish to do by completing the lower half of this form and filing it in the Registry of the District Court within 14 days after the copy of the defendant's admission is served on you.**
At the same time you must serve a copy on the defendant. If you do not file this form in the Registry of the District Court within the prescribed period, your claim will be stayed. No further action will be taken by the Court until the form is received.
- **You must tick box A or B.**
- **Remember to sign and date the notice.**

A ☐ I DO NOT accept the defendant's part admission

If you tick box A the claim will proceed as a defended claim.

B ☐ I ACCEPT the amount admitted by the defendant in satisfaction of my whole claim

Tick only one box and follow the instructions given.

☐ I accept the defendant's proposal for payment

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the offer.

☐ The defendant has not made any proposal for payment

Enclose a draft judgment for approval. You can ask for the judgment to be paid by instalments or in one payment.

☐ I DO NOT accept the defendant's proposal for payment

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note — The Court will notify you and the defendant of its judgment.

I certify that the information given is correct

Signed

**(Plaintiff)(Plaintiff's
solicitor)(next friend)**

**Position or office held
(If signing on behalf of
a firm, company or
corporation)**

**With company chop
(if applicable)**

Date

No. 16C
Admission (unliquidated amount)
(Order 13A rules 6(2), 7(2) & 13(2))
(Heading as in action)

Explanatory Note

1. The only claim the plaintiff has made against you is for an unliquidated amount of money. You may admit the plaintiff's claim in whole or in part by completing this form within the period for service of your defence if you have been served with a Writ or the period for filing of your affidavit evidence if you have been served with an Originating Summons or within 14 days after service of the originating process in any other case.
2. You may offer a specified amount to satisfy the claim. If the amount you offer is accepted by the plaintiff, the plaintiff may request the Court to enter judgment against you for that amount. Alternatively, the plaintiff may request the Court to enter judgment against you for an amount to be decided by the Court and costs.
3. You may also ask for time to pay. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made.
4. The completed form should be filed in the Registry of the District Court.

How to fill in this form

- Tick the correct boxes and give as much information as you can. Then sign and date the form. If necessary provide details on a separate sheet, add the action number and attach it to this form.
- If you do not ask for time to pay, you need not complete items 2 to 9 and 11 and 12.
- If you are not an individual, you need not complete items 1 to 9 but you should complete items 10 to 12 and ensure that you comply with the requirement specified in item 13 and provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made.
- If you are an individual, you need not complete items 10 to 12 and need not comply with the requirement specified in item 13.
- You can get help to complete this form at the Registry of the District Court.

Part A Response to claim (tick one box only)

☐ I admit liability for the whole claim but want the Court to decide the amount I should pay (if you tick this box, you need not complete Part B and items 2 to 9, 11 and 12 and need not comply with the requirement specified in item 13)

OR

☐ I admit liability for the claim and offer to pay in satisfaction of the claim

Part B How are you going to pay the amount you have admitted? (tick one box only)

☐ I offer to pay on (date)

OR

☐ I cannot pay the amount immediately because (state reason)

AND

I offer to pay by instalments of \$ per (week)(month) starting (date)

1. Personal details

<u>Surname</u>	
<u>Forename</u>	
<input type="checkbox"/> <u>Mr</u> <input type="checkbox"/> <u>Mrs</u> <input type="checkbox"/> <u>Miss</u> <input type="checkbox"/> <u>Ms</u>	
<u>Address</u>	

2. Dependants (people you look after financially)

<u>(give details)</u>	
-----------------------	--

3. Employment

<input type="checkbox"/> <u>I am employed as a</u>	
<u>My employer is</u>	
<u>Jobs other than main job</u> <u>(give details)</u>	
<input type="checkbox"/> <u>I am self employed as a</u>	
<u>Annual turnover is</u>	<u>\$</u>
<input type="checkbox"/> <u>I am not in arrears with my mandatory provident fund contributions and income tax</u>	
<input type="checkbox"/> <u>I am in arrears and I owe</u>	<u>\$</u>
<u>Give details of :</u>	
<u>(a) contracts and other work</u> <u>in hand</u>	
<u>(b) any sums due for work</u> <u>done</u>	
<input type="checkbox"/> <u>I have been unemployed for</u>	<u> years months</u>
<input type="checkbox"/> <u>I am a pensioner</u>	

4. Bank account and savings (please list all)

<u>Bank account</u>	<u>In credit by</u> <u>\$</u>	<u>Overdrawn by</u> <u>\$</u>

5. Residence

I live in ☐ my own flat
☐ my jointly owned flat
☐ public housing estate
☐ others (please specify)

6. Income

<u>My usual take-home pay (including overtime, commission, bonuses etc)</u>	\$ _____ per month
<u>My pension(s)</u>	\$ _____ per month
<u>Others living in my home give me</u>	\$ _____ per month
<u>Other income (give details below)</u>	
	\$ _____ per month
	\$ _____ per month
	\$ _____ per month
<u>Total income</u>	\$ _____ per month

7. Other assets (please list and indicate their location)

--

8. Expenses

(Do not include any payments made by other members of the household out of their own income)

<u>I have regular expenses as follows:</u>	
<u>Mortgage (including second mortgage)</u>	\$ _____ per month
<u>Rent</u>	\$ _____ per month
<u>Rates and government rent</u>	\$ _____ per month
<u>Gas</u>	\$ _____ per month
<u>Electricity</u>	\$ _____ per month
<u>Water charges</u>	\$ _____ per month
<u>Housekeeping, food, school meals</u>	\$ _____ per month
<u>Travelling expenses</u>	\$ _____ per month
<u>Children's clothing</u>	\$ _____ per month
<u>Maintenance payments</u>	\$ _____ per month
<u>Court orders</u>	\$ _____ per month
<u>Others</u>	
	\$ _____ per month
	\$ _____ per month
	\$ _____ per month
<u>Total expenses</u>	\$ _____ per month

9. Liabilities

(This section is for arrears only. Do not include regular expenses listed in item 8.)

<u>Rent arrears</u>	\$
<u>Mortgage arrears</u>	\$
<u>Rates and government rent arrears</u>	\$
<u>Water charges arrears</u>	\$
<u>Fuel debts : Gas</u>	\$
<u>Electricity</u>	\$
<u>Other</u>	\$
<u>Maintenance arrears</u>	\$
<u>Loans and credit card debts (please list)</u>	\$
<u>Others (give details below)</u>	
	\$
	\$
<u>Total liabilities</u>	\$

10. Firm, company or corporation

<u>Name</u>	
<u>Address</u>	
<u>Tel. no.</u>	

11. Assets of firm, company or corporation (please list)

<u>Property, plant and equipment</u>	\$
<u>Inventories</u>	\$
<u>Goodwill and other intangible assets</u>	\$
<u>Loans and receivables</u>	\$
<u>Bank balances and cash</u>	\$
<u>Others</u>	\$
<u>Total</u>	\$

12. Liabilities of firm, company or corporation (please list)

<u>Trade payables</u>		\$
<u>Tax payables</u>		\$
<u>Other payables</u>		\$
<u>Bank loans</u>		\$
<u>Other borrowings</u>		\$
<u>Others</u>		\$
<u>Total</u>		\$

13. Attach to this form a copy of the latest audited profit and loss account and balance sheet of the firm, company or corporation

14. Declaration I _____ declare that the details I have given above and in the attached sheet(s) (if any) are true to the best of my knowledge
 And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declaration Ordinance (Cap. 11)

Signed

Position or office held
(If signing on behalf of
a firm, company or
corporation)

With company chop
(if applicable)

Declared at _____ **in Hong Kong on** _____ **of 20** _____.

Before me,

[Signature and designation, i.e., Justice of the Peace/Notary Public/Commissioner for Oaths.]

Note — Under section 36 of the Crimes Ordinance (Cap. 200), a person who knowingly and wilfully makes a statement false in a material particular in a declaration or other document which he is authorized or required to make by an enactment is guilty of an offence.

- A defendant who is an individual must sign personally. A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.**
- If a plaintiff does not file a request for judgment within 14 days after this form is served on him, his claim is stayed until he files the request.**

No. 16D

Request for judgment (admission of unliquidated amount)

(Order 13A rule 6(3))

(Heading as in action)

The defendant has admitted liability to pay the whole of my claim but has not made any proposal for payment.

I request judgment to be entered against the defendant for an amount to be decided by the Court and costs.
[Enclose a draft judgment for approval]

Signed

(Plaintiff)(Plaintiff's solicitor)(next friend)

Position or office held
(If signing on behalf of

a firm, company or corporation)

With company chop
(if applicable)

Date

- **The completed form should be filed in the Registry of the District Court.**

No. 16E

Reply to admission of unliquidated amount and Request for judgment

(Order 13A rules 7(3), (5) & (9), 9(4) & 10(2))

(Heading as in action)

Important notes for plaintiff

- **You must tick either item A or complete item B and file the form in the Registry of the District Court within 14 days after the copy of the defendant's admission is sent to you.**
At the same time you must send a copy to the defendant. If you do not return the form within the prescribed period, your claim will be stayed. No further action will be taken by the Court until the form is received.
- **Remember to sign and date the notice.**

A ☐ I DO NOT accept the amount offered by the defendant in satisfaction of my claim. I wish judgment to be entered for an amount to be decided by the Court.

The Court will give directions for management of the case.

B ☐ I ACCEPT the amount admitted by the defendant in satisfaction of my claim

Tick only one box and follow the instructions given.

☐ I accept the defendant's proposal for payment

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the offer.

☐ I DO NOT accept the defendant's proposal for payment

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note — The Court will notify you and the defendant of its judgment.

I certify that the information given is correct

Signed

**(Plaintiff)(Plaintiff's
solicitor)(next friend)**

**Position or office held
(If signing on behalf of
a firm, company or
corporation)**

**With company chop
(if applicable)**

Date

No. 17
Notice to be indorsed on copy of counterclaim

(Order 15 rule 3(6))

To X. Y.

1. Take notice that, ~~Take notice that~~, within [14 days] after service of this defence and counterclaim on you, counting the day of service, you must acknowledge service and state in your acknowledgment whether you intend to contest the proceedings. If you fail to do so or if your acknowledgment does not state your intention to contest the proceedings, judgment may be given against you without further notice.

Rule 42
Rec 18

2. If the only remedy that the counterclaiming plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the counterclaiming plaintiff's claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the counterclaim.

A completed Form No. 16 or 16C must be filed with the Registry of the District Court and served on the counterclaiming plaintiff [or the counterclaiming plaintiff's solicitors] within the period for service of the defence to counterclaim.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

~~No. 23~~
Notice of payment into court

Rule 69
Rec 38-43

~~(Order 22 rule 4)~~

~~(Heading as in action)~~

~~Take notice that-~~

~~The defendant has paid \$ into court.~~

~~The said \$ is in satisfaction of (the cause of action) (all the causes of action) in respect of which the plaintiff claims (and after taking into account and satisfying the above named defendant's cause of action for in respect of which he counterclaims).~~

~~or~~

~~The said \$ is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely, (and after taking into account as above).~~

~~or~~

~~Of the said \$, \$ is in satisfaction of the plaintiff's cause(s) of action for (and after taking into account as above) and \$ is in satisfaction of the plaintiff's cause(s) of action for (and after taking into account as above).~~

~~Dated the day of 20~~

No. 23

Notice of sanctioned payment

(Order 22 rules 1, 6(3) & 7(2))

(Heading as in action)

To the plaintiff('s solicitor) and to the Director of Legal Aid (if applicable)

**Take notice that the defendant(s) _____ has/have
paid \$ _____ (a further amount of \$ _____) into
court in settlement of
(tick as appropriate)**

- ☐ **the whole of your claim**
- ☐ **part of your claim (give details below)**
- ☐ **a certain issue or issues arising from your claim (give details below)**

The (part) (issue or issues) to which it relates is(are): (give details)

- ☐ **It is in addition to the amount of \$ _____ already paid into
court on _____ and the total amount in court now offered in
settlement is \$ _____ (give total of all payments in court
to date)**
- ☐ **It is not inclusive of interest and an additional amount of \$ _____
is offered for interest (give details of the rate(s) and period(s)
for which the amount of interest is offered)**
- ☐ **It takes into account all (part) of the following counterclaim or set off:
(give details of the party and the part of the counterclaim to which the
payment relates)**
- ☐ **It takes into account the interim payment(s) made in the following
amount(s) on the following date(s): (give details)**
- ☐ **It takes into account the following sum(s) of money that has (have) been
paid into court: (give details)**
- ☐ **It is part of the terms of a sanctioned offer set out in (identify the
document). If you give notice of acceptance of this sanctioned payment,
you will be treated as also accepting the sanctioned offer.**

Note : This notice will need to be modified where an offer of provisional damages is made (Order 22, rule 8) .

Signed

Defendant('s solicitor)

Position or office held
(If signing on behalf
of a firm, company or
corporation)

Date

With company chop
(if applicable)

Note: To the plaintiff

If you wish to accept the payment made into court and the Court's leave for acceptance is not required, you should complete Form No. 24 and send it to the defendant, and file a copy in the Registry of the District Court.

No. 24
Notice of acceptance of money paid into court

Rule 69
Rec 38-43

~~(Order 22 rule 3)~~

~~(Heading as in action)~~

~~Take notice that the plaintiff accepts the sum of \$
paid in by the defendant C.D. in satisfaction of the cause(s) of action in respect of
which it was paid in and in respect of which the plaintiff claims (against that
defendant) (and abandons the other causes of action in respect of which he claims in
this action).~~

~~Dated the day of 20~~

No. 24

Notice of acceptance of sanctioned payment

(Order 22 rule 11(4))

(Heading as in action)

Rule 69
Rec 38-43

To the defendant('s solicitor) and to the Director of Legal Aid (if applicable)

Take notice that the plaintiff accepts the payment(s) into court totalling
\$ _____ in settlement of (the whole of) (part of) (certain
issue(s) arising from) *the plaintiff's claim as set out in the notice of
sanctioned payment received on _____ (and
abandons the other part(s) of or issue(s) arising from the plaintiff's claim).

Signed

Plaintiff('s solicitor)

Position or office held
(If signing on behalf of
a firm, company or
corporation)

Date

With company chop
(if applicable)

*** Delete as appropriate.**

No. 25

Notice of request for payment

(Order 22 rule 13)

(Heading as in action)

On I accepted the payment(s) into court
totalling \$ in settlement of (the whole of) (part of)
(certain issue(s) arising from) *my claim as set out in the notice of sanctioned
payment received on (and abandoned the
other part(s) of or issue(s) arising from my claim).*

I declare that:

- ☐ the sanctioned payment has been accepted [within 28 days] [after 28 days
but costs have been agreed] [less than 28 days before trial but costs have
been agreed]*
- ☐ the payment into court was not made with a defence of tender
- ☐ the offeree is not a person under disability
- ☐ [at no time has the offeree been on legal aid in these proceedings] [the
offeree has been on legal aid]*
- ☐ there is no pending application to withdraw or diminish the sanctioned
payment
- ☐ [there is only 1 defendant) (the sanctioned payment is made by all
defendants] [I have discontinued my claim against those defendants who
have not made the sanctioned payment and they have given written consent
to the acceptance of the sanctioned payment]*
- ☐ [my claim does not include a claim for provisional damages] [my claim for
provisional damages has been disposed of under Order 37, rule 8]*
- (If any of the above declarations has not been made, the money in court can
only be paid out by order of the Court)
- ☐ a copy of this notice has been served on the defendant('s solicitor) named
below and I request payment of this money held in court to be made to:

Plaintiff or solicitor's full name/Director of Legal Aid*

Address and telephone number

Signature

Note: Before signing this form please read the notes for guidance overleaf.
Incorrectly signed forms may be returned unactioned.

Signed

Date

DETAILS OF PLAINTIFF'S SOLICITOR

Name of firm

Solicitor for

Defendant or solicitor's full name/Director of Legal Aid*

Address and telephone number

Signature

Note: The plaintiff('s solicitor) should obtain the signature of the defendant('s solicitor) on the box below before serving a copy of this notice on him

Signed

Date

DETAILS OF DEFENDANT'S SOLICITOR

Name of firm

Solicitor for

* Delete as appropriate

Notes for guidance on completion of Form No. 25

In order to request payment out of funds in court, file this form, signed and completed in accordance with these notes for guidance in the Registry of the District Court. A copy of this form should also be sent to the defendant('s solicitors).

- When completing this form, please ensure that you tick all of the boxes under the heading: 'I declare that'. If you do not tick all of the boxes, the Registry of the District Court will not be able to process your request for payment and will have to return the form to you.
- The form should be signed either by the plaintiff or his solicitor.
- The Accounts Office of the District Court will only issue payment upon receipt of a properly completed Form No. 25 with an original signature. Faxed copies of the form and photocopies of signatures will not be accepted and will be returned to sender.

No. 25A

Notice of payment into court under order or certificate

(Order 22 rule 23(1))

(Heading as in action)

Rule 69
Rec 38-43

Take notice that the plaintiff/defendant _____ has paid
\$ _____ into court in compliance with the order/certificate of
_____ dated _____.

Signed

Plaintiff/Defendant('s
solicitor)

Position or office
held
(If signing on behalf
of a firm, company
or corporation)

Date

With company chop
(if applicable)

Solicitors' certificate

We certify that –

(a) _____ the payment is made within time.

***(b) _____ there is no direction in the order for investment of the money.**

***(c) _____ the Court has directed that the money be invested in the following manner –**

Signed

Date

SOLICITOR'S DETAILS

Name of firm

Solicitor for

*** _____ Delete as appropriate**

No. 26

List of Documents

(Order 24 rule 5)

(Heading as in cause or matter)

List of documents

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the above-named plaintiff (or defendant) A.B. **and which is served in compliance with Order 24, rule 2** (or the order herein dated the day of 20).

Rule 191

1. The plaintiff (or defendant) has in his possession, custody or power the documents relating to the matters in question in this action enumerated in schedule 1 hereto.
2. The plaintiff (or defendant) objects to produce the documents enumerated in part 2 of the said schedule 1 on the ground that (stating the ground of objection).
3. The plaintiff (or defendant) has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this action enumerated in schedule 2 hereto.
4. Of the documents in the said schedule 2, those numbered in that schedule were last in the plaintiff's (or defendant's) possession, custody or power on (stating when) and the remainder on (stating when).

(Here state what has become of the said documents and in whose possession they now are.)

5. Neither the plaintiff (or defendant), nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in this action, other than the documents enumerated in schedules 1 and 2 hereto.

SCHEDULE 1

Part 1

(Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.)

Part 2

(Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.)

SCHEDULE 2

(Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question.)

Dated the day of 20

Notice to inspect

Take notice that the documents in the above list, other than those listed in part 2 of schedule 1 (and schedule 2), may be inspected at (the office of the solicitor of the above-named (plaintiff) (defendant) (insert address) or as may be) on the.....day of.....20....., between the hours of..... and

To the defendant (or plaintiff) C.D. and his solicitor.

Served the.....day of.....20.....by.....
of.....solicitors for the (plaintiff) (defendant).

No. 38

Notice of motion

(Order 8 rule 3)

(Heading as in cause or matter)

Take notice that (pursuant to the leave of _____ given on
the _____ day of _____ 20____) the Court (or Judge _____)
will be moved _____ the _____ day of _____ 20____ at _____ o'clock, or
so soon thereafter as counsel can be heard, by (Mr _____
of _____) counsel for the above-named plaintiff (or defendant) that and
that the costs of the application be _____

Dated the _____ day of _____ 20____ .

(Signed) _____
of _____
Solicitor for _____

To

Solicitor for _____

No. 51

~~Judgment for costs after acceptance of money paid into court~~

~~(Order 62 rule 10(3))~~

~~(Heading as in action)~~

The day of 20

~~The defendant having paid into court in this action the sum of
\$ in satisfaction of the plaintiff's cause(s) of action (or in
satisfaction of the plaintiff's cause of action for), and the
plaintiff having by his notice dated the day of 20 accepted
that sum in satisfaction of his cause(s) of action (or in satisfaction of his cause of action
for and abandoned his other cause(s) of action);
and the plaintiff's costs herein having been taxed and allowed at \$ as
appears by a taxing officer's certificate dated the day of
20, and the defendant not having paid the sum within 48 hours after taxation.~~

~~It is this day adjudged that the defendant do pay the plaintiff \$ the
said taxed costs.~~

No. 85

Order of committal

(O. 52 r. 1)

(Heading as in action)

Rule 191

~~Upon hearing the originating summons dated the day
of 20 taken out by the Solicitor for the
Plaintiff/Plaintiff and upon reading (an affidavit of filed the
day of 20 of service on the defendant C.D. of a copy of
the order of the Court dated the day of
20 and of notice of hearing of this originating summons):~~

Upon hearing the originating summons dated the day of
20 taken out by the solicitor for the plaintiff/plaintiff and upon reading (an
affidavit of filed the day of 20 of service on
the defendant C.D. of a copy of the order of the Court dated the day of
20 and of notice of hearing of this originating summons:

And it appearing to the satisfaction of the Court that the defendant C.D. has been
guilty of contempt of court in (state the contempt):

It is ordered that for his said contempt the defendant do stand committed
to Prison to be there imprisoned (until further order).

(It is further ordered that this order shall not be executed if the defendant C.D.
complies with the following terms,
namely,
.....
.....).

Dated the day of 20

No. 93

Notice of sanctioned payment (Order 62A)

(Order 62A rule 6(2))

(Heading as in action)

Rule 72
Rec 132

To the receiving party('s solicitor)

Take notice that the paying party _____ has paid \$ _____ (a further amount of \$ _____) into court in settlement of (tick as appropriate)

- ☐ the whole of your costs including the costs of taxation (for the bill dated _____)
- ☐ part of your costs (give details below)
- ☐ It is in addition to the amount of \$ _____ already paid into court on _____ and the total amount in court now offered in settlement of your costs is \$ _____ (give total of all payments in court to date)
- ☐ It is not inclusive of interest and an additional amount of \$ _____ is offered for interest (give details of the rate(s) and period(s) for which the amount of interest is offered)
- ☐ It takes into account the interim payment(s) of costs made in the following amount(s) on the following date(s): (give details)
- ☐ It takes into account the following sum(s) of money that has (have) been paid into court as security for the costs of the action, cause or matter: (give details)

Signed

Paying party('s solicitor)

Position or office held
(If signing on behalf of
a firm, company or
corporation)

Date

With company chop
(if applicable)

Note: To the receiving party

If you wish to accept the payment made into court and the Court's leave for acceptance is not required, you should complete Form No. 93B and file it in the Registry of the District Court, and send a copy to the paying party.

No. 93A

Notice of acceptance of sanctioned payment (Order 62A)

(Order 62A rule 9(4))

(Heading as in action)

To the paying party('s solicitor)

Take notice that the receiving party accepts the payment(s) into court totalling
\$ _____ in settlement of (the whole of) (part of) the
receiving party's costs as set out in the notice of sanctioned payment received on
_____ (and abandons the other part(s) of the costs).

Signed

Receiving party('s
solicitor)

Position or office held
(If signing on behalf of
a firm, company or
corporation)

With company chop
(if applicable)

Date

No. 93B

Notice of request for payment (Order 62A)

(Order 62A rule 11)

(Heading as in action)

On _____ **I accepted the payment(s) into court totalling \$**
in settlement of (the whole of) (part of) my costs as set out in the notice of
sanctioned payment received on _____ **.**

I declare that:

☐ **the sanctioned payment has been accepted [within 14 days] [after 14 days but liability for and quantum of costs incurred after the 14-day period have been agreed]***

☐ **the offeree is not a person under disability**

☐ **[at no time has the offeree been on legal aid in these proceedings] [the offeree has been on legal aid]***

☐ **there is no pending application to withdraw or diminish the sanctioned payment**

☐ **[there is only one paying party] [the sanctioned payment is made by all paying parties] [I have discontinued the proceedings for taxation against those paying parties who have not made the payment and they have given written consent to the acceptance of the sanctioned payment]***

(If any of the above declarations has not been made, the money in court can only be paid out by order of the Court)

☐ **a copy of this notice has been served on the paying party('s solicitor) named below and I request payment of this money held in court to be made to:**

Receiving party or solicitor's full name

Address and telephone number

Signature

Note: Before signing this form please read the notes for guidance overleaf. Incorrectly signed forms may be returned unactioned.

Signed

Date

DETAILS OF RECEIVING PARTY'S SOLICITOR

Name of firm

Solicitor for

Paying party or solicitor's full name/Director of Legal Aid*

Address and telephone number

Signature

Note: The Receiving party('s solicitor) should obtain the signature of the paying party('s solicitor) on the box below before serving a copy of this notice on him

Signed

Date

DETAILS OF PAYING PARTY'S SOLICITOR

Name of firm

Solicitor for

* Delete as appropriate

Notes for guidance on completion of Form No. 93B

In order to request payment out of funds in court, file this form, signed and completed in accordance with these notes for guidance in the Registry of the District Court. A copy of this form should also be sent to the paying party's solicitors.

- When completing this form, please ensure that you tick all of the boxes under the heading: 'I declare that'. If you do not tick all of the boxes, the Registry of the District Court will not be able to process your request for payment and will have to return the form to you.
- The form should be signed either by the receiving party or his solicitor.
- The Accounts Office of the District Court will only issue payment upon receipt of a properly completed Form No. 93B with an original signature. Faxed copies of the form and photocopies of signatures will not be accepted.
- A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 119
Rec 102, 103, 107

APPENDIX E Code of conduct for expert witnesses (Order 38 rules 35, 37B and 37C)

Application of code

1. This code of conduct applies to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in Court.

General duty to Court

2. An expert witness has an overriding duty to assist the Court impartially and independently on matters relevant to the expert's area of expertise.

3. An expert witness's paramount duty is to the Court and not to the person from whom the expert has received instructions or by whom he is paid.

4. An expert witness is not an advocate for a party.

Declaration of duty to Court

5. A report by an expert witness is not admissible in evidence unless the report contains a declaration by the expert witness that –

- (a) he has read this code of conduct 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.

6. Oral expert evidence is not admissible unless an expert witness has declared in writing, whether in a report or otherwise in relation to the proceedings, that –

- (a) he has read this code of conduct 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.

Expert report to be verified

7. A report by an expert witness must be verified by a statement of truth in accordance with Order 41A of the Rules of the District Court (Cap. 336 sub. leg. H).

Form of expert reports

8. A report by an expert witness must (in the body of the report or in an annexure) specify –

- (a) the person's qualifications as an expert;
- (b) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed);
- (c) the reasons for each opinion expressed;
- (d) if applicable, that a particular question or issue falls outside his field of expertise;
- (e) any literature or other materials utilized in support of the opinions; and
- (f) any examinations, tests or other investigations on which he has relied, and the identity and details of the qualifications of the person who carried them out.

9. If an expert witness who prepares a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.

10. If an expert witness considers that his opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.

11. An expert witness who, after communicating an opinion to the party instructing him (or that party's legal representative), changes his opinion on a material matter shall forthwith provide the party (or that party's legal representative) with a supplementary report to that effect which must contain such of the information referred to in section 8(b), (c), (d), (e) and (f) as is appropriate.

Experts' conference

12. An expert witness shall abide by any direction of the Court to -

- (a) confer with any other expert witness;
- (b) endeavour to reach agreement on material matters for expert opinion; and
- (c) provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non-agreement.

13. An expert witness shall exercise his independent, professional judgment in relation to such a conference and joint report, and shall not act on any instruction or request to withhold or avoid agreement.

Note:- Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false declaration or a false statement in a document verified by a statement of truth without an honest belief in its truth.