

CJRS 22/2008

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

**Revised Proposal for Amendments to the
Rules of the High Court (Cap. 4A)**

Purpose

This paper takes stock of the revised amendments to the Rules of the High Court (“RHC”) (Cap. 4A), which the Steering Committee on Civil Justice Reform (“the Steering Committee”) has proposed in its submissions to the Subcommittee.

Order / Rule	Consideration and Revised Amendments Proposed
Part 2 – Objectives and Case Management Powers	
O.1A, r.1(d)	- Taking into account the Subcommittee’s comments and deputations’ comments, the Steering Committee will revise O.1A, r.1(d) to read “ <i>to ensure fairness between the parties</i> ”. See CJRS 5/2008 .
Part 3 – Pre-action Protocol and Costs-only Proceedings	
O.2, r. 4	- The Steering Committee has agreed to the Bar’s suggestion in its previous submissions that O.2 r.4 be amended to provide that any sanction for failure to comply imposed by the rule or court order shall take effect unless the party in default applies for and obtains relief from the sanction within 14 days. See CJRS 3/2008 .
O.2	- Taking into account the Subcommittee’s comments and deputations’ comments, the Steering Committee will amend O.2 to exclude the application of the proposed sanctions from pre-action protocol and practice direction. See

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	<p>CJRS 5/2008.</p> <ul style="list-style-type: none">- Consequential to the above revisions, amendments will be proposed to Orders 1, 22 and 62.
Part 4 – Commencement of Proceedings	
O.118 & O.119	<ul style="list-style-type: none">- Having considered the Subcommittee’s comments, the Steering Committee will amend O.118, r.4(1) and O.119, r.4 to make it clear that the proceedings dealt with by these orders are ex parte in nature and specify that the form to be used is an originating summons in Form No. 11 at Appendix A of the RHC. See CJRS 20/2008.
Part 6 – Default Judgments and Admissions	
O.13A, r.10	<ul style="list-style-type: none">- Taking into account the Subcommittee’s views, the Steering Committee will amend O.13A, r.10 and the Explanatory Notes in the Forms 16 and 16C to set out that, if the plaintiff does not accept the defendant’s proposal for payment, the Court will decide how the payment should be made, taking into account (i) the information set out by the defendant in the admission form, (ii) the plaintiff’s objections set out in the request for judgment, and (iii) any other relevant factors. See CJRS 19/2008.
Forms 16 and 16C	<ul style="list-style-type: none">- The Steering Committee has agreed to the Subcommittee’s suggestion to add a notice to the Explanatory Notes in Forms No. 16 and 16C to alert a defendant making an admission and proposals for payment terms that he will not normally be allowed to resile from his admission, if the plaintiff does not accept his proposal. See CJRS 19/2008.

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Part 7 – Pleadings	
Forms 1 and 14	- The Steering Committee has agreed to the Subcommittee’s suggestion to set out in the relevant forms the requirement that the pleading should be verified by a statement of truth. See CJRS 19/2008 .
Part 8 – Sanctioned Offers and Payments	
O.22, r.5	- The Steering Committee has proposed to delete O.22, r.5(6)(b) as it is unnecessary to require the offeror of a sanctioned offer to file with the Court a certificate of service of the offer. Raised at the Subcommittee meeting on 18.4.2008.
O.22, r.19	- The Steering Committee has proposed to introduce a provision similar to O.22, r.20(2) so that a plaintiff and defendant would be subject to the same financial sanctions for non-acceptance of a sanctioned offer/payment. Raised at the Subcommittee meeting on 18.4.2008.
O.22, r.23	- The Steering Committee has proposed amendments to clarify that the money is deemed to be a sanctioned payment on the date the sanctioned payment notice is served on the offeree, and the notice in r.23(2)(a) is deemed to be sanctioned payment notice; and in the case of pleading a plea of tender, the date the plea is served. See CJRS 19/2008 .
O.22	- The Steering Committee has proposed to add a provision to require that the notice of acceptance of plaintiff’s sanctioned offer should be given to other defendants, who may then apply to the court as regards costs or other directions. This is to cater for the issue of costs (if any) between the defendants, in the

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	event that only one or more, but not all, defendants accepted the plaintiff's sanctioned offer. See CJRS 20/2008 .
Part 10 – Case Management, Timetabling and Milestones	
O.25, r.1B	- The Steering Committee has agreed to the Subcommittee's suggestion to amend O.25, r.1B to specify that the Court shall not grant an application for variation of a milestone date unless there are exceptional circumstances. See CJRS 20/2008 .
O.25, r.1C	- The Steering Committee has proposed to amend O.25, r.1C to clarify that – (a) If both the plaintiff and counterclaiming defendant have not appeared at the case management conference (“CMC”) or pre-trial review (“PTR”), the claim and counterclaim shall be provisionally struck out, subject to a period of 3 months for restoration; and (b) If the plaintiff has not appeared at the CMC or PTR, but the counterclaiming defendant has, the counterclaim should not be struck out and the defendant may proceed with his counterclaim, notwithstanding the plaintiff's claim is provisionally struck out. See CJRS 20/2008 .
Part 13 – Interlocutory Applications	
O.32, r.11A	- Taking into account the comments from Professor Eric CHEUNG in his submission dated 29.2.2008 [LC Paper No. CB(2)1255/07-08(01)], the Steering Committee will amend O.32, r.11A(4) to make it clear that it is subject to any

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	directions given under r.11A(3). See CJRS 6/2008 .
Part 14 - Interlocutory Assessment of Costs of Interlocutory Applications	
O.62, r.9A	<ul style="list-style-type: none">- Having considered the Subcommittee's views, the Steering Committee has agreed to delete the phrase "<i>aggrieved by the order</i>" in O.62, r.9A(2).- The Steering Committee has agreed to the Subcommittee's suggestion to replace references to "<i>the Court</i>" in O.62, r.9A(4) and (5) by "<i>taxing master</i>". See CJRS 20/2008.
Part 15 – Wasted Costs	
O.62, r.8D	- Taking into account the comments from Professor Eric CHEUNG in his submission dated 29.2.2008 [LC Paper No. CB(2)1255/07-08(01)], the Steering Committee has proposed to state the procedural safeguards contained in r.8 will also apply to r.8D. See CJRS 6/2008 .
Part 17 – Expert Witness	
O.38, r.4A	<ul style="list-style-type: none">- The Steering Committee has proposed to amend O.38, r.4A to make it clear that –<ul style="list-style-type: none">(a) before the Court considers appointing a single joint expert (“SJE”) on its own motion, it should hear the parties first; and(b) the Court will only appoint an SJE where the circumstances allow this (see O.38 r.4A(5)), but where one party objects, or both or all parties object, the Court may nevertheless appoint an SJE in the interests of justice. <p>See CJRS 20/2008.</p>

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Part 19 – Leave to Appeal	
O.59, r.2B	- Taking into account the comments from Professor Eric CHEUNG in his submission dated 7.4.2008 [LC Paper No. CB(2)1529/07-08(01)] in relation to Order 59 (Appeals), the Steering Committee would delete the words “ <i>by a summons</i> ” from r.2B(1). Raised at meeting on 5.5.2008.
O.59, r.10	- Taking into account the comments from Professor Eric CHEUNG in his submission dated 7.4.2008 [LC Paper No. CB(2)1529/07-08(01)], the Steering Committee would delete the words “ <i>in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits</i> ” from r.10(2). Raised at meeting on 5.5.2008.
Part 22 – Taxing the Other Side’s Costs	
O.62, r.17A	- The Steering Committee would propose amendments to r.17A to make it clear that the taxing master would only issue a final certificate after the expiry of the review period in r.33. Raised at meeting on 5.5.2008.
Part 23 – Judicial Review	
O.53	- In the light of observations of the Subcommittee and taking into account the views expressed through deputations, the Steering Committee has decided to remove the proposed amendments regarding the service requirement at the leave application stage. See CJRS 4/2008 and CJRS 18/2008 .

Proposed Way Forward

2. The Judiciary will revise the draft Rules of the High Court (Amendment) Rules 2008 (as attached to **CJRS 1/2008**) in the light of the above proposed amendments by the Steering Committee, together with necessary consequential and textual amendments, before they are gazetted for negative vetting by the Legislative Council.

Judiciary Administration
May 2008