

LEGISLATIVE COUNCIL BRIEF

**SUBSIDIARY LEGISLATION RELATING TO THE
CIVIL JUSTICE REFORM**

**High Court Ordinance (Chapter 4)
District Court Ordinance (Chapter 336)
Lands Tribunal Ordinance (Chapter 17)**

**RULES OF THE HIGH COURT (AMENDMENT) RULES 2008
RULES OF THE DISTRICT COURT (AMENDMENT) RULES 2008
LANDS TRIBUNAL (AMENDMENT) RULES 2008
HIGH COURT FEES (AMENDMENT) RULES 2008
DISTRICT COURT CIVIL PROCEDURE (FEES)
(AMENDMENT) RULES 2008
HIGH COURT SUITORS' FUNDS (AMENDMENT) RULES 2008
DISTRICT COURT SUITORS' FUNDS (AMENDMENT) RULES 2008**

INTRODUCTION

On 4 June 2008, the following Amendment Rules were made by their respective rule-making authorities as listed below –

Amendment Rules	Made by
1. Rules of the High Court (Amendment) Rules 2008 (Annex A)	High Court Rules Committee (“HCRC”)
2. Rules of the District Court (Amendment) Rules 2008 (Annex B)	District Court Rules Committee (“DCRC”)
3. Lands Tribunal (Amendment) Rules 2008 (Annex C)	Chief Justice
4. High Court Fees (Amendment) Rules 2008 (Annex D)	HCRC
5. District Court Civil Procedure (Fees) (Amendment) Rules 2008 (Annex E)	DCRC
6. High Court Suitors’ Funds (Amendment) Rules 2008 (Annex F)	Chief Judge of the High Court
7. District Court Suitors’ Funds (Amendment) Rules 2008 (Annex G)	Chief Judge of the High Court

BACKGROUND AND JUSTIFICATIONS

Problems in the Present Civil Justice System

2. As in many common law jurisdictions, our present civil justice system has to keep abreast with the needs and developments of modern times. With Hong Kong's economic development and social and technological advances, there has been over the years a sharp increase in the number and complexity of transactions, in particular commercial ones. The increase in the scope and complexity of legislation reflects this. All this has put pressure on our civil justice system, generating large numbers of disputes and consequent civil proceedings. The increase in and volume of litigation over the past 20 years is a clear indication of this. Our civil justice system, largely unchanged for several decades, has been criticised for not having kept up with the times.

3. The procedural system of justice in Hong Kong is adversarial based, meaning that the courts will leave it to the parties themselves to bring cases to court and on the whole let them define the nature and extent of their dispute. However, this has led to the pace and timetabling of litigation often to be in the hands of the parties rather than the court. This in turn has resulted in excessive costs, delay and complexity, which have been criticised as being the common faults of the present system. Thus, important features in the system have been misused. For instance, (i) pleadings, which should focus the issues between the parties, are at times unclear and obscure rather than clarify; (ii) discovery, which should be a candid disclosure of documents to promote a fair resolution of the dispute, are taken to excessive lengths resulting in severe delays and therefore inflating the costs of action; (iii) numerous interlocutory applications to court are often made which serve little useful purpose but which increase the costs of an action and cause significant delays. As the present system is largely party driven rather than being court driven, these excesses are permitted to exist. In addition, the failure to identify the real issues in a case at an early stage or the fact that parties are able to reveal the true strengths or weaknesses of their cases only at a relatively late stage of the proceedings, result in cases not being settled before significant costs are incurred and delays having already occurred.

Objectives of the Civil Justice Reform (“CJR”)

4. In February 2000, the Chief Justice appointed the Working Party on CJR (“the Working Party”) to review the rules and procedure of the High Court (“HC”) in civil proceedings and to recommend changes thereto, with a view to ensuring and improving access to justice at reasonable cost and speed. The Working Party submitted its recommendations to the Chief Justice in its Final Report in March 2004, making a total of 150 recommendations.

5. The objective of the CJR is to –

- (a) preserve the best features of the adversarial system but curtailing its excesses. One of the primary ways to achieve this is by giving even greater case management powers to the courts. This would prevent tactical manipulation of the rules to delay proceedings and also ensure that court and judicial resources are fairly distributed;
- (b) streamline and improve the civil procedures; and
- (c) facilitate early settlement by parties, cut out unnecessary applications and, if necessary, penalize such applications.

6. In consequence, civil proceedings would become more efficient, expeditious and promote a sense of reasonable proportion and economy. The intention is to reduce delay and eliminate unnecessary expenses in litigation. There would also be greater equality between parties to proceedings and settlements would be both encouraged and facilitated. As far as the administration of the court is concerned, its resources would be more fairly distributed and utilized.

Steering Committee on CJR

7. In March 2004, the Chief Justice accepted the Working Party’s Final Report and set up the Steering Committee on CJR (“the Steering Committee”) to oversee the implementation of the recommendations therein relating to the Judiciary. The Chief Justice subsequently decided that the proposed changes should be implemented not just in the HC, but also in the District Court (“DC”) and the Lands Tribunal (“LT”) where such changes are appropriate. Accordingly, the terms of reference of the Steering Committee were expanded in

September 2006 to oversee the application of the recommendations in the Final Report to the DC and LT.

8. The work of the Steering Committee has so far focused mainly on the legislative amendments for the implementation of the recommendations in the Final Report. The work on legislative amendments to primary legislation was completed with the enactment of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (hereafter referred to as “CJO”) in January 2008. The Steering Committee’s proposed amendments to subsidiary legislation involve three main sets of subsidiary legislation –

- (a) Rules of the High Court (“RHC”) (Cap. 4A);
- (b) Rules of the District Court (“RDC”) (Cap. 336H); and
- (c) Lands Tribunal Rules (“LTR”) (Cap. 17A).

9. Consequential amendments are proposed to four sets of subsidiary legislation –

- (a) High Court Fees Rules (“HCFR”) (Cap. 4D);
- (b) District Court Civil Procedure (Fees) Rules (“DCFR”) (Cap. 336C);
- (c) High Court Suitors’ Funds Rules (“HCSFR”) (Cap. 4B); and
- (d) District Court Suitors’ Funds Rules (“DCSFR”) (Cap. 336E).

Legislative Council’s Subcommittee on Draft Subsidiary Legislation Relating to the CJR

10. Given the complexity and the volume of subsidiary legislation relating to the CJR, the Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007 recommended that in order to allow sufficient time for scrutiny, the subsidiary legislation should be studied in draft form before they are formally tabled before the Legislative Council (“LegCo”). On 18 January 2008, the House Committee agreed to form a subcommittee for the purpose. The Subcommittee on Draft Subsidiary Legislation Relating to the CJR held 14 meetings from February to May 2008 to scrutinize the English drafts of the amendments to the seven sets

of draft subsidiary legislation set out in paragraphs 8 and 9 above, including one meeting on 29.2.2008 to receive deputations' views.

PROPOSED AMENDMENTS TO SUBSIDIARY LEGISLATION UNDER CJR

11. The amendments to subsidiary legislation proposed by the Steering Committee relate primarily to the recommendations in the Final Report. Some are to implement the recommendations of the Steering Committee, having regard to related developments in the course of the Steering Committee's deliberations since the publication of the Final Report. These are mainly logical extensions in line with the objectives of recommendations the Final Report. Others are minor amendments to tidy up the existing rules. The Steering Committee has also taken into account the comments received in the two rounds of consultation in April 2006 and October 2007, as well as the comments of the LegCo Subcommittee and the deputations' views.

Policy Aspects of the Proposed Amendments

12. In order to deal with the problems of the present civil justice system highlighted in paragraph 3 above, the proposed amendments seek to bring into focus the need of the courts to have regard to the following underlying objectives, namely -

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

whilst always recognizing that the primary aim of case management is to secure the just resolution of the parties' dispute in accordance with their substantive rights.

13. Bearing in mind these objectives should result in having in place in every case effective procedures ensuring that (i) there are no unnecessary steps taken or applications made and (ii) parties are provided at an earlier (rather than a later) stage with a good idea as to the true nature and strength of their respective cases. Effective procedures will result in unnecessary delays in litigation being avoided, parties not having to incur unnecessary expense and in the more efficient resolution of disputes, whether at trial or, as important, at an earlier stage with a settlement. The elimination of unnecessary (and therefore costly) steps will also promote greater equality between parties (for example, by eliminating the use of delaying tactics) and enable the courts to utilise their resources efficiently and properly (in dealing with cases and applications that merit attention).

14. Integral to the implementation of the reforms is the need for greater case management by the courts on proceedings before them. It is proposed that the case management powers of the court be enhanced and put on a statutory footing. Such case management includes the following facets -

- (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.

15. These changes are intended to foster a new culture for the conduct of cases, so that at an earlier stage than it is at present, parties will have to be better prepared and be in a better position to know the other side's case. Case management can be applied to restrain excessive discovery, deter undue prolixity of witness statements and evidence, cut down the number of unmeritorious and unnecessary interlocutory applications, which are some of the major causes of costs and delays in the present system.

Improving Cost-effectiveness, ensuring cases are dealt with expeditiously, promoting a sense of reasonable proportion, procedural economy and ensuring fairness between the parties

Greater Case Management by the Courts

16. Under the new system, there should be no scope for tactical games (which are often designed to cause delay or increase costs) by any party. Every step permitted by the court will go towards the just and efficient resolution of the dispute before the court bearing in mind the said objectives. The court will at a relatively early stage of proceedings adopt a "hands on" approach to ensure that proceedings are court controlled rather than party driven. In this way, the court can ensure that proceedings will proceed with expedition, that costly and unnecessary steps (that at present can lead to expense and delay out of all proportion to the amount at stake in the proceedings) are avoided and that parties are put on an equal footing (for example, the party with the greater resources is not able to prejudice the other side by tactics).

Court-determined Timetables

17. Instead of leaving the progress of actions in the hands of the parties as at present, the Court will assume much greater control over the progress of actions by setting a firm timetable for each case at an early stage of proceedings. A court-determined timetable takes into account the needs of the particular case and the reasonable requests of the parties. The time-table sets out milestone dates for the major steps in any proceedings, such as the dates for trial and other important hearings. Only in the most exceptional circumstances will a milestone date be changed. This arrangement also helps reduce delays.

Expert Evidence

18. In order to counter the possible lack of impartiality or independence of expert witnesses, it is proposed that an expert witness be required to (i) declare that he owes a duty to the court which overrides any obligation to those instructing or paying him; (ii) acknowledge that overriding duty in his report; and (iii) declare his agreement to be bound by an approved code of conduct for experts.

Pleadings to be Verified by Statements of Truth

19. Pleadings, which should contain a concise and clear statement of the true nature of the case and the facts relied on, are at present often obscure, thereby hiding the true nature and strength of a party's case. For example, a defence pleading contain merely bare denials or non-admissions or even drafted in an over-elaborate way. Extravagant claims or defences may be made (for tactical reasons) which are later shown to be unsustainable or which are abandoned. To confirm the proper function of pleadings, it is proposed that pleadings should be verified by a "statement of truth". Substantive defences must be revealed. These changes will enable each party's case to be defined with sufficient precision and accuracy at an early stage. In this way, early settlements should be achieved or if not, this will enable the parties to be better prepared and focused for trial.

Reducing Complexity and Streamlining Procedures

Commencement of Proceedings

20. The present system, with four different modes of commencement of proceedings – writs, originating summonses, originating motions and petitions – is often criticised for being too technical and cumbersome. It is proposed to simplify this, so that, save for certain exceptions, the modes of commencement will be confined to (i) writs where substantial factual disputes are likely to arise, and (ii) originating summonses where questions of law involving no or little factual investigation are to be placed before the court.

Leave to appeal to the Court of Appeal

21. At present, the procedure with regard to applications for leave to appeal to the Court of Appeal (“CA”) are cumbersome and inconsistent. The party applying for leave makes the application and this is dealt with by the court in the absence of the other party. If leave is granted, the other party may then apply to court to set aside the initial order. This is unnecessarily cumbersome and costly. It is proposed that all applications for leave to appeal be dealt with in the same way. It is also proposed that applications for leave to appeal should involve all parties (inter partes) and not just the party applying for leave (ex parte) save in exceptional cases.

Facilitating Settlement

22. Experience has shown that a high percentage of cases settle just before or after the start of the trial. It is in the public interest that if settlements can be reached at a much earlier stage, significant costs, efforts and time can be saved.

Costs-only Proceedings

23. To facilitate settlement, the CJO introduces amendments to the High Court Ordinance (“HCO”) (Cap. 4) and the District Court Ordinance (“DCO”) (Cap. 336) to provide for a new cause of action called “costs-only proceedings”. This will enable parties who have reached settlement on a substantive dispute and have also agreed on who should in principle pay the costs, but cannot agree on the amount of such costs, to apply for their costs to be taxed by the Court of First Instance

(“CFI”) or the CA. Amendments are proposed to RHC and RDC to set out the detailed procedures for costs-only proceedings.

Admissions and Default Judgments

24. It is proposed that a new procedure for making admissions to money claims be introduced to facilitate settlement. At present, the default judgment process (which requires no court appearance) is limited, applying only where the defendant unconditionally surrenders to the claim. Accordingly, in many money claims, e.g. debt-collection claims, although the defendant has no defence (and accepts this), he may make desperate attempts to stave off default judgment being made against him just to avoid an immediate liability to pay. The plaintiff may then have to apply to the court for summary judgment or even take the matter to trial, incurring much expense and suffering delay. The defendant may also incur expense in trying to avoid an immediate liability to pay. Thus, to facilitate settlement in money claims, it is proposed that a defendant may, in admitting a claim, also make proposals regarding payment terms (whether as to the time to pay or as to instalment payments) in the discharge of the liability on the claim. This would facilitate the settlement of claims in many cases.

Sanctioned Offers and Sanctioned Payments

25. It is proposed that a system of “sanctioned offers and sanctioned payments” be introduced so that, effectively, offers to settle any type of dispute (not just money ones) may be made, thereby bringing the whole action or a part of it, to an end. The proposals substantially alter the existing system of payments into court and would considerably widen the ambit of offers to settle cases. For example, under the existing rules, only a defendant may offer to settle claims by payments into court, thereby putting a plaintiff at risk as to costs. Under the proposed system, a plaintiff, by making an offer to the defendant, can put the defendant at such risk. This proposal is modelled on the system of “Part 36 offers and payments” of the Civil Procedure Rules (“CPR”) which has achieved considerable success in England and Wales. This will act as a significant incentive for parties to settle disputes at an earlier stage than at present. This is regarded as an important measure in the just and expeditious resolution of disputes.

Discovery

26. To facilitate settlement, the CJO amends the HCO and DCO to extend pre-action discovery to all civil claims, instead of death and personal injuries claims as at present. Amendments are proposed to the RHC and RDC to set out the detailed procedures to be adopted following the amendments in the CJO.

Fairer Distribution and Better Deployment of Court Resources

27. A number of proposed amendments are intended to further the objective of reducing delays, thereby enabling better deployment of the Court's resources.

System of Interlocutory Applications

28. The proliferation of interlocutory applications has been regarded as one of the most serious causes of additional expense and delay in the litigation process, particularly if taken on appeal, which is currently as of right in the CFI. In order to reduce the number of interlocutory applications of doubtful or little value, the following changes are proposed –

- (a) making orders “self-executing”, i.e. prescribing an appropriate sanction which automatically applies for non-compliance without the need to apply to the Court for enforcement;
- (b) dealing with interlocutory applications on paper as far as practicable; and
- (c) penalising unwarranted interlocutory appeals with appropriate costs and other sanctions.

Procedures for costs assessment

29. It is proposed that changes be introduced to the procedures for costs assessment to –

- (a) provide for summary assessment of costs, whereby the court, can assess the amount of costs payable and then order payment to be made within a certain period of time;
- (b) empower Masters to do provisional taxation on paper without a hearing; and
- (c) empower Chief Judicial Clerks to tax costs if the amount of the bill of costs does not exceed the sum of \$200,000 (currently \$100,000).

The introduction of summary assessment of costs is aimed at discouraging unwarranted interlocutory applications. The proposed changes are also intended to dispense with the present elaborate and lengthy taxation procedures, thereby saving time and costs.

30. In line with the objectives of streamlining procedures, reducing undue delays and better deployment of the Court's resources, the CJO amends the HCO to (i) allow a vexatious litigant order be made not only on the application of the Secretary for Justice, but also on the application of an "affected person" as defined; (ii) extend the Court's power to make a wasted costs order (which currently applies to solicitors only) to barristers; and (iii) clarify that the CA comprising two Justices of Appeal has jurisdiction to hear or determine interlocutory applications of pending appeals on paper without a hearing. Amendments are proposed to the relevant subsidiary legislation to set out the detailed procedures to be adopted following these changes in the primary legislation.

Miscellaneous Amendments and Logical Extensions

31. The CJO amends the HCO to (i) extend the CFI's jurisdiction to grant interim relief in aid of proceedings outside Hong Kong; and (ii) empower the Court to order costs against a non-party. Amendments are proposed to the relevant subsidiary legislation to set out the detailed procedures to be adopted following these changes in the primary legislation. Amendments are made to expressly allow applications for the court to decline exercising jurisdiction over a plaintiff's claim and granting a discretionary stay of the action, where there is a dispute as to jurisdiction. Several technical and minor amendments are proposed, mainly for clarification and tidying-up of existing rules.

THE AMENDMENT RULES

I. Rules of the High Court (Amendment) Rules 2008

32. The principal purpose of the Rules of the High Court (Amendment) Rules 2008 (“RHC Amendment Rules”) at **Annex A** is to amend the RHC to implement 76 recommendations made in the Final Report. They are divided into 26 Parts. A summary table, setting out the 76 recommendations in the Final Report, the Orders in the RHC affected, and the relevant Rules in the RHC Amendment Rules, is at **Annex H**. The key features of the proposed amendments in each Part are highlighted below.

Annex A

Annex H

Part 1 – Preliminary

33. Part 1 provides that the RHC Amendment Rules shall come into operation on the day appointed for the commencement of the CJO.

Part 2 – Objectives and Case Management Powers (Recommendations 2, 3, 4, 81 and 82)

34. It is proposed under the new Order 1A that courts would exercise their powers with regard to the underlying objectives to -

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

The new Order 1A also specifies that active case management includes encouraging the parties to co-operate with each other in the conduct of the proceedings.

35. It is proposed under the new Order 1B that courts have such case management powers as (i) identifying the issues at an early stage; (ii)

fixing timetables and controlling the progress of the case; and (iii) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

Part 3 – Non-compliance with Rules and Court Orders
(Recommendation 84)

36. Under the proposed new Order 2, rules 3 to 5 –
- (a) the Court is empowered to (i) order a party to pay a sum of money into court if that party fails to comply with a rule or court order, and (ii) make “self-executing” orders, i.e. prescribing an appropriate sanction which automatically applies for non-compliance without the need to apply to the court for enforcement;
 - (b) a party in default may apply for relief from the sanction; and
 - (c) the Court is required to consider all the circumstances in considering an application for relief from the sanction..

Part 4 –Costs-only Proceedings
(Recommendation 9)

37. The proposed amendments to Order 11, rule 1(1) and Order 62, rules 11A and 12(1) are related to the procedure for commencing costs-only proceedings under the new section 52B(2) of the HCO in the CJO, and empower a master to tax the costs that are the subject matter of costs-only proceedings.

Part 5 – Commencement of Proceedings
(Recommendation 11 to 16)

38. It is proposed that amendments be made to the various Orders so that the present system, with four different modes of commencement of proceedings (i.e. writs, originating summonses, originating motions and petitions) be simplified, so that after the amendments, with very few exceptions (for example, winding up and bankruptcy proceedings) where petitions will continue to be used, writs and originating summons will become the only means of commencing proceedings, with the RHC

indicating that (i) a writ is appropriate where a substantial factual dispute is likely; and (ii) an originating summons is appropriate where questions of law involving no or little factual investigation are to be placed before the court.

Part 6 – Dispute as to Jurisdiction
(Recommendation 17)

39. Amendments are proposed to Order 12, rule 8 to bring into its scheme for disputing the court's jurisdiction, applications for the court to decline to exercise jurisdiction over the plaintiff's claim and to grant a discretionary stay of the action.

Part 7 – Default Judgments and Admissions
(Recommendation 18)

40. It is proposed that a new procedure for making admissions to money claims (both liquidated and unliquidated) be introduced by adding a new Order 13A and six new Forms, i.e. Forms No. 16, 16A, 16B, 16C, 16D and 16E. This is intended to facilitate settlements and save court time and costs by enabling payment terms (as to, say, time and instalments) to be proposed by a defendant who admits a claim. Under the proposed new Order 13A –

- (a) the defendant may admit the whole or part of a liquidated claim or in the case of an unliquidated claim, put forward a sum in respect of which he is willing to submit to judgment;
- (b) if the whole claim is admitted or if the plaintiff decides to accept judgment for part of his claim, the defendant may seek time to pay, either by a certain date or by instalments at a specified rate of payment; and
- (c) if the plaintiff is satisfied with the admission but not with the defendant's payment proposals, he can refer those proposals for determination by the Court.

Part 8 – Pleadings

Division 1 (Recommendations 22 to 24)

41. Amendments are proposed to Order 18, rules 13 and 14 to (i) require defences be pleaded substantively, (ii) provide that a defendant who has adequately set out the nature of his case in relation to which the untraversed allegation is relevant, is deemed not to admit and to put the plaintiff to proof of such allegation, and (iii) provide that a joinder of issue operates as a non-admission instead of a denial.

Division 2 (Recommendations 26 to 32 and 35)

42. Amendments are proposed to Order 18 to –

- (a) extend the period allowed for (i) a defendant to serve his defence and (ii) a plaintiff to serve his reply to defence or his defence to counterclaim from 14 days to 28 days;
- (b) provide that the pleadings in an action are deemed to be closed at the expiration of 28 days instead of 14 days after service of the defence if neither a reply nor a defence to counterclaim is served;
- (c) provide that a party may make alternative and inconsistent allegations in his pleading if he has reasonable grounds for doing so; and
- (d) require a pleading and the particulars of a pleading to be verified by a statement of truth.

43. Amendments are also proposed to Order 20 to require that an amendment to a pleading or to the particulars of a pleading must be verified by a statement of truth. Corresponding amendments are proposed to Order 38 to require that witness statements and expert reports to be verified by a statement of truth.

44. A new Order 41A is proposed to introduce a requirement that certain documents be verified by a statement of truth. It also identifies the persons by whom a statement of truth is to be signed, sets out the effect of a statement of truth and the consequences of a failure to verify a document for which verification by a statement of truth is required.

45. Consequential amendments are made to Forms No. 1 and 14 at Appendix A to specify the requirement that pleadings should be verified by a statement of truth.

Division 3 (Recommendations 33 and 34)

46. Orders 18 and 20 are amended to specify that the Court shall not order a party to particularise or amend his pleadings, unless it is of the opinion that the order is necessary for disposing fairly of the matter or for saving costs.

Part 9: Sanctioned Offers and Sanctioned Payments

Division 1 (Recommendations 38, 39, 41, 42 and 43)

47. A new Order 22 is proposed to introduce a system of sanctioned offers and payments so that, effectively, offers to settle any type of dispute (not just money ones) may be made, thereby bringing the whole action or a part of it, to an end. The proposals substantially alter the existing system of payments into court and would considerably widen the ambit of offers to settle cases. For example, under the existing rules, only a defendant may offer to settle a claim by a payment into court, thereby putting the plaintiff somehow at a higher risk as to costs. Under the proposed system, a plaintiff, by making an offer to the defendant, can put the defendant at much the same risk as the defendant may put to the plaintiff. If an offer is not bettered when judgment is obtained, the offeree has to bear enhanced interest and costs.

48. A new Order 22A is also proposed to set out miscellaneous provisions about payment into court. A majority of these provisions are at present contained in the existing Order 22.

Division 2 (Recommendation 132)

49. A new Order 62A is proposed to enable offers and payments similar to those contained in the new Order 22 to be made in the context of the taxation of costs.

Part 10 – Interim Remedies and Mareva Injunctions in aid of Proceedings outside Hong Kong
(Recommendation 49)

50. Order 11 is amended to allow service out of the jurisdiction of an application for interim relief or appointment of a receiver. Amendments are proposed to Orders 29 and 30 to respectively (i) set out the procedure for applying for interim relief in aid of proceedings outside Hong Kong, and (ii) provide that the procedure for applying for appointment of a receiver in an action or proceeding in the High Court applies, with certain modifications, to an application for appointment of a receiver in aid of proceedings outside Hong Kong.

51. Order 73 is amended to set out the procedure for applying for interim injunction or any other interim measure in aid of arbitration proceedings outside Hong Kong, and to allow for service out of the jurisdiction of such applications.

Part 11 - Case Management Timetabling and Milestones

Division 1 (Recommendations 52 to 60 and 62)

52. Order 25 is amended so that court-determined timetables can be set at an early stage of proceedings, taking into account the needs of the particular case and the reasonable requests of the parties, who are required to fill in a questionnaire and to propose directions and a timetable. There will be firm milestone dates for the major steps, i.e. case management conferences, pre-trial reviews and the trial or trial period to be set by the Court. Only in the most exceptional circumstances would a milestone date be changed.

53. As it would be confusing to have in existence both a summons for directions and a case management summons, it is therefore proposed that there be only one procedural summons - the case management summons. The term “summons for directions” in Order 25 and other orders are substituted by “case management summons”.

Part 12 – Vexatious Litigants
(Recommendation 69)

54. Amendments are proposed to Order 32, rule 11(1) so that an application under section 27A of the HCO for leave to institute or continue legal proceedings may not be heard by the Registrar of the High Court or any master. A new Order 32A is added to set out the procedure relating to the making of a vexatious litigant order. A new form (i.e. Form No. 27A) is added to Appendix A for making a relevant application

Part 13 – Discovery
Divisions 1 and 2 (Recommendations 76, 79 and 80)

55. Order 24 is amended to –
- (a) widen its scope of application for pre-action discovery under section 41 of the HCO to cases other than personal injuries or death claims. The affidavit in support of the application must show that the documents sought to be disclosed are directly relevant to the claim;
 - (b) provide that no order for disclosure of documents is to be made under section 41 or 42 of the HCO, unless the Court is of the opinion that the order is necessary for disposing fairly of the cause or matter or for saving costs; and
 - (c) empower the Court to limit the discovery of documents or to direct that the discovery of documents should be made in the manner specified by the Court.

Part 14 – Interlocutory Applications
(Recommendations 83, 85 and 86)

56. Order 32 is amended to –
- (a) allow interlocutory applications (other than applications specified in the rule) to be dealt with by a master without a hearing;

- (b) provide for the Court's power to specify the consequences of failing to comply with a court order on an interlocutory application; and
- (c) provide that the Registrar and any master of the High Court may deal with matters relating to the conditions of admission to bail.

Part 15 - Interlocutory Applications and Summary Assessment of Costs
(Recommendations 88, 89 and 92)

57. Order 62 is amended to introduce summary assessment of costs. It is aimed at discouraging unwarranted interlocutory applications. The proposed changes are also intended to dispense with the present elaborate and lengthy taxation procedures, thereby saving time and costs. Specifically, the amendments –

- (a) empower the Court, when disposing of an interlocutory application, to make a summary assessment of costs or a provisional summary assessment, or to order a taxation at the end of the action;
- (b) regulate time for compliance with an order for summary assessment of costs; and
- (c) deal with the question of when to tax costs.

Part 16 – Wasted Costs
(Recommendations 94 – 97)

58. Order 62 is amended by adding new rules 8, 8A, 8B, 8C, 8D and 8E, to -

- (a) set out the circumstances under which the Court may make a wasted costs order;
- (b) specify that the Court may make a wasted costs order on its own motion;

- (c) require the Court to consider the question of whether to make a wasted costs order by a 2-stage procedure specified in the rule;
- (d) provide that a party shall not threaten another party or any of that party's legal representatives with an application for a wasted costs order, and a party shall not indicate to the other party or any of that party's legal representatives that he intends to apply for such an order, unless he is able to particularize the misconduct concerned and to identify the evidence; and
- (e) require a taxing master to consider the question of whether to direct a legal representative to pay costs in the 2 stages specified in the rule.

Part 17 – Witness Statements and Evidence
(Recommendation 100)

59. Order 38 is amended to allow a witness greater flexibility to amplify or supplement his witness statement.

Part 18 – Expert Evidence
(Recommendations 102, 103 and 107)

60. Order 38 is amended to -

- (a) empower the Court to order the parties to appoint a single joint expert;
- (b) declare that an expert witness's duty to assist the Court overrides his duty to his client or the person paying his fees;
- (c) provide that a party who instructs an expert witness shall provide the expert witness with a copy of the code of conduct set out in the new Appendix D; and
- (d) require an expert witness to make a specified declaration before his expert report or evidence will be admitted in evidence.

Part 19 - Case Managing Trials
(Recommendation 108)

61. Order 35 is amended to set out the Court's powers of case management in relation to trials.

Part 20 – Leave to Appeal

Division 1 (Recommendation 109)

62. Order 58 is amended to make it clear that the entitlement to appeal to a judge from a master's decision applies irrespective of whether the decision is made on paper or after a hearing; and to provide that the introduction of fresh evidence on the appeal is not allowed except on special grounds.

Division 2 (Recommendations 110 and 112)

63. Order 59 is amended to –
- (a) set out the judgments and orders of the Court from which an appeal lies as of right despite their interlocutory nature; and
 - (b) prescribe the procedure for applying for leave to appeal to implement the Steering Committee's recommendations to standardise the provisions for leave to appeal to the CA, irrespective of the type of proceedings or the level of court. Specifically –
 - (i) all applications for leave should be inter partes, unless the proceedings to which the judgment or order appealed against are ex parte;
 - (ii) where the CA makes a determination on paper, an aggrieved party may request that the CA reconsider the matter at an oral hearing, but the CA may refuse to do so where it is of the view that the application is totally without merit. (Reference is made to CPR 52.3(4));
 - (iii) where a single judge of the CA makes a determination on an application for leave to appeal, an aggrieved party

may make a fresh application within 7 days to the CA;
and

- (iv) in granting leave to appeal, the CA may give such directions or impose such conditions as it deems fit.

Part 21 – Appeals

Division 1 (Recommendation 120)

64. Order 59 is amended to provide that the CA may determine an interlocutory application on paper and may direct that the application be heard before a bench of 2 or 3 judges constituting the CA. For the avoidance of doubt, it also provides that interlocutory applications before the CA may continue to be dealt with by one Justice of Appeal, and that a judge of the CFI may sit as a judge of the CA.

Division 2 (Miscellaneous)

65. This Division amends Order 59 to implement the Steering Committee's recommendation in respect of the calculation of time for making applications (whether for leave to appeal or appeal) to specify that the time should start to run from the date of the relevant judgment, order or decision appealed against, instead of from the date of sealing or perfection of the order (as it is now). Specifically -

- (a) where leave is required and is granted, a notice of appeal has to be filed within 7 days;
- (b) where leave is not required, the time for appealing is standardized so that the notice of appeal should be filed within 28 days from the date the relevant judgment, order or decision is made, and not (as now) from the date of perfection; and
- (c) where an application made to the CA ex parte is granted, any party affected by the order granting the application may, within 7 days after service of the notice of the order, apply to have the order reconsidered inter partes in open court.

66. This Part also amends Orders 60A and 61 to extend the time for appealing to the CA from a tribunal from 21 days to 28 days.

Part 22 – General Approach to Inter-party Costs
(Recommendation 122)

67. Part 22 introduces the following changes regarding inter-party costs -

- (a) in relation to interlocutory applications, the principle that the costs should normally follow the event is no longer the prescribed usual order but just an option; and
- (b) the Court shall take into account the underlying objectives of the RHC and several additional matters in exercising its discretion as to costs, including (i) the conduct of all parties; (ii) whether a party has succeeded on part of his case, even if he has not been wholly successful; and (iii) any admissible offer to settle made by a party which is drawn to the Court's attention.

Part 23 – Taxing the Other Side's Costs

Division 1 (Recommendation 131)

68. Order 62 is amended to provide that counsel's fees are in the discretion of the taxing master. At present, counsel's fees are allowed in full on taxation, unless the taxing master is satisfied that the amount is excessive and unreasonable.

Division 2 (Recommendation 134)

69. This Division amends Order 62 to introduce the following major changes -

- (a) Chief Judicial Clerks are empowered to conduct a provisional taxation if the amount of the bill of costs does not exceed \$200,000 (currently, the limit is \$100,000);
- (b) a new procedure to enable a taxing master to conduct a provisional taxation on paper is introduced. Any party dissatisfied with the award is entitled to require an oral taxation hearing; and

- (c) a party shall pay the prescribed taxing fee if he withdraws his bill of costs within 7 days after his application for setting down the taxation. At present, the relevant fee is payable if the bill of costs is withdrawn less than 7 days before the appointment for taxation.

Division 3 (Recommendations 135 and 136)

70. This Division amends Order 62 to –

- (a) empower a taxing master to give certain directions relating to the taxation of a bill of costs;
- (b) provide that if taxation proceedings are adjourned because a party has failed to comply with any directions given by a taxing master, he may make such order as to costs thrown away by the adjournment;
- (c) provide that a party entitled to payment of costs to be taxed is also entitled to his costs of the taxation except where the Court orders otherwise or any enactment or relevant practice direction provides otherwise; and
- (d) empower the Court to disallow all or part of the costs being summarily assessed or taxed, and to order a party to pay costs that he has caused any other party to incur.

Division 4 (Miscellaneous)

71. This Division amends Order 62 to introduce the following major changes –

- (a) the person entitled to payment of costs is allowed more time for discussing settlement of costs and for commencing taxation proceedings;
- (b) a taxing master may disallow any part of the taxed costs, disallow interest on taxed costs or reduce the period for which such interest is payable or the rate at which such interest is payable to penalise delay;
- (c) a party is not entitled to commence taxation proceedings after a specified period;

- (d) a taxing master is required to issue a final certificate for costs at the conclusion of taxation proceedings before him, but the final certificate should be issued after the expiry of the review period;
- (e) a taxing master is enabled to set aside or vary his decision against a party in certain specified circumstances;
- (f) taxing fees may be reimbursed upon issue of a final certificate by a taxing master;
- (g) it is made clear that a party may not apply to a judge for an order to review a taxing master's decision until after its review by the taxing master;
- (h) a taxing master is empowered to dismiss an application for review if the applicant has failed to comply with directions;
- (i) the scales of costs set out in the Schedules are revised; and
- (j) it is made clear that no costs are to be allowed in respect of 2 or more counsel's appearance before a judge in open court or a master in open court unless the judge or master has certified the attendance as proper.

Part 24 – Judicial Review

(Recommendations 144, 145 and 148)

72. Order 53 is amended to –

- (a) define more clearly the scope of judicial review proceedings;
- (b) require that an application for leave must be made by filling a new Form 86 with more particulars (N.B. The existing form for application for judicial review is replaced by a new originating summons, i.e. new Form No. 86A, in Part 5);
- (c) provide for service of an order granting leave to apply for judicial review and of any associated directions given by the Court;

- (d) provide that at the hearing of the application for judicial review, no affidavit may be relied on unless one of the specified conditions is met;
- (e) allow any person to apply for leave to file evidence or make representations at a judicial review hearing; and
- (f) provide that a person who wishes to be heard in support of an application for judicial review is also to be heard if that person appears to the Court to be a proper person to be heard. At present, only a person who wishes to be heard in opposition to an application is heard.

Part 25 – Costs against Non-party
(Steering Committee’s recommendation)

73. The CJO amends the HCO to allow the Court to order costs to fall where they are appropriate in cases where costs have been incurred as a result of the conduct of someone who is not a party to the proceedings. Following this amendment, Order 11, rule 1(1) is amended to enable service outside Hong Kong of an originating process by which a cost order against a person who is not a party to the relevant proceedings is sought.

74. A new rule 6A is added to Order 62 to provide that if the Court is considering whether to make a costs order in favour of or against a person who is not a party to the relevant proceedings, that person must be joined as a party and must be given a reasonable opportunity to attend a hearing.

Part 26 – Miscellaneous

75. Part 26 contains technical and minor amendments to Orders 1, 25, 37, 38, 42, 71, 75 and 78 of the RHC. It also amends a number of Orders to (i) repeal the term “成文法” and substitute “成文法律” and (ii) repeal the term “認收送達” and substitute “送達認收” wherever they appear in the Chinese text.

II. Rules of the District Court (Amendment) Rules 2008

76. The principal purpose of the Rules of the District Court (Amendment) Rules 2008 (“RDC (Amendment) Rules”) at **Annex B** is 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.

Annex B

77. 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 in the RHC (Amendment) Rules, unless there are special considerations justifying differences between the two sets of Rules. In drawing up the proposed amendments as contained in the latest Draft RDC, the Steering Committee has taken 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 DCO will be retained to provide the flexibility for the Court to exercise discretion to excuse a party from compliance with any rule.

78. The RDC (Amendment) Rules are divided into 24 Parts: three Parts in the RHC Amendment Rules (i.e. Part 10 – Interim Remedies and Mareva Injunctions in Aid of Proceedings outside Hong Kong, Part 12 – Vexatious Litigants and Part 24 – Judicial Review) have no equivalent in the RDC (Amendment) Rules as the DC does not have jurisdiction for the matters concerned. On the other hand, one part (i.e. Part 23 – Replacement of Order 34) is specific to the RDC (Amendment) Rules for alignment with the RHC.

79. The amendments contained in Parts 1 to 9, 11 to 18 and 20 to 22 of the RDC (Amendment) Rules are similar to those contained in the relevant Parts of the RHC (Amendment) Rules.

80. Part 10 repeals the existing 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.

81. Part 19 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 CA as of right;
 - (b) extend the period within which an appeal as of right to the CA may be made from 14 days to 28 days;
 - (c) extend the period within which an application for leave to appeal to the CA against a judgment, order or decision of a master may be made to the master from 14 days to 28 days;
 - (d) extend the period within which an application for leave to appeal to the CA against a judgment, order or decision of a judge (other than an interlocutory judgment, order or decision) may be made to the judge from 14 days to 28 days;
 - (e) specify that an application for leave to appeal against an interlocutory judgment, order or decision of a judge may be made to the judge 14 days from the date of the interlocutory judgment, order or decision; and
 - (f) 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 CA from a judgment or order of a District Judge.
82. Part 23 replaces Order 34 of the RDC by a new Order 34. The new Order is similar to Order 34 of the RHC. Part 24 makes miscellaneous amendments to the RDC for consistency with the relevant provisions of the RHC.
83. A comparison table between the RHC and the RDC after the amendments is at **Annex I**. 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.; and
- (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.

84. The major differences between the amended 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 CA (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); and
- (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))

III. Lands Tribunal (Amendment) Rules 2008

85. The Lands Tribunal (Amendment) Rules 2008 at **Annex C** introduce amendments to the LTR in relation to its case management powers and the newly introduced leave requirement for appeals from the LT to the CA. These amendments are modelled on the similar provisions in the RHC and RDC, where appropriate.

Annex C

86. Currently, pursuant to section 10(1)¹ of the Lands Tribunal Ordinance (Cap. 17) (“LTO”), the LT has a general power to adopt the practice and procedure of the CFI in the exercise of its civil jurisdiction in respect of the matters listed under that section. Following a separate review of the procedures of the LT in 2005, the Judiciary proposed that section 10(1) be amended to make it clear that the LT has a general power to adopt all practice and procedure of the CFI as it thinks fit (and not restricted to the matters currently listed in section 10). This proposal has been effected by amendments to the LTO contained in the CJO.

¹ **Section 10 - Practice and procedure of Tribunal**

(1) The Tribunal shall have the powers which are vested in the Court of First Instance in the exercise of its civil jurisdiction in respect of the following matters -

- (a) the attendance, examination and payment of witnesses;
- (b) the hearing of any matter with the assistance of an assessor or assessors;
- (c) the consolidation or hearing of any matters;
- (d) the punishment of persons guilty of contempt;
- (e) the ordering of inspection of any premises or place;
- (f) the entering and viewing of any premises or place;
- (g) the enforcement of decisions, judgments and orders;
- (h) the making of orders as to interim payments;
- (i) the making of orders in default of any action by a party,

and, so far as it thinks fit, may follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction.

87. Pursuant to the new section 10(1) of the LTO, the LT has a general power to adopt the practice and procedure of the CFI in the exercise of its civil jurisdiction. With such flexibility therefore to adopt the practice and procedure of the CFI, any changes under CJR can likewise be utilized as the LT thinks fit. Following this amendment, amendments are proposed to the LTR to make it clear that the case management powers of the LT under the existing rule 14(2) are in addition to and do not derogate from any power of the LT conferred by any enactment or rule of law.

88. The CJO also introduces a leave requirement for appeals from the LT to the CA under the new section 11AA of the LTO. Amendments are therefore proposed to the LTR to prescribe the procedures for (i) an appeal against a judgment, order or decision of the registrar of the LT or of a deputy registrar or assistant registrar of the LT; and (ii) an application for leave to appeal against a judgment, order or decision of the LT, and for any subsequent appeal to the CA.

IV. High Court Fees (Amendment) Rules 2008

89. The High Court Fees (Amendment) Rules 2008 at **Annex D** amend the HCFR consequential to certain amendments contained in (i) the CJO and (ii) the RHC (Amendment) Rules.

Annex D

Amendments Consequential to the CJO

90. Following the enactment of the CJO, amendments have been introduced to the HCO to empower the CFI to grant interim relief in aid of proceedings outside Hong Kong which are capable of giving rise to a judgment that is capable of being enforced in Hong Kong (cf. new section 21M of HCO). Consequential amendments are proposed to the HCFR to provide for a prescribed fee payable on the sealing of an order made under section 21M of the HCO (cf. proposed amendments in Rule 3(d) to item 23 in the First Schedule to the HCFR).

91. The CJO also amends section 27 of the HCO to allow a vexatious litigant order to be made not only on the application of the Secretary for Justice, but also on the application of any person who is or has been a party to vexatious proceedings instituted by a vexatious party, or who has directly suffered adverse consequences resulting from such proceedings. As has been the case under the existing section 27, a person

subject to a vexatious litigant order has to file a notice for application to CFI for leave to institute or continue proceedings. In line with the objective to screen out vexatious litigation, thereby enabling fairer distribution of the court's resources for genuine disputes, amendments are proposed to the HCFR to -

- (a) introduce a new fee at \$1,045 (i.e. the same amount charged for other similar applications such as the commencement of a cause or matter at the High Court) for the filing of a notice of application for leave to institute or continue proceedings by a vexatious litigant (cf. Rule 3(e) adding a new item 25 in the First Schedule to the HCFR); but
- (b) provide that a vexatious litigants who have been charged \$1,045 for leave application need not be charged again for commencing proceedings upon grant of leave (cf. Rule 3(a) which amends item 1 in the First Schedule to the HCFR).

Amendments Consequential to the RHC Amendment Rules

92. The Steering Committee has proposed certain amendments to the provisions governing taxation procedures in Order 62 of the RHC, including (i) empowering the Court to make a summary assessment of costs when disposing of an interlocutory application (cf. rr.9 and 9A of the RHC Amendment Rules); and (ii) requiring a party to pay to the Court a prescribed taxing fee when filing a notice of commencement of taxation (cf. O.62, r.21(5) of the RHC (Amendment) Rules).

93. Consequential to the above proposed amendments, and in line with the objective to facilitate settlement and to deter the inflation of the bill of costs, amendments are proposed to the HCFR to prescribe that –

- (a) taxing fees will be levied on the amount claimed in the bill of costs, instead of the amount allowed as at present. However, the prescribed taxing fees are not payable on summary assessment of costs. (cf. proposed amendments in Rule 3(b) to item 19 in the First Schedule to the HCFR); and
- (b) 10% of the taxing fee is payable if a bill of costs is withdrawn within 7 days after the application for setting down the taxation (cf. proposed amendments in Rule 3(c) to item 19a in the First Schedule to the HCFR).

V. District Court Civil Procedure (Fees) (Amendment) Rules 2008

94. The Steering Committee has proposed similar amendments as set out in paragraph 92 above to the provisions governing taxation procedures in Order 62 of the RDC. The District Court Civil Procedure (Fees) (Amendment) Rules 2008 at **Annex E** amend items 20 and 20a in the Schedule to the DCFR to incorporate amendments similar to items 19 and 19a in the First Schedule to the HCFR.

Annex E

VI. High Court Suitors' Funds (Amendment) Rules 2008 ("HCSF(A)R")

VII. District Court Suitors' Funds (Amendment) Rules 2008 ("DCSF(A)R")

95. The amendments in HCSF(A)R at **Annex F** and DCSF(A)R at **Annex G** are mainly consequential to the new Order 22 in the RHC (Amendment) Rules and RDC (Amendment) Rules. Under the new Order 22, a party to the proceedings has 28 days to consider whether to accept a sanctioned payment.

Annex F
Annex G

96. Under the existing r.16(3A) of the HCSFR, if money is paid in court as security for costs, or by way of satisfaction or amends, or in compliance with an order giving leave to defend upon the payment, interest is to be credited in respect of the payment as from the day beginning 14 days after the money is paid in. To cater for the system of sanctioned payment under the new Order 22, the HCSF(A)R amend r.16 of the HCSFR to provide that where the money so paid in court is an offer made by way of a payment into court in accordance with the new Order 22 of the RHC, interest is to be credited in respect of the payment as from the day beginning 28 days after the money is paid in.

97. The DCSF(A)R amend the DCSFR to (i) align with the existing r.16(3A) of the HCSFR, and (ii) cater for the system of sanctioned payment under the new Order 22 in the RDC (Amendment) Rules.

LEGISLATIVE TIMETABLE

98. The legislative timetable for the seven sets of Amendment Rules is as follows –

Publication in the Gazette	6 June 2008
Tabling at LegCo	11 June 2008

Commencement Date

99. The seven sets of Amendment Rules shall come into operation on the day appointed for the commencement of the CJO. Section 2 of the CJO provides that it shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

100. The Judiciary's target is to bring the CJO and the seven sets of Amendment Rules into operation on 2 April 2009 in one go. This would allow some 9 months from the gazettal of the Amendment Rules for the Judiciary to conduct training programmes for Judges and Judicial Officers ("JJOs") and support staff, and make other preparation for infrastructural support for the implementation of the CJR. This would also allow time for the two branches of the legal profession to provide the necessary training courses for their members. In this regard, the Judiciary has noted that the Bar Association and the Law Society have confirmed that they have training programmes in the pipeline and indicated their readiness for the implementation of the CJR by the target date of 2 April 2009.

101. As requested by the LegCo Subcommittee, the Judiciary will ascertain the progress on preparation and training of the two legal professional bodies for the implementation of CJR in late 2008 and report the matter to the Panel on Administration of Justice and Legal Services ("AJLS") by early January 2009, before gazettal of the commencement notice for the CJO, which is a piece of subsidiary legislation subject to the negative vetting procedure of LegCo.

IMPLICATIONS OF THE PROPOSAL

102. The proposal aims to improve the civil procedures and avoid undue delay and expenses.

Financial and Manpower Implications

103. The proposed legislative amendments would streamline civil proceedings and eliminate unnecessary steps, thereby tending to lessen the strain on judicial resources. However, some of the proposed legislative amendments may increase the workload of the courts. It is difficult to estimate with any degree of precision at this stage as to the financial implication for the Judiciary. The Judiciary will continue to assess the possible resource implications of the implementation of the reform. Any additional resource requirements will be acquired in accordance with normal procedures of resource allocation.

Economic Implications

104. Through improving our civil justice system, the proposal would ensure that our judicial system, one of the most important cornerstones for Hong Kong's long-term prosperity, would develop in line with the increasingly complex global socio-economic progression. Upon effective implementation, the proposal would strengthen Hong Kong's competitiveness as a dispute resolution centre and its position as an international business centre.

Sustainability Implications

105. In line with the sustainability principle of fostering an equitable and progressive society, the proposal would improve the civil procedures and enable a fairer distribution of the judicial resources, thereby enhancing the public's access to justice.

PUBLIC CONSULTATION

106. In November 2001, the Working Party published an "*Interim Report and Consultative Paper*" containing various recommendations on changes to the civil justice system for seven months of consultation. During the consultation period, the Judiciary held various public seminars and briefings and almost 100 written submissions were received. Most of the proposals received significant support from those who responded in the consultation exercise, including the Bar Association and the Law Society. Having examined the responses, the Working Party submitted its Final Report in March 2004.

107. In April 2006, the Steering Committee decided on a package of proposed legislative amendments, and issued a “*Consultation Paper on Proposed Legislative Amendments for the Implementation of the CJR*” for a 3-month consultation ending in July 2006. The Steering Committee received 30 responses including responses from the two legal professional bodies, commenting mostly on technical and drafting details. The Steering Committee subsequently held meetings with the two legal professional bodies for detailed discussions. It accepted a number of comments from respondents and accordingly revised the package of proposed legislative amendments.

108. The LegCo AJLS Panel has been briefed from time to time on the CJR recommendations and the proposed legislative amendments. Specifically, the Working Party conducted briefings for the AJLS Panel and other interested members on both the Interim Report and the Final Report in 2001 and 2004 respectively. The Judiciary Administration briefed the AJLS Panel on the “*Consultation Paper on Proposed Legislative Amendments*” at the meeting on 26 June 2006, and the outcome of the 3-month consultation exercise at the meeting on 12 December 2006.

109. The Steering Committee issued a set of “*Revised Proposals for Amendments to Subsidiary Legislation under the CJR*” for 1-month consultation in October 2007. Nine responses were received, including those from the two legal professional bodies and various Government Bureaux/Departments. Most of the comments received are technical in nature, and the Steering Committee has adopted many of the suggested amendments in the Amendment Rules.

110. The seven sets of Amendment Rules have incorporated further amendments proposed by the Steering Committee in the light of the LegCo Subcommittee’s comments and the deputations’ submissions to the Subcommittee.

PUBLICITY

111. The Judiciary will produce explanatory materials in due course to help litigants understand the revised or new procedures under CJR. A spokesman will be available to answer media and public enquiries.

ENQUIRY

112. Any enquiry of this brief should be addressed to Miss Vega Wong, Assistant Judiciary Administrator (Development), at telephone number 2825 4244.

Judiciary Administration
4 June 2008

List of Annexes

- | | | |
|----|--|---------|
| 1. | Rules of the High Court (Amendment) Rules 2008 | Annex A |
| 2. | Rules of the District Court (Amendment) Rules 2008 | Annex B |
| 3. | Lands Tribunal (Amendment) Rules 2008 | Annex C |
| 4. | High Court Fees (Amendment) Rules 2008 | Annex D |
| 5. | District Court Civil Procedure (Fees) (Amendment) Rules 2008 | Annex E |
| 6. | High Court Suitors' Funds (Amendment) Rules 2008 | Annex F |
| 7. | District Court Suitors' Funds (Amendment) Rules 2008 | Annex G |
| 8. | Rules of the High Court (Amendment) Rules 2008 - Summary of Recommendations in the Final Report Implemented and Orders in the Rules of the High Court Affected | Annex H |
| 9. | Comparison between the Rules of the High Court ("RHC") and the Rules of the District Court ("RDC") after Amendment | Annex I |
-

RULES OF THE HIGH COURT (AMENDMENT) RULES 2008

CONTENTS

Rule		Page
PART 1		
PRELIMINARY		
1.	Commencement	1
PART 2		
OBJECTIVES AND CASE MANAGEMENT POWERS		
Recommendations 2, 3, 4, 81 and 82		
2.	Definitions	1
3.	Orders added	
ORDER 1A		
OBJECTIVES		
	1. Underlying objectives	1
	2. Application by the Court of underlying objectives	2
	3. Duty of the parties and their legal representatives	2
	4. Court's duty to manage cases	2

ORDER 1B

CASE MANAGMENT POWERS

- | | | |
|----|--|---|
| 1. | Court's general powers of management | 3 |
| 2. | Court's power to make order of its own motion | 3 |
| 3. | Court's power to give procedural directions by way of order nisi | 4 |

PART 3

NON-COMPLIANCE WITH RULES AND COURT ORDERS

Recommendation 84

- | | | |
|----|---|---|
| 4. | Rules added | |
| | 3. Non-compliance with rules and court orders | 4 |
| | 4. Sanctions have effect unless defaulting party obtains relief | 5 |
| | 5. Relief from sanctions | 5 |

PART 4

COSTS-ONLY PROCEEDINGS

Recommendation 9

- | | | |
|----|---|---|
| 5. | Service of originating summons, notice of motion, or petition | 5 |
| 6. | Principal cases in which service of writ out of jurisdiction is permissible | 6 |
| 7. | Acknowledgment of service | 6 |

Rule	- iii -	Page
8.	Application	6
9.	Rule added	
	11A. Commencement of costs-only proceedings	6
10.	Powers of taxing masters to tax costs	6
11.	Forms	7

PART 5

COMMENCEMENT OF PROCEEDINGS

Recommendations 11 to 16

12.	Application	9
13.	Definitions	9
14.	Non-compliance with Rules	9
15.	Application to set aside for irregularity	9
16.	Mode of beginning civil proceedings	9
17.	Rules repealed	10
18.	Proceedings which may be begun by writ or originating summons	10
19.	Proceedings to be begun by motion or petition	10
20.	Rule added	
	7. Transitional provision relating to rule 16 of Amendment Rules 2008	10
21.	Form of summons, etc.	10
22.	Ex parte originating summons	10

23.	Rule substituted	
	1. Application	11
24.	Rule added	
	6. Transitional provision relating to originating and other motions	11
25.	Rule substituted	
	1. Application	11
26.	Manner in which application under rule 1 may be made	11
27.	Judgment between defendant and third party	11
28.	Mode of application	11
29.	Default of defence: other claims	11
30.	Amendment of judgment and orders	11
31.	Discontinuance of action, etc., with leave	12
32.	Stay of subsequent action until costs paid	12
33.	Judgment on admissions	12
34.	Rule added	
	3A. Originating summons to be heard in open court	12
35.	Application for injunction	12
36.	Application for receiver and injunction	12
37.	Impounded documents	12
38.	Application for leave to issue writ of	

Rule	- v -	Page
	sequestration	12
39.	Order prohibiting transfer, etc. of securities	12
40.	Application for order after leave to apply granted	12
41.	Provisions as to hearing	13
42.	Mode of applying for judicial review	13
43.	Statements and affidavits	13
44.	Hearing of application for judicial review	14
45.	Power of Court to whom ex parte application made	14
46.	Removal of solicitor from record at instance of another party	14
47.	Matters for a judge in court	14
48.	Matters for judge in chambers or master	15
49.	Time limits and other special provisions as to appeals and applications under the Arbitration Ordinance	15
50.	Rule added	
	6A. Originating summons to be heard in chambers	15
51.	Service out of the jurisdiction of summons, notice, etc.	16
52.	Registration of awards under Arbitration (International Investment Disputes) Act 1966	16
53.	Enforcement of settlement agreement under section 2C of the Arbitration Ordinance or of award under section 2GG of that Ordinance	16

54.	Issue of writ and acknowledgment of service	16
55.	Requirements in connection with issue of writ	16
56.	Discontinuance and dismissal	16
57.	Judgment in default	16
58.	Applications under section 25 of Crown Proceedings Ordinance	17
59.	Approval of settlement	17
60.	Commencement of money lender's action	17
61.	Foreclosure in redemption action	17
62.	Determination of questions as to property	17
63.	Provisions as to actions in tort	17
64.	Application to make a minor a ward of court	17
65.	Applications under the Guardianship of Minors Ordinance	17
66.	Removal of guardianship proceedings from the District Court	17
67.	Appeals and applications under the Trade Marks Ordinance	17
68.	Applications to be made by originating summons	18
69.	Rules repealed	18
70.	Entitlement of proceedings	18
71.	Application for rectification of register of patents in Hong Kong	18
72.	Assignment of proceedings	18

73.	Application for confiscation order where person has died or absconded	18
74.	Application for restraint order or charging order	18
75.	Realisation of property	19
76.	Application for continued detention of seized property	19
77.	Application for restraint order or charging order	19
78.	Realisation of property	19
79.	Realisation of property	19
80.	Proceedings under section 84	19
81.	Proceedings under section 85	19
82.	Form of application	19
83.	Restriction on access to documents, etc.	20
84.	Mode of application	20
85.	Forms	20

PART 6

DISPUTE AS TO JURISDICTION

Recommendation 17

86.	Dispute as to jurisdiction	23
87.	Rule added	
	11. Transitional provision relating to rule 86 of Amendment Rules 2008	24

88.	Service of defence	24
89.	Forms	24

PART 7

DEFAULT JUDGMENTS AND ADMISSIONS

Recommendation 18

90.	Indorsement of claim	25
91.	Order added	

ORDER 13A

ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY

1.	Interpretation	25
2.	Making an admission	25
3.	Period for making admission	26
4.	Admission of whole of claim for liquidated amount of money	26
5.	Admission of part of claim for liquidated amount of money	27
6.	Admission of liability to pay whole of claim for unliquidated amount of money	28
7.	Admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim	28
8.	Power of Court to give directions	29

	9. Request for time to pay	29
	10. Determination of rate of payment by Court	30
	11. Right of re-determination	30
	12. Interest	31
	13. Form for admission to be served with writ or originating summons	31
	14. Application	31
92.	Forms	32

PART 8

PLEADINGS

Division 1 – Recommendations 22 to 24

93.	Admissions and denials	51
94.	Denial by joinder of issue	52
95.	Rule added	
	23. Transitional provision relating to rule 93 of Amendment Rules 2008	52

Division 2 – Recommendations 26 to 32 and 35

96.	Service of defence	52
97.	Service of reply and defence to counterclaim	52
98.	Rule added	
	12A. Pleading with inconsistent alternatives	52

Rule	- x -	Page
99.	Close of pleadings	52
100.	Rule added	
	20A. Pleading, etc. to be verified by statement of truth	53
101.	Rule added	
	24. Transitional provision relating to rules 96 and 97 of Amendment Rules 2008	53
102.	Rule added	
	13. Amendment of pleadings or particulars of pleadings to be verified by statement of truth	53
103.	Exchange of witness statements	53
104.	Rule added	
	37A. Expert report to be verified by statement of truth	54
105.	Order added	

ORDER 41A

STATEMENTS OF TRUTH

1.	Interpretation	54
2.	Documents to be verified by statement of truth	54
3.	Signing of statement of truth	55
4.	Effect of statement of truth	56
5.	Form of statement of truth	56

Rule	- xi -	Page
	6. Failure to verify pleading	57
	7. Failure to verify witness statement or expert report	57
	8. Power of Court to require document to be verified	57
	9. False statements	58
	10. Transitional	58
106.	Forms	58

Division 3 – Recommendations 33 and 34

107.	Particulars of pleading	58
108.	Amendment of certain other documents	58
109.	Failure to amend after order	59

PART 9

SANCTIONED OFFERS AND SANCTIONED PAYMENTS

Division 1 - Recommendations 38, 39, 41, 42 and 43

110.	Definitions	59
111.	Order substituted	

ORDER 22

OFFERS TO SETTLE AND PAYMENTS INTO COURT

I. PRELIMINARY

	1. Interpretation	59
	2. Offer to settle with specified	

consequences	60
II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT	
3. Defendant's offer to settle	60
4. Plaintiff's offer to settle	61
5. Form and content of sanctioned offer	61
6. Service of sanctioned offer	61
7. Withdrawal or diminution of sanctioned offer	62
8. Notice of sanctioned payment	62
9. Service of sanctioned payment	62
10. Withdrawal or diminution of sanctioned payment	63
11. Offer to settle claim for provisional damages	63
12. Time when sanctioned offer or sanctioned payment is made and accepted	64
13. Service of notice of acceptance of plaintiff's sanctioned offer	64
14. Clarification of sanctioned offer or sanctioned payment notice	64
III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT	
15. Time for acceptance of defendant's sanctioned offer or sanctioned payment	65

- | | | |
|-----|--|----|
| 16. | Time for acceptance of plaintiff's sanctioned offer | 65 |
| 17. | Payment out of a sum in court on acceptance of sanctioned payment | 66 |
| 18. | Acceptance of sanctioned offer or sanctioned payment made by one or more, but not all, defendants | 66 |
| 19. | Other cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment | 66 |

IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

- | | | |
|-----|---|----|
| 20. | Costs consequences of acceptance of defendant's sanctioned offer or sanctioned payment | 67 |
| 21. | Costs consequences of acceptance of plaintiff's sanctioned offer | 67 |
| 22. | Other consequences of acceptance of sanctioned offer or sanctioned payment | 68 |
| 23. | Costs consequences where plaintiff fails to do better than sanctioned offer or sanctioned payment | 68 |
| 24. | Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer | 69 |

V. MISCELLANEOUS

- | | | |
|-----|---|----|
| 25. | Restriction on disclosure of sanctioned offer or sanctioned payment | 70 |
|-----|---|----|

26.	Interest	70
27.	Money paid into court under order	71
28.	Transitional provision relating to Part 9 of Amendment Rules 2008	71
112.	Payment into court in satisfaction	72
113.	Notification of setting down	72
114.	Non-disclosure of payment into court	72
115.	When costs to follow the event	72
116.	Special matters to be taken into account in exercising discretion	72
117.	When a party may sign judgment for costs without an order	72
118.	Payment into and out of court	72
119.	Proceedings under Fatal Accidents Ordinance: apportionment by Court	72
120.	Provisions as to payment into court	73
121.	Applications with respect to funds in court	73
122.	Forms	73
123.	Order added	

ORDER 22A

MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

1.	Money remaining in court	79
2.	Person to whom payment to be made	79

- | | | | |
|--|----|--------------------------------------|----|
| | 3. | Payment out: small intestate estates | 79 |
| | 4. | Investment of money in court | 80 |

Division 2 – Recommendation 132

- | | |
|------|-------------|
| 124. | Order added |
|------|-------------|

ORDER 62A

COSTS OFFER AND PAYMENTS INTO COURT

I. PRELIMINARY

- | | | | |
|--|----|--|----|
| | 1. | Interpretation and application | 80 |
| | 2. | Offer to settle with specified
consequences | 80 |

II. MANNER OF MAKING SANCTIONED
OFFER OR SANCTIONED PAYMENT

- | | | | |
|--|-----|--|----|
| | 3. | Paying party's costs offer
requires sanctioned payment | 81 |
| | 4. | Receiving party's costs offer
requires sanctioned offer | 81 |
| | 5. | Form and content of sanctioned offer | 81 |
| | 6. | Service of sanctioned offer | 81 |
| | 7. | Withdrawal or diminution of
sanctioned offer | 82 |
| | 8. | Notice of sanctioned payment | 82 |
| | 9. | Service of sanctioned payment | 82 |
| | 10. | Withdrawal or diminution of
sanctioned payment | 83 |

- | | | |
|-----|---|----|
| 11. | Time when sanctioned offer or sanctioned payment is made and accepted | 83 |
| 12. | Clarification of sanctioned offer or sanctioned payment notice | 83 |

III. ACCEPTANCE OF ANCTIONED OFFER
OR SANCTIONED PAYMENT

- | | | |
|-----|--|----|
| 13. | Time for acceptance of paying party's sanctioned payment | 84 |
| 14. | Time for acceptance of receiving party's sanctioned offer | 84 |
| 15. | Payment out of a sum in court on acceptance of sanctioned payment | 85 |
| 16. | Acceptance of sanctioned payment made by one or more, but not all, paying parties | 85 |
| 17. | Cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment | 85 |

IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

- | | | |
|-----|---|----|
| 18. | Consequences of acceptance of sanctioned offer or sanctioned payment | 86 |
| 19. | Costs consequences where receiving party fails to better sanctioned payment | 86 |
| 20. | Costs and other consequences where receiving party does better than he proposed in his sanctioned offer | 87 |

V. MISCELLANEOUS

21.	Restriction on disclosure of sanctioned offer or sanctioned payment	88
22.	Interest	88
125.	Forms	88

PART 10

INTERIM REMEDIES AND MAREVA INJUNCTIONS
IN AID OF PROCEEDINGS OUTSIDE HONG KONG**Recommendations 49**

126.	Principal cases in which service of writ out of jurisdiction is permissible	93
127.	Rule added	
	8A. Application for interim relief under section 21M(1) of the Ordinance	93
128.	Rule added	
	9. Application for appointment of receiver under section 21M(1) of the Ordinance	93
129.	Rule added	
	4. Application for interim injunction under section 2GC(1) of Arbitration Ordinance	93
130.	Service out of the jurisdiction of summons and order	94

PART 11

CASE MANAGEMENT TIMETABLING AND MILESTONES

Division 1 - Recommendations 52 to 60 and 62

131.	Directions	94
132.	Trial without pleadings	94
133.	Discovery by parties without order	94
134.	Order for determination of issue, etc., before discovery	95
135.	Heading amended	95
136.	Summons for directions	95
137.	Rules added	
	1A. Case management timetable	96
	1B. Variation of case management timetable	97
	1C. Failure to appear at case management conference or pre-trial review	97
138.	Duty to consider all matters	98
139.	Particular matters for consideration	99
140.	Admissions and agreements to be made	99
141.	Limitation of right of appeal	99
142.	Duty to give all information at hearing	99
143.	Duty to make all interlocutory applications on summons for directions	100
144.	Standard direction by consent	100

145.	Rules added	
	10. Application to action in specialist list	100
	11. Transitional provisions relating to Part 11 of Amendment Rules 2008	100
146.	Directions, etc., by Court	101
147.	Continuation of proceedings as if cause or matter begun by writ	101
148.	Order for hearing or trial	101
149.	Directions	101
150.	Directions on application under rule 10	101
151.	Determining the place and mode of trial	101
152.	Trial with jury	101
153.	Time for setting down action	101
154.	Lodging documents when setting down	102
155.	Power to order assessment at trial	102
156.	Application for award of further damages	102
157.	Exchange of witness statements	102
158.	Evidence of finding on foreign law	102
159.	Interpretation	102
160.	Directions in particular proceedings	102
161.	Preliminary acts	103
162.	Summons for directions	103

Rule	- xx -	Page
163.	Fixing date for trial, etc.	103
164.	Limitation action: summons for decree or directions	103
165.	Limitation action: proceedings to set aside decree	103
166.	References to Registrar	103
167.	Summons for directions or summary judgment	103
168.	Directions	103
169.	Summons for directions	103
170.	Proceedings for infringement: summons for directions	104
171.	Receivers	104
172.	Receivers	104
173.	Receivers	104
Division 2 - Miscellaneous		
174.	Case management summons and conference	104
175.	Particular matters for consideration	104
176.	Automatic directions in personal injury actions	104
PART 12		
VEXATIOUS LITIGANTS		
Recommendation 69		
177.	Striking out pleadings and indorsements	105
178.	Jurisdiction of the Registrar and masters	105

179. Order added

ORDER 32A

VEXATIOUS LITIGANTS

- | | | |
|----|---|-----|
| 1. | Application under section 27(1) of the Ordinance | 105 |
| 2. | Application for leave for institution or continuance of proceedings, etc. | 105 |
| 3. | Hearing and determination of application for leave | 106 |
| 4. | Service of order | 106 |
| 5. | Setting aside grant of leave | 106 |
| 6. | Leave required for inspection of documents relating to application for leave under section 27A of the Ordinance | 107 |
| 7. | Transitional | 107 |

180. Forms

107

PART 13

DISCOVERY

Division 1 – Recommendations 76 and 79

- | | | |
|------|--|-----|
| 181. | Application under section 41 or 42(1) of the Ordinance | 109 |
| 182. | Discovery to be ordered only if necessary | 109 |

Division 2 – Recommendation 80

183.	Rule added	
	15A.	Order for limiting discovery 109

PART 14

INTERLOCUTORY APPLICATIONS

Division 1 - Recommendations 83, 85 and 86

184.	Rules added	
	11A.	Interlocutory applications 110
	11B.	Court's power to specify consequences of failure to comply with court order on interlocutory application 111

Division 2 – Jurisdiction of Registrar and Master

185.	Jurisdiction of the Registrar and masters	111
------	---	-----

PART 15

INTERLOCUTORY APPLICATIONS AND
SUMMARY ASSESSMENT OF COSTS**Recommendations 88, 89 and 92**

186.	Fractional or gross sums in place of taxed costs	111
187.	Rules substituted	
	9A.	Summary assessment of costs of interlocutory application 112

	9B. Time for complying with direction or order for summary assessment	113
	9C. When summary assessment not allowed	113
	9D. When to tax costs	114
188.	Costs of a litigant in person	114

PART 16

WASTED COSTS

Recommendations 94 to 97

189.	Interpretation	114
190.	Rule substituted	
	8. Personal liability of legal representative for costs - wasted costs order	115
	8A. Court may make wasted costs order on its own motion or on application	116
	8B. Stages of considering whether to make a wasted costs order	116
	8C. Application for wasted costs order not to be used as means of intimidation	117
	8D. Personal liability of legal representative for costs – supplementary provisions	117
	8E. Stages of considering whether to make direction under rule 8D(1)	118

191. Rule added

TRANSITIONAL

36. Transitional provision relating to
Part 16 of Amendment Rules 2008 119

PART 17

WITNESS STATEMENTS AND EVIDENCE

Recommendation 100

192. Exchange of witness statements 119

PART 18

EXPERT EVIDENCE

Recommendations 102, 103 and 107

193. Rule added

4A. Evidence by single joint expert 120

194. Interpretation 121

195. Rule added

35A. Expert witness's overriding duty
to Court 121

196. Rules added

37B. Duty to provide expert witness with
copy of code of conduct 121

37C. Expert witness's declaration of duty
to Court 121

Rule	- xxv -	Page
197.	Expert evidence contained in statement	122
198.	Time for putting expert report in evidence	122
199.	Appendix D added	
	Appendix D Code of conduct for expert witnesses	122

PART 19

CASE MANAGING TRIAL

Recommendation 108

200.	Rule added	
	3A. Time, etc. limits at trial	124

PART 20

LEAVE TO APPEAL

Division 1 – Recommendation 109

201.	Appeals from certain decisions of masters to a judge in chambers	125
------	--	-----

Division 2 – Recommendations 110 and 112

202.	Rules added	
	<p>CASES WHERE LEAVE TO APPEAL IS NOT REQUIRED FOR INTERLOCUTORY APPEALS</p>	
	21. Judgments and orders to which section 14AA(1) of the Ordinance not apply	125
203.	Rules added	
	2A. Application to Court of Appeal for	

	leave to appeal	126
	2B. Application for leave to appeal against interlocutory and other judgments or orders of Court	127
	2C. Refusal by single judge of application for leave to appeal	128
204.	Applications to the Court of Appeal	128

PART 21

APPEALS

Division 1 - Recommendation 120

205.	Rule added	
	14A. Determination of interlocutory application	129

Division 2 - Miscellaneous

206.	Appeal from judgment, etc. of judge in interpleader proceedings	129
207.	Application of Order to appeals	129
208.	Time for appealing	129
209.	Setting down appeal	130
210.	Documents to be lodged by appellant	130
211.	General powers of the Court	130
212.	Stay of execution, etc.	130
213.	Application to the Court of Appeal	131
214.	Appeal against decree nisi	131

Rule	- xxvii -	Page
215.	Appeal from District Court	131
216.	Time for appealing	131
217.	Setting down appeal	131
218.	Statement of case by tribunals	132
219.	Proceedings on case stated	132

PART 22

GENERAL APPROACH TO INTER-PARTY COSTS

Recommendation 122

220.	When costs to follow the event	132
221.	Special matters to be taken into account in exercising discretion	132
222.	Costs arising from misconduct or neglect	133

PART 23

TAXING THE OTHER SIDE'S COSTS

Division 1 – Recommendation 131

223.	First Schedule amended	133
------	------------------------	-----

Division 2 – Recommendation 134

224.	Interpretation	133
225.	Application	134
226.	Powers of certain judicial clerks to tax costs	134
227.	Rule substituted	

21.	Mode of commencing proceedings for taxation	134
21A.	Application for taxation to be set down	135
21B.	Provisional taxation	135
21C.	Taxation with a hearing	136
21D.	Withdrawal of bill of costs	136
228.	Rule substituted	
24.	Taxation	136
Division 3 – Recommendations 135 and 136		
229.	Rule added	
13A.	Taxing master may give directions	137
230.	Deposit of papers and vouchers	137
231.	Provisions as to bills of costs	137
232.	Power to adjourn	137
233.	Rules added	
32A.	Liability for costs of taxation	138
234.	Rule added	
32C.	Court's powers in relation to misconduct	138
Division 4 – Miscellaneous		
235.	Interpretation	139
236.	Stage of proceedings at which costs to be dealt with	139

237.	Costs arising from misconduct or neglect	139
238.	Rule substituted	
	22. Delay in service of notice of commencement of taxation or in proceeding with taxation	139
239.	Scales of costs	141
240.	Rules added	
	17A. Final certificate	142
	17B. Taxing master may set aside his own decision	142
241.	Cross-heading substituted	142
242.	Costs payable to one party by another or out of a fund	142
243.	Costs of a litigant in person	142
244.	Rule added	
	32B. Reimbursement for taxing fees	142
245.	Application to taxing master for review	142
246.	Review of taxing master's certificate by a judge	143
247.	First Schedule amended	143
248.	Fixed costs	144
Division 5 – Transitional arrangement		
249.	Rule added	
	37. Transitional provisions relating to Part 23 of Amendment Rules 2008	145

PART 24

JUDICIAL REVIEW

Recommendations 144, 145 and 148

250.	Rule added	
	1A. Interpretation	146
251.	Rule substituted	
	1. Cases appropriate for application for judicial review	146
252.	Grant of leave to apply for judicial review	147
253.	Rule added	
	4A. Service of order granting leave	147
254.	Rules added	
	5A. Affidavit evidence	147
	5B. Court's powers to hear any person	148
255.	Statements and affidavits	148
256.	Hearing of application for judicial review	148
257.	Rule added	
	15. Transitional provisions relating to Part 24 of Amendment Rules 2008	148
258.	Forms	148

PART 25

COSTS AGAINST NON-PARTY

259.	Principal cases in which service of writ out of jurisdiction is permissible	150
260.	Rule added	
	6A. Costs orders in favour of or against non-parties	150

PART 26

MISCELLANEOUS

261.	Application	150
262.	Definitions	150
263.	Automatic directions in personal injury actions	150
264.	Assessment of damages by a master	150
265.	Offer to submit an award	151
266.	Exchange of witness statements	151
267.	Restrictions on adducing expert evidence	151
268.	Consent judgment and orders	151
269.	Cross-heading amended	151
270.	Application for registration	151
271.	Evidence in support of application	151
272.	Order for registration	151
273.	Register of recommendations etc.	152

274.	Service of writ out of jurisdiction	152
275.	Warrant of arrest	152
276.	Application and interpretation	152
277.	Duties of officer	152
278.	Acknowledgment of service	152
279.	Judgment on failure to give notice of intention to defend	153
280.	Case management summons or summary judgment	153
281.	"成文法" substituted by "成文法律"	153
282.	"認收送達" substituted by "送達認收"	153

RULES OF THE HIGH COURT (AMENDMENT) RULES 2008

(Made by the Rules Committee of the High Court
under section 54 of the High Court
Ordinance (Cap. 4))

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. Definitions

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

""practice direction" (實務指示) 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;"

3. Orders added

The Rules of the High Court (Cap. 4 sub. leg. A) are amended by adding immediately 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 ensure fairness 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 varying the order."

PART 3

NON-COMPLIANCE WITH RULES AND COURT ORDERS

Recommendation 84

4. Rules added

Order 2 is amended by adding –

"3. Non-compliance with rules and court orders (O. 2, r. 3)

(1) 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 or court order.

(2) When exercising its power under paragraph (1), 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.

(3) Where a party pays money into court following an order under paragraph (1), 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 or court order, any sanction for failure to comply imposed by the rule or court order has effect unless the party in default applies to the Court for and obtains relief from the sanction within 14 days of the failure.

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 or court order, 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 to comply;
- (e) the extent to which the party in default has complied with other rules and court orders;
- (f) whether the failure to comply was caused by the party in default or his legal representative;
- (g) in the case where the party in default is not legally represented, whether he was unaware of the rule or court order, 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."

PART 4
COSTS-ONLY PROCEEDINGS

Recommendation 9

5. Service of originating summons, notice of motion, or petition

Order 10, rule 5(1) 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 –

- "(ob) the claim is for an order for the costs of and incidental to a dispute under section 52B(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 52A and 52B of the Ordinance".

9. 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 52B(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 52B(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."

10. Powers of taxing masters to tax costs

Order 62, rule 12(1) is amended –

(a) in sub-paragraph (a), by repealing "costs of or arising out of any cause or matter" and substituting "costs of or incidental to any proceedings";

(b) by adding –

- "(aa) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1);"

11. Forms

- (1) Appendix A is amended in Form No. 10 –
 - (a) by adding "O. 29 r. 8A; O. 30 r. 9; O. 62 r. 11A; O. 73 rr. 2, 3 & 4; O. 100 r. 2; O. 115 rr. 2A, 3, 7 & 24" after "O. 7 r. 2" appearing in parentheses immediately under the heading;
 - (b) by repealing "OF HONG KONG" and substituting "OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION";
 - (c) by repealing "19....." wherever it appears and substituting "20.....".
- (2) Appendix A is amended in Form No. 15 –
 - (a) by repealing the heading and substituting –

**"Acknowledgment of Service of Originating
Summons – for all cases other than
costs-only proceedings under
section 52B of the High
Court Ordinance";**
 - (b) by repealing "(O. 10 r. 5)" and substituting "(O. 10 r. 5; O. 12 r. 3(1))".
- (3) Appendix A is amended by adding –

"No. 15A

**Acknowledgment of Service of Originating Summons –
for costs-only proceedings under section 52B
of the High Court Ordinance**

(O. 10 r. 5; O. 12 r. 3(1); O. 62 r. 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 High Court of the following address –

[insert here the address of the Registry of the High 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

Service of the originating summons is acknowledged accordingly.

Where words appear between square brackets, delete if inapplicable.

(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 5
COMMENCEMENT OF PROCEEDINGS

Recommendations 11 to 16

12. Application

Order 1, rule 2 is amended by adding –

"(5) These rules do not have effect in relation to an election petition lodged under an enactment specified in the first column of the following Table, except to the extent that the practice and procedure of the High Court are applied to that election petition by virtue of an enactment specified in the second column of the Table –

TABLE

1. Legislative Council Ordinance (Cap. 542), Part VII.	Legislative Council (Election Petition) Rules (Cap. 542 sub. leg. F), rule 2.
2. District Councils Ordinance (Cap. 547), Part V.	District Councils (Election Petition) Rules (Cap. 547 sub. leg. C), rule 2.
3. Chief Executive Election Ordinance (Cap. 569), Part 6.	Chief Executive Election (Election Petition) Rules (Cap. 569 sub. leg. E), section 3.
4. Village Representative Election Ordinance (Cap. 576), Part 5.	Village Representative (Election Petition) Rules (Cap. 576 sub. leg. B), section 2."

13. Definitions

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

"Amendment Rules 2008" (《2008年修訂規則》) means the Rules of the High 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. Application to set aside for irregularity

Order 2, rule 2(2) is amended by repealing "or motion" and "or notice of motion".

16. Mode of beginning civil proceedings

Order 5, rule 1 is amended by repealing ", originating summons, originating motion or petition" and substituting "or originating summons".

17. Rules repealed

Order 5, rules 2 and 3 are repealed.

18. 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."

19. Proceedings to be begun by motion or petition

Order 5, rule 5 is amended by repealing "by these rules or by or".

20. Rule added

Order 5 is amended by adding -

"7. Transitional provision relating to rule 16 of Amendment Rules 2008 (O. 5, r. 7)

Any civil proceedings begun by originating motion or petition before the commencement of the Amendment Rules 2008 and pending immediately before the commencement may be continued and disposed of as if rule 16 of the Amendment Rules 2008 had not been made."

21. Form of summons, etc.

Order 7, rule 2 is amended –

(a) 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.";

(b) by adding –

"(3) This rule is subject to Order 53, rule 5(1) and Order 54, rule 2(3)."

22. Ex parte originating summons

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

23. Rule substituted

Order 8, rule 1 is repealed and the following substituted –

"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."

24. Rule added

Order 8 is amended by adding –

"6. Transitional provision relating to originating and other motions

(O. 8, r. 6)

Where, immediately before the commencement of the Amendment Rules 2008, an application, request or appeal by motion or originating motion made under a provision amended by Part 4 of the Amendment Rules 2008 is pending, then the application, request or appeal is to be determined as if that provision had not been so amended."

25. Rule substituted

Order 9, rule 1 is repealed and the following substituted –

"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."

26. Manner in which application under rule 1 may be made

Order 14A, rule 2 is amended by repealing "or motion".

27. Judgment between defendant and third party

Order 16, rule 7(1) is amended by repealing "or motion".

28. Mode of application

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

29. Default of defence: other claims

Order 19, rule 7 is amended –

- (a) in paragraph (2)(b), by repealing "on motion" where it twice appears;
- (b) in paragraph (3), by repealing "or motion".

30. Amendment of judgment and orders

Order 20, rule 11 is amended by repealing "motion or".

- 31. Discontinuance of action, etc., with leave**
Order 21, rule 3(2) is amended by repealing "or motion".
- 32. Stay of subsequent action until costs paid**
Order 21, rule 5(2) is amended by repealing "or motion".
- 33. Judgment on admissions**
Order 27, rule 3 is amended by repealing "motion or".
- 34. 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."
- 35. Application for injunction**
Order 29, rule 1(2) is amended by repealing "motion or".
- 36. Application for receiver and injunction**
Order 30, rule 1(1) is amended by repealing "or motion".
- 37. Impounded documents**
Order 35, rule 13(1) is amended by repealing "motion" and substituting "summons".
- 38. Application for leave to issue writ of sequestration**
Order 46, rule 5 is amended –

 - (a) in paragraph (1), by repealing "motion" and substituting "summons";
 - (b) in paragraph (2), by repealing "notice of motion" and substituting "summons";
 - (c) in paragraph (3), by repealing "of the notice of motion".
- 39. Order prohibiting transfer, etc. of securities**
Order 50, rule 15(2) is amended by repealing "motion or".
- 40. Application for order after leave to apply granted**
Order 52, rule 3 is amended –

 - (a) in paragraph (1), by repealing "by motion" and substituting "by originating summons";

- (b) in paragraph (1), by repealing "notice of motion" and substituting "originating summons";
- (c) in paragraph (1A), by repealing "notice of motion" and substituting "originating summons";
- (d) in paragraph (2), by repealing "motion" and substituting "originating summons";
- (e) in paragraphs (3) and (4), by repealing "notice of motion" and substituting "originating summons".

41. Provisions as to hearing

Order 52, rule 6(3) is amended by repealing "notice of motion" and substituting "originating summons".

42. Mode of applying for judicial review

Order 53, rule 5 is amended –

- (a) by repealing paragraph (1) and substituting –
 - "(1) When leave has been granted to make an application for judicial review, the application must be made by originating summons in Form No. 86A in Appendix A to a judge sitting in open court or, if the judge granting leave has so ordered, to a judge in chambers.";
- (b) in paragraph (3) –
 - (i) by repealing "notice of motion or summons" and substituting "originating summons";
 - (ii) by repealing "notice or summons" and substituting "originating summons";
- (c) in paragraph (4), by repealing "notice of motion or summons" and substituting "originating summons";
- (d) in paragraph (5), by repealing "A motion must be entered" and substituting "An originating summons must be issued";
- (e) in paragraph (6) –
 - (i) by repealing "notice of motion" and substituting "originating summons";
 - (ii) by repealing "before the motion is entered for hearing" and substituting "within 7 days of such service";
 - (iii) by repealing "of the motion" and substituting "of the originating summons";
- (f) in paragraph (7) –
 - (i) by repealing "motion" and substituting "originating summons";
 - (ii) by repealing "notice" and substituting "originating summons".

43. Statements and affidavits

Order 53, rule 6 is amended –

- (a) in paragraph (1), by repealing "notice of motion or summons" and substituting "originating summons";
- (b) in paragraph (2), by repealing "motion or summons" and substituting "originating summons".

44. Hearing of application for judicial review

Order 53, rule 9 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "motion or" where it first and secondly appears and substituting "originating";
 - (ii) by repealing "notice of the motion or the" and substituting "the originating";
- (b) in paragraph (2), by repealing "motion or" where it twice appears and substituting "originating";
- (c) in paragraph (5), by repealing "as if the application had been made by summons".

45. Power of Court to whom ex parte application made

Order 54, rule 2 is amended –

- (a) in paragraph (1)(a) and (b), by repealing "originating motion" and substituting "originating summons";
- (b) in paragraph (2), by repealing "or notice of the motion";
- (c) by adding –
 - "(3) An originating summons under this rule must be in Form No. 87 in Appendix A."

46. Removal of solicitor from record at instance of another party

Order 67, rule 5(2) is amended by repealing "or, in the case of an application to the Court of Appeal, by motion, and the summons or notice of the motion" and substituting "and the summons".

47. Matters for a judge in court

Order 73, rule 2 is amended –

- (a) in paragraph (1) –
 - (i) in sub-paragraph (f), by repealing "29A(2)" and substituting "2GE";
 - (ii) by repealing "must be made by originating motion" and substituting "may be made by originating summons in Form No. 10 in Appendix A";
- (b) in paragraph (2), by repealing "shall be made by originating motion to a single judge in court and notice thereof may be included in the notice of application" and substituting "may be made by originating summons in Form

No. 10 in Appendix A to a single judge in court which may be included in the originating summons";

- (c) in paragraph (3) –
 - (i) by repealing "originating motion" and substituting "originating summons in Form No. 10 in Appendix A";
 - (ii) by repealing everything after "single judge in court" and substituting a full stop.

48. Matters for judge in chambers or master

Order 73, rule 3(2) and (3) is repealed and the following substituted –

"(2) Any application under section 23(5) or (7) of the Arbitration Ordinance (Cap. 341) (including any application for leave) must be made to a judge in chambers.

(3) Any application to which this rule applies may, where an action is pending, be made by summons in the action, and in any other case may be made by an originating summons in Form No. 10 in Appendix A."

49. Time limits and other special provisions as to appeals and applications under the Arbitration Ordinance

Order 73, rule 5 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "or notice";
 - (ii) by repealing "21 days" and substituting "30 days";
- (b) in paragraph (2) –
 - (i) by repealing "the notice" and substituting "the summons";
 - (ii) by repealing "21 days" where it twice appears and substituting "30 days";
- (c) in paragraph (3), by repealing ", and notice thereof served, within 14 days" and substituting "within 30 days";
- (d) in paragraph (5) –
 - (i) by repealing "the notice of originating motion, or as the case may be, the originating summons," and substituting "the summons";
 - (ii) by repealing "that notice" and substituting "that summons".

50. Rule added

Order 73 is amended by adding –

"6A. Originating summons to be heard in chambers (O. 73, r. 6A)

An originating summons referred to in rules 2, 3 and 5 may be heard in chambers if the judge, whether of his own motion or at the request of one or more of the parties, so decides."

51. Service out of the jurisdiction of summons, notice, etc.

Order 73, rule 7 is amended –

- (a) in the heading, by repealing ", **notice, etc.**" and substituting "**and order**";
- (b) in paragraph (1) –
 - (i) in sub-paragraph (a), by repealing "or notice of originating motion";
 - (ii) in sub-paragraph (b), by repealing "or motion as aforesaid";
 - (iii) by repealing "summons, motion or order" and substituting "summons or order";
- (c) in paragraph (3), by repealing "summons, notice or order" and substituting "summons or order".

52. Registration of awards under Arbitration (International Investment Disputes) Act 1966

Order 73, rule 9(3) is amended by repealing "shall be made" and substituting "may be made".

53. Enforcement of settlement agreement under section 2C of the Arbitration Ordinance or of award under section 2GG of that Ordinance

Order 73, rule 10(2) is amended by repealing "shall be an originating summons" and substituting "may be an originating summons".

54. Issue of writ and acknowledgment of service

Order 75, rule 3(1) is amended by repealing "must be begun by writ" and substituting "may be begun by writ".

55. Requirements in connection with issue of writ

Order 76, rule 2(1) is amended by repealing "must be" and substituting "may be".

56. Discontinuance and dismissal

Order 76, rule 11(3) is amended by repealing "motion or".

57. Judgment in default

Order 77, rule 9(3) is amended by repealing "or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion" and substituting "and the summons".

**58. Applications under section 25 of
Crown Proceedings Ordinance**

Order 77, rule 18(2) is amended by repealing "motion or".

59. Approval of settlement

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

60. Commencement of money lender's action

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

61. Foreclosure in redemption action

Order 88, rule 7 is amended by repealing "motion or".

62. Determination of questions as to property

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

63. Provisions as to actions in tort

Order 89, rule 2(2) is amended by repealing "or motion".

64. Application to make a minor a ward of court

Order 90, rule 3(1) is amended by repealing "but except in that case an application to make a minor a ward of court must be made by originating summons" and substituting "in any other case an application to make a minor a ward of court may be made by originating summons".

**65. Applications under the Guardianship
of Minors Ordinance**

Order 90, rule 5 is amended by repealing ", but except in that case any such application must be made by originating summons" and substituting "; and in any other case any such application may be made by originating summons".

**66. Removal of guardianship proceedings
from the District Court**

Order 90, rule 10(1) is amended by repealing "shall be" and substituting "may be".

**67. Appeals and applications under the
Trade Marks Ordinance**

Order 100, rule 2 is amended –

(a) in paragraph (2), by repealing "must be begun by originating motion" and substituting "may be begun by originating summons in Form No. 10 in Appendix A";

(b) in paragraph (3), by repealing "Notice of the motion" and substituting "The summons".

68. Applications to be made by originating summons

Order 102, rule 2 is amended –

- (a) in the Chinese text, by repealing the heading and substituting –

"藉原訴傳票提出的申請";

- (b) by repealing paragraph (1) and substituting -

"(1) Except in the case of applications made in proceedings relating to the winding up of companies, applications made pursuant to section 168A of the Ordinance and the applications mentioned in rule 5, every application under the Ordinance may be made by originating summons."

69. Rules repealed

Order 102, rules 3 and 4 are repealed.

70. Entitlement of proceedings

Order 102, rule 6(2) is amended by repealing ", notice of originating motion".

71. Application for rectification of register of patents in Hong Kong

Order 103, rule 29 is amended by repealing "originating motion" and substituting "originating summons".

72. Assignment of proceedings

Order 115, rule 2 is amended by repealing "a motion" and substituting "an originating summons".

73. Application for confiscation order where person has died or absconded

Order 115, rule 2A is amended –

- (a) by renumbering it as Order 115, rule 2A(1);
(b) in paragraph (1), by repealing "by originating summons";
(c) by adding –

"(2) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A."

74. Application for restraint order or charging order

Order 115, rule 3 is amended –

- (a) in paragraph (1), by repealing "by originating motion";
(b) by adding –

"(1A) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A.";

- (c) in paragraph (3), by repealing "originating motion under paragraph (1)" and substituting "originating summons under paragraph (1A)".

75. Realisation of property

Order 115, rule 7 is amended –

- (a) by repealing paragraph (1) and substituting –
 - "(1) An application under section 12 must be made by the Secretary for Justice.
 - (1A) The application may, where there have been proceedings against the defendant in the Court of First Instance, be made by summons and may otherwise be made by originating summons in Form No. 10 in Appendix A.";
- (b) in paragraph (2), by repealing "originating motion" and substituting "originating summons".

76. Application for continued detention of seized property

Order 115, rule 24(1) is amended by repealing "shall be made by ex parte originating motion in Form No. 107 in Appendix A" and substituting "may be made by originating summons in Form No. 10 in Appendix A".

77. Application for restraint order or charging order

Order 115A, rule 13(1) and (3) is amended by repealing "originating motion" and substituting "originating summons".

78. Realisation of property

Order 115A, rule 17(1) and (2) is amended by repealing "originating motion" and substituting "originating summons".

79. Realisation of property

Order 117, rule 9(1) and (2) is amended by repealing "originating motion" and substituting "originating summons".

80. Proceedings under section 84

Order 118, rule 3(1) is amended by repealing "shall be" and substituting "may be".

81. Proceedings under section 85

Order 118, rule 4(1) is amended by adding "in Form No. 11 in Appendix A" after "originating summons".

82. Form of application

Order 119, rule 4 is amended by repealing "by ex parte notice of motion in Form 109" and substituting "ex parte by originating summons in Form No. 11 in Appendix A".

83. Restriction on access to documents, etc.

Order 119, rule 5(1) is amended by repealing "notice of motion" and substituting "originating summons".

84. Mode of application

Order 121, rule 2(1) is amended by repealing "shall be" and substituting "may be".

85. Forms

- (1) Appendix A is amended in Form No. 11 –
 - (a) by adding "; O. 118 r. 4(1); O. 119 r. 4" after "O. 7 r. 2" appearing in parentheses immediately under the heading;
 - (b) by repealing "OF HONG KONG" and substituting "OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION";
 - (c) by repealing "19....." wherever it appears and substituting "20".
- (2) Appendix A is amended in Form No. 81 –
 - (a) in the heading, by repealing "**originating motion**" and substituting "**originating summons**";
 - (b) by repealing "of Hong Kong" and substituting "of the Hong Kong Special Administrative Region";
 - (c) by repealing "originating motion" and substituting "originating summons";
 - (d) by repealing "19....." wherever it appears and substituting "20".
- (3) Appendix A is amended in Form No. 85 –
 - (a) by repealing "Upon motion this day made unto this Court by counsel for the plaintiff" and substituting "Upon hearing the originating summons dated theday of 20 taken out by the solicitor for the plaintiff/ plaintiff";
 - (b) by repealing "19....." wherever it appears and substituting "20.....";
 - (c) by repealing "and of notice this motion" and substituting "and of notice of hearing of this originating summons".
- (4) Appendix A is amended by repealing Form No. 86.
- (5) Appendix A is amended by adding immediately after Form No. 86A -

"No. 86A
Originating summons – judicial review
(O. 53 r. 5)

____ / 20____

IN THE HIGH COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. _____ OF _____

Between *A.B.* Applicant
AND
C.D. Respondent

Pursuant to the leave granted by the Honourable _____ on _____, let all parties concerned appear before the Honourable _____ on the ____ day of _____ 20____ at ____ o'clock, on the hearing of an application by *A.B.* for an order that (or for the following relief, namely):

TAKE NOTICE that an order will also be sought that the costs of and incidental to this application be paid by _____.

THE GROUNDS FOR THE APPLICATION are those set out in Form No. 86 used on the application for leave to apply for such order (or the grounds for the application, for which leave had been granted, are as follows:

_____)

FURTHER TAKE NOTICE that on the hearing of this application, the applicant will use the following affidavit(s) and the exhibits therein referred to:

Dated the _____ day of _____ 20____.

Solicitor for the applicant (or where the applicant acts in person, name of the applicant)

This summons was taken out by _____, solicitor for the applicant whose address is at

(or where the plaintiff acts in person:

This summons was taken out by the applicant whose address for service is at _____)

To : _____

(Name and address of the respondent or the solicitor for the respondent, and if applicable, name and address of the interested party or other party as directed by the Court)".

(6) Appendix A is amended by repealing Form No. 87 and substituting –

"No. 87

Originating summons – for writ of habeas corpus ad subjiciendum

(O. 54 r. 2)

____ / 20____

IN THE HIGH COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. _____ OF _____

Between

A.B.

Applicant

AND

C.D.

Respondent

Pursuant to the direction given by the Honourable _____ on _____, let all parties concerned appear before the Honourable _____ on the _____ day of _____ 20____ at _____ o'clock, on the hearing of an application by A.B. for an order that a writ of habeas corpus be issued directed to _____ to have A.B. brought before the Honourable _____ at such time as the judge _____ may direct.

TAKE NOTICE that an order will also be sought that the costs of and incidental to this application be paid by _____.

THE GROUNDS FOR THE APPLICATION are those set out in the affidavits of A.B. and _____ and the exhibits therein respectively referred to used on the application to the _____ for such order, copies of which affidavits and exhibits are served herewith.

FURTHER TAKE NOTICE that on the hearing of this application, the applicant will use the following affidavit(s) and the exhibits therein referred to:

Dated the _____ day of _____ 20____.

Solicitor for the applicant (or where the applicant acts in person, name of the applicant)

This summons was taken out by _____, solicitor for the applicant whose address is at

(or where the plaintiff acts in person:

This summons was taken out by the applicant whose address for service is at _____)

To : _____

(Name and address of the respondent or the solicitor for the respondent, and if applicable, name and address of the other party as directed by the Court)".

- (7) Appendix A is amended by repealing Forms No. 107 and 109.

PART 6
DISPUTE AS TO JURISDICTION

Recommendation 17

86. 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) by repealing paragraph (3) and substituting –
 - "(3) An application under paragraph (1) or (2) must be made by summons and the summons must state the grounds of the application.";
- (d) in paragraph (4) –
 - (i) by adding "or (2)" after "paragraph (1)";

- (ii) by repealing "notice of motion or";
- (e) in paragraphs (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)".

87. Rule added

Order 12 is amended by adding –

"11. Transitional provision relating to rule 86 of Amendment Rules 2008

(O. 12, r. 11)

Where an application under rule 8(1) is pending immediately before the commencement of the Amendment Rules 2008, then the application is to be determined as if rule 86 of the Amendment Rules 2008 had not been made."

88. Service of defence

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

89. 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 Court of First Instance in the proceedings or to argue that the Court of First Instance should not exercise its jurisdiction in the proceedings, and wishes to apply to the Court of First Instance 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 Court of First Instance in the proceedings or to argue that the Court of First Instance should not exercise its jurisdiction in the proceedings, and wishes to apply to the Court of First Instance 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 7
DEFAULT JUDGMENTS AND ADMISSIONS

Recommendation 18

90. Indorsement of claim

Order 6, rule 2(1) is amended –

- (a) in sub-paragraph (b), by repealing the full stop and substituting "; and";
- (b) by adding –
 - "(c) where the only remedy that the plaintiff is seeking is the payment of money, with a statement that the defendant may make an admission in accordance with Order 13A within the period fixed for service of his defence."

91. 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" (申索) 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" (無行為能力的人) 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 files an admission under paragraph (2), this Order applies as if he had made the admission specified in paragraph (1)(a) or (b), as the case may be.

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), (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 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 in the Registry 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 in the Registry 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 in the Registry 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 in the Registry 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 proposal for payment, he shall file in the Registry 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 –

- (a) may do so without a hearing; but
- (b) shall consider –
 - (i) the information set out in the defendant's admission filed in the Registry;
 - (ii) the reasons why the plaintiff does not accept the defendant's proposal for payment; and
 - (iii) all other relevant matters.

(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 48 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 writ 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."

92. Forms

- (1) Appendix A is amended in Form No. 1 –
 - (a) by repealing "OF HONG KONG" and substituting "OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION";
 - (b) by repealing "19....." where it twice appears and substituting "20.....";
 - (c) by adding "or to make an admission" after "to contest these proceedings";
 - (d) by adding immediately below "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.]
 - (e) 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 –
 - "[insert here the address of the Registry of the High 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 High 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 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 box)

"

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."

(4) 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 –

"[insert here the address of the Registry of the High 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 High Court and served on the Plaintiff [or the Plaintiff's Solicitors] within the period for filing of the Defendant's affidavit evidence."

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

"Where words appear between square brackets, delete if inapplicable.

Service of the Originating Summons is acknowledged accordingly."

and substituting –

"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."

(6) Appendix A is amended by adding –

"No. 16

Admission (liquidated amount)

(O. 13A rr. 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 –
 - (a) within the period for service of your defence if you have been served with a writ; *or*
 - (b) the period for filing of your affidavit evidence if you have been served with an originating summons; *or*
 - (c) within 14 days after service of the originating process in any other case.
2. If you have made an admission, you may only be allowed to amend or withdraw your admission if the Court considers it just to do so.
3. If you do not ask for time to pay, the plaintiff will decide how much and when you should pay.
4. If you ask for time to pay, the plaintiff will decide whether or not to accept your proposal for payment.
5. 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.
6. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made after considering –
 - (a) the information set out in this form;
 - (b) the reasons why the plaintiff does not accept your proposal for payment; and
 - (c) all other relevant matters.
7. The completed form should be filed in the Registry of the High 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 High 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 \$

5. Residence

- I live in
- my own flat
 - my jointly owned flat
 - public housing estate
 - rented private flat
 - 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 (<i>give details below</i>)		
	\$	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 (<i>including second mortgage</i>)	\$	per month
Rent	\$	per month
Rates and government rent	\$	per month
Management fees	\$	per month
Domestic helper's salary	\$	per month
Gas	\$	per month
Electricity	\$	per month
Water charges	\$	per month
Telephone charges	\$	per month
Housekeeping, food, school meals	\$	per month
Travelling expenses	\$	per month
Children's clothing	\$	per month
Tuition fees	\$	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	\$
Others	\$
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 or <input type="checkbox"/> I can pay by [weekly/monthly etc.] instalments of	<input style="width: 100%;" type="text"/> <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)

(O. 13A rr. 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 High 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

(O. 13A rr. 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 High 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 High 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)

Date

With company chop
(if applicable)

No. 16C
Admission (unliquidated amount)
(O. 13A rr. 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 –
 - (a) within the period for service of your defence if you have been served with a writ; *or*
 - (b) the period for filing of your affidavit evidence if you have been served with an originating summons; *or*
 - (c) within 14 days after service of the originating process in any other case.
2. If you have made an admission, you may only be allowed to amend or withdraw your admission if the Court considers it just to do so.
3. 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.
4. 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 after considering –
 - (a) the information set out in this form;
 - (b) the reasons why the plaintiff does not accept your proposal for payment; and
 - (c) all other relevant matters.
5. The completed form should be filed in the Registry of the High 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 High 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

Surname	
Forename	
	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms
Address	

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

(give details)

--

3. Employment

<input type="checkbox"/> I am employed as a			
My employer is			
Jobs other than main job (give details)			
<input type="checkbox"/> I am self employed as a			
Annual turnover is	\$		
<input type="checkbox"/> I am not in arrears with my mandatory provident fund contributions and income tax			
<input type="checkbox"/> I am in arrears and I owe	\$		
Give details of:			
(a) contracts and other work in hand			
(b) any sums due for work done			
<input type="checkbox"/> I have been unemployed for	<table border="1"> <tr> <td>years</td> <td>months</td> </tr> </table>	years	months
years	months		
<input type="checkbox"/> I am a pensioner			

4. Bank account and savings (*please list all*)

Bank account	In credit by \$	Overdrawn by \$

5. Residence

- I live in
- my own flat
 - my jointly owned flat
 - public housing estate
 - rented private flat
 - 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 (<i>give details below</i>)		
	\$	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 (<i>including second mortgage</i>)	\$	per month
Rent	\$	per month
Rates and government rent	\$	per month
Management fees	\$	per month
Domestic helper's salary	\$	per month
Gas	\$	per month
Electricity	\$	per month
Water charges	\$	per month
Telephone charges	\$	per month
Housekeeping, food, school meals	\$	per month
Travelling expenses	\$	per month
Children's clothing	\$	per month
Tuition fees	\$	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	\$
Others	\$
Maintenance arrears	\$
Loans and credit card debts <i>(please list)</i>	\$
Others <i>(give details below)</i>	
	\$
	\$
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)

(O. 13A r. 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 High Court.

No. 16E

Reply to admission of unliquidated amount and Request for judgment

(O. 13A rr. 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 High 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)

".

- (7) 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 High Court and served on the counterclaiming plaintiff [or the counterclaiming plaintiff's solicitors] within the period for service of the defence to counterclaim."

PART 8 PLEADINGS

Division 1 – Recommendations 22 to 24

93. Admissions and denials

Order 18, rule 13 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "Any allegation" and substituting "Subject to paragraph (6), an allegation";
 - (ii) by repealing "denial" and substituting "non-admission";
- (b) in paragraph (2), by repealing "A traverse" and substituting "Subject to paragraph (5), a traverse";
- (c) by adding –
 - "(5) 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.
 - (6) 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."

94. 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".

95. Rule added

Order 18 is amended by adding –

"23. Transitional provision relating to rule 93 of Amendment Rules 2008

(O. 18, r. 23)

Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rule 93 of the Amendment Rules 2008 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 rule 93 of the Amendment Rules 2008 had not been made."

Division 2 – Recommendations 26 to 32 and 35

96. Service of defence

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

97. 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".

98. 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."

99. Close of pleadings

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

100. 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)."

101. Rule added

Order 18 is amended by adding –

"24. Transitional provision relating to rules 96 and 97 of Amendment Rules 2008 (O. 18, r. 24)

Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rules 96 and 97 of the Amendment Rules 2008 do not apply –

- (a) in relation to the service of the defence and the reply to that defence; and
- (b) 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 continue to apply as if rules 96 and 97 of the Amendment Rules 2008 had not been made."

102. 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 the 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)."

103. 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".

104. 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."

105. 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" (專家報告) means an expert report disclosed under these rules;

"pleading" (狀書) includes –

- (a) particulars of a pleading given by a party to any other party, whether voluntarily or pursuant to –
 - (i) a request made by 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" (證人陳述書) 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 sub-paragraph.

(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 must be signed by –

- (a) one 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 signed 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 document are true and (if applicable) the opinion expressed in it is honestly held.

(2) If a party is conducting proceedings with a next friend or guardian ad litem, the statement of truth in or in relation to a pleading is a statement that the next friend or guardian ad litem believes the facts stated in the document being verified are true.

(3) Where a legal representative or insurer has signed a statement of truth on behalf of a party, the Court shall treat his signature as his statement that –

- (a) the party on whose behalf he has signed had authorized him to do so;
- (b) before signing he had explained to the party that in signing the statement of truth he would be confirming the party's belief that the facts stated in the document were true; and
- (c) before signing he had informed the party of the possible 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 by order strike out a pleading that 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."

106. Forms

(1) Appendix A is amended in Form No. 1 by adding "A statement of claim must be verified by a statement of truth in accordance with Order 41A of the Rules of the High Court (Cap. 4 sub. leg. A)." after "(Signed if statement of claim indorsed)."

(2) Appendix A is amended in Form No. 14, under the sub-heading "*Directions for Acknowledgment of Service*", by adding immediately above paragraph 3 –

"The Defendant's defence must be verified by a statement of truth in accordance with Order 41A of the Rules of the High Court (Cap. 4 sub. leg. A)."

Division 3 – Recommendations 33 and 34

107. 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."

108. 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."

109. 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 9

SANCTIONED OFFERS AND SANCTIONED PAYMENTS

Division 1 – Recommendations 38, 39, 41, 42 and 43

110. Definitions

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

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

111. 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" (申索) includes, where the context so permits or requires, a counterclaim;

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

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

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

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

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

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

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

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

(2) 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 20, 21, 22, 23 and 24 (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 specified in this Order unless it is made by way of a sanctioned offer or a 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 specified in this Order unless it is made by way of a sanctioned offer.

5. Form and content of 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 26(2).
- (4) A defendant may make a sanctioned offer limited to accepting liability up to a specified proportion.
- (5) A sanctioned offer may be made by reference to an interim payment.
- (6) A sanctioned offer may be made at any time after the commencement of the proceedings but may not be made before such commencement.
- (7) A sanctioned offer made not less than 28 days before the commencement of the trial must provide that after the expiry of 28 days from the date the sanctioned offer is made, 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.
- (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.

6. Service of sanctioned offer

(O. 22, r. 6)

An offeror shall serve the sanctioned offer –

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

7. Withdrawal or diminution of sanctioned offer

(O. 22, r. 7)

(1) A sanctioned offer made not less than 28 days before the commencement of the trial 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.

(2) 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.

(3) 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.

(4) 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.

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

8. Notice of sanctioned payment

(O. 22, r. 8)

(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 an issue arising from it and if so to which part or issue it relates;
- (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 26(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.

9. Service of sanctioned payment

(O. 22, r. 9)

A defendant who makes a sanctioned payment 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.

10. Withdrawal or diminution of sanctioned payment

(O. 22, r. 10)

(1) 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.

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

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

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

11. Offer to settle claim for provisional damages

(O. 22, r. 11)

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

(2) Where the defendant makes a sanctioned payment under paragraph (1), 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 15,

the sanctioned payment has the consequences specified in rule 20, 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 unless the Court has disposed of the application made under paragraph (5).

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

12. Time when sanctioned offer or sanctioned payment is made and accepted (O. 22, r. 12)

- (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 notice of its acceptance is served on the offeror.

13. Service of notice of acceptance of plaintiff's sanctioned offer (O. 22, r. 13)

- (1) Where there is more than one defendant, a defendant who serves on the plaintiff a notice of acceptance of the plaintiff's sanctioned offer shall at the same time serve a copy of the notice on the other defendant or defendants.
- (2) A defendant on whom a copy of the notice has been served may within 14 days after the service apply to the Court for –
 - (a) a direction as to any question of costs between him and the defendant who has accepted the plaintiff's sanctioned offer; and
 - (b) any other direction relating to the acceptance of the plaintiff's sanctioned offer.
- (3) No application may be made under paragraph (2) after the expiry of the 14-day period referred to in that paragraph.

14. Clarification of sanctioned offer or sanctioned payment notice (O. 22, r. 14)

- (1) The offeree may, within 7 days of a sanctioned offer or a 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

15. Time for acceptance of defendant's sanctioned offer or sanctioned payment (O. 22, r. 15)

(1) Subject to rules 7(3) and 10(2), 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 the leave of the Court; and
- (ii) if the parties do not agree on the liability for costs, only accept the offer or payment with the leave of the Court.

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

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

16. Time for acceptance of plaintiff's sanctioned offer (O. 22, r. 16)

(1) Subject to rule 7(3), 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 the leave of the Court; and

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

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

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

(O. 22, r. 17)

Subject to rules 18(4) and 19 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.

18. Acceptance of sanctioned offer or sanctioned payment made by one or more, but not all, defendants

(O. 22, r. 18)

(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 15(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 15(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.

19. Other cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment (O. 22, r. 19)

(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 a 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

20. Costs consequences of acceptance of defendant's sanctioned offer or sanctioned payment (O. 22, r. 20)

(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.

21. Costs consequences of acceptance of plaintiff's sanctioned offer (O. 22, r. 21)

(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.

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

- (1) If a sanctioned offer or a 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.

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

(O. 22, r. 23)

- (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 by order disallow all or part of any interest otherwise payable under section 48 of the Ordinance on the whole or part of any sum of money awarded to the plaintiff for some or all of the period 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 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.

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

- (a) his costs on the indemnity basis after 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 the costs referred to in paragraph (3) or sub-paragraph (a) at a rate not exceeding 10% above judgment rate.

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

(6) In considering whether it would be unjust to make the orders referred to in paragraphs (2), (3) and (4), 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.

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

24. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O. 22, r. 24)

(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 after 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 after 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

25. Restriction on disclosure of sanctioned offer or sanctioned payment

(O. 22, r. 25)

- (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 22 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.

26. Interest (O. 22, r. 26)

- (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.

27. Money paid into court under order

(O. 22, r. 27)

(1) On making any payment into court under an order of the Court or a certificate of a master, the 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 served on 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 served on the plaintiff, 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) in the case of paragraph (2)(a), a sanctioned payment when the notice is served on the plaintiff; and
 - (b) in the case of paragraph (2)(b), money paid into court with a plea of tender when the pleading is served on the plaintiff,

and this Order applies accordingly.

(4) A notice served on the plaintiff in accordance with paragraph (2)(a) is deemed to be a sanctioned payment notice.

28. Transitional provision relating to Part 9 of Amendment Rules 2008

(O. 22, r. 28)

Where –

- (a) a payment into court has been made in accordance with Order 22 ("the repealed Order") repealed by rule 111 ("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 9 of the Amendment Rules 2008 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."

112. Payment into court in satisfaction

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

113. Notification of setting down

Order 34, rule 8(3) is amended by repealing "payment into court in accordance with Order 22, rule 3(1)" and substituting "sanctioned payment or a sanctioned offer in accordance with Order 22".

114. Non-disclosure of payment into court

Order 59, rule 12A(1) is amended –

- (a) in sub-paragraph (b), by repealing "Order 22, rule 1" and substituting "Order 22";
- (b) by adding "nor the terms of any relevant offer made in accordance with Order 22" after "nor the amount thereof".

115. When costs to follow the event

Order 62, rule 3(8) is repealed.

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

Order 62, rule 5(1) is amended by repealing sub-paragraph (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 a sanctioned offer under Order 22;"

117. When a party may sign judgment for costs without an 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 20 and 21 and Order 25, rule 1C(6)";
 - (iii) by repealing "respectively".

118. Payment into and out of court

Order 75, rule 24(1) is amended by repealing "Order 22 (except rules 3, 4 and 12)" and substituting "Subject to this rule, Order 22".

119. 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".

120. 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) of";
- (b) in paragraph (2), by repealing "Order 22, rule 7" and substituting "Order 22, rule 25".

**121. Applications with respect to funds
in court**

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

122. Forms

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

"No. 23

Notice of sanctioned payment

(O. 22 r. 8(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 certain 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 11).

Signed		Position or office held (If signing on behalf of a firm, company or corporation)	
	Defendant('s solicitor)		
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, send it to the defendant and file a copy in the Registry of the High Court.

No. 24

Notice of acceptance of sanctioned payment

(O. 22 r. 15(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

(O. 22 r. 17)

(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 High 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 High 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 High 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

(O. 22 r. 27(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.

123. 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 17, 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 High Court Suitors' Funds Rules (Cap. 4 sub. leg. B) and the Trustee Ordinance (Cap. 29)."

Division 2 – Recommendation 132

124. 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" (訟費提議) means an offer to settle –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

3. Paying party's costs offer requires sanctioned payment

(O. 62A, r. 3)

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

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

4. Receiving party's costs offer requires sanctioned offer

(O. 62A, r. 4)

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

5. Form and content of sanctioned offer

(O. 62A, r. 5)

(1) A sanctioned offer must be in writing.

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

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

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

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

(a) the parties agree on the liability for and quantum of costs of taxation incurred after the period; or

(b) the Court grants leave to accept it.

6. Service of sanctioned offer

(O. 62A, r. 6)

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

7. Withdrawal or diminution of sanctioned offer

(O. 62A, r. 7)

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

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

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

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

8. Notice of sanctioned payment

(O. 62A, r. 8)

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

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

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

9. Service of sanctioned payment

(O. 62A, r. 9)

A paying party who makes a sanctioned payment shall –

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

10. Withdrawal or diminution of sanctioned payment

(O. 62A, r. 10)

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

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

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

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

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

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

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

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

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

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

12. Clarification of sanctioned offer or sanctioned payment notice

(O. 62A, r. 12)

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

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

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

III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT

13. Time for acceptance of paying party's sanctioned payment

(O. 62A, r. 13)

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

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

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

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

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

14. Time for acceptance of receiving party's sanctioned offer

(O. 62A, r. 14)

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

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

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

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

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

(O. 62A, r. 15)

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

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

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

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

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

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

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

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

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

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

(O. 62A, r. 17)

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

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

IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

18. Consequences of acceptance of sanctioned offer or sanctioned payment

(O. 62A, r. 18)

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

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

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

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

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

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

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

(6) Where –

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

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

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

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

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

(3) The taxing master may also –

- (a) order the receiving party to pay the costs of the taxation on the indemnity basis after the date on which the payment was made; and
- (b) order that the paying party is entitled to interest on those costs at a rate not exceeding 10% above judgment rate.

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

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

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

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

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

(O. 62A, r. 20)

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

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

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

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

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

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

- (a) the terms of the sanctioned offer;
- (b) the stage in the proceedings at which the sanctioned offer was made;

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

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

V. MISCELLANEOUS

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

- (1) A sanctioned offer is treated as "without prejudice save as to costs".
- (2) The fact that a sanctioned payment has been made must not be communicated to the taxing master until the amount of the costs to be allowed have been decided.
- (3) Paragraph (2) does not apply –
 - (a) where the taxation has been stayed under rule 18 following acceptance of a sanctioned payment; and
 - (b) where the fact that there has or has not been a sanctioned payment may be relevant to the question of the costs of the issue of liability.

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

- (1) Unless –
 - (a) a receiving party's sanctioned offer; or
 - (b) a sanctioned payment notice,
 indicates to the contrary, any such offer or payment is to be treated as inclusive of all interest until the last date on which it could be accepted without requiring the leave of the Court.
- (2) Where a receiving party's sanctioned offer or a sanctioned payment notice is expressed not to be inclusive of interest, the offer or notice must state –
 - (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."

125. Forms

Appendix A is amended by adding –

"No. 93

Notice of sanctioned payment (Order 62A)

(O. 62A r. 8(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)

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 High Court, and send a copy to the paying party.

No. 93A

Notice of acceptance of sanctioned payment (Order 62A)

(O. 62A r. 13(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)

(O. 62A r. 15)

(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 High 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 High 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 High 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 10
INTERIM REMEDIES AND MAREVA INJUNCTIONS
IN AID OF PROCEEDINGS OUTSIDE HONG KONG

Recommendation 49

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

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

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

127. Rule added

Order 29 is amended by adding immediately after rule 8 –

"8A. Application for interim relief under section 21M(1) of the Ordinance

(O. 29, r. 8A)

(1) An application for interim relief under section 21M(1) of the Ordinance must be made by originating summons in Form No. 10 in Appendix A.

(2) Rules 1, 2, 3, 4, 7(1), 7A and 8 of this Order apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

(3) Upon hearing of the originating summons, the Court may direct that all or any part of the hearing be conducted in open court."

128. Rule added

Order 30 is amended by adding –

"9. Application for appointment of receiver under section 21M(1) of the Ordinance

(O. 30, r. 9)

This Order applies to an application for appointment of a receiver under section 21M(1) of the Ordinance as it applies to an application for appointment of a receiver in an action or proceeding in the High Court subject to the following modifications –

- (a) the application must be made by originating summons in Form No. 10 in Appendix A and accordingly rule 1(1) does not apply; and
- (b) rule 1(3) and (4) does not apply to the application."

129. Rule added

Order 73 is amended by adding –

"4. Application for interim injunction under section 2GC(1) of Arbitration

Ordinance (O. 73, r. 4)

(1) An application for an interim injunction or any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap. 341) in relation to an arbitration proceeding (whether in Hong Kong or in a place outside Hong Kong) must be made by originating summons in Form No. 10 in Appendix A.

(2) Where the application is in relation to an arbitration proceeding outside Hong Kong, rules 1, 2, 3, 4, 7(1), 7A and 8 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

(3) Upon hearing of the originating summons, the Court may direct that all or any part of the hearing be conducted in open court."

130. Service out of the jurisdiction of summons and order

Order 73, rule 7 is amended –

- (a) in paragraph (1), by repealing "paragraph (1A)" and substituting "paragraphs (1A) and (1B)";
- (b) by adding –
 - "(1B) Service out of the jurisdiction of an originating summons by which an application for an interim injunction or any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap. 341) is made is permissible with the leave of the Court.";
- (c) in paragraph (3), by adding "or (1B)" after "paragraph (1)".

PART 11

CASE MANAGEMENT TIMETABLING AND MILESTONES

Division 1 - Recommendations 52 to 60 and 62

131. Directions

Order 14, rule 6(1) is amended by repealing "summons for directions" and substituting "case management summons".

132. Trial without pleadings

Order 18, rule 21(3) is amended by repealing "summons for directions" and substituting "case management summons".

133. Discovery by parties without order

Order 24, rule 2(7) is amended by repealing "summons for directions" and substituting "case management summons".

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

Order 24, rule 4(2) is amended by repealing "summons for directions" and substituting "case management summons".

135. Heading amended

The heading of Order 25 is amended by repealing "SUMMONS FOR DIRECTIONS" and substituting "CASE MANAGEMENT SUMMONS AND CONFERENCE".

136. Summons for directions

Order 25, rule 1 is amended –

- (a) in the heading, by repealing "**Summons for directions**" and substituting "**Case management summons and conference**";
- (b) by repealing paragraph (1) and substituting -

"(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.

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

- (a) the directions relating to the management of the case 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.

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

- (a) each party shall in the questionnaire make a proposal on the matter; and
- (b) the plaintiff shall, within the time specified in the practice direction, take out a summons (in these rules referred to as a case management summons) returnable in not less than 14 days,

so that the Court may give directions relating to the management of the case.";

- (c) by repealing paragraph (3);
- (d) by repealing paragraph (4) and substituting –
 - "(4) If the plaintiff does not file the questionnaire in accordance with paragraph (1)(b) or take out a case management summons in accordance with paragraph (1B)(b), the defendant or any defendant may –
 - (a) take out a case management summons; or
 - (b) apply for an order to dismiss the action.";
- (e) in paragraph (5), by repealing "summons for directions" and substituting "case management summons";
- (f) in paragraph (6), by adding "and rule 1A(1)(c)" after "this rule";
- (g) in paragraph (7) –
 - (i) by repealing "(1)" and substituting "(1B)";
 - (ii) by repealing "summons for directions" and substituting "case management summons".

137. Rules added

Order 25 is amended by adding –

"1A. Case management timetable

(O. 25, r. 1A)

- (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(1B)(b).
- (2) Where the Court has fixed a case management conference, it shall –
 - (a) give directions relating to the management of the case and fix the timetable 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) at 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 varying the order.

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

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

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

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

(3) The Court shall not grant an application under paragraph (2) unless there are exceptional circumstances justifying the variation.

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

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

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

(7) Whether or not sufficient grounds have been shown to it, the Court shall not grant an application under paragraph (5) if the variation would make it necessary to change a trial date or the period in which the trial is to take place.

(8) In this rule –

"milestone date" (進度指標日期) 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" (非進度指標日期) means a date or period fixed by the Court, other than a date or period specified in the definition of "milestone date".

1C. Failure to appear at case management conference or pre-trial review

(O. 25, r. 1C)

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

(2) Where the defendant has made a counterclaim in the action and he does not appear at the case management conference or pre-trial review, the Court shall provisionally strike out the defendant's counterclaim.

(3) Where the Court has provisionally struck out a claim or counterclaim under paragraph (1) or (2), the plaintiff or the defendant 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 claim or counterclaim.

(4) The Court may restore the claim or counterclaim subject to such conditions as it thinks fit or refuse to restore it.

(5) The Court shall not restore the claim or counterclaim unless good reasons have been shown to the satisfaction of the Court.

(6) If the plaintiff or the defendant does not apply under paragraph (3) or his application under that paragraph is refused, then –

- (a) the plaintiff's claim or the defendant's counterclaim 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)
 - (i) in the case of the plaintiff's claim, the defendant is entitled to his costs of the claim; and
 - (ii) in the case of the defendant's counterclaim, the plaintiff is entitled to his costs of the counterclaim."

138. Duty to consider all matters

Order 25, rule 2 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "summons for directions first comes to be heard" and substituting "case management summons first comes to be determined";
 - (ii) in sub-paragraph (a) -
 - (A) by repealing "subsequent";
 - (B) by repealing "on the hearing of the summons for directions," and substituting "at the case management summons";
- (b) in paragraph (2), by repealing "summons for directions first comes to be heard" and substituting "case management summons first comes to be determined";
- (c) in paragraph (3) –
 - (i) by repealing "summons for directions first comes to be heard" and substituting "case management summons first comes to be determined";
 - (ii) by repealing "subsequent";
 - (iii) by repealing "on the hearing of the summons" and substituting "at the case management summons";

- (iv) by repealing "at a resumed hearing of the summons for directions" and substituting "at such time as the Court may specify";
- (d) in paragraph (4) –
 - (i) by repealing "subsequent";
 - (ii) by repealing "on the hearing of the summons for directions" and substituting "at the case management summons";
- (e) in paragraph (5) –
 - (i) by repealing "on the summons for directions" and substituting "at the determination of the case management summons";
 - (ii) by repealing "on the summons" and substituting "at the case management summons";
- (f) in paragraph (7) –
 - (i) by repealing "hearing of the summons for directions" and substituting "determination of the case management summons";
 - (ii) by repealing "the resumed hearing thereof" and substituting "its resumption";
 - (iii) by repealing "it" and substituting "the summons".

139. Particular matters for consideration

Order 25, rule 3 is amended by repealing "On the hearing of the summons for directions" and substituting "At the determination of the case management summons,".

140. Admissions and agreements to be made

Order 25, rule 4 is amended by repealing "hearing of the summons for directions" and substituting "determination of the case management summons".

141. Limitation of right of appeal

Order 25, rule 5 is amended by repealing "summons for directions" and substituting "case management summons".

142. Duty to give all information at hearing

Order 25, rule 6 is amended –

- (a) in the heading, by repealing "**hearing**" and substituting "**determination of case management summons**";
- (b) in paragraph (1) –
 - (i) by repealing "on the hearing of the summons for directions" and substituting "at the determination of the case management summons";
 - (ii) by repealing "on any hearing of the summons";
 - (iii) by repealing "present or represented on the hearing of the summons";

- (c) in paragraph (2), by repealing "on the hearing of the summons for directions" and substituting "at the determination of the case management summons";
- (d) in paragraph (3), by repealing "on any hearing of the summons for directions" and substituting "at the determination of the case management summons".

143. Duty to make all interlocutory applications on summons for directions

Order 25, rule 7 is amended –

- (a) in the heading, by repealing "**on summons for directions**" and substituting "**at case management summons**";
- (b) in paragraph (1) –
 - (i) by repealing "summons for directions" and substituting "case management summons";
 - (ii) by repealing "at the hearing" and substituting "at the time fixed for determination";
 - (iii) by repealing "before the hearing" and substituting "before the time fixed for determination";
- (c) in paragraph (2) –
 - (i) by repealing "hearing of the summons for directions" and substituting "determination of the case management summons";
 - (ii) by repealing "at the resumed hearing";
 - (iii) by repealing "resumed hearing" and substituting "resumption of the determination";
- (d) in paragraph (3), by repealing "summons for directions" and substituting "case management summons".

144. Standard direction by consent

Order 25, rule 9 is repealed.

145. Rules added

Order 25 is amended by adding –

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

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

11. Transitional provisions relating to Part 11 of Amendment Rules 2008 (O. 25, r. 11)

(1) A summons for directions taken out before the commencement of the Amendment Rules 2008 and pending immediately before the commencement is deemed to be –

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

(2) Where the pleadings in an action to which rule 1 applies are deemed to be closed but no summons for directions has been taken out before the commencement of the Amendment Rules 2008, 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 the Amendment Rules 2008".

146. Directions, etc., by Court

Order 28, rule 4(4) is amended by repealing "summons for directions" and substituting "case management summons".

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

Order 28, rule 8(2) is amended by repealing "summons for directions" and substituting "case management summons".

148. Order for hearing or trial

Order 28, rule 9(4) is amended by repealing "summons for directions" and substituting "case management summons".

149. Directions

Order 29, rule 7(2) is amended by repealing "summons for directions" where it twice appears and substituting "case management summons".

150. Directions on application under rule 10

Order 29, rule 14 is amended by repealing "summons for directions" and substituting "case management summons".

151. 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."

152. Trial with jury

Order 33, rule 5(1) is amended by repealing "(1) and".

153. Time for setting down action

Order 34, rule 2(1) is amended by repealing "Every" and substituting "Unless the Court has fixed a trial date or a period in which the trial is to take place under Order 25, rule 1A(2)(b) or (3)(b), every".

154. Lodging documents when setting down

Order 34, rule 3(1)(c) is repealed and the following substituted –

"(c) all orders made –

- (i) pursuant to the questionnaire completed in accordance with Order 25, rule 1(1)(a);
- (ii) pursuant to a case management summons; and
- (iii) at a case management conference or pre-trial review,".

155. Power to order assessment at trial

Order 37, rule 4(3) is amended by repealing "summons for directions" and substituting "case management summons".

156. Application for award of further damages

Order 37, rule 10 is amended –

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

157. Exchange of witness statements

Order 38, rule 2A(2) is amended –

- (a) by repealing "At the hearing of a summons for directions" and substituting "At the determination of a case management summons,";
- (b) by repealing "of the hearing".

158. Evidence of finding on foreign law

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

159. Interpretation

Order 38, rule 35 is amended by repealing everything before "used in this Part" and substituting "Expressions".

160. Directions in particular proceedings

Order 72, rule 8 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "rule 1(1)" and substituting "rule 1(1B)(b)";
 - (ii) by repealing "summons for directions" and substituting "case management summons";
- (b) in paragraph (2), by repealing "summons for directions" and substituting "case management summons".

161. Preliminary acts

Order 75, rule 18(10) is amended by repealing "summons for directions" and substituting "case management summons".

162. Summons for directions

Order 75, rule 25 is amended –

- (a) in the heading, by repealing "**Summons for directions**" and substituting "**Case management summons**";
- (b) in paragraphs (1), (2) and (3), by repealing "summons for directions" wherever it appears and substituting "case management summons".

163. Fixing date for trial, etc.

Order 75, rule 26(1) and (2) is amended by repealing "summons for directions" and substituting "case management summons".

164. Limitation action: summons for decree or directions

Order 75, rule 38(7) is amended by repealing "summons for directions" and substituting "case management summons".

165. Limitation action: proceedings to set aside decree

Order 75, rule 40(4) is amended by repealing "summons for directions" and substituting "case management summons".

166. References to Registrar

Order 75, rule 41(2) is amended by repealing "summons for directions" and substituting "case management summons".

167. Summons for directions or summary judgment

Order 78, rule 5 is amended –

- (a) in the heading, by repealing "**Summons for directions**" and substituting "**Case management summons**";
- (b) in paragraphs (1) and (3), by repealing "summons for directions" wherever it appears and substituting "case management summons".

168. Directions

Order 86, rule 5 is amended by repealing "summons for directions" and substituting "case management summons".

169. Summons for directions

Order 102, rule 7 is amended –

- (a) in the heading, by repealing "**Summons for directions**" and substituting "**Case management summons**";
- (b) in paragraph (1), by repealing "summons for directions" and substituting "case management summons".

**170. Proceedings for infringement:
summons for directions**

Order 103, rule 26 is amended –

- (a) in the heading, by repealing "**summons for directions**" and substituting "**case management summons**";
- (b) in paragraph (1), by repealing "summons for directions" and substituting "case management summons".

171. Receivers

Order 115, rule 8(3) is amended by repealing "summons for directions" and substituting "case management summons".

172. Receivers

Order 115A, rule 18(3) is amended by repealing "summons for directions" and substituting "case management summons".

173. Receivers

Order 117, rule 10(3) is amended by repealing "summons for directions" and substituting "case management summons".

Division 2 - Miscellaneous

174. Case management summons and conference

Order 25, rule 1(2) is amended –

- (a) in sub-paragraph (h), by adding "and" at the end;
- (b) in sub-paragraph (j), by repealing "; and" and substituting a full stop;
- (c) by repealing sub-paragraph (k).

175. Particular matters for consideration

Order 25, rule 3(c) is amended by repealing "40" and substituting "43".

**176. Automatic directions in personal
injury actions**

Order 25, rule 8(3) is amended, in the English text, by repealing "a district court" and substituting "the District Court".

PART 12
VEXATIOUS LITIGANTS

Recommendation 69

177. Striking out pleadings and indorsements

Order 18, rule 19(1) is amended by adding ", either of its own motion or on application," after "The Court may".

178. Jurisdiction of the Registrar and masters

Order 32, rule 11(1) is amended by adding –
"(da) applications under section 27A of the Ordinance (leave to institute or continue proceedings) for leave to institute or continue legal proceedings;".

179. Order added

The following is added immediately after Order 32 –

"ORDER 32A
VEXATIOUS LITIGANTS

**1. Application under section 27(1)
of the Ordinance (O. 32A, r. 1)**

(1) An application under section 27(1) of the Ordinance for an order specified in that section must be made by originating summons supported by affidavit and served on the person against whom the order is sought.

(2) The application must be heard in open court by a single judge.

**2. Application for leave for institution
or continuance of proceedings, etc.**

(O. 32A, r. 2)

(1) Where an order made under section 27(1) of the Ordinance is in force against a person, an application for leave to institute or continue any legal proceedings by that person must be made by a notice in Form No. 27A in Appendix A containing a statement of –

- (a) the title and reference number of the proceedings in which that order was made;
- (b) the name and address of the applicant;
- (c) the order the applicant is seeking; and
- (d) briefly, why the applicant is seeking the order.

(2) The notice of application for leave must be filed together with any affidavit evidence on which the applicant relies in support of the application.

(3) Any previous applications for leave which the applicant has made under section 27 of the Ordinance, and the results of those applications, must be listed in the notice of application.

3. Hearing and determination of application

for leave (O. 32A, r. 3)

(1) An application for leave made under rule 2 may be determined by a single judge without the attendance of the applicant unless the judge gives directions for the hearing of the application.

(2) Where the judge gives directions for the hearing of the application, the hearing may be held in chambers.

(3) Directions for the hearing of the application given under paragraph (2) may include an order that the notice of application be served by the applicant on the Secretary for Justice and on any person against whom the applicant wishes to institute or continue the proceedings for which leave is being sought.

(4) The judge may give directions for further affidavit evidence to be supplied by the applicant before an order is made on the application.

(5) Without limiting the power of the judge to refuse the application, if the leave sought, or the grounds advanced, substantially repeat those submitted in support of a previous application which has been refused, the judge may make an order refusing the application.

(6) Where the applicant institutes the new proceedings or continues the proceedings for which leave has been granted, the applicant shall –

- (a) file the order granting the leave, together with the instrument by which the proceedings are instituted or continued; and
- (b) serve the order granting the leave on every other person who is a party to the proceedings, together with the instrument by which the proceedings are instituted or continued.

4. Service of order (O. 32A, r. 4)

(1) An order granting or refusing the leave sought or an order made pursuant to rule 3(3) must be sent to the applicant at the address given in the notice of application.

(2) The applicant shall forthwith after being sent an order granting the leave sought serve a copy of the order on the Secretary for Justice if he has been served with the notice of application pursuant to rule 3(3).

5. Setting aside grant of leave

(O. 32A, r. 5)

(1) A person may apply to set aside a grant of leave if –

- (a) the leave allows the applicant to institute or continue proceedings against that person; and
- (b) the leave was granted other than at a hearing of which that person was given notice pursuant to a direction given under rule 3.

(2) An application under paragraph (1) must be made by an inter partes summons within 14 days after the order granting the leave was served on the person under rule 3(6)(b).

6. Leave required for inspection of documents relating to application for leave under section 27A of the Ordinance (O. 32A, r. 6)

(1) A person may not without the leave of the Court inspect any document filed in the Registry relating to the application for leave under section 27A of the Ordinance.

(2) Leave may not be granted under paragraph (1) unless the Court is satisfied that there is reasonable ground for the inspection.

(3) Leave granted under paragraph (1) may be granted on such terms and conditions as the Court thinks just.

7. Transitional (O. 32A, r. 7)

Where, immediately before the commencement of this Order, an application for an order or for leave under section 27 of the Ordinance as in force immediately before the commencement is pending, then the application is to be determined as if this Order had not been made."

180. Forms

Appendix A is amended by adding –

"No. 27A

Notice of application for leave to institute or continue proceedings in court

(O. 32A r. 2)

No.....

IN THE HIGH COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

Applicant

Notice of application for leave to
institute or continue proceedings
in court (O. 32A r. 2)

To the Registrar, High Court, Hong Kong.

Name and address of applicant	
Title and reference number of the proceedings in which the order under section 27(1) of the High Court Ordinance (Cap. 4) was made	
Order sought	
Previous applications for leave which the applicant has made under section 27 of the High Court Ordinance (Cap. 4), and the results of those applications	
Signed	Dated

Grounds on which leave is sought

Note: — Grounds must be supported by the affidavit evidence on which the applicant relies in support of his application."

PART 13
DISCOVERY

Division 1 – Recommendations 76 and 79

**181. Application under section 41
or 42(1) of the Ordinance**

Order 24, rule 7A is amended –

- (a) in paragraph (3) –
 - (i) in sub-paragraph (a), by repealing "in which a claim for personal injuries is likely to be made";
 - (ii) in sub-paragraph (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 41 of the Ordinance)".";
- (c) by repealing paragraph (7).

**182. 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 41 or 42 of the Ordinance, unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs."

Division 2 – Recommendation 80

183. 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 14
INTERLOCUTORY APPLICATIONS

Division 1 - Recommendations 83, 85 and 86

184. Rules added

Order 32 is amended by adding –

"11A. Interlocutory applications

(O. 32, r. 11A)

- (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 sub-paragraph (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) Paragraph (4) is subject to a direction given under paragraph (3).
- (6) 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.

11B. Court's power to specify consequences of failure to comply with court order on interlocutory application

(O. 32, r. 11B)

- (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 1A(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 1A(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

185. Jurisdiction of the Registrar and masters

Order 32, rule 11(1)(a) is amended by adding "matters relating to the conditions of admission to bail and" after "other than".

PART 15
INTERLOCUTORY APPLICATIONS AND
SUMMARY ASSESSMENT OF COSTS

Recommendations 88, 89 and 92

186. 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.".

187. 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 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 equals 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 exceeds 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 taxing master may make such order as to the costs of the taxation or such other order as he considers appropriate.

(5) In determining whether the taxed costs materially exceed the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall, in addition to any other matter that he 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 ad litem) acting for the person under disability has not waived the right to any further sum of money in respect of the costs of the interlocutory application.

(2) In this rule –

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

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

9D. When to tax costs

(O. 62, r. 9D)

(1) Subject to paragraphs (2) and (4), 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."

188. 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 16

WASTED COSTS

Recommendations 94 to 97

189. 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" (法律代表), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party;

"wasted costs order" (虛耗訟費命令) means an order made under section 52A(4) of the Ordinance."

190. 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 52A(6) of the Ordinance; and
 - (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.
- (2) A wasted costs order may –
- (a) disallow the costs as between the legal representative and his client; and
 - (b) direct 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 that –
 - (i) 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 sub-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 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 personally to pay costs 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.

(5) A legal representative shall not be directed or ordered under this rule to pay any costs or fees, nor shall he be disallowed under this rule any fees, unless he has been given a reasonable opportunity to give reasons why –

- (a) the direction or order should not be made; or
- (b) he should not be disallowed the fees.

(6) When a taxing master makes a direction under paragraph (1), he –

- (a) shall specify the amount to be paid; and
- (b) 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.

(7) The Court or a taxing master may direct that notice must be given to the legal representative's client, in such manner as the Court or the taxing master may direct, of any direction or order made under this rule against his legal representative.

8E. Stages of considering whether to make direction under rule 8D(1) (O. 62, r. 8E)

(1) The taxing master shall consider whether to make a direction under rule 8D(1) in 2 stages –

- (a) in the first stage, the taxing master must be satisfied that –
 - (i) he has before him evidence or other material which, if unanswered, would be likely to lead to a direction under rule 8D(1) being made; and
 - (ii) the direction is justified notwithstanding the likely costs involved; and
- (b) in the second stage (even if the taxing master is satisfied under subparagraph (a)), the taxing master shall consider, after giving the legal representative an opportunity to give reasons why the taxing master should not make the direction, whether it is appropriate to make the direction.

(2) On an application for a direction under rule 8D(1), the taxing master may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if he is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the taxing master should not make the direction. In other cases the taxing master shall adjourn the hearing before proceeding to the second stage.

(3) On an application for a direction under rule 8D(1), 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 directed to pay or which are sought against him."

191. Rule added

Order 62 is amended by adding immediately after rule 35 –
"TRANSITIONAL

**36. Transitional provision relating to
Part 16 of Amendment Rules 2008**

(O. 62, r. 36)

Rules 8, 8A, 8B, 8C, 8D and 8E do not apply in relation to any costs incurred before the commencement of the Amendment Rules 2008, and rule 8 as in force immediately before the commencement continues to apply in relation to those costs as if Part 16 had not been made."

PART 17

WITNESS STATEMENTS AND EVIDENCE

Recommendation 100

192. 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 18

EXPERT EVIDENCE

Recommendations 102, 103 and 107

193. Rule added

Order 38 is amended by adding –

"4A. Evidence by 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, subject to paragraph (6), make an order under paragraph (1) if it is satisfied that it is in the interests of justice to do so 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 a party to the action disagrees with the appointment of a single joint expert witness to give evidence, the Court shall not make an order under paragraph (1) unless the party has been given a reasonable opportunity to appear before the Court and to show cause why the order should not be made.

(7) 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."

194. 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 D is a reference to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court."

195. 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."

196. Rules added

Order 38 is amended by adding immediately after rule 37A –

"37B. Duty to provide expert witness with 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 D.
- (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 D.

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 D and agrees to be bound by it;
 - (b) he understands his duty to the Court; and
 - (c) he has complied with and will continue to comply with that duty.
- (2) Oral expert evidence is not admissible unless the expert witness has declared, whether orally or in writing or otherwise, that –
 - (a) he has read the code of conduct set out in Appendix D and agrees to be bound by it;
 - (b) he understands his duty to the Court; and
 - (c) he has complied with and will continue to comply with that duty.

(3) Paragraph (1) does not apply to a report that was disclosed under rule 37 before the commencement of this rule."

197. Expert evidence contained in statement

Order 38, rule 41 is amended by repealing "rules 20 to 23 inclusive and 25 to 33" and substituting "rules 20 to 22".

198. 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".

199. Appendix D added

The following is added after Appendix C –

"APPENDIX D

Code of conduct for expert witnesses

(O. 38 rr. 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 the Court.

General duty to Court

2. An expert witness has an overriding duty to help 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 High Court (Cap. 4 sub. leg. A).

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 19 CASE MANAGING TRIALS

Recommendation 108

200. 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 20
LEAVE TO APPEAL

Division 1 - Recommendation 109

201. Appeals from certain decisions of masters to a judge in chambers

Order 58, rule 1 is amended –

- (a) in paragraph (1), by adding ", irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing" after "decision of a master";
- (b) by adding –

"(5) 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."

Division 2 – Recommendations 110 and 112

202. Rule added

Order 59 is amended by adding –

"CASES WHERE LEAVE TO APPEAL IS NOT
REQUIRED FOR INTERLOCUTORY APPEALS

21. Judgments and orders to which section 14AA(1) of the Ordinance not apply (O. 59, r. 21)

(1) Judgments and orders to which section 14AA(1) of the Ordinance (leave to appeal required for interlocutory appeals) does not apply and accordingly an appeal lies as of right from them are the following –

- (a) a judgment or order determining in a summary way the substantive rights of a party to an action;
- (b) an order made under section 52A(4) of the Ordinance;
- (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;

- (f) an order granting any relief made at the hearing of an application for judicial review;
 - (g) an order under Order 53, rule 3 refusing to grant leave to apply for judicial review;
 - (h) an order granting an application for a writ of habeas corpus ad subjiciendum;
 - (i) an order under Order 73 (other than an order against which leave to appeal is required under the Arbitration Ordinance (Cap. 341));
 - (j) a judgment given inter partes under Order 83A, rule 4, or Order 84A, rule 3 or in a mortgage action within the meaning of Order 88, rule 1;
 - (k) an order under Order 121; and
 - (l) a decree nisi of divorce or nullity of marriage.
- (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), (e), (f), (h), (i), (k) and (l) includes an order refusing, varying or discharging the order."

203. Rules added

Order 59 is amended by adding immediately before rule 3 –

"2A. Application to Court of Appeal for leave to appeal (O. 59, r. 2A)

(1) An application to the Court of Appeal for leave to appeal must be made by a summons supported by a statement setting out –

- (a) the reasons why leave should be granted; and
 - (b) if the time for appealing has expired, the reasons why the application was not made within that time.
- (2) An application under paragraph (1) must be made inter partes if the proceedings in the court below are inter partes.
- (3) An application under paragraph (1) must include, where necessary, an application to extend the time for appealing.
- (4) A party who intends to resist an application under paragraph (1) made inter partes shall, within 14 days after the application is served on him, file in the Court of Appeal and serve on the applicant a statement as to why the application should not be granted.
- (5) The Court of Appeal may –
- (a) determine the application without a hearing on the basis of written submissions only; or
 - (b) direct that the application be heard at an oral hearing,
- and in both cases, the Court of Appeal may give such directions as it thinks fit in relation to the application.
- (6) Where the Court of Appeal grants the application, it may impose such terms as it thinks fit.
- (7) Subject to paragraph (8), if the application is determined on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after he has been given notice of the determination, request the Court of Appeal to reconsider the determination at an oral hearing inter partes.
- (8) Where the Court of Appeal determines the application on the basis of written submissions only, it may, if it considers that the application is totally without merit, make an order that no party may under paragraph (7) request the determination to be reconsidered at an oral hearing inter partes.
- (9) An oral hearing held pursuant to a request under paragraph (7) may be before the Court of Appeal consisting of –
- (a) the Justice of Appeal; or
 - (b) one or more of the Justices of Appeal,
- who have determined the application on the basis of written submissions only.

**2B. Application for leave to appeal
against interlocutory and other
judgments or orders of Court**

(O. 59, r. 2B)

- (1) Subject to paragraph (4) and any other enactment, an application for leave to appeal against –
- (a) an interlocutory judgment or order of the Court;
 - (b) a judgment or order of the Court specified in section 14(3)(e) or (f) of the Ordinance; or
 - (c) any other judgment or order of the Court against which an appeal may be made with leave of the Court or the Court of Appeal,

may only be made to the Court in the first instance within 14 days from the date of the judgment or order.

(2) So far as is practicable, the application must be made to the judge or master against whose judgment or order leave to appeal is sought.

(3) Where the Court refuses the application, a further application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.

(4) If the Court of Appeal allows, the application may be made direct to the Court of Appeal within 14 days from the date of the judgment or order.

(5) An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes.

2C. Refusal by single judge of application for leave to appeal (O. 59, r. 2C)

(1) Notwithstanding rule 2A(8), where an application for leave to appeal made under rule 2A(1) or 2B(3) is determined (with or without a hearing) by a single Justice of Appeal, a party aggrieved by the determination may, within 7 days from the date of the refusal, make a fresh application to the Court of Appeal.

(2) The party is entitled to have the fresh application determined by the Court of Appeal consisting of 2 Justices of Appeal.

(3) The Justice of Appeal who has previously determined the application may sit in the Court of Appeal determining the fresh application."

204. Applications to the Court of Appeal

Order 59, rule 14 is amended –

- (a) by repealing paragraphs (2), (2A) and (2B);
- (b) in paragraph (7), by repealing ", not being an application for leave to appeal,";
- (c) in paragraph (12), by repealing ", not being the determination of an application for leave to appeal,";
- (d) by adding –

"(13) This rule does not apply in relation to an application for leave to appeal."

PART 21
APPEALS

Division 1 - Recommendation 120

205. Rule added

Order 59 is amended by adding -

"14A. Determination of interlocutory application (O. 59, r. 14A)

(1) The Court of Appeal (including a single judge thereof) may, in relation to a cause or matter pending before the Court of Appeal, determine an interlocutory application without a hearing on the basis of written submissions only.

(2) Where it considers it necessary or expedient, the Court of Appeal (including a single judge thereof) may direct that the interlocutory application shall be heard before the Court of Appeal consisting of 2 or 3 Justices of Appeal.

(3) For the avoidance of doubt, nothing in this rule precludes a judge of the Court of First Instance from sitting as an additional judge of the Court of Appeal in accordance with section 5(2) of the Ordinance."

Division 2 - Miscellaneous

206. Appeal from judgment, etc. of judge in interpleader proceedings

Order 58, rule 7(3) is repealed.

207. Application of Order to appeals

Order 59, rule 1 is amended –

- (a) by renumbering it as Order 59, rule 1(1);
- (b) by adding –

"(2) For the avoidance of doubt and without prejudice to the generality of paragraph (1), this Order, unless the context otherwise requires, applies in relation to an appeal to the Court of Appeal from the District Court."

208. Time for appealing

Order 59, rule 4 is amended –

- (a) by repealing paragraph (1) and substituting –

"(1) Except as otherwise provided by these rules, a notice of appeal must be served under rule 3(5) within –

- (a) in the case where leave to appeal to the Court of Appeal is required under section 14AA (not being a case to which sub-paragraph (b) applies) or section 14(3)(e) or (f) of the Ordinance, 7 days after the date on which leave to appeal is granted;
- (b) in the case of an appeal from a judgment, order or decision given or made in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days from the date of the judgment, order or decision; and

- (c) in any other case, 28 days from the date of the judgment, order or decision concerned.";
- (b) by repealing paragraph (3);
- (c) by adding –
 - "(4) In relation to an appeal from the District Court, a notice of appeal must be served under rule 3(5) within –
 - (a) in the case where leave to appeal to the Court of Appeal is required under section 63(1) or (1B) of the District Court Ordinance (Cap. 336), 7 days after the date on which leave to appeal is granted; and
 - (b) in the case of an appeal from an order specified in section 63(3) of the District Court Ordinance (Cap. 336) or an order for imprisonment given or made under Order 49B of the Rules of the District Court (Cap. 336 sub. leg. H), 28 days after the date on which the order is made."

209. Setting down appeal

Order 59, rule 5 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "the later of (i)";
 - (ii) by repealing "or (ii) the date on which the judgment or order of the Court below was sealed or otherwise perfected,";
 - (iii) in sub-paragraph (a), by repealing "said judgment or order," and substituting "sealed judgment or order and a copy of the reasoned decision (if any);";
- (b) by renumbering paragraph (4) as paragraph (3).

210. Documents to be lodged by appellant

Order 59, rule 9 is amended –

- (a) in paragraph (1), by repealing "Not less than 7 days before the appeal is likely to be" and substituting "Not less than 14 days before the date on which the appeal is";
- (b) in paragraph (2A), by repealing "official shorthand writer or transcriber" and substituting "appellant".

211. General powers of the Court

Order 59, rule 10(2) is amended by repealing ", in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits,".

212. Stay of execution, etc.

Order 59, rule 13(2) is amended –

- (a) by repealing "Court of First Instance" and substituting "court below";

- (b) by repealing "unless the Court" and substituting "unless the court below".

213. Applications to the Court of Appeal

Order 59, rule 14 is amended -

- (a) by adding -

"(3A) Where an application made to the Court of Appeal ex parte under paragraph (3) is granted, notice of the order granting the application must be served on the party or parties affected.

(3B) A party on whom a notice has been served is entitled, within 7 days after service of the notice, to apply to the Court of Appeal to have the order granting the application reconsidered inter partes in open court.";

- (b) in paragraph (12), by repealing everything after "appealed against" and substituting a full stop.

214. Appeal against decree nisi

Order 59, rule 16 is amended by adding -

"(1A) An appeal lies as of right to the Court of Appeal from a decree nisi granted by the Court.".

215. Appeal from District Court

Order 59, rule 19 is amended -

- (a) by repealing paragraph (3);

- (b) in paragraph (4) -

(i) by repealing everything before "Except where";

(ii) by repealing "Except where" and substituting -

"(4) Except where";

(iii) by repealing "under this paragraph" and substituting "before the Court of Appeal";

- (c) by adding -

"(4B) Rule 12A(1) applies as if a reference to Order 22 were a reference to Order 22 of the Rules of the District Court (Cap. 336 sub. leg. H).".

216. Time for appealing

Order 60A, rule 3 is amended -

- (a) by repealing "21" and substituting "28";

- (b) by repealing "decision" and substituting "judgment".

217. Setting down appeal

Order 60A, rule 4(1)(a) is amended by repealing "decision or order of the tribunal" and substituting "sealed judgment or order of the tribunal and a copy of its reasoned decision (if any)".

218. Statement of case by tribunals

Order 61, rule 2(2) is amended by repealing "21" and substituting "28".

219. Proceedings on case stated

Order 61, rule 3(1) and (2) is amended by repealing "21" and substituting "28".

PART 22

GENERAL APPROACH TO INTER-PARTY COSTS

Recommendation 122**220. 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."

221. 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) by adding before sub-paragraph (a) –
 - "(aa) the underlying objectives set out in Order 1A, rule 1;"
 - (ii) in sub-paragraph (c), by repealing "and";
 - (iii) 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."

222. Costs arising from misconduct or neglect

Order 62, rule 7(2) is amended by adding before sub-paragraph (a) –

"(aa) the underlying objectives set out in Order 1A, rule 1;"

PART 23

TAXING THE OTHER SIDE'S COSTS

Division 1 – Recommendation 131

223. First Schedule amended

The First Schedule 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

224. Interpretation

Order 62, rule 1(1) is amended by adding –

"party entitled to be heard on taxation" (有權在訟費評定中獲聆聽的一方) 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);"

225. Application

Order 62, rule 2 is amended –

- (a) in paragraph (2), by repealing "and (5), rule 8(6), rules 14 to 16, rule 17(1), rule 18, rule 21 (except paragraph (3)), rules 22 to 26" and substituting ", rule 8D (except paragraph (4)), rule 8E, rule 9D(1) and (4), rules 13 and 13A, rules 14 to 16, rule 17(1), rules 17A and 17B, rule 18, rules 21 (except paragraph (4)), 21A, 21B, 21C and 21D, rules 22 to 26, rule 28A (except paragraphs (4) and (7)), rules 32A and 32B";
- (b) by adding –
 - "(2A) Where rule 22 has effect under paragraph (2), a reference to the Court of First Instance in rule 22(9)(a) is to be construed as a reference to the arbitrator, umpire, tribunal or other body, as the case may be."

226. Powers of certain judicial clerks to tax costs

Order 62, rule 13 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "paragraph (4) of rule 21" 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)".

227. 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) 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, except where –

- (a) an order for the taxation of the bill of costs of a solicitor is made under section 67 of the Legal Practitioners Ordinance (Cap. 159) at the instance of the solicitor; or
- (b) the Court otherwise orders.

(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 motion 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) is made.

(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."

228. 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

229. 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."

230. Deposit of papers and vouchers

Order 62, rule 23 is repealed.

231. Provisions as to bills of costs

Order 62, rule 25 is repealed.

232. 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."

233. 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."

234. 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.
- (3) Where paragraph (1) applies, the Court may –
 - (a) by order 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" (當事人) 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

235. Interpretation

Order 62, rule 1 is amended, in the English text, in the definition of "District Court", by repealing "地方" and substituting "區域".

236. Stage of proceedings at which costs to be dealt with

Order 62, rule 4 is amended –

- (a) in paragraphs (2) and (3), by adding "or tribunal" after "court" wherever it appears;
- (b) in paragraph (3), by repealing "District Court" where it twice appears and substituting "District Court or the Lands Tribunal".

237. 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).

238. 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 of those costs, 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 of those costs, 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 sub-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" (完結日期) means –

(a) in relation to a costs order made by the Court of First Instance –

- (i) the date of the judgment or order of the Court of First Instance which disposes of the action;
- (ii) the date on which the Court of First Instance makes the 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);
- (iii) 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 of First Instance to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court of First Instance directing the taxation of them, the date on which he becomes entitled to tax those costs,

whichever is the later; and

(b) in relation to a costs order made by the Court of Appeal –

- (i) the date of the judgment or order of the Court of Appeal which disposes of the appeal;
- (ii) the date on which the Court of Appeal makes the 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);
- (iii) 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 of Appeal to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court of Appeal directing the taxation of them, the date on which he becomes entitled to tax those costs,

whichever is the later."

239. Scales of costs

Order 62, rule 32(3) is amended by repealing "[in the absence of agreement to the contrary]" and substituting "(in the absence of agreement to the contrary)".

240. Rules added

Order 62 is amended by adding -

"17A. Final certificate (O. 62, r. 17A)

(1) A taxing master shall, after the conclusion of taxation proceedings before him, issue a final certificate specifying the amount of taxed costs and the amount of money payable under rule 32B.

(2) A taxing master shall not issue a final certificate unless the period within which an application for review of his decision may be made under rule 33(2) has expired.

(3) A taxing master may set aside a final certificate for good reasons 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."

241. 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".

242. Costs payable to one party by another or out of a fund

Order 62, rule 28(6) is amended –

(a) by repealing "43" and substituting "44A";

(b) by repealing everything after "(Cap. 336)" and substituting a full stop.

243. Costs of a litigant in person

Order 62, rule 28A(5) is amended by adding ", unless otherwise specified therein," after "shall".

244. 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."

245. 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."

246. Review of taxing master's certificate by a judge

Order 62, rule 35(1) is amended by repealing "33 or".

247. First Schedule amended

The First Schedule to Order 62 is amended –

(a) in Part I –

(i) 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";

- (ii) in item 2, by repealing "\$100" and substituting "\$110";
- (iii) in item 3, by repealing "\$100" and substituting "\$50";

(b) in Part II –

- (i) by repealing paragraph 1(1);
- (ii) in paragraph 2(3), by repealing "judge in chambers, unless the master or judge" and substituting "master in open court or a judge or the Court of Appeal, unless the master or judge or the Court of Appeal".

248. Fixed costs

The Second Schedule to Order 62 is amended –

- (a) by repealing everything from "FIXED COSTS" and before "PART I";
- (b) in Part I –
 - (i) in the heading, by adding "OR UNDER ORDER 13A" after "LIQUIDATED SUM";
 - (ii) in paragraph 1 –
 - (A) by repealing "1 January 1966" and substituting "the commencement of the Amendment Rules 2008";
 - (B) in sub-paragraph (b), by repealing the semicolon and substituting a full stop;
 - (C) by repealing sub-paragraph (c);
 - (iii) by adding –
 - "1A. The scale of costs set out in Part II of this Schedule applies in relation to cases in which the plaintiff obtains judgment under Order 13A without a hearing.";
 - (iv) in paragraph 2 –
 - (A) by adding "or 1A" after "in paragraph 1";
 - (B) by adding "or 1A" after "said paragraph 1";

(c) in Part II –

(i) by repealing –

"sub-paragraph (a) of paragraph 1	400.00
sub-paragraph (b) of paragraph 1	505.00
sub-paragraph (c) of paragraph 1	650.00"

and substituting –

"sub-paragraph (a) of paragraph 1	9,000 if the plaintiff is legally represented and 500 if the plaintiff is not legally represented
sub-paragraph (b) of paragraph 1	10,000 if the plaintiff is legally represented and 600 if the plaintiff is not legally represented

- 10,000 if the
plaintiff is
legally
represented
and 600 if the
plaintiff is
not legally
represented";
- (ii) in item 1, by repealing "65.00" and substituting "500";
 - (iii) in item 2, by repealing "500.00" and substituting "1,000";
 - (iv) by repealing items 3, 4, 5, 6 and 7;
- (d) in Part III –
- (i) in item 1 –
 - (A) by repealing "rule 11" and substituting "rule 10";
 - (B) by repealing "120.00" and substituting "1,000";
 - (ii) in item 2 –
 - (A) in paragraph (a)(i), by repealing "50.00" and substituting "100";
 - (B) in paragraph (a)(ii), by repealing "100.00" and substituting "300";
 - (iii) by repealing items 2(b) and 3;
 - (iv) in item 4, by repealing "170.00" and substituting "600".

Division 5 – Transitional arrangement

249. Rule added

Order 62 is amended by adding –

**"37. Transitional provisions relating to
Part 23 of 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 the Amendment Rules 2008, nothing in Part 23 of the Amendment Rules 2008 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 the Amendment Rules 2008; but
- (b) any item of work to which the costs or charges specified in the First Schedule or Part III of the Second Schedule of this Order relate was undertaken before the commencement,

then the First Schedule or Part III of the Second Schedule of this Order as in force immediately before the commencement applies in relation to that item of work as if it had not been amended by Part 23 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 the Amendment Rules 2008; but
- (b) the writ of summons was issued before the commencement,

then Part I and Part II of the Second Schedule of this Order as in force immediately before the commencement applies in relation to the writ of summons issued before the commencement as if they had not been amended by Part 23 of the Amendment Rules 2008.

(4) No costs for work undertaken before the commencement 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 24 JUDICIAL REVIEW

Recommendations 144, 145 and 148

250. Rule added

Order 53 is amended by adding immediately before rule 1 –

"1A. Interpretation (O. 53, r. 1A)

In this Order –

"application for judicial review" (司法覆核申請) includes an application in accordance with this Order for a review of the lawfulness of –

- (a) an enactment; or
- (b) a decision, action or failure to act in relation to the exercise of a public function;

"interested party" (有利害關係的一方、有利害關係的各方), in relation to an application for judicial review, means any person (other than the applicant and respondent) who is directly affected by the application."

251. Rule substituted

Order 53, rule 1 is repealed and the following substituted -

"1. Cases appropriate for application for judicial review (O. 53, r. 1)

- (1) An application for judicial review must be made if the applicant is seeking –
 - (a) an order for mandamus, prohibition or certiorari; or
 - (b) an injunction under section 21J of the Ordinance restraining a person from acting in any office in which he is not entitled to act.
- (2) An application for judicial review may be made if the applicant is seeking –
 - (a) a declaration; or
 - (b) an injunction (not being an injunction mentioned in paragraph (1)(b)).

(3) An application for judicial review may include an application for an award of damages, restitution or the recovery of a sum due but may not seek such a remedy alone."

252. Grant of leave to apply for judicial review

Order 53, rule 3 is amended –

- (a) by repealing paragraph (2)(a) and substituting –
- "(a) a notice in Form No. 86 in Appendix A containing a statement of –
- (i) the name and description of the applicant;
 - (ii) the name and description of the respondent;
 - (iii) the relief sought and the grounds on which it is sought;
 - (iv) the name and description of all interested parties (if any) known to the applicant;
 - (v) the name and address of the applicant's solicitors (if any); and
 - (vi) if no solicitor acts for the applicant, the applicant's address for service; and";
- (b) in paragraph (3), by adding "for leave" after "the application";
- (c) in paragraph (4), by repealing "10 days" and substituting "14 days".

253. Rule added

Order 53 is amended by adding –

"4A. Service of order granting leave

(O. 53, r. 4A)

(1) Where leave to make an application for judicial review is granted, the Court may also give directions as to the management of the case.

(2) The applicant for judicial review shall, within 14 days after the leave was granted, serve the order granting leave and any directions given under paragraph (1) on –

- (a) the respondent; and
- (b) such interested parties as may be directed by the Court."

254. Rules added

Order 53 is amended by adding –

"5A. Affidavit evidence (O. 53, r. 5A)

At the hearing of the application for judicial review, no affidavit may be relied on unless –

- (a) rule 6(3), (4) or (5), as the case may be, has been complied with as regards the use of affidavits;
- (b) the affidavit has been served in accordance with any direction of the Court; or
- (c) the Court grants leave.

5B. Court's powers to hear any person

(O. 53, r. 5B)

(1) Any person may apply for leave to –

(a) file evidence; or

(b) make representations at the hearing of the application for judicial review.

(2) An application under paragraph (1) must be made promptly.

(3) The Court shall not grant leave under paragraph (1) unless the applicant appears to the Court to be a proper person to be heard at the hearing of the application for judicial review."

255. Statements and affidavits

Order 53, rule 6 is amended by adding -

"(6) A reference to a party in paragraphs (3) and (5) includes a reference to an interested party on whom the applicant is required under rule 4A(2) to serve the order granting leave for judicial review."

256. Hearing of application for judicial review

Order 53, rule 9(1) is amended by adding "or in support of" after "in opposition to".

257. Rule added

Order 53 is amended by adding –

"15. Transitional provisions relating to Part 24 of Amendment Rules 2008

(O. 53, r. 15)

(1) Where, immediately before the commencement of the Amendment Rules 2008, an application for leave to apply for judicial review is pending, then nothing in Part 24 of the Amendment Rules applies in relation to the application and (if leave is granted) the subsequent application for judicial review, and this Order as in force immediately before the commencement continues to apply as if that Part had not been made.

(2) Where, immediately before the commencement of the Amendment Rules 2008, an application for judicial review is pending, then nothing in Part 24 of the Amendment Rules 2008 applies in relation to the application, and this Order as in force immediately before the commencement continues to apply as if that Part had not been made."

258. Forms

Appendix A is amended by repealing Form No. 86A (Notice of application for leave to apply for Judicial Review) and substituting –

"No. 86

Notice of application for leave to apply for judicial review

(O. 53 r. 3(2))

No.....

IN THE HIGH COURT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

Applicant

Notice of application for leave to apply
for judicial review (O. 53 r. 3(2))

This form must be read together with notes for guidance obtainable from the Registry.

To the Registrar, High Court, Hong Kong.

Name, description and address of applicant	
Name and description of proposed respondent	
Judgment, order, decision or other proceeding in respect of which relief is sought	

Relief sought

Name, description and address of all interested parties (if any) known to the applicant	
Name and address of applicant's solicitors, or, if no solicitors acting, the address for service of the applicant	

Signed	Dated
--------	-------

Grounds on which relief is sought
(If there has been any delay, include reasons here).

Note:—Grounds must be supported by an affidavit which verifies the facts relied on."

PART 25
COSTS AGAINST NON-PARTY

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

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

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

260. 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 52A or 52B of the Ordinance to make a costs order in favour of or against a person who is not a party to the relevant proceedings –

- (a) that person must be joined as a party to the proceedings for the purposes of costs only; and
- (b) that person must be given a reasonable opportunity to attend a hearing at which the Court shall consider the matter further.

(2) This rule does not apply where the Court is considering whether to make –

- (a) a wasted costs order; or
- (b) an order under section 41 or 42 of the Ordinance."

PART 26
MISCELLANEOUS

261. Application

Order 1, rule 2(3) is amended by adding "Order 115A," after "Order 115,".

262. Definitions

Order 1, rule 4(1) is amended, in the definition of "written law" –

- (a) by repealing "(成文法)" and substituting "(成文法律)";
- (b) by repealing ""imperial enactment" and".

263. Automatic directions in personal injury actions

Order 25, rule 8(1)(b) and (c) and (2) is repealed.

264. Assessment of damages by a master

Order 37, rule 1(1A) is amended –

- (a) by adding –

"(ab) 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;"

(b) by repealing sub-paragraphs (b), (c) and (d).

265. 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".

266. Exchange of witness statements

Order 38, rule 2A(9) is amended by repealing "Where such a notice is served, a counter-notice shall be deemed to have been served under rule 26(1).".

267. Restrictions on adducing expert evidence

Order 38, rule 36(1) is amended –

- (a) in sub-paragraph (a), by repealing ", or" and substituting a full stop;
- (b) by repealing sub-paragraphs (b) and (c).

268. Consent judgment and orders

Order 42, rule 5A(2)(b)(vi) is amended by adding "or the Lands Tribunal" after "District Court".

269. Cross-heading amended

The cross-heading before Order 71, rule 41 is amended by repealing "MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982" and substituting "MERCHANT SHIPPING (LINER CONFERENCES) ORDINANCE (CAP. 482)".

270. Application for registration

Order 71, rule 41 is amended by repealing "section 9 of the Merchant Shipping (Liner Conferences) Act 1982 (1982 c. 37 U.K.)(in this Order referred to as "the Act of 1982")" and substituting "section 10 of the Merchant Shipping (Liner Conferences) Ordinance (Cap. 482) (in this Order referred to as "the Liner Conferences Ordinance")".

271. Evidence in support of application

Order 71, rule 42 is amended –

- (a) in paragraphs (1) and (2), by repealing "section 9 of the Act of 1982" and substituting "section 10 of the Liner Conferences Ordinance";
- (b) in paragraph (1)(e), by repealing "section 9(2) of the Act of 1982" and substituting "section 10(2) of the Liner Conferences Ordinance".

272. Order for registration

Order 71, rule 43(1) is amended by repealing "section 9 of the Act of 1982" and substituting "section 10 of the Liner Conferences Ordinance".

273. Register of recommendations etc.

Order 71, rule 44(1) is amended by repealing "section 9 of the Act of 1982" and substituting "section 10 of the Liner Conferences Ordinance".

274. Service of writ out of jurisdiction

Order 75, rule 4(2) is amended –

- (a) by repealing "rule 3 and";
- (b) in the English text, by repealing "they apply" and substituting "it applies";
- (c) by repealing "or 2".

275. Warrant of arrest

Order 75, rule 5(10)(e) is amended by repealing "section 51 of the Civil Aviation Act 1949 as it applies to Hong Kong" and substituting "section 9 of the Civil Aviation Ordinance (Cap. 448)".

276. Application and interpretation

Order 78, rule 1 is amended in the English text, –

- (a) in paragraph (1), by repealing "a district court" and substituting "the District Court";
- (b) in paragraph (3), by repealing "district court" and substituting "District Court".

277. Duties of officer

Order 78, rule 2 is amended –

- (a) by repealing "referred to in section 44 of the District Court Ordinance (Cap. 336)" and substituting "relating to the transfer or removal";
- (b) in sub-paragraph (c) –
 - (i) in the English text, by repealing "district court" and substituting "District Court";
 - (ii) by adding "in writing" after "service of the notice".

278. Acknowledgment of service

Order 78, rule 3 is amended –

- (a) in paragraph (1), by repealing everything after "acknowledge service" and substituting "in writing of the notice of transfer or removal.";
- (b) by adding –

"(2) Where the defendant has not, before the proceedings are transferred or removed to the Court, acknowledged service of the writ or the originating summons by which the proceedings were begun in the District Court, he shall file an acknowledgement of service in accordance with Order 12, rules 1, 3, 5 and 9 within 14 days after receipt of the notice referred to in rule 2."

279. Judgment on failure to give notice of intention to defend

Order 78, rule 4 is amended –

- (a) in paragraph (1), by repealing "rule 3" and substituting "rule 3(2)";
- (b) in paragraph (2), in the English text, by repealing "district court" and substituting "District Court".

280. Case management summons or summary judgment

Order 78, rule 5(1) is amended by repealing "Where a defendant gives notice of intention to defend in the action the plaintiff must, within 7 days after such notice is given" and substituting "Unless the plaintiff has entered judgment against a defendant under rule 4(1) or has entered judgment (final or interlocutory) or applied for judgment against a defendant under Order 19, the plaintiff must, within 7 days after a notice under rule 2 is given".

281. "成文法" substituted by "成文法律"

The following provisions are amended, in the Chinese text, by repealing "成文法" wherever it appears and substituting "成文法律" –

- (a) Order 1, rule 5(3);
- (b) Order 5, rule 1;
- (c) Order 5, rule 4(2)(a);
- (d) Order 5, rule 5;
- (e) Order 6, the proviso to rule 7(1);
- (f) Order 7, rule 1;
- (g) Order 11, rule 1(2)(b);
- (h) Order 11, rule 9(4);
- (i) Order 15, rule 4(2);
- (j) Order 15, rule 13(1)(c);
- (k) Order 23, rule 3;
- (l) Order 24, rule 2(3);
- (m) Order 28, rule 1;
- (n) Order 45, rule 1(3);
- (o) Order 46, rule 2(2);
- (p) Order 49, rule 1(1);
- (q) Order 52, rule 9;
- (r) Order 63, rule 10;
- (s) Order 65, rule 3(1);
- (t) Order 65, rule 6;
- (u) Order 81, rule 1.

282. "認收送達" substituted by "送達認收"

(1) The following provisions are amended, in the Chinese text, by repealing "認收送達" wherever it appears and substituting "送達認收" -

- (a) Order 1, rule 4(3);

- (b) Order 6, rule 2(1)(b);
- (c) Order 6, rule 5(3) and (4);
- (d) Order 8, rule 4;
- (e) Order 10, rule 1(5);
- (f) Order 10, rule 2(2);
- (g) Order 11, rule 1(3);
- (h) Order 11, rule 4(4);
- (i) Order 11, rule 9(6);
- (j) Order 12, rule 1(1), (2), (3), (4) and (5);
- (k) Order 12, rule 3(2) and (3);
- (l) Order 12, rule 5;
- (m) Order 12, rule 6(2);
- (n) Order 12, rule 7;
- (o) Order 12, rule 8(7);
- (p) Order 12, rule 8A(4);
- (q) Order 12, rule 9(1);
- (r) Order 12, rule 10;
- (s) Order 13, rule 6(1);
- (t) Order 13, rule 6A;
- (u) Order 13, rule 7(1)(a);
- (v) Order 13, rule 7A(2)(c);
- (w) Order 13, rule 8;
- (x) Order 15, rule 3(2) and (4);
- (y) Order 15, rule 8(3) and (4);
- (z) Order 15, rule 13A(4);
- (aa) Order 16, rule 3(3);
- (ab) Order 16, rule 8(3);
- (ac) Order 16, rule 9(3);
- (ad) Order 16, rule 10(1);
- (ae) Order 18, rule 2(1);
- (af) Order 21, rule 1;
- (ag) Order 28, rule 1A(1), (3) and (4);
- (ah) Order 28, rule 2(2) and (3);
- (ai) Order 28, rule 3(5)(a);
- (aj) Order 28, rule 6;
- (ak) Order 28, rule 7(1);
- (al) Order 29, rule 2(6);
- (am) Order 29, rule 10(1);
- (an) Order 43, rule 1(1);
- (ao) Order 44, rule 2(4), (5) and (6);
- (ap) Order 47, rule 1(2);
- (aq) Order 62, rule 3(11);
- (ar) Order 65, rule 9;
- (as) Order 67, rule 1(3);

- (at) Order 67, rule 5(3)(a);
- (au) Order 67, rule 6(1)(a);
- (av) Order 71, rule 13(5)(a);
- (aw) Order 75, rule 8(5);
- (ax) Order 75, rule 9;
- (ay) Order 75, rule 12(2)(c);
- (az) Order 75, rule 18(2) and (6);
- (ba) Order 75, rule 21(3);
- (bb) Order 75, rule 38(1), (2)(b), (4) and (8);
- (bc) Order 75, rule 40(3);
- (bd) Order 76, rule 5(1) and (2);
- (be) Order 76, rule 6(2) and (3);
- (bf) Order 76, rule 7;
- (bg) Order 76, rule 11(2);
- (bh) Order 77, rule 3(2) and (3);
- (bi) Order 78, rule 2(c);
- (bj) Order 80, rule 2(1);
- (bk) Order 80, rule 3(6)(b);
- (bl) Order 80, rule 6(1), (2) and (5)(d);
- (bm) Order 81, rule 4(1), (2), (3), (4) and (5);
- (bn) Order 81, rule 5(2)(a) and (b) and (3)(a);
- (bo) Order 83A, rule 4(3);
- (bp) Order 84A, rule 3(3);
- (bq) Order 86, rule 1(2);
- (br) Order 88, rule 4(1);
- (bs) Order 89, rule 2(5);
- (bt) Order 113, rule 2;
- (bu) Order 121, rule 6;
- (bv) Order 121, rule 7(1);
- (bw) Appendix A, Form No. 8;
- (bx) Appendix A, Form No. 14;
- (by) Appendix A, Form No. 15;
- (bz) Appendix A, Form No. 17;
- (ca) Appendix A, Form No. 20;
- (cb) Appendix A, Form No. 52;
- (cc) Appendix B, Form No. 2B.

(2) The following provisions are amended, in the Chinese text, in the heading, by repealing "認收送達" and substituting "送達認收" -

- (a) Order 12, rule 1;
- (b) Order 12, rule 5;
- (c) Order 12, rule 6;
- (d) Order 12, rule 9;
- (e) Order 12, rule 10;
- (f) Order 16, rule 3;

- (g) Order 21, rule 1;
- (h) Order 28, rule 6;
- (i) Order 76, rule 6;
- (j) Order 78, rule 3;
- (k) Order 80, rule 6;
- (l) Order 81, rule 4;
- (m) Order 88, rule 4;
- (n) Order 121, rule 6.

Made this day of 2008.

Explanatory Note

Interpretation

In this Note –

- "CPR" (《民事訴訟程序規則》) means the Civil Procedure Rules enacted in England and Wales;
 "Final Report" (《最後報告書》) means the Final Report of the Chief Justice's Working Party on Civil Justice Reform published in 2004;
 "RHC" (《高等法院規則》) means the Rules of the High Court (Cap. 4 sub. leg. A);
 "the Court" (法庭) means the Court of First Instance.

2. In this Note, an Order referred to by number means the Order so numbered in the RHC.

Principal Purpose

3. The principal purpose of these Rules is to amend the RHC to implement a number of recommendations made in the Final Report. The recommendations implemented by these Rules are set out in the attached Schedule.

Part 2 – Objectives and Case Management Powers

4. Part 2 implements Recommendations 2, 3 and 4 in section 4 of the Final Report and Recommendations 81 and 82 in section 17 of the Final Report by adding new Orders 1A and 1B to the RHC.

5. The new Order 1A –

- (a) sets out the underlying objectives of the RHC;
- (b) requires the Court to give effect to the underlying objectives when it exercises any of its powers or interprets any of the provisions of the RHC or a practice direction;
- (c) imposes a duty on the parties to any proceedings and their legal representatives to assist the Court to further the underlying objectives of the RHC; and
- (d) requires the Court to further the underlying objectives by actively managing cases (It should be noted that rule 4(2)(a) of the new Order 1A also implements Recommendation 81 by specifying that active case management includes encouraging the parties to co-operate with each other in the conduct of the proceedings).

6. The new Order 1B –

- (a) confers specific case management powers on the Court along the lines of Part 3.1 of the CPR in accordance with Recommendation 4;
- (b) provides for the Court's powers to make orders of its own motion; and
- (c) empowers the Court to give procedural directions by way of order nisi in accordance with Recommendation 82.

Part 3 – Non-Compliance with Rules and Court Orders

7. Part 3 implements Recommendation 84 in section 17 of the Final Report by adding 3 new rules to Order 2. The new rule 3 empowers the Court to order a party to pay a sum of money into court if that party fails to comply with a rule or court order. The new rule 4 confirms the validity of any sanction imposed by a rule or court order and provides that a party in default may apply for relief from the sanction. The new rule 5 requires the Court to consider all the circumstances in considering an application for relief from the sanction.

Part 4 – Costs-only Proceedings

8. Part 4 (comprising rules 5 to 11) implements Recommendation 9 in section 5 of the Final Report. The major provisions in this Part are -

- (a) Rule 6 which amends Order 11, rule 1(1) to enable service outside Hong Kong of an application for an order under section 52B(2) of the principal Ordinance for the costs of a dispute only;
- (b) Rule 9 which adds a new rule to Order 62 to prescribe the procedure for commencing costs-only proceedings;
- (c) Rule 10 which amends Order 62, rule 12(1) so that a master may also tax costs that are the subject matter of costs-only proceedings.

Part 5 – Commencement of Proceedings

9. Part 5 (comprising rules 12 to 85) implements Recommendations 11 to 16 in section 6 of the Final Report. It also makes miscellaneous amendments for connected purposes. The major provisions in this Part are –

- (a) Rule 12 which adds a new paragraph to Order 1, rule 2 to implement the second part of Recommendation 11. It provides that the RHC do not apply to the specified election petitions except to the extent that the practice and procedure of the High Court are applied to them by specific rules governing such election petitions. At present, petitions are prescribed by various pieces of electoral legislation as the only means of questioning the validity of an election. Under such legislation, the procedures adopted for the conduct of such petitions should approximate as closely as possible to High Court procedures;
- (b) Rule 14 which replaces Order 2, rule 1(3) by a new paragraph to implement Recommendation 16 of the Final Report. It provides that the Court shall not wholly set aside any proceedings on the ground that they were begun by an inappropriate originating process but shall give directions for the continuation of the proceedings;
- (c) Rule 16 which amends Order 5, rule 1 so that civil proceedings in the Court may not normally be begun by originating motion or petition;
- (d) Rule 17 which repeals Order 5, rules 2 and 3 so that it is no longer mandatory to commence certain proceedings by writ or, as the case may be, by originating summons;

- (e) Rule 21(a) which adds 3 new paragraphs to Order 7, rule 2 to provide general guidance as to when conventional, expedited and ex parte originating summons are to be used;
- (f) Rule 23 which replaces Order 8, rule 1 by a new rule to provide that the provisions of Order 8 apply to all motions required under any enactment subject to any provisions relating to any class of motion made by that enactment. As the RHC no longer contain any special provisions relating to any particular class of originating motion, the new rule is not expressed to be subject to such provisions;
- (g) Rule 25 which replaces Order 9, rule 1 by a new rule to provide that the provisions of Order 9 apply to all petitions required under any enactment subject to any provisions relating to any class of petition made by that enactment. As the RHC no longer contain any special provisions relating to any particular class of petition, the new rule is not expressed to be subject to such provisions;
- (h) Rule 34 which adds a new rule to Order 28 to provide that the hearing of an originating summons must be in open court unless the Court otherwise directs.

10. The main objects of the other amendments in Part 5 are to –

- (a) amend certain rules so that it is no longer mandatory to make certain applications by originating summons; and
- (b) abolish motions and originating motions as a means of making certain applications.

Part 6 – Dispute as to Jurisdiction

11. Part 6 (comprising rules 86 to 89) implements Recommendation 17 in section 7 of the Final Report.

12. Rule 86 amends Order 12, rule 8 to –

- (a) provide that a defendant who wishes to dispute the jurisdiction of the Court may also apply for an order staying the proceedings;
- (b) prescribe the procedure for arguing that the Court should not exercise its jurisdiction; and
- (c) provide that an application for relief by a defendant who wishes to dispute the jurisdiction of the Court or to argue that the Court should not exercise its jurisdiction must be made by interlocutory summons.

13. The other rules in Part 6 provide for transitional and consequential matters.

Part 7 – Default Judgments and Admissions

14. Part 7 (comprising rules 90 to 92) implements Recommendation 18 in section 8 of the Final Report. A new Order 13A modelled on Part 14 of the CPR is added to the RHC in accordance with the Recommendation. The new Order 13A applies only to money claims, both liquidated and

unliquidated, and allows the defendant to admit part of a liquidated amount claimed or in the case of unliquidated claims, to put forward a sum in respect of which he is willing to submit to judgment. If the whole claim is admitted or if the plaintiff decides to accept judgment for part of his claim, the defendant may seek time to pay the amount due, either as a single sum or by instalments at a specified rate of payment. If the plaintiff is satisfied with the admission (whether as to the whole or part of his claim) but not satisfied with the defendant's payment proposals, he can refer those proposals for determination by the Court.

Part 8 – Pleadings

Division 1

15. Division 1 (comprising rules 93 to 95) of Part 8 implements Recommendations 22 to 24 in section 9 of the Final Report.

16. Rule 93 amends Order 18, rule 13 to –

- (a) require that a party who denies an allegation made in a statement of claim or counterclaim shall in his defence or defence to counterclaim, state his reasons and if he intends to put forward a different version of events, state his own version; and
- (b) specify that a party who fails to deal with an allegation but has set out in his defence or defence to counterclaim the nature of his case in relation to the allegation is taken to require that allegation to be proved.

17. Rule 94 amends Order 18, rule 14 so that a joinder of issue operates as a non-admission instead of a denial.

Division 2

18. Division 2 (comprising rules 96 to 106) of Part 8 implements Recommendations 26 to 32 and 35 in section 9 of the Final Report.

19. Rule 96 amends Order 18, rule 2 to extend the period allowed for a defendant to serve his defence from 14 days to 28 days.

20. Rule 97 amends Order 18, rule 3(4) to extend the period allowed for a plaintiff to serve his reply to defence or his defence to counterclaim from 14 days to 28 days.

21. Rule 98 adds a new rule to Order 18 to provide that a party may make alternative and inconsistent allegations in his pleading if he has reasonable grounds for so doing.

22. Rule 99 amends Order 18, rule 20(1)(b) so that the pleadings in an action are deemed to be closed at the expiration of 28 days instead of at the expiration of 14 days after service of the defence if neither a reply nor a defence to counterclaim is served.

23. Rule 100 adds a new rule to Order 18 to require that a pleading and the particulars of a pleading must be verified by a statement of truth.
24. Rule 102 adds a new rule to Order 20 to require that an amendment to a pleading or to the particulars of a pleading must be verified by a statement of truth.
25. Rule 103 amends Order 38, rule 2A(4)(a) to require that written statements of oral evidence must be verified by a statement of truth.
26. Rule 104 adds a new rule to Order 38 to require that an expert report must be verified by a statement of truth.
27. Rule 105 adds a new Order 41A to the RHC. The new Order is modelled on Part 22 of the CPR and the associated practice directions. The new Order introduces a requirement that certain documents be verified by a statement of truth. It also identifies the persons by whom a statement of truth is to be signed, sets out the effect of a statement of truth and the consequences of a failure to verify a document for which verification by a statement of truth is required, etc.
28. Rule 106 makes consequential amendments to relevant forms.

Division 3

29. Division 3 (comprising rules 107 to 109) of Part 8 implements Recommendations 33 and 34 in section 9 of the Final Report. It amends Order 18, rule 12 and Order 20, rule 8 to specify that the Court shall not order a party to particularize or amend his pleadings unless the Court is of the opinion that the order is necessary for disposing fairly of the cause or matter or for saving costs.

Part 9 – Sanctioned Offers and Sanctioned Payments

Division 1

30. Division 1 (comprising rules 110 to 123) of Part 9 implements Recommendations 38, 39, 41, 42 and 43 of the Final Report by repealing Order 22 and substituting a new Order which contains rules along the lines of Part 36 of the CPR.

31. The principal change brought about by the new Order is that a plaintiff is able to make an offer of settlement which puts a defendant who unreasonably rejects it at risk as to costs and to a financial penalty (new Order 22, rule 24). The major change in relation to a defendant concerns claims other than money claims. Under the new Order, a defendant may make a sanctioned offer or sanctioned payment in respect of such claims with the same consequences as those attaching to a sanctioned payment made in response to a money claim (new Order 22, rule 23).

32. Division 1 of Part 9 also adds a new Order 22A to the RHC. The new Order 22A contains miscellaneous provisions about payment into court. The majority of these provisions are at present contained in the existing Order 22.

Division 2

33. Division 2 (comprising rules 124 and 125) of Part 9 implements Recommendation 132 of the Final Report by adding a new Order 62A to the RHC. The new Order enables offers and payments similar to those contained in the new Order 22 to be made in the context of the taxation of costs.

Part 10 – Interim Remedies and Mareva Injunctions in aid of Proceedings outside Hong Kong

34. Part 10 (comprising rules 126 to 130) implements Recommendation 49 in section 12 of the Final Report.

35. Rule 126 amends Order 11, rule 1(1) to enable service outside Hong Kong of an application for interim relief or for the appointment of a receiver under section 21M(1) of the principal Ordinance.

36. Rule 127 adds a new rule 8A to Order 29 to set out the procedure for applying for interim relief in aid of proceedings outside Hong Kong.

37. Rule 128 adds a new rule 9 to Order 30 to provide that the procedure for applying for the appointment of a receiver in an action or proceeding in the High Court applies, with certain modifications, to an application for the appointment of a receiver in aid of proceedings outside Hong Kong.

38. Rule 129 adds a new rule 4 to Order 73 to set out the procedure for applying for an interim injunction or for any other interim measure in aid of arbitration proceedings outside Hong Kong.

39. Rule 130 amends Order 73, rule 7 to enable service outside Hong Kong of an application for an interim injunction or for any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap. 341).

Part 11 – Case Management Timetabling and Milestones

Division 1

40. Division 1 (comprising rules 131 to 173) of Part 11 implements Recommendations 52 to 60 and 62 in section 13 of the Final Report. The major provisions in this Division are -

- (a) Rule 136 which amends Order 25, rule 1 to require each party to fill in a questionnaire and to propose directions and a timetable to be ordered by the Court;
- (b) Rule 137 which adds new rules 1A, 1B and 1C to Order 25. The new rule 1A provides for the fixing of a case management timetable and empowers the Court to give directions relating to the management of a case by an order nisi without a hearing of a case management summons. The new rule 1B provides for the variation of a case management timetable and the new rule 1C provides for the consequences of failing to appear at a case management conference or pre-trial review.

Division 2

41. Division 2 (comprising rules 174 to 176) of Part 11 repeals an obsolete provision and rectifies 2 technical errors.

Part 12 – Vexatious Litigants

42. Part 12 (comprising rules 177 to 180) provides for various matters concerning vexatious litigants and implements Recommendation 69 in section 14 of the Final Report.

43. Rule 177 contains a minor technical amendment.

44. Rule 178 amends Order 32, rule 11(1) so that an application under section 27A of the principal Ordinance for leave to institute or continue legal proceedings may not be heard by the Registrar of the High Court or any master.

45. Rule 179 adds a new Order 32A to the RHC to set out the procedure relating to the making of a vexatious litigant order. In essence, the new Order 32A –

- (a) specifies the mode of application for a vexatious litigant order;
- (b) specifies the mode of application ("relevant application") for leave to institute or continue any proceedings by a person against whom a vexatious litigant order is in force;
- (c) provides for the hearing and determination of a relevant application;
- (d) provides for the service of certain orders made by the Court;
- (e) allows a person in specified circumstances to apply to set aside a grant of leave to institute or continue any proceedings; and
- (f) provides that leave is required for the inspection of documents relating to a relevant application.

46. Rule 180 specifies a form for making a relevant application.

Part 13 – Discovery

Division 1

47. Division 1 (comprising rules 181 and 182) of Part 13 implements Recommendations 76 and 79 in section 16 of the Final Report.

48. Rule 181 amends Order 24, rule 7A to –

- (a) widen its scope of application to cover cases other than those relating to personal injury or death claims; and
- (b) provide that in respect of an application for an order under section 41 of the principal Ordinance for the disclosure of documents before the commencement of proceedings, the affidavit in support of the application must show that the documents sought to be disclosed are directly relevant to the claim.

49. Rule 182 amends Order 24, rule 8 to provide that no order for the disclosure of documents is to be made under section 41 or 42 of the principal 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

50. Division 2 of Part 13 implements Recommendation 80 in section 16 of the Final Report by adding a new rule 15A to Order 24. The new rule 15A empowers the Court to limit the discovery of documents or to direct that the discovery of documents should be made in the manner specified by the Court.

Part 14 – Interlocutory Applications

Division 1

51. Division 1 of Part 14 implements Recommendations 83, 85 and 86 in section 17 of the Final Report by adding new rules 11A and 11B to Order 32.

52. The new rule 11A allows interlocutory applications (other than applications specified in the rule) to be dealt with by a master without an oral hearing and empowers him to give directions for the purpose of determining the applications.

53. The new rule 11B provides for the Court's power to specify the consequences of failing to comply with a court order on an interlocutory application.

Division 2

54. Division 2 of Part 14 amends Order 32, rule 11(1)(a) so that the Registrar and any master of the High Court may deal with matters relating to the conditions of admission to bail.

Part 15 – Interlocutory Applications and Summary Assessment of Costs

55. Part 15 (comprising rules 186 to 188) implements Recommendations 88, 89 and 92 of the Final Report. The major provisions in this Part are -

- (a) Rule 187 which replaces Order 62, rule 9A with 4 new rules. The new rule 9A empowers the Court, when disposing of an interlocutory application, to make a summary assessment of costs or a provisional summary assessment, or to order a taxation at the end of the proceedings. Where the Court has made a provisional summary assessment of the costs of the interlocutory application, either party is entitled to insist on a taxation of the costs. However, a special order as to the costs of the taxation may be made against him if the taxed costs do not materially exceed the amount of the provisional summary assessment. The new rules 9B and 9C make further provisions to regulate the making and implementation of an order for the summary assessment of costs. The new rule 9D deals with the question of when to tax costs;
- (b) Rule 188 which amends Order 62, rule 28A(6) to provide that a litigant in person includes a company or other corporation acting without a legal

representative. It also adds a new paragraph to Order 62, rule 28A to specify that rule 28A applies to a summary assessment of costs as it applies to the taxation of the costs of a litigant in person.

Part 16 – Wasted Costs

56. Part 16 (comprising rules 189 to 191) implements Recommendations 94 to 97 in section 18 of the Final Report by replacing rule 8 of Order 62 with new rules 8, 8A, 8B, 8C, 8D and 8E.

57. The new rule 8 sets out the circumstances under which the Court may make a wasted costs order and the procedure for making such an order. The new rule 8(1) and (5) is modelled on paragraphs 53.4 and 53.5 of the CPR Practice Direction in accordance with Recommendation 94.

58. The new rule 8A specifies that the Court may make a wasted costs order on its own motion. It also sets out the procedure for applying for such an order.

59. The new rule 8B requires the Court to consider the question of whether to make a wasted costs order in the 2 stages specified in the rule. The new rule 8B(1) is modelled on paragraph 53.6 of the CPR Practice Direction in accordance with Recommendation 94.

60. The new rule 8C provides that a party shall not threaten another party or any of that party's legal representatives with an application for a wasted costs order. It also provides that a party shall not indicate to the other party or any of that party's legal representatives that he intends to apply for such an order unless he is able to particularize the misconduct concerned and to identify the evidence.

61. The new rule 8D(1), (2), (3) and (4) contains the same provisions as the repealed rule 8(6) to (8) of Order 62 except that the new rule applies in relation to a counsel as well.

62. The new rule 8E requires a taxing master to consider the question of whether to direct a legal representative to pay costs in the 2 stages specified in the rule.

Part 17 – Witness Statements and Evidence

63. Part 17 implements Recommendation 100 in section 19 of the Final Report by amending Order 38, rule 2A. At present, Order 38, rule 2A(7)(b) permits a witness statement to be supplemented by testimony in very limited circumstances. The amendments allow a witness greater flexibility to amplify or supplement his witness statement.

Part 18 – Expert Evidence

64. Part 18 (comprising rules 193 to 199) implements Recommendations 102, 103 and 107 in section 20 of the Final Report by amending Order 38 to -

- (a) empower the Court to order parties to appoint a single joint expert;
- (b) declare that an expert witness's duty to help the Court overrides his duty to his client or the person paying his fees;

- (c) provide that a party who instructs an expert witness shall provide the expert witness with a copy of the code of conduct set out in the new Appendix D; and
- (d) require an expert witness to make a specified declaration before his expert report or evidence is admitted in evidence.

Part 19 – Case Managing Trials

65. Part 19 implements Recommendation 108 in section 21 of the Final Report by adding a new rule 3A to Order 35. The new rule 3A (which is modelled on Order 34, rule 5A of the Western Australia Rules of the Supreme Court) sets out the Court's powers of case management in relation to trials.

Part 20 – Leave to Appeal

Division 1

66. Division 1 of Part 20 implements Recommendation 109 in section 22 of the Final Report by amending Order 58, rule 1 to –

- (a) make it clear that the entitlement to appeal to a judge from a master's decision applies irrespective of whether the decision is made after hearing; and
- (b) provide that the introduction of fresh evidence on the appeal is not allowed except on special grounds.

Division 2

67. Division 2 (comprising rules 202 to 204) of Part 20 implements Recommendations 110 and 112 in section 22 of the Final Report.

68. Rule 202 adds a new rule 21 to Order 59 to set out the judgments and orders of the Court from which an appeal lies as of right despite their interlocutory nature. These judgments and orders are thus exceptions to the general rule provided in section 14AA of the principal Ordinance that an interlocutory appeal from the Court may only be brought with leave of the Court.

69. Rule 203 adds 3 new rules to Order 59 to prescribe the procedure for applying for leave to appeal.

70. Rule 204 amends Order 59, rule 14 to provide for consequential amendments.

Part 21 – Appeals

Division 1

71. Division 1 of Part 21 implements Recommendation 120 in section 23 of the Final Report by adding a new rule 14A to Order 59. The new rule 14A provides that the Court of Appeal may determine an interlocutory application on written submissions only without a hearing and may

direct that the application be heard before the Court of Appeal consisting of 2 or 3 Justices of Appeal.

Division 2

72. Division 2 (comprising rules 206 to 219) of Part 21 makes miscellaneous amendments to Orders 58, 59, 60A and 61. The major provisions in this Division are –

- (a) Rule 208 which replaces Order 59, rule 4(1) with a new rule 4(1) to set out the time for appealing to the Court of Appeal. Such time starts to run from the date of the judgment, order or decision appealed against and not from the date on which the judgment, order or decision was sealed or otherwise perfected;
- (b) Rule 213 which amends Order 59, rule 14 to provide that where an application made to the Court of Appeal ex parte is granted, any party affected by the order granting the application may apply to the Court of Appeal to have the order reconsidered inter partes in open court;
- (c) Rules 216, 218 and 219 which amend Orders 60A and 61 to extend the time for appealing to the Court of Appeal from a tribunal from 21 days to 28 days.

Part 22 – General Approach to Inter-party Costs

73. Part 22 (comprising rules 220 to 222) implements Recommendation 122 of the Final Report.

74. In this Part, the following changes regarding inter-party costs are introduced –

- (a) In relation to interlocutory applications, the principle that the costs should normally follow the event is no longer the prescribed usual order but just an option (new rule 3(2A) of Order 62);
- (b) The Court is to take into account the underlying objectives of the RHC and several additional matters in exercising its discretion as to costs (new rules 5(1)(aa), (e), (f) and (g) and 7(2)(aa) of Order 62).

Part 23 – Taxing the Other Side's Costs

Division 1

75. Division 1 of Part 23 implements Recommendation 131 of the Final Report by repealing paragraph 2(5) of Part II of the First Schedule to Order 62 and substituting a new paragraph 2(5). The new paragraph 2(5) provides that counsel's fees are in the discretion of the taxing master. At present, counsel's fees are allowed in full on taxation, unless the taxing master is satisfied that the amount is excessive and unreasonable.

Division 2

76. Division 2 (comprising rules 224 to 228) of Part 23 implements Recommendation 134 of the Final Report and introduces other changes relating to taxation. The major provisions in this Division are -

- (a) Rule 226 which amends Order 62, rule 13 by providing that a Chief Judicial Clerk may only conduct a provisional taxation if the amount of the bill of costs does not exceed \$200,000;
- (b) Rule 227 which repeals Order 62, rule 21 and introduces a new procedure to enable a taxing master to conduct a provisional taxation without a hearing (new rule 21B of Order 62). Any party dissatisfied with the award of costs is entitled to require an oral taxation hearing. Instead of conducting a provisional taxation without a hearing, the taxing master may choose to conduct the taxation with a full hearing (new rule 21C of Order 62). Rule 227 also adds a new rule 21D to Order 62 to provide that a party must pay the prescribed fee if he withdraws his bill of costs within 7 days after his application for setting down the taxation. At present, the relevant fee is payable if the bill of costs is withdrawn less than 7 days before the appointment for taxation;
- (c) Rule 228 which replaces the existing Order 62, rule 24 by a new rule 24 to provide that if the taxing master is satisfied that there has been proper service of the notice of commencement of taxation and of the bill of costs, he may proceed to provisional taxation even though his directions concerning the taxation have not been complied with. The other provisions of the new rule 24 are similar to the existing rule 24 with changes consequent upon the introduction of the provisional taxation procedure.

Division 3

77. Division 3 (comprising rules 229 to 234) of Part 23 implements Recommendations 135 and 136 of the Final Report.

78. Rule 229 adds a new rule 13A to Order 62 to empower a taxing master to give certain directions relating to the taxation of a bill of costs.

79. Rule 230 repeals Order 62, rule 23 as it is considered that the new rule 26(2) of Order 62 would suffice.

80. Rule 231 repeals Order 62, rule 25 as the new rule 13A(2)(a) of Order 62 has empowered a taxing master to give directions as to the form and contents of a bill of costs.

81. Rule 232 adds a new paragraph to Order 62, rule 26 to provide that if taxation proceedings are adjourned because a party has failed to comply with any directions given by a taxing master, he may make such order as to costs thrown away by the adjournment.

82. Rule 233 adds a new rule 32A to Order 62. The new rule 32A is modelled on rule 47.18 of the CPR in accordance with Recommendation 136. It provides that a party entitled to payment of costs to be taxed is also entitled to his costs of the taxation except where any enactment or relevant practice direction provides otherwise or the Court orders otherwise.

83. Rule 234 adds a new rule 32C to Order 62. The new rule 32C is modelled on Part 44.14 of the CPR in accordance with Recommendation 136. It empowers the Court to disallow all or part of the costs being summarily assessed or taxed. It also empowers the Court to order a party to pay costs that he has caused any other party to incur.

Division 4

84. Division 4 (comprising rules 235 to 248) of Part 23 makes miscellaneous amendments to Order 62. The major provisions in this Division are –

- (a) Rule 238 which repeals Order 62, rule 22 and substitutes a new rule 22, introducing the following major changes –
 - (i) the person entitled to payment of costs is allowed more time for settling the amount of costs and for commencing taxation proceedings;
 - (ii) a taxing master may disallow any part of the costs to be taxed, disallow interest on taxed costs or reduce the period for which such interest is payable or the rate at which such interest is payable; and
 - (iii) a party is not entitled to commence taxation proceedings after a specified period;
- (b) Rule 240 which adds new rules 17A and 17B to Order 62. The new rule 17A requires a taxing master to issue a final certificate for costs at the conclusion of taxation proceedings before him. The new rule 17B enables a taxing master to set aside or vary his decision against a party in specified circumstances;
- (c) Rule 244 which adds a new rule 32B to Order 62 to provide for reimbursement of a taxing fee upon issue of a final certificate by a taxing master;
- (d) Rule 245 which amends Order 62, rule 33 to –
 - (i) make it clear that a party may not apply to a judge for an order to review a taxing master's decision until after its review by the taxing master;
 - (ii) provide that an application for the review of a taxing master's decision may be made within 14 days after the conclusion of the taxation in which the decision was made. At present, the 14-day period counts from the day the decision was made; and
 - (iii) empower a taxing master to dismiss an application for review if the applicant fails to set out his objections properly and deliver a copy of them to the relevant parties in accordance with Order 62, rule 33(3);
- (e) Rules 247 and 248 which amend the Schedules to Order 62 to –
 - (i) revise the scales of costs set out in those Schedules;
 - (ii) repeal certain obsolete provisions; and
 - (iii) provide that no costs are to be allowed in respect of 2 or more counsel's appearance before a judge in open court or a master

in open court unless the judge or master has certified the attendance as proper.

Division 5

85. Division 5 of Part 23 contains transitional provisions relating to taxation.

Part 24 – Judicial Review

86. Part 24 (comprising rules 250 to 258) implements Recommendations 144, 145 and 148 in section 31 of the Final Report. The major provisions in this Part are –

- (a) Rule 250 which adds a new rule 1A to Order 53 and rule 251 which replaces Order 53, rule 1 by a new rule 1 to define more clearly the scope of judicial review proceedings. The 2 new rules are modelled on Parts 54.1 to 54.3 of the CPR in accordance with Recommendation 144;
- (b) Rule 252 which amends Order 53, rule 3 to require that an application for leave must be made by filing a new form with more particulars;
- (c) Rule 253 which adds a new rule 4A to Order 53 to provide for service of an order granting leave to apply for judicial review and of any associated directions given by the Court;
- (d) Rule 254 which adds 2 new rules (new rules 5A and 5B) to Order 53. The new rule 5A provides that at the hearing of the application for judicial review, no affidavit may be relied on unless one of the specified conditions is met. The new rule 5B allows any person to apply for leave to file evidence or make representations at a judicial review hearing;
- (e) Rule 256 which amends Order 53, rule 9(1) so that a person who wishes to be heard in support of an application for judicial review is also to be heard if that person appears to the Court to be a proper person to be heard. At present, only a person who wishes to be heard in opposition to an application is heard.

Part 25 – Costs against Non-party

87. Part 25 (comprising rules 259 and 260) deals with costs against a person who is not a party to the relevant proceedings.

88. Rule 259 amends Order 11, rule 1(1) to enable service outside Hong Kong of an originating process by which a cost order against a person who is not a party to the relevant proceedings is sought.

89. Rule 260 adds a new rule 6A to Order 62 to provide that if the Court is considering whether to make a costs order in favour of or against a person who is not a party to the relevant proceedings, that person must be joined as a party and must be given a reasonable opportunity to attend a hearing.

Part 26 – Miscellaneous

90. Part 26 (comprising rules 261 to 282) contains technical and minor amendments to several Orders of the RHC.

SCHEDULE

Recommendation 2

A rule should be introduced identifying underlying (rather than overriding) objectives of the system of civil justice to assist in the interpretation and application of rules of court, practice directions and procedural jurisprudence and to serve as a statement of the legitimate aims of judicial case management.

Recommendation 3

The underlying objectives referred to in Recommendation 2 should be stated as (i) increasing cost-effectiveness in the court's procedures; (ii) the expeditious disposal of cases; (iii) promoting a sense of reasonable proportion and procedural economy in respect of how cases are litigated; (iv) promoting greater equality between parties; (v) facilitating settlement; and (vi) distributing the court's resources fairly, always recognizing that the primary aim of judicial case management should be to secure the just resolution of the parties' dispute in accordance with their substantive rights.

Recommendation 4

Rules should be introduced (along the lines of CPR 1.4) listing available case management measures and conferring (along the lines of CPR 3.1) specific case management powers on the court, including power to act of its own motion, exercisable generally and (unless excluded) in addition to powers provided by specific rules, in the light of the underlying objectives referred to in Recommendation 2.

Recommendation 9

A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.

Recommendation 11

In so far as appropriate, other specialised types of proceedings governed by their own procedural rules and requirements should be added to the excluded proceedings and special provision should be made in respect of election petitions.

Recommendation 12

The rules of the RHC making it mandatory to commence certain proceedings by writ or, as the case may be, by originating summons, should be abolished.

Recommendation 13

In all cases other than the excluded proceedings, the parties should be permitted to commence proceedings either by writ or by originating summons, with the RHC indicating that a writ is appropriate where a substantial dispute of fact is likely and that an originating summons is appropriate where there is unlikely to be a substantial dispute of fact, such as where the sole or principal issue is one of law or construction.

Recommendation 14

Originating motions and petitions should be abolished (save where they are prescribed for commencing any of the excluded proceedings).

Recommendation 15

Unless the court otherwise directs (in accordance with applicable laws), all hearings of originating summonses should take place in open court.

Recommendation 16

It should continue to be the case that an inappropriate mode of commencement does not invalidate steps taken in the proceedings so commenced and that in such cases, the court should give suitable directions for continuation of the proceedings in an appropriate manner.

Recommendation 17

Order 12 r 8 should be amended to the extent necessary to bring into its scheme for disputing the court's jurisdiction, applications for the court to decline to exercise jurisdiction over the plaintiff's claim and to grant a discretionary stay of the action.

Recommendation 18

Provisions along the lines of Part 14 of the CPR should be adopted in relation to claims for liquidated and unliquidated sums of money with a view to enabling defendants to propose payment terms (as to time and instalments) in submitting to entry of judgment by default.

Recommendation 22

Proposal 10 (requiring defences to be pleaded substantively) should be adopted.

Recommendation 23

An exception to the general rule deeming the defendant to have admitted any untraversed

allegation of fact in the statement of claim should be created along the lines of CPR 16.5(3) so that a defendant who has adequately set out the nature of his case in relation to which the untraversed allegation is relevant, is deemed not to admit and to put the plaintiff to proof of such allegation.

Recommendation 24

Proposal 10 should not be extended to pleadings subsequent to the defence.

Recommendation 26

Proposal 11 (requiring pleadings to be verified by a statement of truth) should be adopted as modified and supplemented by Recommendations 27 to 32.

Recommendation 27

The rules should indicate the level or class of officer or employee who may sign a statement of truth verifying pleadings on behalf of a party that is a corporation, a partnership or an analogous organization or association.

Recommendation 28

The rules should set out (along the lines of 22PD3.7 and 22PD3.8) the effect in law of a legal representative signing a statement of truth to verify a pleading on behalf of the party concerned.

Recommendation 29

Insurers (or lead insurers) and the Hong Kong Motor Insurers Bureau should be authorized to sign a statement of truth to verify a pleading on behalf of the party or parties concerned (along the lines of 22PD3.6A and 22PD3.6B).

Recommendation 30

The period allowed for defendants to file their defence should be increased to allow adequate time to plead substantively to a plaintiff's claim and to verify the defence.

Recommendation 31

The possibility of proceedings for contempt being brought against a person who verifies a pleading by a statement of truth without believing that the factual allegations contained in the pleading are true should be maintained, but the rule should make it clear that such proceedings (to be brought, with the leave of the court, either by the Secretary for Justice or by an aggrieved party) are subject to the general law of contempt and to be contemplated only in cases where sanctions for contempt may be proportionate and appropriate.

Recommendation 32

A rule should be adopted making it clear that a party who has reasonable grounds for so doing, may advance alternative and mutually inconsistent allegations in his pleading and verify the same with a statement of truth.

Recommendation 33

The court should have power to require, of its own motion and in such manner as it sees fit, any party or parties to particularise or amend their pleadings where clarification is necessary for disposing fairly of the cause or matter or for saving costs.

Recommendation 34

The existing rule should be amended to make it clear that a court will only order delivery of further and better particulars where such order is necessary for disposing fairly of the matter or for saving costs.

Recommendation 35

Voluntary particulars should be required to be verified by a statement of truth.

Recommendation 38

Proposal 15 (for introducing sanctioned offers and payments along the lines of CPR 36) should be adopted as modified and supplemented by Recommendations 39 to 43.

Recommendation 39

The defendant's position under Order 22 should in substance be preserved, but with the addition of the relevant ancillary provisions found in CPR 36.

Recommendation 41

A sanctioned offer or payment should be required to remain open for acceptance for 28 days after it is made (such 28 day period falling before commencement of the trial), unless leave is granted by the court for its earlier withdrawal. Thereafter, the offer could be withdrawn and if not, would continue to be capable of acceptance.

Recommendation 42

The rules should make it clear that the court will continue to exercise its discretion as to costs in relation to any offers of settlement which do not meet the requirements to qualify as sanctioned offers.

Recommendation 43

The rules should make it clear that a plaintiff may qualify for an award of additional interest along the lines of Part 36 where he makes a sanctioned offer which satisfies the prescribed requirements, but not otherwise.

Recommendation 49

The mode of commencing an application for a Mareva injunction in aid of foreign proceedings or arbitrations, including possible initial *ex parte* applications, should be prescribed and provision made for the procedure thereafter to be followed.

Recommendation 52

Procedures should be introduced for establishing a court-determined timetable which takes into account the reasonable wishes of the parties and the needs of the particular case.

Recommendation 53

As the first part of the summons for directions procedure, the parties should be required (i) to complete a questionnaire giving specified information and estimates concerning the case with a view to facilitating case management by the court; and (ii) to propose directions and a timetable to be ordered by the court, preferably put forward by agreement amongst the parties, but with the court affording unrepresented litigants leeway in their observance of these requirements.

Recommendation 54

Unless it appears to the court that a hearing of the summons for directions is in any event desirable, the court ought to make orders *nisi* giving such directions and fixing such timetable for the proceedings as it thinks fit in the light of the questionnaire and without a hearing. However, any party who objects to one or more of the directions given, should be entitled to have the summons for directions called on for a hearing.

Recommendation 55

Where, at the summons for directions stage, the court's view is that a case management conference is desirable, the court should fix a timetable up to the date of the case management conference, that date constituting the first milestone, with further milestones to be fixed when the case management conference is held.

Recommendation 56

A date for a pre-trial review and the trial date or the trial period should be fixed as milestone dates either at the summons for directions or at any case management conference held.

Recommendation 57

Where all the parties agree to a variation of time-limits for non-milestone events in the timetable, they may effect such variations by recording the agreement in counter-signed correspondence to be filed as a matter of record with the court, provided that the agreed variations do not involve or necessitate changes to any milestone date.

Recommendation 58

Where a party cannot secure the agreement of all the other parties for a time extension relating to a non-milestone event, a court should have power to grant such extension only if sufficient grounds are shown and provided that any extension granted does not involve or necessitate changing the trial date or trial period. It should be made clear in a practice direction that where an extension is granted, it is likely to involve an immediate "unless order" specifying a suitable sanction.

Recommendation 59

A court should have power, on the application of the parties or of its own motion, to give further directions and to vary any aspect of the timetable, including its milestone dates, but it should be made clear in a practice direction that a court would only contemplate changing a milestone date in the most exceptional circumstances.

Recommendation 60

Where the parties fail to obtain a timetable, the court should not compel them to continue with the proceedings. However, where a pre-trial milestone date has been set, the court should, after giving prior warning, strike out the action provisionally if no one appears at that milestone hearing. A plaintiff should have 3 months to apply to reinstate the action for good reason, failing which the action should stand dismissed and the defendant should automatically be entitled to his costs. Thereafter, the defendant should have a further three months to reinstate any counterclaim, which would also stand dismissed with no order as to costs in default of such application.

Recommendation 62

The recommendations made in this Final Report regarding timetables and milestones should not apply to cases in the specialist lists save to the extent that the judges in charge of such lists should choose to adopt them in a particular case or by issuing appropriate practice directions and subject to what has previously been recommended regarding the retention of a Running List.

Recommendation 69

All applications to have a person declared a vexatious litigant should be made directly to a single judge.

Recommendation 76

Such jurisdiction should be exercisable where it is shown by the applicant that he and the respondent are both likely to be parties to the anticipated proceedings and that disclosure before the proceedings have been started is necessary to dispose fairly of the anticipated proceedings or to save costs.

Recommendation 79

The requirements to be met and procedure to be followed when seeking orders referred to in Recommendation 78 should be as laid down by O. 24 r. 7A in respect of section 42(1) orders and by O. 24 r. 13, with any necessary or desirable modifications.

Recommendation 80

Proposal 29 (for the case management of discovery by the courts) should be adopted, but with *Peruvian Guano* principles as the primary measure of discovery, taken as the starting-point for such case management.

Recommendation 81

The parties should be encouraged by rule and practice direction, backed by costs sanctions, to adopt a reasonable and cooperative attitude in relation to all procedural issues.

Recommendation 82

Where the court considers one or more procedural directions to be necessary or desirable and unlikely to be controversial between the parties, it ought to have power, of its own motion and without hearing the parties, to give the relevant directions by way of an order *nisi*, with liberty to the parties to apply within a stated period for that order not to be made absolute.

Recommendation 83

When disposing of interlocutory applications after the summons for directions, the court should normally make orders which specify the automatic consequences of non-compliance appropriate and proportionate to the non-compliance in question. Orders specifying such consequences may, if appropriate, also be made where the interlocutory application is heard before the summons for directions. However, the directions given on the summons for directions itself should generally not specify any such consequences.

Recommendation 84

While it would be open to a party who has failed to comply with a self-executing order to seek relief from the prescribed consequences of his non-compliance, such relief should not be

automatic and, if granted, should generally be granted on suitable terms as to costs and otherwise.

Recommendation 85

All interlocutory applications (other than applications for relief against the implementation of sanctions imposed by self-executing orders previously made and subject to special arrangements being made for time summonses) should be placed before the master who may either determine the application on the papers and without a hearing or fix the summons for hearing either directly before a judge in chambers or before a master.

Recommendation 86

Rules and practice directions should be issued, in respect of the setting of the timetable and the filing of evidence, skeleton arguments and costs statements to enable the master to exercise his discretion as aforesaid. A practice direction setting out an abbreviated procedure for dealing with time summonses, allowing them to be dealt with promptly either on paper or at a short hearing should be issued.

Recommendation 88

The court should, whenever appropriate (whether as a response to an unwarranted application or unwarranted resistance to an application, with a view to saving costs or otherwise), make a summary assessment of costs when disposing of interlocutory applications.

Recommendation 89

Rules and practice directions along the lines indicated in this section of the Final Report should be adopted to regulate the making and implementation of orders for the summary assessments of costs.

Recommendation 92

Judges and masters should be empowered to make provisional summary assessments of costs, whereby the assessed sum must promptly be paid but allowing either party, at the end of the main proceedings, to insist on a taxation of the relevant costs with a view to adjusting the quantum of the payment made, but with the party who insists on such a taxation being at risk as to a special order for the costs of the taxation and other possible sanctions in the event that the taxation does not result in a proportionate benefit to him.

Recommendation 94

Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the

exercise of the court's discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.

Recommendation 95

Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.

Recommendation 96

Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side's lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.

Recommendation 97

Barristers should be made subject to liability for wasted costs under O. 62 r. 8.

Recommendation 100

Proposal 37 (for introducing greater flexibility in permitting a witness to amplify or supplement his witness statement) should be adopted, replacing O. 38 r. 2A(7)(b) by a rule along the lines of CPR 32.5(3) and (4).

Recommendation 102

A rule along the lines of CPR 35.3 declaring that expert witnesses owe a duty to the court which overrides any obligation to those instructing or paying the expert should be adopted.

Recommendation 103

A rule along the lines of CPR 35.10(2) combined with Part 36 of the NSW rules should be adopted, making it a requirement for the reception of an expert report or an expert's oral testimony that (a) the expert declares in writing (i) that he has read the court-approved Code of Conduct for Experts and agrees to be bound by it; (ii) that he understands his duty to the court; and (iii) that he has complied and will continue to comply with that duty; and (b) his expert report be verified by a statement of truth.

Recommendation 107

The court should be given power to order the parties to appoint a single joint expert upon

application by at least one of the parties, subject to the court being satisfied, having taken into account certain specified matters, that the other party's refusal to agree to a SJE is unreasonable in the circumstances.

Recommendation 108

A rule along the lines of O 34 r 5A of the Western Australian Rules of the Supreme Court should be adopted, setting out the court's powers of case management in relation to trials, together with a practice direction providing that such powers should primarily be exercised at the pre-trial review.

Recommendation 109

An appeal should lie as of right from the master to the judge (whether from a decision on the papers or after a contested hearing) but with the introduction of fresh evidence for the purposes of the appeal precluded save in exceptional circumstances.

Recommendation 110

Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.

Recommendation 112

A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered necessary, the Court of Appeal should be able to direct that there be an oral hearing before the original two judges or before a panel of three judges.

Recommendation 120

Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges (the last option being dictated where the two judges are unable to agree).

Recommendation 122

The principle that the costs should normally "follow the event" should continue to apply to the costs of the action as a whole. However, in relation to interlocutory applications, that principle

should be an option (which would often in practice be adopted) but should not be the prescribed "usual order." Costs orders aimed at deterring unreasonable interlocutory conduct after commencement of the proceedings should be given at least equal prominence in practice, with the court being directed to have regard to the underlying objectives mentioned in relation to Recommendation 2. These powers should not apply to pre-action conduct.

Recommendation 131

Proposal 57 (for the abolition of a special rule governing taxation of counsel's fees) should be adopted.

Recommendation 132

The procedure for making sanctioned offers and payments should be extended to pending costs taxations, save in relation to legally-aided parties.

Recommendation 134

The court should have a general discretion to conduct provisional taxations on the papers, with any party dissatisfied with the award being entitled to require an oral taxation hearing, but subject to possible costs sanctions if he fails to do materially better at the hearing.

Recommendation 135

Rules or practice directions, backed by flexible costs sanctions, should be introduced requiring the parties to a taxation to file documents in prescribed form, with bills of costs supported by and cross-referenced to taxation bundles and objections to items in such bills taken on clearly stated grounds.

Recommendation 136

Rules conferring a broad discretion on the court in respect of the costs of a taxation and giving guidance as to the exercise of such discretion should be introduced along the lines of CPR 44.14 and CPR 47.18, suitably modified to fit local circumstances.

Recommendation 144

Rules along the lines of CPR 54.1 to 54.3, suitably adapted, retaining the present terminology, should be adopted for defining the scope of judicial review proceedings in Hong Kong.

Recommendation 145

Provision should be made to enable persons wishing to be heard at the substantive hearing, subject to the court's discretion, to be heard in support of, as well as in opposition to, an

application for judicial review.

Recommendation 148

If leave is granted, the order granting leave and any case management directions should be required to be served by the applicant on the respondent (whether or not he has acknowledged service) and on all interested parties who have acknowledged service, such persons then becoming entitled, if they so wish, to file grounds and evidence to contest or to support on additional grounds, the claim for judicial review.

RULES OF THE DISTRICT COURT (AMENDMENT) RULES 2008

CONTENTS

Rule		Page
PART 1		
PRELIMINARY		
1.	Commencement	1
PART 2		
OBJECTIVES AND CASE MANAGEMENT POWERS		
Recommendations 2, 3, 4, 81 and 82		
2.	Definitions	1
3.	Orders added	
ORDER 1A		
OBJECTIVES		
1.	Underlying objectives	1
2.	Application by the Court of underlying objectives	2
3.	Duty of the parties and their legal representatives	2
4.	Court's duty to manage cases	2

ORDER 1B

CASE MANAGEMENT POWERS

1.	Court's general powers of management	3
2.	Court's power to make order of its own motion	3
3.	Court's power to give procedural directions by way of order nisi	4

PART 3

NON-COMPLIANCE WITH RULES AND COURT ORDERS

Recommendation 84

4.	Rules added	
	3. Non-compliance with rules and court orders	5
	4. Sanctions have effect unless defaulting party obtains relief	5
	5. Relief from sanctions	5

PART 4

COSTS-ONLY PROCEEDINGS

Recommendation 9

5.	Service of originating summons	6
6.	Principal cases in which service of writ out of jurisdiction is permissible	6
7.	Acknowledgment of service	6

Rule		Page
8.	Application	6
9.	Rule added	
	11A. Commencement of costs-only proceedings	6
10.	Powers of taxing masters to tax costs	7
11.	Forms	7

PART 5

COMMENCEMENT OF PROCEEDINGS

Recommendations 11 to 16

12.	Definitions	9
13.	Non-compliance with Rules	9
14.	Rules repealed	9
15.	Proceedings which may be begun by writ or originating summons	9
16.	Rule added	
	5. Proceedings to be begun by motion or petition	9
17.	Form of summons, etc.	9
18.	Ex parte originating summons	10
19.	Orders added	

ORDER 8

ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

1.	Application	10
----	-------------	----

Rule		Page
	2. Notice of motion	10
	3. Form and issue of notice of motion	10
	4. Service of notice of motion with writ, etc.	11
	5. Adjournment of hearing	11
ORDER 9		
PETITIONS: GENERAL PROVISIONS		
	1. Application	11
	2. Contents of petition	11
	3. Presentation of petition	11
	4. Fixing time for hearing petition	11
	5. Certain applications not to be made by petition	11
20.	Service of originating summons, etc.	12
21.	Mode of application	12
22.	Amendment of originating summons	12
23.	Rule added	
	3A. Originating summons to be heard in open court	12
24.	Application for receiver and injunction	12
25.	Evidence by affidavit	12
26.	Order prohibiting transfer, etc., of securities	12
27.	When order for taxation of costs not required	13

Rule		Page
28.	Appointment of next friend or guardian ad litem	13
29.	Approval of settlement	13
30.	Service of certain documents on person under disability	13
31.	Commencement of money lender's action	13
32.	Determination of questions as to property	13
33.	Applications under Guardianship of Minors Ordinance and Parent and Child Ordinance	13
34.	Forms	13

PART 6

DISPUTE AS TO JURISDICTION

Recommendation 17

35.	Dispute as to jurisdiction	16
36.	Rule added	
	11. Transitional provision relating to rule 35 of Amendment Rules 2008	17
37.	Service of defence	17
38.	Forms	17

PART 7

DEFAULT JUDGMENTS AND ADMISSIONS

Recommendation 18

39.	Indorsement of claim	18
40.	Order added	

ORDER 13A

ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY

1.	Interpretation	18
2.	Making an admission	18
3.	Period for making admission	19
4.	Admission of whole of claim for liquidated amount of money	19
5.	Admission of part of claim for liquidated amount of money	20
6.	Admission of liability to pay whole of claim for unliquidated amount of money	21
7.	Admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim	21
8.	Power of Court to give directions	22
9.	Request for time to pay	22
10.	Determination of rate of payment by Court	23
11.	Right of re-determination	24

Rule		Page
	12. Interest	24
	13. Form for admission to be served with writ or originating summons	24
	14. Application	25
41.	Forms	25

PART 8

PLEADINGS

Division 1 – Recommendations 22 to 24

42.	Admissions and denials	43
43.	Denial by joinder of issue	44
44.	Rule added	
	23. Transitional provision relating to rule 42 of Amendment Rules 2008	44

Division 2 – Recommendations 26 to 32 and 35

45.	Service of defence	44
46.	Service of reply and defence to counterclaim	44
47.	Rule added	
	12A. Pleading with inconsistent alternatives	44
48.	Striking out pleadings and indorsements	44
49.	Close of pleadings	45
50.	Rule added	

Rule		Page
	20A. Pleading, etc. to be verified by statement of truth	45
51.	Rule added	
	24. Transitional provision relating to rules 45 and 46 of Amendment Rules 2008	45
52.	Rule added	
	13. Amendment of pleadings or particulars of pleadings to be verified by statement of truth	45
53.	Exchange of witness statements	46
54.	Rule added	
	37A. Expert report to be verified by statement of truth	46
55.	Order added	

ORDER 41A

STATEMENTS OF TRUTH

1.	Interpretation	46
2.	Documents to be verified by statement of truth	46
3.	Signing of statement of truth	47
4.	Effect of statement of truth	48
5.	Form of statement of truth	49
6.	Failure to verify pleading	49
7.	Failure to verify witness statement or expert report	50

Rule		Page
	8. Power of Court to require document to be verified	50
	9. False statements	50
	10. Transitional	50
56.	Forms	50

Division 3 – Recommendations 33 and 34

57.	Particulars of pleading	51
58.	Amendment of certain other documents	51
59.	Failure to amend after order	51

PART 9

SANCTIONED OFFERS AND SANCTIONED PAYMENTS

Division 1 - Recommendations 38, 39, 41, 42 and 43

60.	Definitions	52
61.	Order substituted	

ORDER 22

OFFERS TO SETTLE AND PAYMENTS INTO COURT

I. PRELIMINARY

1.	Interpretation	52
2.	Offer to settle with specified consequences	53

Rule	Page
II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT	
3. Defendant's offer to settle	53
4. Plaintiff's offer to settle	53
5. Form and content of sanctioned offer	53
6. Service of sanctioned offer	54
7. Withdrawal or diminution of sanctioned offer	54
8. Notice of sanctioned payment	54
9. Service of sanctioned payment	55
10. Withdrawal or diminution of sanctioned payment	55
11. Offer to settle claim for provisional damages	56
12. Time when sanctioned offer or sanctioned payment is made and accepted	56
13. Service of notice of acceptance of plaintiff's sanctioned offer	57
14. Clarification of sanctioned offer or sanctioned payment notice	57
III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT	
15. Time for acceptance of defendant's sanctioned offer or sanctioned payment	57

Rule	Page
16. Time for acceptance of plaintiff's sanctioned offer	58
17. Payment out of a sum in court on acceptance of sanctioned payment	58
18. Acceptance of sanctioned offer or sanctioned payment made by one or more, but not all, defendants	59
19. Other cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment	59
IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT	
20. Costs consequences of acceptance of defendant's sanctioned offer or sanctioned payment	60
21. Costs consequences of acceptance of plaintiff's sanctioned offer	60
22. Other consequences of acceptance of sanctioned offer or sanctioned payment	61
23. Costs consequences where plaintiff fails to do better than sanctioned offer or sanctioned payment	61
24. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer	62
V. MISCELLANEOUS	
25. Restriction on disclosure of sanctioned offer or sanctioned payment	63

Rule		Page
	26. Interest	64
	27. Money paid into court under order	64
	28. Transitional provision relating to Part 9 of Amendment Rules 2008	65
62.	Payment into court in satisfaction	65
63.	When costs to follow the event	65
64.	Special matters to be taken into account in exercising discretion	65
65.	When a party may sign judgment for costs without order	65
66.	Proceedings under Fatal Accidents Ordinance: apportionment by Court	66
67.	Provisions as to payment into court	66
68.	Applications with respect to funds in court	66
69.	Forms	66
70.	Order added	

ORDER 22A

MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

1.	Money remaining in court	72
2.	Person to whom payment to be made	72
3.	Payment out: small intestate estates	72
4.	Investment of money in court	73

Division 2 – Recommendation 132

71. Order added

ORDER 62A

COSTS OFFER AND PAYMENTS INTO COURT

I. PRELIMINARY

- | | |
|--|----|
| 1. Interpretation and application | 73 |
| 2. Offer to settle with specified consequences | 74 |

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

- | | |
|---|----|
| 3. Paying party's costs offer requires sanctioned payment | 74 |
| 4. Receiving party's costs offer requires a sanctioned offer | 74 |
| 5. Form and content of sanctioned offer | 74 |
| 6. Service of sanctioned offer | 75 |
| 7. Withdrawal or diminution of sanctioned offer | 75 |
| 8. Notice of sanctioned payment | 75 |
| 9. Service of sanctioned payment | 75 |
| 10. Withdrawal or diminution of sanctioned payment | 76 |
| 11. Time when sanctioned offer or sanctioned payment is made and accepted | 76 |

Rule		Page
12.	Clarification of sanctioned offer or sanctioned payment notice	76
III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT		
13.	Time for acceptance of paying party's sanctioned payment	77
14.	Time for acceptance of receiving party's sanctioned offer	77
15.	Payment out of a sum in court on acceptance of sanctioned payment	78
16.	Acceptance of sanctioned payment made by one or more, but not all, paying parties	78
17.	Cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment	78
IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT		
18.	Consequences of acceptance of sanctioned offer or sanctioned payment	79
19.	Costs consequences where receiving party fails to better sanctioned payment	79
20.	Costs and other consequences where receiving party does better than he proposed in his sanctioned offer	80

Rule		Page
	V. MISCELLANEOUS	
	21. Restriction on disclosure of sanctioned offer or sanctioned payment	81
	22. Interest	81
72.	Forms	81

PART 10

CASE MANAGEMENT TIMETABLING AND MILESTONES

Recommendations 52 to 60 and 62

73.	Directions	86
74.	Discovery	86
75.	Trial without pleadings	86
76.	Discontinuance of action, etc., with leave	86
77.	Stay of subsequent action until costs paid	86
78.	Directions for Actions Begun by Writ	86
79.	Order for discovery	86
80.	Order for determination of issue, etc., before discovery	86
81.	Order added	

ORDER 25

CASE MANAGEMENT SUMMONS AND CONFERENCE

1.	Case management summons and conference	87
----	--	----

Rule	Page
2. Case management timetable	88
3. Variation of case management timetable	89
4. Failure to appear at case management conference or pre-trial review	90
5. Duty to consider all matters	90
6. Particular matters for consideration	91
7. Admissions and agreements to be made	92
8. Limitation of right of appeal	92
9. Duty to give all information at determination of case management summons	92
10. Duty to make all interlocutory applications at case management summons	93
11. Automatic directions in personal injury actions	93
12. Application to action in specialist list	94
13. Transitional	94
82. Discovery by interrogatories	95
83. Notice to admit	95
84. Admission and production of documents specified in list of documents	95
85. Notices to admit or produce documents	96
86. Directions, etc., by Court	96

Rule		Page
87.	Continuation of proceedings as if cause or matter begun by writ	96
88.	Order for hearing or trial	96
89.	Detention, preservation, etc., of subject-matter of cause or matter	96
90.	Directions	96
91.	Rule substituted	
	14. Directions on application under rule 10	97
92.	Determining the place and mode of trial	97
93.	Rule added	
	4. Power to order assessment at trial	97
94.	Application for award of further damages	97
95.	Exchange of witness statements	98
96.	Evidence of finding on foreign law	98
97.	Directions in particular proceedings	98
98.	Discovery and interrogatories	98
99.	Procedure in Court after transfer	98
100.	Directions	98

PART 11

DISCOVERY

Division 1 – Recommendations 76 and 79

101.	Application under section 47A or 47B(1) of the Ordinance	99
102.	Discovery to be ordered only if necessary	99

Division 2 – Recommendation 80

103.	Rule added	
	15A. Order for limiting discovery	100

PART 12

INTERLOCUTORY APPLICATIONS

Division 1 - Recommendations 83, 85 and 86

104.	Rules added	
	16A. Interlocutory applications	100
	16B. Court's power to specify consequences of failure to comply with court order on interlocutory application	101

Division 2 – Jurisdiction of Registrar and Master

105.	Rule added	
	8A. Application for a direction under the Limitation Ordinance	102
106.	Jurisdiction of the Registrar and master	102

PART 13

INTERLOCUTORY APPLICATIONS AND
SUMMARY ASSESSMENT OF COSTS

Recommendations 88, 89 and 92

107.	Fractional or gross sums in place of taxed costs	102
108.	Rules substituted	
	9A. Summary assessment of costs of interlocutory application	102
	9B. Time for complying with direction or order for summary assessment	104
	9C. When summary assessment not allowed	104
	9D. When to tax costs	104
109.	Costs of a litigant in person	105

PART 14

WASTED COSTS

Recommendations 94 to 97

110.	Interpretation	105
111.	Rules substituted	
	8. Personal liability of legal representative for costs - wasted costs order	105
	8A. Court may make wasted costs order on its own motion or on application	106

Rule		Page
	8B. Stages of considering whether to make a wasted costs order	107
	8C. Application for wasted costs order not to be used as means of intimidation	107
	8D. Personal liability of legal representative for costs – supplementary provisions	108
	8E. Stages of considering whether to make direction under rule 8D(1)	109
112.	Rule added	

TRANSITIONAL

36.	Transitional provision relating to Part 14 of Amendment Rules 2008	109
-----	--	-----

PART 15

WITNESS STATEMENTS AND EVIDENCE

Recommendation 100

113.	Exchange of witness statements	110
------	--------------------------------	-----

PART 16

EXPERT EVIDENCE

Recommendations 102, 103 and 107

114.	Rule added	
	4A. Evidence by single joint expert	110
115.	Interpretation	111

Rule		Page
116.	Rule added	
	35A. Expert witness's overriding duty to Court	112
117.	Rules added	
	37B. Duty to provide expert witness with copy of code of conduct	112
	37C. Expert witness's declaration of duty to Court	112
118.	Time for putting expert report in evidence	112
119.	Appendix E added	
	Appendix E Code of conduct for expert witnesses	113

PART 17

CASE MANAGING TRIALS

Recommendation 108

120.	Rule added	
	3A. Time, etc. limits at trial	115

PART 18

LEAVE TO APPEAL

Recommendation 109

121.	Appeals from master to judge in chambers	116
------	--	-----

Rule		Page
	PART 19	
	APPEALS	
122.	Appeals to Court of Appeal	116
123.	Rule added	
	4. Non-interlocutory judgments and orders	117
	PART 20	
	GENERAL APPROACH TO INTER-PARTY COSTS	
	Recommendation 122	
124.	When costs to follow the event	118
125.	Special matters to be taken into account in exercising discretion	119
126.	Costs arising from misconduct or neglect	120
	PART 21	
	TAXING THE OTHER SIDE'S COSTS	
	Division 1 – Recommendation 131	
127.	Schedule 1 amended	120
	Division 2 – Recommendation 134	
128.	Interpretation	120
129.	Powers of Chief Judicial Clerks to tax costs	120

Rule		Page
130.	Rules substituted	
	21. Mode of commencing proceedings for taxation	121
	21A. Application for taxation to be set down	121
	21B. Provisional taxation	122
	21C. Taxation with a hearing	122
	21D. Withdrawal of bill of costs	123
131.	Rule substituted	
	24. Taxation	123
Division 3 – Recommendations 135 and 136		
132.	Rule added	
	13A. Taxing master may give directions	123
133.	Deposit of papers and vouchers	124
134.	Provisions as to bills of costs	124
135.	Power to adjourn	124
136.	Costs for witnesses	124
137.	Rule added	
	32A. Liability for costs of taxation	124
138.	Rule added	
	32C. Court's powers in relation to misconduct	125

Rule		Page
Division 4 – Miscellaneous		
139.	Costs arising from misconduct or neglect	125
140.	Rules added	
	17A. Final certificate	126
	17B. Taxing master may set aside his own decision	126
141.	Rule substituted	
	22. Delay in service of notice of commencement of taxation or in proceeding with taxation	126
142.	Cross-heading substituted	128
143.	Costs of a litigant in person	128
144.	Rule added	
	32B. Reimbursement for taxing fees	128
145.	Application to taxing master for review	128
146.	Schedule 1 amended	129
147.	Fixed costs	129
Division 5 – Transitional arrangement		
148.	Rule added	
	37. Transitional provisions relating to Part 21 of Amendment Rules 2008	131

Rule		Page
PART 22		
COSTS AGAINST NON-PARTY		
149.	Principal cases in which service of writ out of jurisdiction is permissible	132
150.	Rule added	
	6A. Costs orders in favour of or against non-parties	132
PART 23		
REPLACEMENT OF ORDER 34		
151.	Order substituted	
ORDER 34		
SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT		
	1. Application and interpretation	133
	2. Time for setting down action	133
	3. Lodging documents when setting down	133
	4. Directions relating to lists	134
	5. Notification of setting down	134
	6. Abatement, etc., of action	135
152.	Order for hearing or trial	135
153.	Abatement, etc., of action	135

Rule		Page
	PART 24	
	MISCELLANEOUS	
154.	Application	135
155.	Definitions	136
156.	Rule added	
	6A. Construction of references to Registrar	136
157.	Transfer to the Court of First Instance	137
158.	Service of originating summons	137
159.	Mode of acknowledging service	137
160.	Mixed claims	137
161.	Rules added	
	1. Mutual discovery of documents	137
	2. Discovery by parties without order	137
162.	Order for discovery	138
163.	Order for determination of issue, etc., before discovery	139
164.	Form of list and affidavit	139
165.	Inspection of documents referred to in list	139
166.	Failure to comply with requirement for discovery, etc.	139
167.	Rule added	
	17. Transitional provision relating to rules 1 and 2	139

Rule		Page
168.	Discovery by interrogatories	140
169.	Order for hearing or trial	140
170.	Order for interim payment in respect of damages	140
171.	Certificate of judicial clerk	140
172.	Report on reference	141
173.	Assessment of damages	141
174.	Certificate of amount of damages	141
175.	Offer to submit to an award	141
176.	Exchange of witness statements	142
177.	Rule added	
	6. Revocation or variation of orders under rules 2 to 5	142
178.	Restrictions on adducing expert evidence	143
179.	Orders required to be drawn up	143
180.	Consent judgments and orders	143
181.	Appeal against order of master	143
182.	Rule substituted	
	3. Record of judgment debtor's evidence given at examination	144
183.	Rule added	
	1AA. Record of judgment debtor's evidence given at examination	144

Rule		Page
184.	Application for order after leave to apply granted	144
185.	Provisions as to hearing	144
186.	When costs to follow the event	144
187.	Stage of proceedings at which costs to be dealt with	144
188.	Schedule 1 amended	145
189.	Pleadings in particular proceedings	145
190.	Appointment of guardian where person under disability does not acknowledge service	145
191.	Forms	145
192.	"成文法" substituted by "成文法律"	145
193.	"認收送達" substituted by "送達認收"	146

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. Definitions

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

""practice direction" (實務指示) 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;".

3. Orders added

The Rules of the District Court (Cap. 336 sub. leg. H) are amended by adding immediately 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 ensure fairness 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 varying the order."

PART 3
NON-COMPLIANCE WITH RULES AND COURT ORDERS

Recommendation 84

4. Rules added

Order 2 is amended by adding –

"3. Non-compliance with rules and court orders (O. 2, r. 3)

(1) 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 or court order.

(2) When exercising its power under paragraph (1), 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.

(3) Where a party pays money into court following an order under paragraph (1), 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 or court order, any sanction for failure to comply imposed by the rule or court order has effect unless the party in default applies to the Court for and obtains relief from the sanction within 14 days of the failure.

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 or court order, 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 to comply;
- (e) the extent to which the party in default has complied with other rules and court orders;
- (f) whether the failure to comply was caused by the party in default or his legal representative;
- (g) in the case where the party in default is not legally represented, whether he was unaware of the rule or court order, 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."

PART 4
COSTS-ONLY PROCEEDINGS

Recommendation 9

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 of the Ordinance".

9. 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."

10. 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"

11. 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 5
COMMENCEMENT OF PROCEEDINGS

Recommendations 11 to 16

12. Definitions

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

"Amendment Rules 2008" (《2008年修訂規則》) means the Rules of the District Court (Amendment) Rules 2008 (L.N. of 2008);".

13. 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."

14. Rules repealed

Order 5, rules 2 and 3 are repealed.

15. 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."

16. 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."

17. 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."

18. Ex parte originating summons

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

19. 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."

20. 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".

21. Mode of application

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

22. 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".

23. 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."

24. Application for receiver and injunction

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

25. 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".

**26. 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."

27. 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,".

28. 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".

29. Approval of settlement

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

30. 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".

31. Commencement of money lender's action

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

32. Determination of questions as to property

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

33. 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".

34. 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, theday 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. ofsolicitor 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 6
DISPUTE AS TO JURISDICTION

Recommendation 17

35. 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)".

36. Rule added

Order 12 is amended by adding –

"11. Transitional provision relating to rule 35 of Amendment Rules 2008

(O. 12, r. 11)

Where an application under rule 8(1) is pending immediately before the commencement of the Amendment Rules 2008, then the application is to be determined as if rule 35 of the Amendment Rules 2008 had not been made."

37. Service of defence

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

38. 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 or to argue that the District Court should not exercise its jurisdiction in the proceedings, and wishes 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 or to argue that the District Court should not exercise its jurisdiction in the proceedings, and wishes 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 7
DEFAULT JUDGMENTS AND ADMISSIONS

Recommendation 18

39. 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) where the only remedy that the plaintiff is seeking is the payment of money, with a statement that the defendant may make an admission in accordance with Order 13A within the period fixed for service of his defence."

40. 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" (申索) 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" (無行為能力的人) 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 files an admission under paragraph (2), this Order applies as if he had made the admission specified in paragraph (1)(a) or (b), as the case may be.

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), (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 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 in the Registry 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 in the Registry 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 in the Registry 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 in the Registry 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 proposal for payment, he shall file in the Registry 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 –

- (a) may do so without a hearing; but
- (b) shall consider –
 - (i) the information set out in the defendant's admission filed in the Registry;
 - (ii) the reasons why the plaintiff does not accept the defendant's proposal for payment; and
 - (iii) all other relevant matters.

(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 writ 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."

41. 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 adding immediately below "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.]";

- (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 –

"[insert here 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 –
 "*[insert here 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 –

"Where words appear between square brackets, delete if inapplicable.

Service of the Originating Summons is acknowledged accordingly."

and substituting –

"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."

(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 –
 - (a) within the period for service of your defence if you have been served with a writ; *or*
 - (b) the period for filing of your affidavit evidence if you have been served with an originating summons; *or*
 - (c) within 14 days after service of the originating process in any other case.
2. If you have made an admission, you may only be allowed to amend or withdraw your admission if the Court consider it just to do so.
3. If you do not ask for time to pay, the plaintiff will decide how much and when you should pay.
4. If you ask for time to pay, the plaintiff will decide whether or not to accept your proposal for payment.
5. 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.
6. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made after considering –
 - (a) the information set out in this form;
 - (b) the reasons why the plaintiff does not accept your proposal for payment; and
 - (c) all other relevant matters.
7. 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 \$

5. Residence

- I live in
- my own flat
 - my jointly owned flat
 - public housing estate
 - rented private flat
 - 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)	\$	
Rent	\$	per month
Rates and government rent	\$	per month
Management fees	\$	per month
Domestic helper's salary	\$	per month
Gas	\$	per month
Electricity	\$	per month
Water charges	\$	per month
Telephone charges	\$	per month
Housekeeping, food, school meals	\$	per month
Travelling expenses	\$	per month
Children's clothing	\$	per month
Tuition fees	\$	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	\$	
Others	\$	
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 or <input type="checkbox"/> I can pay by [weekly/monthly etc.] instalments of	<div style="border: 1px solid black; height: 20px; margin-bottom: 10px;"></div> <div style="border: 1px solid black; padding: 2px;">\$</div>
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)

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 –
 - (a) within the period for service of your defence if you have been served with a writ; *or*
 - (b) the period for filing of your affidavit evidence if you have been served with an originating summons; *or*
 - (c) within 14 days after service of the originating process in any other case.
2. If you have made an admission, you may only be allowed to amend or withdraw your admission if the Court consider it just to do so.
3. 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.
4. 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 after considering –
 - (a) the information set out in this form;
 - (b) the reasons why the plaintiff does not accept your proposal for payment; and
 - (c) all other relevant matters.
5. 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

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 \$

5. Residence

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

6. Income

My usual take-home pay (including overtime, commission, bonuses etc)

My pension(s)

Others living in my home give me

Other income (give details below)

	\$	per month
	\$	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
Management fees	\$	per month
Domestic helper's salary	\$	per month
Gas	\$	per month
Electricity	\$	per month
Water charges	\$	per month
Telephone charges	\$	per month
Housekeeping, food, school meals	\$	per month
Travelling expenses	\$	per month
Children's clothing	\$	per month
Tuition fees	\$	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	\$	
Others	\$	
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 8 PLEADINGS

Division 1 – Recommendations 22 to 24

42. 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."

43. 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".

44. Rule added

Order 18 is amended by adding –

"23. Transitional provision relating to rule 42 of Amendment Rules 2008

(O. 18, r. 23)

Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rule 42 of the Amendment Rules 2008 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 rule 42 of the Amendment Rules 2008 had not been made."

Division 2 – Recommendations 26 to 32 and 35

45. Service of defence

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

46. 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".

47. 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."

48. 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".

49. Close of pleadings

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

50. 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 the 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)."

51. Rule added

Order 18 is amended by adding –

"24. Transitional provision relating to rules 45 and 46 of Amendment Rules 2008 (O. 18, r. 24)

Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rules 45 and 46 of the Amendment Rules 2008 do not apply –

- (a) in relation to the service of the defence and the reply to that defence; and
- (b) 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 continue to apply as if rules 45 and 46 of the Amendment Rules 2008 had not been made."

52. 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 the 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)."

53. 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".

54. 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."

55. 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" (專家報告) means an expert report disclosed under these Rules;

"pleading" (狀書) includes –

- (a) particulars of a pleading given by a party to any other party, whether voluntarily or pursuant to –
 - (i) a request made by 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" (證人陳述書) 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 must be signed by –

- (a) one 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 signed 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 document are true and (if applicable) the opinion expressed in it is honestly held.

(2) If a party is conducting proceedings with a next friend or guardian ad litem, the statement of truth in or in relation to a pleading is a statement that the next friend or guardian ad litem believes the facts stated in the document being verified are true.

(3) Where a legal representative or insurer has signed a statement of truth on behalf of a party, the Court shall treat his signature as his statement that –

- (a) the party on whose behalf he has signed had authorized him to do so;
- (b) before signing he had explained to the party that in signing the statement of truth he would be confirming the party's belief that the facts stated in the document were true; and
- (c) before signing he had informed the party of the possible 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 by order strike out a pleading that 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."

56. Forms

(1) Appendix A is amended in Form No. 1 by adding "A statement of claim 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)." after "(Signed if statement of claim indorsed)."

(2) Appendix A is amended in Form No. 14, under the sub-heading "*Directions for Acknowledgment of Service*", by adding immediately above paragraph 3 –

"The Defendant's defence 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)."

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 9
SANCTIONED OFFERS AND SANCTIONED PAYMENTS

Division 1 - Recommendations 38, 39, 41, 42 and 43

60. Definitions

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

""aided person" (受助人) 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" (申索) includes, where the context so permits or requires, a counterclaim;

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

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

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

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

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

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

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

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

(2) 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 20, 21, 22, 23 and 24 (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 specified in this Order unless it is made by way of a sanctioned offer or a 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 specified in this Order unless it is made by way of a sanctioned offer.

5. Form and content of 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 26(2).

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

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

(6) A sanctioned offer may be made at any time after the commencement of the proceedings but may not be made before such commencement.

(7) A sanctioned offer made not less than 28 days before the commencement of the trial must provide that after the expiry of 28 days from the date the sanctioned offer is made, 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.

(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.

6. Service of sanctioned offer

(O. 22, r. 6)

An offeror shall serve the sanctioned offer –

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

7. Withdrawal or diminution of sanctioned offer

(O. 22, r. 7)

(1) A sanctioned offer made not less than 28 days before the commencement of the trial 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.

(2) 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.

(3) 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.

(4) 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.

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

8. Notice of sanctioned payment

(O. 22, r. 8)

(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 an issue arising from it and if so to which part or issue it relates;
- (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 26(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.

9. Service of sanctioned payment

(O. 22, r. 9)

A defendant who makes a sanctioned payment 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.

10. Withdrawal or diminution of sanctioned payment

(O. 22, r. 10)

(1) 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.

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

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

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

11. Offer to settle claim for provisional damages

(O. 22, r. 11)

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

(2) Where the defendant makes a sanctioned payment under paragraph (1), 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 15,

the sanctioned payment has the consequences specified in rule 20, 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 unless the Court has disposed of the application made under paragraph (5).

(7) In this rule, "provisional damages" (暫定損害賠償) 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.

12. Time when sanctioned offer or sanctioned payment is made and accepted (O. 22, r. 12)

(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 notice of its acceptance is served on the offeror.

13. Service of notice of acceptance of plaintiff's sanctioned offer

(O. 22, r. 13)

(1) Where there is more than one defendant, a defendant who serves on the plaintiff a notice of acceptance of the plaintiff's sanctioned offer shall at the same time serve a copy of the notice on the other defendant or defendants.

(2) A defendant on whom a copy of the notice has been served may within 14 days after the service apply to the Court for –

- (a) a direction as to any question of costs between him and the defendant who has accepted the plaintiff's sanctioned offer; and
- (b) any other direction relating to the acceptance of the plaintiff's sanctioned offer.

(3) No application may be made under paragraph (2) after the expiry of the 14-day period referred to in that paragraph.

14. Clarification of sanctioned offer or sanctioned payment notice

(O. 22, r. 14)

(1) The offeree may, within 7 days of a sanctioned offer or a 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**

15. Time for acceptance of defendant's sanctioned offer or sanctioned payment (O. 22, r. 15)

(1) Subject to rules 7(3) and 10(2), 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 the leave of the Court; and
- (ii) if the parties do not agree on the liability for costs, only accept the offer or payment with the leave of the Court.

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

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

16. Time for acceptance of plaintiff's sanctioned offer (O. 22, r. 16)

(1) Subject to rule 7(3), 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 the leave of the Court; and
- (ii) if the parties do not agree on the liability for costs, only accept the offer with the leave of the Court.

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

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

(O. 22, r. 17)

Subject to rules 18(4) and 19 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.

18. Acceptance of sanctioned offer or sanctioned payment made by one or more, but not all, defendants

(O. 22, r. 18)

(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 15(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 15(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.

19. Other cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment (O. 22, r. 19)

(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 a 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

20. Costs consequences of acceptance of defendant's sanctioned offer or sanctioned payment (O. 22, r. 20)

(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.

21. Costs consequences of acceptance of plaintiff's sanctioned offer

(O. 22, r. 21)

(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.

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

- (1) If a sanctioned offer or a 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.

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

(O. 22, r. 23)

- (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 by order disallow all or part of any interest otherwise payable under section 49 of the Ordinance on the whole or part of any sum of money awarded to the plaintiff for some or all of the period 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 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.

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

(a) his costs on the indemnity basis after 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 the costs referred to in paragraph (3) or subparagraph (a) at a rate not exceeding 10% above judgment rate.

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

(6) In considering whether it would be unjust to make the orders referred to in paragraphs (2), (3) and (4), 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.

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

24. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O. 22, r. 24)

(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 after 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 after 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

25. Restriction on disclosure of sanctioned offer or sanctioned payment (O. 22, r. 25)

(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 22 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.

26. Interest (O. 22, r. 26)

(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.

27. Money paid into court under order

(O. 22, r. 27)

(1) On making any payment into court under an order of the Court or a certificate of a master, the 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 served on 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 served on the plaintiff, 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) in the case of paragraph (2)(a), a sanctioned payment when the notice is served on the plaintiff; and

(b) in the case of paragraph (2)(b), money paid into court with a plea of tender when the pleading is served on the plaintiff,

and this Order applies accordingly.

(4) A notice served on the plaintiff in accordance with paragraph (2)(a) is deemed to be a sanctioned payment notice.

28. Transitional provision relating to Part 9 of Amendment Rules 2008

(O. 22, r. 28)

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 9 of the Amendment Rules 2008 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 a 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 20 and 21 and Order 25, rule 4(6)";
 - (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 25".

**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 8(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 certain 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 11).

Signed		Position or office held (If signing on behalf of a firm, company or corporation)	
Defendant('s solicitor)		With company chop (if applicable)	
Date			

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, 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 15(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 17)

(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 27(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 17, 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" (訟費提議) means an offer to settle –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

3. Paying party's costs offer requires sanctioned payment

(O. 62A, r. 3)

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

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

4. Receiving party's costs offer requires sanctioned offer

(O. 62A, r. 4)

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

5. Form and content of sanctioned offer

(O. 62A, r. 5)

(1) A sanctioned offer must be in writing.

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

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

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

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

(a) the parties agree on the liability for and quantum of costs of taxation incurred after the period; or

(b) the Court grants leave to accept it.

6. Service of sanctioned offer

(O. 62A, r. 6)

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

7. Withdrawal or diminution of sanctioned offer

(O. 62A, r. 7)

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

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

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

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

8. Notice of sanctioned payment

(O. 62A, r. 8)

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

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

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

9. Service of sanctioned payment

(O. 62A, r. 9)

A paying party who makes a sanctioned payment shall –

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

10. Withdrawal or diminution of sanctioned payment

(O. 62A, r. 10)

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

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

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

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

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

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

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

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

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

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

12. Clarification of sanctioned offer or sanctioned payment notice

(O. 62A, r. 12)

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

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

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

III. ACCEPTANCE OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

13. Time for acceptance of paying party's sanctioned payment

(O. 62A, r. 13)

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

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

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

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

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

14. Time for acceptance of receiving party's sanctioned offer

(O. 62A, r. 14)

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

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

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

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

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

(O. 62A, r. 15)

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

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

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

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

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

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

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

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

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

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

(O. 62A, r. 17)

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

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

IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

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

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

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

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

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

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

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

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

(6) Where –

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

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

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

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

(2) The taxing master may by order disallow all or part of any interest otherwise payable under section 50 of the Ordinance on the whole or part of the amount of the costs awarded to the receiving party for some or all of the period after the latest date on which the payment could have been accepted without requiring the leave of the Court.

(3) The taxing master may also –

- (a) order the receiving party to pay the costs of the taxation on the indemnity basis after the date on which the payment was made; and
- (b) order that the paying party is entitled to interest on those costs at a rate not exceeding 10% above judgment rate.

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

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

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

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

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

(O. 62A, r. 20)

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

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

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

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

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

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

- (a) the terms of the sanctioned offer;
- (b) the stage in the proceedings at which the sanctioned offer was made;

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

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

V. MISCELLANEOUS

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

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

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

(3) Paragraph (2) does not apply –

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

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

(1) Unless –

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

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

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

- (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 8(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)

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 13(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 15)

(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 10
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 –

"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) at 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 varying the order.

(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) The Court shall not grant an application under paragraph (2) unless there are exceptional circumstances justifying the variation.

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

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

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

(7) Whether or not sufficient grounds have been shown to it, the Court shall not grant an application under paragraph (5) if the variation would make it necessary to change a trial date or the period in which the trial is to take place.

(8) In this rule –

"milestone date" (進度指標日期) 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" (非進度指標日期) 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 plaintiff's claim.
- (2) Where the defendant has made a counterclaim in the action and he does not appear at the case management conference or pre-trial review, the Court shall provisionally strike out the defendant's counterclaim.
- (3) Where the Court has provisionally struck out a claim or counterclaim under paragraph (1) or (2), the plaintiff or the defendant 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 claim or counterclaim.
- (4) The Court may restore the claim or counterclaim subject to such conditions as it thinks fit or refuse to restore it.
- (5) The Court shall not restore the claim or counterclaim unless good reasons have been shown to the satisfaction of the Court.
- (6) If the plaintiff or the defendant does not apply under paragraph (3) or his application under that paragraph is refused, then –
 - (a) the plaintiff's claim or the defendant's counterclaim 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)
 - (i) in the case of the plaintiff's claim, the defendant is entitled to his costs of the claim; and
 - (ii) in the case of the defendant's counterclaim, the plaintiff is entitled to his costs of the counterclaim.

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 are 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" (已廢除的第23A號命令) means Order 23A repealed by rule 78 of the Amendment Rules 2008;
 "repealed Order 34" (已廢除的第34號命令) 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), (b), (c), (e) and (f) 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 "rule 7(1)" and substituting "rule 10(1)";
 - (iii) 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 the 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 11
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 12

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) Paragraph (4) is subject to a direction given under paragraph (3).

(6) 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 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 13
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 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 equals 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 exceeds 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 taxing master may make such order as to the costs of the taxation or such other order as he considers appropriate.

(5) In determining whether the taxed costs materially exceed the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall, in addition to any other matter that he 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 ad litem) acting for the person under disability has not waived the right to any further sum of money in respect of the costs of the interlocutory application.

- (2) In this rule –

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

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

9D. When to tax costs

(O. 62, r. 9D)

- (1) Subject to paragraphs (2) and (4), 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."

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 14 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" (法律代表), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party;
 - "wasted costs order" (虛耗訟費命令) 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 that –

(i) 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 subparagraph (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 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 personally to pay costs 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.

(5) A legal representative shall not be directed or ordered under this rule to pay any costs or fees, nor shall he be disallowed under this rule any fees, unless he has been given a reasonable opportunity to give reasons why –

- (a) the direction or order should not be made; or
- (b) he should not be disallowed the fees.

(6) When a taxing master makes a direction under paragraph (1), he –

- (a) shall specify the amount to be paid; and
- (b) 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.

(7) The Court or a taxing master may direct that notice must be given to the legal representative's client, in such manner as the Court or the taxing master may direct, of any direction or order made under this rule against his legal representative.

8E. Stages of considering whether to make direction under rule 8D(1) (O. 62, r. 8E)

(1) The taxing master shall consider whether to make a direction under rule 8D(1) in 2 stages –

- (a) in the first stage, the taxing master must be satisfied that –
 - (i) he has before him evidence or other material which, if unanswered, would be likely to lead to a direction under rule 8D(1) being made; and
 - (ii) the direction is justified notwithstanding the likely costs involved; and
- (b) in the second stage (even if the taxing master is satisfied under subparagraph (a)), the taxing master shall consider, after giving the legal representative an opportunity to give reasons why the taxing master should not make the direction, whether it is appropriate to make the direction.

(2) On an application for a direction under rule 8D(1), the taxing master may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if he is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the taxing master should not make the direction. In other cases the taxing master shall adjourn the hearing before proceeding to the second stage.

(3) On an application for a direction under rule 8D(1), 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 directed to pay or which are sought against him."

112. Rule added

Order 62 is amended by adding immediately after rule 35 –

"TRANSITIONAL

36. Transitional provision relating to Part 14 of Amendment Rules 2008 (O. 62, r. 36)

Rules 8, 8A, 8B, 8C, 8D and 8E do not apply in relation to any costs incurred before the commencement of the Amendment Rules 2008, and rule 8 as in force immediately

before the commencement continues to apply in relation to those costs as if Part 14 had not been made."

PART 15

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 16

EXPERT EVIDENCE

Recommendations 102, 103 and 107

114. Rule added

Order 38 is amended by adding –

"4A. Evidence by 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, subject to paragraph (6), make an order under paragraph (1) if it is satisfied that it is in the interests of justice to do so 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 a party to the action disagrees with the appointment of a single joint expert witness to give evidence, the Court shall not make an order under paragraph (1) unless the party has been given a reasonable opportunity to appear before the Court and to show cause why the order should not be made.

(7) 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 immediately after rule 37A –

"37B. Duty to provide expert witness with 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 the Court.

General duty to Court

2. An expert witness has an overriding duty to help 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 17
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 18
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 19
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 20 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 is amended –

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

(b) in paragraph (1) –

(i) by adding before subparagraph (a) –

"(aa) the underlying objectives set out in Order 1A, rule 1;"

(ii) in subparagraph (c), by repealing "and";

(iii) in subparagraph (d), by repealing the full stop and substituting a semicolon;

(iv) 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."

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 21

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" (有權在訟費評定中獲聆聽的一方) 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 motion 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) is made.

(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.
- (3) Where paragraph (1) applies, the Court may –
 - (a) by order 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" (當事人) 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, after the conclusion of taxation proceedings before him, issue a final certificate specifying the amount of taxed costs and the amount of money payable under rule 32B.

(2) A taxing master shall not issue a final certificate unless the period within which an application for review of his decision may be made under rule 33(2) has expired.

(3) A taxing master may set aside a final certificate for good reasons 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 of those costs, 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 of those costs, 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 subparagraph (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" (完結日期) 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
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1A.	Copying of documents, per page of whatever size	\$1".
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(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 of this Schedule 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	70
(b) if affidavit used	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 21 of 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 the Amendment Rules 2008, nothing in Part 21 of the Amendment Rules 2008 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 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 21 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 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 21 of the Amendment Rules 2008.

(4) No costs for work undertaken before the commencement 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 22

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 23
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)(a);
 - (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 24
 MISCELLANEOUS

154. Application

Order 1, rule 2 is amended –

- (a) in paragraph (2), in the Table –
 (i) by repealing –

"3.	Proceedings	Domestic
	in respect of	Violence
	domestic	Ordinance
	violence.	(Cap. 189),
		section 8.";

- (ii) by repealing –

"5. Proceedings	Business
under the	Registration
Business	Ordinance
Registration	(Cap. 310),
Ordinance	section 17.";
(Cap. 310).	
- (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 –

- (a) in the definition of "written law", by repealing "(成文法)" and substituting "(成文法律)";
- (b) 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, in the English text, by repealing "1 or more" and substituting "2 or more".

160. Mixed claims

Order 13, rule 5 is amended, in the English text, 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" 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):".

192. "成文法" substituted by "成文法律"

The following provisions are amended, in the Chinese text, by repealing "成文法" wherever it appears and substituting "成文法律" –

- (a) Order 1, rule 5(3);
- (b) Order 5, rule 1;
- (c) Order 5, rule 4(2)(a);
- (d) the proviso to rule 7(1) of Order 6;
- (e) Order 7, rule 1;
- (f) Order 11, rule 1(2)(b);
- (g) Order 11, rule 9(4);
- (h) Order 15, rule 4(2);
- (i) Order 15, rule 13(1)(c);
- (j) Order 23, rule 3;

- (k) Order 28, rule 1;
- (l) Order 46, rule 2(2);
- (m) Order 49, rule 1(1);
- (n) Order 52, rule 9;
- (o) Order 65, rule 3(1);
- (p) Order 65, rule 6;
- (q) Order 81, rule 1.

193. "認收送達" substituted by "送達認收"

(1) The following provisions are amended, in the Chinese text, by repealing "認收送達" wherever it appears and substituting "送達認收" -

- (a) Order 1, rule 4(3);
- (b) Order 6, rule 2(b);
- (c) Order 6, rule 5(3) and (4);
- (d) Order 10, rule 1(5);
- (e) Order 10, rule 2(2);
- (f) Order 11, rule 1(3);
- (g) Order 11, rule 4(4);
- (h) Order 11, rule 9(6);
- (i) Order 12, rule 1(1), (2), (3), (4) and (5);
- (j) Order 12, rule 3(2) and (3);
- (k) Order 12, rule 5;
- (l) Order 12, rule 6(2);
- (m) Order 12, rule 7;
- (n) Order 12, rule 8(7);
- (o) Order 12, rule 8A(4);
- (p) Order 12, rule 9(1);
- (q) Order 12, rule 10;
- (r) Order 13, rule 6(1);
- (s) Order 13, rule 6A;
- (t) Order 13, rule 7(1)(a);
- (u) Order 13, rule 7A(2)(c);
- (v) Order 13, rule 8;
- (w) Order 15, rule 3(2) and (4);
- (x) Order 15, rule 8(3) and (4);
- (y) Order 15, rule 13A(4);
- (z) Order 16, rule 3(3);
- (aa) Order 16, rule 8(3);
- (ab) Order 16, rule 9(3);
- (ac) Order 16, rule 10(1);
- (ad) Order 18, rule 2(1);
- (ae) Order 21, rule 1;

- (af) Order 28, rule 1A(1), (3) and (4);
- (ag) Order 28, rule 2(2) and (3);
- (ah) Order 28, rule 3(5)(a);
- (ai) Order 28, rule 6;
- (aj) Order 28, rule 7(1);
- (ak) Order 29, rule 2(6);
- (al) Order 29, rule 10(1);
- (am) Order 43, rule 1(1);
- (an) Order 44, rule 2(4), (5) and (6);
- (ao) Order 47, rule 1(2);
- (ap) Order 62, rule 3(11);
- (aq) Order 65, rule 9;
- (ar) Order 67, rule 1(3);
- (as) Order 67, rule 5(3)(a);
- (at) Order 67, rule 6(1)(a);
- (au) Order 77, rule 3(2) and (3);
- (av) Order 80, rule 2(1);
- (aw) Order 80, rule 3(6)(b);
- (ax) Order 80, rule 6(1), (2) and (5)(d);
- (ay) Order 81, rule 4(1), (2), (3), (4) and (5);
- (az) Order 81, rule 5(2)(a) and (b) and (3)(a);
- (ba) Order 83A, rule 4(3);
- (bb) Order 84A, rule 3(3);
- (bc) Order 86, rule 1(2);
- (bd) Order 88, rule 4(1);
- (be) Order 89, rule 2(5);
- (bf) Order 113, rule 2;
- (bg) Appendix A, Form No. 8;
- (bh) Appendix A, Form No. 14;
- (bi) Appendix A, Form No. 15;
- (bj) Appendix A, Form No. 17;
- (bk) Appendix A, Form No. 20;
- (bl) Appendix A, Form No. 52.

(2) The following provisions are amended, in the Chinese text, in the heading, by repealing "認收送達" and substituting "送達認收" -

- (a) Order 12, rule 1;
- (b) Order 12, rule 5;
- (c) Order 12, rule 6;
- (d) Order 12, rule 9;
- (e) Order 12, rule 10;
- (f) Order 16, rule 3;
- (g) Order 21, rule 1;

- (h) Order 28, rule 6;
- (i) Order 80, rule 6;
- (j) Order 81, rule 4;
- (k) Order 88, rule 4.

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 9, 11 to 18 and 20 to 22

2. The amendments contained in Parts 2 to 9, 11 to 18 and 20 to 22 are similar to those contained in the relevant Parts of the Rules of the High Court (Amendment) Rules 2008 (L.N. of 2008). Part 5 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 10

3. Part 10 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 19

4. Part 19 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 23

5. Part 23 replaces Order 34 of the RDC by a new Order 34. The new Order is similar to Order 34 of the RHC.

Part 24

6. Part 24 makes miscellaneous amendments to the RDC for consistency with the relevant provisions of the RHC.

LANDS TRIBUNAL (AMENDMENT) RULES 2008

(Made by the Chief Justice under section 10(3)
of the Lands Tribunal Ordinance (Cap. 17)
after consultation with the President
of the Lands Tribunal)

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).

2. Listing for hearing

Rule 14 of the Lands Tribunal Rules (Cap. 17 sub. leg. A) is amended by adding –

"(3) Subrule (2) is in addition to and does not derogate from any power of the Tribunal conferred by any enactment or rule of law."

3. Rules added

The following are added –

**"30A. Appeals from registrar to
presiding officer**

(1) An appeal to a presiding officer from a judgment, order or decision of the registrar may be made, irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing.

(2) The appeal must be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in the form specified by the Tribunal, requiring the party on whom the notice is served to attend before the presiding officer on a day specified in the notice or on such other day as may be directed.

(3) Unless the Tribunal otherwise orders, the notice –

- (a) must be filed with the registrar within 14 days after the judgment, order or decision appealed against was given or made; and
- (b) must be served within 5 days after filing.

(4) An appeal to which this rule applies must not be heard sooner than 2 clear days after the service under subrule (3)(b).

(5) Except so far as the Tribunal may otherwise direct, an appeal under this rule does not operate as a stay of the proceedings in which the appeal is brought.

(6) 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.

(7) In subrule (1), "registrar" (司法常務官) includes a deputy registrar or assistant registrar of the Tribunal.

30B. Application for leave to appeal

(1) An application for leave to appeal against a judgment, order or decision of the Tribunal must be made to the Tribunal first before the application may be made to the Court of Appeal.

(2) The application to the Tribunal must be made within -

(a) in the case of an appeal against a judgment, order or decision other than an interlocutory judgment, order or decision, 28 days from the date of the judgment, order or decision;

(b) in the case of an appeal against an interlocutory judgment, order or decision, 14 days from the date of the interlocutory judgment, order or decision.

(3) So far as is practicable, the application must be made to the member or members of the Tribunal against whose judgment, order or decision leave to appeal is sought.

(4) Where the Tribunal refuses the application, a further application for leave to appeal may be made to the Court of Appeal within 14 days from the date of refusal.

(5) An application under this rule must be made inter partes if the proceedings to which the judgment, order or decision relates are inter partes.

30C. Service of notice of appeal

(1) Subject to subrule (2), where leave to appeal is granted by the Tribunal or the Court of Appeal, Order 60A of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the appeal.

(2) Notwithstanding Order 60A, rule 3 of the Rules of the High Court (Cap. 4 sub. leg. A), a notice of appeal within the meaning of that Order must be served on –

(a) the Tribunal; and

(b) all other parties to the proceedings before the Tribunal,

within 7 days from the date on which leave to appeal is granted.

30D. Extension of time for appeal or application for leave to appeal

The Tribunal 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.

30E. Non-interlocutory judgments and orders

(1) For the purposes of rule 30B(2), 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 12(3) of the Ordinance disallowing, or requiring a legal representative to meet, the whole or any part of any wasted costs;
 - (c) an order prohibiting a debtor from leaving Hong Kong;
 - (d) an order for the imprisonment of a judgment debtor; and
 - (e) an order of committal for contempt of court.
- (2) Without affecting the generality of subrule (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party –
- (a) an order striking out –
 - (i) an application or other proceedings;
 - (ii) a notice of application or a notice of opposition; or
 - (iii) any part of the application, proceedings or notice;
 - (b) a judgment or order determining any question of law or construction of any document without a full trial of the action;
 - (c) a judgment or order dismissing any cause or matter upon determination of a question of law or construction of any document without a full trial of the action;
 - (d) a judgment or order on any preliminary issue;
 - (e) an order dismissing or striking out an application or other proceedings for want of prosecution;
 - (f) a judgment obtained pursuant to an "unless" order;
 - (g) an order refusing to set aside a judgment in default;
 - (h) an order refusing to allow –
 - (i) an amendment of a notice of application;
 - (ii) a notice of opposition to introduce a new claim or defence; or
 - (iii) any other new issue; and
 - (i) a judgment or order on admissions of fact or of part of a case.
- (3) A direction as to whether a judgment or order is one that is referred to in subrule (1)(a) may be sought from the member or members of the Tribunal who made or will make the judgment or order.
- (4) A reference to an order specified in subrule (1)(b), (c), (d) and (e) includes an order refusing, varying or discharging the order."

4. "Registrar" substituted by "registrar"

The following provisions are amended, in the English text, by repealing "Registrar" wherever it appears and substituting "registrar" –

- (a) rule 4(1);
- (b) rule 5(2);
- (c) rule 6;
- (d) rule 7A;
- (e) rule 10;

- (f) rule 13(1) and (4);
- (g) rule 14(1)(a), (b), (c) and (d) and (1A)(a) and (b);
- (h) rule 15(2)(a), (3), (4A) and (6);
- (i) rule 16;
- (j) rule 20(1), (3), (4) and (5);
- (k) rule 22;
- (l) rule 24(4);
- (m) rule 34(1);
- (n) rule 35;
- (o) rule 36;
- (p) rule 38(1);
- (q) rule 39;
- (r) rule 40(1)(a) and (3);
- (s) rule 41(2);
- (t) rule 44(1);
- (u) rule 45;
- (v) rule 46(1)(a) and (3);
- (w) rule 47(2);
- (x) rule 48(1);
- (y) rule 49;
- (z) rule 50;
- (aa) rule 51;
- (ab) rule 53(1);
- (ac) rule 54;
- (ad) rule 56(1);
- (ae) rule 57;
- (af) rule 58(1)(a) and (b), (2), (3) and (4);
- (ag) rule 59(1) and (3);
- (ah) rule 60;
- (ai) rule 61;
- (aj) rule 62(1);
- (ak) rule 63;
- (al) rule 65(1);
- (am) rule 66(1);
- (an) rule 68(1), (1A) and (1B);
- (ao) rule 69(1)(a);
- (ap) rule 72(1);
- (aq) rule 73;
- (ar) rule 74(1), (2), (3), (3A) and (7);
- (as) rule 75;
- (at) rule 77(a), (b) and (c);
- (au) rule 78;

- (av) rule 78H;
- (aw) rule 78I;
- (ax) rule 78J(1).

5. "司法常務主任" substituted by "司法常務官"

The following provisions are amended, in the Chinese text, by repealing "司法常務主任" wherever it appears and substituting "司法常務官" –

- (a) rule 78B(1), (3) and (5);
- (b) rule 78C;
- (c) rule 78D;
- (d) rule 78E(1) and (3);
- (e) rule 78F.

Chief Justice

2008

Explanatory Note

These Rules amend the Lands Tribunal Rules (Cap. 17 sub. leg. A) ("Principal Rules") to –

- (a) make it clear that the powers of the Lands Tribunal under rule 14(2) of the Principal Rules are in addition to and do not derogate from any power of the Lands Tribunal conferred by any enactment or rule of law;
- (b) prescribe the procedure for an appeal against a judgment, order or decision of the Registrar of the Lands Tribunal or of a deputy registrar or assistant registrar of the Lands Tribunal;
- (c) prescribe the procedure for an application for leave to appeal against a judgment, order or decision of the Lands Tribunal, and for any subsequent appeal to the Court of Appeal;
- (d) replace the references to "Registrar" with "registrar"; and
- (e) replace the references to "司法常務主任" with "司法常務官".

HIGH COURT FEES (AMENDMENT) RULES 2008

(Made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4))

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).

2. Rule added

The High Court Fees Rules (Cap. 4 sub. leg. D) are amended by adding –

"5. Transitional provision relating to the High Court Fees (Amendment) Rules 2008

Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of rule 3(a) and (b) ("the amending rule") of the High Court Fees (Amendment) Rules 2008 (L.N. of 2008) –

- (a) nothing in the amending rule applies in relation to the taxation; and
- (b) items 19 and 19a in the First Schedule as in force immediately before the commencement of the amending rule continue to apply in relation to the taxation as if they had not been amended by the amending rule."

3. First Schedule amended

The First Schedule is amended –

- (a) in item 1, by repealing "\$1,045.00" and substituting –
"\$1,045.00
(but no fee is payable on sealing of an originating document by which proceedings are instituted pursuant to leave granted under section 27A of the Ordinance)";
- (b) in item 19, by repealing everything from "On" to "allowed" and substituting –
"On the filing of a notice of commencement of taxation under Order 62, rule 21(1) of the Rules of the High Court (Cap. 4 sub. leg. A) or on any assessment or determination of costs pursuant to any court order or Ordinance (except assessment under Order 62, rule 9 or 9A of the Rules of the High Court (Cap. 4 sub. leg. A)), for every \$100 or fraction of \$100 of the amount claimed";
- (c) in item 19a, by repealing everything from "Processing" to "taxation" and substituting –

"Withdrawal of a bill of costs within 7 days after the application for setting down the taxation under Order 62, rule 21A(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is made";

(d) in item 23, by adding "or of an order made under section 21M of the Ordinance" after "a cause";

(e) by adding –

"25. Filing a notice of application for leave to institute or continue proceedings under Order 32A, rule 2 of the Rules of the High Court (Cap. 4 sub. leg. A)

.....

\$1,045.00".

Made this day of 2008.

Explanatory Note

These Rules amend the High Court Fees Rules (Cap. 4 sub. leg. D)("the principal Rules").

2. Rule 2 adds a new rule to the principal Rules to provide for the transitional arrangement relating to the amendments to items 19 and 19a in the First Schedule to the principal Rules, effected by rule 3 of these Rules.
3. Rule 3(a) amends item 1 in the First Schedule to the principal Rules to provide that the fee prescribed in that item is not payable on sealing of an originating summons by which proceedings are instituted pursuant to leave to institute proceedings by a person who is subject to a vexatious litigant order.
4. Rule 3(b) amends item 19 in the First Schedule to the principal Rules to provide that the fee prescribed in that item is payable on the filing of a notice of commencement of taxation or on any assessment or determination of costs pursuant to any court order or Ordinance. The prescribed fee is however not payable on the summary assessment of costs under Order 62, rule 9 or 9A of the Rules of the High Court (Cap. 4 sub. leg. A). It should also be noted that amount of the fee is determined on the basis of the amount claimed instead of on the basis of the amount allowed.
5. Rule 3(c) amends item 19a in the First Schedule to the principal Rules to provide that the fee prescribed in that item is payable where a bill of costs is withdrawn within 7 days after the application for setting down the taxation is made.
6. Rule 3(d) amends item 23 in the First Schedule to the principal Rules to provide that the fee prescribed in that item is also payable on sealing of an order made under section 21M (Interim relief in the absence of substantive proceedings) of the High Court Ordinance (Cap. 4).
7. Rule 3(e) adds a new item 25 to the First Schedule to the principal Rules to prescribe the fee payable for applying for leave to institute or continue proceedings by a person who is subject to a vexatious litigant order.

**DISTRICT COURT CIVIL PROCEDURE (FEES)
(AMENDMENT) RULES 2008**

(Made by the District Court Rules Committee
under section 72 of the District Court
Ordinance (Cap. 336))

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).

2. Rule added

The District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg. C) are amended by adding –

**"8. Transitional provision relating to
the District Court Civil Procedure
(Fees)(Amendment) Rules 2008**

Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of rule 3(a) and (b) ("the amending rule") of the District Court Civil Procedure (Fees)(Amendment) Rules 2008 (L.N. of 2008) –

- (a) nothing in the amending rule applies in relation to the taxation; and
- (b) items 20 and 20a in the Schedule as in force immediately before the commencement of the amending rule continue to apply in relation to the taxation as if they had not been amended by the amending rule."

3. Schedule amended

The Schedule is amended –

- (a) in item 20, by repealing everything from "On" to "allowed" and substituting –
"On the filing of a notice of commencement of taxation under Order 62, rule 21(1) of the Rules of the District Court (Cap. 336 sub. leg. H) or on any assessment or determination of costs pursuant to any court order or Ordinance (except assessment under Order 62, rule 9 or 9A of the Rules of the District Court (Cap. 336 sub. leg. H)), for every \$100 or fraction of \$100 of the amount claimed";
- (b) in item 20a, by repealing everything from "Processing" to "taxation" and substituting –
"Withdrawal of a bill of costs within 7 days after the application for setting down the taxation under Order 62, rule 21A(1) of the Rules of the District Court (Cap. 336 sub. leg. H) is made".

Made this day of 2008.

Explanatory Note

These Rules amend the District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg. C)("the principal Rules").

2. Rule 2 adds a new rule to the principal Rules to provide for the transitional arrangement relating to the amendments to items 20 and 20a in the Schedule to the principal Rules, effected by rule 3 of these Rules.

3. Rule 3(a) amends item 20 in the Schedule to the principal Rules to provide that the fee prescribed in that item is payable on the filing of a notice of commencement of taxation or on any assessment or determination of costs pursuant to any court order or Ordinance. The prescribed fee is however not payable on the summary assessment of costs under Order 62, rule 9 or 9A of the Rules of the District Court (Cap. 336 sub. leg. H). It should also be noted that amount of the fee is determined on the basis of the amount claimed instead of on the basis of the amount allowed.

4. Rule 3(b) amends item 20a in the Schedule to the principal Rules to provide that the fee prescribed in that item is payable where a bill of costs is withdrawn within 7 days after the application for setting down the taxation is made.

HIGH COURT SUITORS' FUNDS (AMENDMENT) RULES 2008

(Made by the Chief Judge under section 57
of the High Court Ordinance (Cap. 4))

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).

2. Power of Registrar to invest funds

The High Court Suitors' Funds Rules (Cap. 4 sub. leg. B) are amended, in rule 16 –

(a) in paragraph (3), by repealing "paragraph (3A)" and substituting "paragraphs (3A) and (3B)";

(b) by adding –

"(3B) Notwithstanding paragraph (3A), where money paid in court for any purpose referred to in paragraph (3)(a) is a sanctioned payment within the meaning of Order 22 of the Rules of the High Court (Cap. 4 sub. leg. A), interest shall be credited on the ledger credit for the relevant cause or

matter, beginning 28 days after the money is paid in."

Chief Judge

Explanatory Note

Under rule 16(3A) of the High Court Suitors' Funds Rules (Cap. 4 sub. leg. B), if money is paid in court as security for costs, or by way of satisfaction or amends, or in compliance with an order giving leave to defend upon the payment, interest is to be credited on the ledger credit in respect of the payment as from the day beginning 14 days after the money is paid in. These Rules amend rule 16 of the High Court Suitors' Funds Rules (Cap. 4 sub. leg. B) to provide that where the money so paid in court is an offer made by way of a payment into court in accordance with the new Order 22 of the Rules of the High Court (Cap. 4 sub. leg. A), interest is to be credited on the ledger credit in respect of the payment as from the day beginning 28 days after the money is paid in.

DISTRICT COURT SUITORS' FUNDS (AMENDMENT) RULES 2008

(Made by the Chief Judge under section 73 of the
District Court Ordinance (Cap. 336))

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).

2. Power of Registrar to invest funds

The District Court Suitors' Funds Rules (Cap. 336 sub. leg. E) are amended, in rule 16 –

(a) in paragraph (3), by adding "and subject to paragraphs (3A) and (3B)" after "directs otherwise";

(b) by adding –

"(3A) Where money is paid in court for any purpose referred to in paragraph (3)(a), interest shall be credited on the ledger credit for the relevant cause or matter, beginning 14 days after the money is paid in.

(3B) Notwithstanding paragraph (3A), where money paid in court for any purpose referred to in paragraph (3)(a) is a sanctioned payment within the meaning of Order 22 of the Rules of the District Court (Cap. 336 sub. leg. H), interest shall be credited on the ledger credit for the relevant cause or matter, beginning 28 days after the money is paid in.";

(c) in paragraph (4), by repealing "and (3)" and substituting ", (3), (3A) and (3B)".

Chief Judge

Explanatory Note

Under rule 16(3)(a) of the District Court Suitors' Funds Rules (Cap. 336 sub. leg. E), no interest is to be credited to any money lodged in court on any ledger credit if the money is paid in court as security for costs, or by way of satisfaction or amends, or in compliance with an order giving leave to defend upon the payment, unless an order of the District Court directs otherwise. These Rules amend rule 16 of the District Court Suitors' Funds Rules (Cap. 336 sub. leg. E) to provide that interest is to be credited on the ledger credit as from the day beginning 14 days after the money is paid in. However, where the money so paid in court is an offer made by way of a payment into court in accordance with the new Order 22 of the Rules of the District Court (Cap. 336 sub. leg. H), interest is to be credited on the ledger credit in respect of the payment as from the day beginning 28 days after the money is paid in.

Civil Justice Reform (“CJR”)

**Rules of the High Court (Amendment) Rules 2008 -
Summary of Recommendations in the Final Report Implemented
and Orders in the Rules of the High Court Affected**

The Rules of the High Court (Amendment) Rules 2008 at **Annex A** are divided into 26 Parts. The relevant recommendations in the Final Report (where applicable) implemented by each Part, the Orders in the Rules of the High Court (“RHC”) affected (including those affected by consequential and related amendments), and the relevant Amendment Rules are tabulated below.

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 1: Preliminary			
-	Not applicable.	-	Rule 1
Part 2: Objectives and Case Management Powers Recommendations 2 - 4, 81 and 82			
1.	<p>Recommendation 2 A rule should be introduced identifying underlying (rather than overriding) objectives of the system of civil justice to assist in the interpretation and application of rules of court, practice directions and procedural jurisprudence and to serve as a statement of the legitimate aims of judicial case management.</p>	Order 1 New Order 1A New Order 1B	Rules 2-3
2.	<p>Recommendation 3 The underlying objectives referred to in Recommendation 2 should be stated as (i) increasing cost-effectiveness in the court’s procedures; (ii) the expeditious disposal of cases; (iii) promoting a sense of reasonable proportion and procedural economy in respect of how cases are litigated; (iv) promoting greater equality between parties; (v) facilitating settlement; and (vi) distributing the court’s resources fairly, always recognizing that the primary aim of judicial case management should be to secure the just resolution of the parties’ dispute in accordance with their substantive rights.</p>		

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
3.	<p>Recommendation 4 Rules should be introduced (along the lines of CPR 1.4) listing available case management measures and conferring (along the lines of CPR 3.1) specific case management powers on the court, including power to act of its own motion, exercisable generally and (unless excluded) in addition to powers provided by specific rules, in the light of the underlying objectives referred to in Recommendation 2.</p>		
4.	<p>Recommendation 81 The parties should be encouraged by rule and practice direction, backed by costs sanctions, to adopt a reasonable and cooperative attitude in relation to all procedural issues.</p>		
5.	<p>Recommendation 82 Where the court considers one or more procedural directions to be necessary or desirable and unlikely to be controversial between the parties, it ought to have power, of its own motion and without hearing the parties, to give the relevant directions by way of an order <i>nisi</i>, with liberty to the parties to apply within a stated period for that order not to be made absolute.</p>		
<p>Part 3: Non-Compliance with Rules and Court Orders Recommendation 84</p>			
6.	<p>Recommendation 84 While it would be open to a party who has failed to comply with a self-executing order to seek relief from the prescribed consequences of his non-compliance, such relief should not be automatic and, if granted, should generally be granted on suitable terms as to costs and otherwise.</p>	<p>Order 2</p>	<p>Rule 4</p>

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 4: Costs-only Proceedings Recommendation 9			
7.	<p>Recommendation 9 A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.</p>	<p>Orders 10, 11, 12 and 62 Appendix A – Forms No. 10, 15 New Form No. 15A</p>	Rules 5-11
Part 5: Commencement of Proceedings Recommendations 11 – 16			
8.	<p>Recommendation 11 In so far as appropriate, other specialised types of proceedings governed by their own procedural rules and requirements should be added to the excluded proceedings and special provision should be made in respect of election petitions.</p>	<p>Orders 1, 2, 5, 7, 8, 9, 14A, 16, 17, 19, 20, 21, 27, 28, 29, 30, 35, 46, 50, 52, 53, 54, 67, 73, 75, 76, 77, 80, 83A, 88, 89, 90, 100, 102, 103, 115, 115A, 117, 118, 119 and 121</p>	Rules 12-85
9.	<p>Recommendation 12 The rules of the RHC making it mandatory to commence certain proceedings by writ or, as the case may be, by originating summons, should be abolished.</p>	<p>Appendix A – Forms No. 11, 81, 85, 86, 87, 107 and 109</p>	
10.	<p>Recommendation 13 In all cases other than the excluded proceedings, the parties should be permitted to commence proceedings either by writ or by originating summons, with the RHC indicating that a writ is appropriate where a substantial dispute of fact is likely and that an originating summons is appropriate where the main issue is one of law or construction, without involving any substantial dispute of fact.</p>	<p>New Forms No. 86A and 87</p>	
11.	<p>Recommendation 14 Originating motions and petitions should be abolished (save where they are prescribed for commencing any of the excluded proceedings).</p>		

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
12.	<p>Recommendation 15 Unless the court otherwise directs (in accordance with applicable laws), all hearings of originating summonses should take place in open court.</p>		
13.	<p>Recommendation 16 It should continue to be the case that an inappropriate mode of commencement does not invalidate steps taken in the proceedings so commenced and that in such cases, the court should give suitable directions for continuation of the proceedings in an appropriate manner.</p>		
<p>Part 6: Dispute as to Jurisdiction Recommendation 17</p>			
14.	<p>Recommendation 17 Order 12 r 8 should be amended to the extent necessary to bring into its scheme for disputing the court’s jurisdiction, applications for the court to decline to exercise jurisdiction over the plaintiff’s claim and to grant a discretionary stay of the action.</p>	<p>Orders 12 and 18 Appendix A – Forms No. 14 and 15</p>	<p>Rules 86-89</p>
<p>Part 7: Default Judgments and Admissions Recommendation 18</p>			
15.	<p>Recommendation 18 Provisions along the lines of Part 14 of the CPR should be adopted in relation to claims for liquidated and unliquidated sums of money with a view to enabling defendants to propose payment terms (as to time and instalments) in submitting to entry of judgment by default.</p>	<p>Order 6 and New Order 13A Appendix A – Forms No. 1, 14, 15 and 17 New Forms No. 16, 16A, 16B, 16C, 16D and 16E</p>	<p>Rules 90-92</p>

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 8: Pleadings Division 1 - Recommendations 22 - 24			
16.	Recommendation 22 Proposal 10 (requiring defences to be pleaded substantively) should be adopted.	Order 18	Rules 93-95
17.	Recommendation 23 An exception to the general rule deeming the defendant to have admitted any untraversed allegation of fact in the statement of claim should be created along the lines of CPR 16.5(3) so that a defendant who has adequately set out the nature of his case in relation to which the untraversed allegation is relevant, is deemed not to admit and to put the plaintiff to proof of such allegation.		
18.	Recommendation 24 Proposal 10 should not be extended to pleadings subsequent to the defence.		
Part 8: Pleadings Division 2 - Recommendations 26 – 32 and 35			
19.	Recommendation 26 Proposal 11 (requiring pleadings to be verified by a statement of truth) should be adopted as modified and supplemented by Recommendations 27 to 32.	Orders 18, 20, 38, and New Order 41A Appendix A – Forms No. 1 and 14	Rules 96-106
20.	Recommendation 27 The rules should indicate the level or class of officer or employee who may sign a statement of truth verifying pleadings on behalf of a party that is a corporation, a partnership or an analogous organization or association.		
21.	Recommendation 28 The rules should set out (along the lines of 22PD3.7 and 22PD3.8) the effect in law of a legal representative signing a statement of truth to verify a pleading on behalf of the party concerned.		

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
22.	<p>Recommendation 29 Insurers (or lead insurers) and the Hong Kong Motor Insurers Bureau should be authorized to sign a statement of truth to verify a pleading on behalf of the party or parties concerned (along the lines of 22PD3.6A and 22PD3.6B).</p>		
23.	<p>Recommendation 30 The period allowed for defendants to file their defence should be increased to allow adequate time to plead substantively to a plaintiff's claim and to verify the defence.</p>		
24.	<p>Recommendation 31 The possibility of proceedings for contempt being brought against a person who verifies a pleading by a statement of truth without believing that the factual allegations contained in the pleading are true should be maintained, but the rule should make it clear that such proceedings (to be brought either by the Secretary for Justice with the leave of the court) are subject to the general law of contempt and to be contemplated only in cases where sanctions for contempt may be proportionate and appropriate.</p>		
25.	<p>Recommendation 32 A rule should be adopted making it clear that a party who has reasonable grounds for so doing, may advance alternative and mutually inconsistent allegations in his pleading and verify the same with a statement of truth.</p>		
26.	<p>Recommendation 35 Voluntary particulars should be expressly required to be verified by a statement of truth.</p>		
<p>Part 8: Pleadings Division 3 - Recommendations 33 and 34</p>			
27.	<p>Recommendation 33 The court should have power to require, of its own motion and in such manner as it sees fit, any party or parties to particularise or amend their pleadings where clarification is necessary for disposing fairly of the cause or matter or for saving costs.</p>	Orders 18 and 20	Rules 107-109

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
28.	<p>Recommendation 34 The existing rule should be amended to make it clear that a court will only order delivery of further and better particulars where such order is necessary for disposing fairly of the matter or for saving costs.</p>		
<p>Part 9: Sanctioned Offers and Sanctioned Payments Division 1 - Recommendations 38 – 39, 41 – 43</p>			
29.	<p>Recommendation 38 Proposal 15 (for introducing sanctioned offers and payments along the lines of CPR 36) should be adopted as modified and supplemented by Recommendations 39 to 43.</p>	<p>Orders 1, 22, 29, 34, 59, 62, 75, 80, 82 and 92</p> <p>New Orders 22 and 22A</p>	Rules 110-123
30.	<p>Recommendation 39 The defendant’s position under Order 22 should in substance be preserved, but with the addition of the relevant ancillary provisions found in CPR 36.</p>	<p>Appendix A – Forms No. 23, 24 and 51</p> <p>New Forms No. 23, 24, 25 and 25A</p>	
31.	<p>Recommendation 41 A sanctioned offer or payment should be required to remain open for acceptance for 28 days after it is made (such 28 day period falling before commencement of the trial), unless leave is granted by the court for its earlier withdrawal. Thereafter, the offer could be withdrawn and if not, would continue to be capable of acceptance.</p>		
32.	<p>Recommendation 42 The rules should make it clear that the court will continue to exercise its discretion as to costs in relation to any offers of settlement which do not meet the requirements to qualify as sanctioned offers.</p>		
33.	<p>Recommendation 43 The rules should make it clear that a plaintiff may qualify for an award of additional interest along the lines of Part 36 where he makes a sanctioned offer which satisfies the prescribed requirements, but not otherwise.</p>		

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 9: Sanctioned Offers and Sanctioned Payments Division 2 – Recommendation 132			
34.	Recommendation 132 The procedure for making sanctioned offers and payments should be extended to pending costs taxations, save in relation to legally-aided parties.	New Order 62A Appendix A – New Forms No. 93, 93A and 93B	Rules 124-125
Part 10: Interim Remedies and Mareva Injunctions in Aid of Proceedings outside Hong Kong Recommendation 49			
35.	Recommendation 49 The mode of commencing an application for a Mareva injunction in aid of foreign proceedings or arbitrations, including possible initial <i>ex parte</i> applications, should be prescribed and provision made for the procedure thereafter to be followed.	Orders 11, 29, 30 and 73	Rules 126-130
Part 11: Case management Timetabling and Milestones Division 1 - Recommendations 52 – 60 and 62			
36.	Recommendation 52 Procedures should be introduced for establishing a court-determined timetable taking into account the reasonable wishes of the parties and the needs of the particular case.	Orders 14, 18, 24, 25, 28, 29, 33, 34, 37, 38, 72, 75, 78, 86, 102, 103, 115, 115A and 117	Rules 131-173
37.	Recommendation 53 As the first part of the summons for directions procedure, the parties should be required (i) to complete a questionnaire giving specified information and estimates concerning the case with a view to facilitating case management by the court; and (ii) to propose directions and a timetable to be ordered by the court, preferably put forward by agreement amongst the parties, but with the court affording unrepresented litigants leeway in their observance of these requirements.		

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
38.	<p>Recommendation 54 Unless it appears to the court that a hearing of the summons for directions is in any event desirable, the court ought to make orders <i>nisi</i> giving such directions and fixing such timetable for the proceedings as it thinks fit in the light of the questionnaire and without a hearing. However, any party who objects to one or more of the directions given, should be entitled to have the summons for directions called on for a hearing.</p>		
39.	<p>Recommendation 55 Where, at the summons for directions stage, the court’s view is that a case management conference is desirable, the court should fix a timetable up to the date of the case management conference, that date constituting the first milestone, with further milestones to be fixed when the case management conference is held.</p>		
40.	<p>Recommendation 56 A date for a pre-trial review and the trial date or the trial period should be fixed as milestone dates either at the summons for directions or at any case management conference held.</p>		
41.	<p>Recommendation 57 Where all the parties agree to a variation of time-limits for non-milestone events in the timetable, they may effect such variations by recording the agreement in counter-signed correspondence to be filed as a matter of record with the court, provided that the agreed variations do not involve or necessitate changes to any milestone date.</p>		
42.	<p>Recommendation 58 Where a party cannot secure the agreement of all the other parties for a time extension relating to a non-milestone event, a court should have power to grant such extension only if sufficient grounds are shown and provided that any extension granted does not involve or necessitate changing the trial date or trial period. It should be made clear in a practice direction that where an extension is granted, it is likely to involve an immediate “unless order” specifying a suitable sanction.</p>		

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
43.	<p>Recommendation 59 A court should have power, on the application of the parties or of its own motion, to give further directions and to vary any aspect of the timetable, including its milestone dates, but it should be made clear in a practice direction that a court would only contemplate changing a milestone date in the most exceptional circumstances.</p>		
44.	<p>Recommendation 60 Where the parties fail to obtain a timetable, the court should not compel them to continue with the proceedings. However, where a pre-trial milestone date has been set, the court should, after giving prior warning, strike out the action provisionally if no one appears at that milestone hearing. A plaintiff should have 3 months to apply to reinstate the action for good reason, failing which the action should stand dismissed and the defendant should automatically be entitled to his costs. Thereafter, the defendant should have a further three months to reinstate any counterclaim, which would also stand dismissed with no order as to costs in default of such application.</p>		
45.	<p>Recommendation 62 The recommendations made in this Final Report regarding timetables and milestones should not apply to cases in the specialist lists save to the extent that the courts in charge of such lists should choose to adopt them in a particular case or by issuing appropriate practice directions and subject to what has previously been recommended regarding the retention of a Running List.</p>		
<p>Part 11: Case management Timetabling and Milestones Division 2 - Miscellaneous</p>			
-	Not applicable	Order 25	Rules 174-176

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 12: Vexatious Litigants Recommendation 69			
46.	Recommendation 69 All applications to have a person declared a vexatious litigant should be made directly to the single judge.	Orders 18, 32, New Order 32A Appendix A – New Form No. 27A	Rules 177-180
Part 13: Discovery Division 1 - Recommendations 76 and 79			
47.	Recommendation 76 Such jurisdiction should be exercisable where it is shown by the applicant that he and the respondent are both likely to be parties to the anticipated proceedings and that disclosure before the proceedings have been started is necessary to dispose fairly of the anticipated proceedings or to save costs.	Order 24	Rules 181-182
48.	Recommendation 79 The requirements to be met and procedure to be followed when seeking orders referred to in the Recommendation 78 should be as laid down by O 24 r 7A in respect of section 42(1) orders and by O 24 r 13, with any necessary or desirable modifications.		
Part 13: Discovery Division 2 - Recommendation 80			
49.	Recommendation 80 Proposal 29 (for the case management of discovery by the courts) should be adopted, but with <i>Peruvian Guano</i> principles as the primary measure of discovery, taken as the starting-point for such case management.	Order 24	Rule 183

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 14: Interlocutory Applications Division 1 - Recommendations 83, 85 and 86			
50.	<p>Recommendation 83</p> <p>When disposing of interlocutory applications after the summons for directions, the court should normally make orders which specify the automatic consequences of non-compliance appropriate and proportionate to the non-compliance in question. Orders specifying such consequences may, if appropriate, also be made where the interlocutory application is heard before the summons for directions. However, the directions given on the summons for directions itself should generally not specify any such consequences.</p>	Order 32	Rule 184
51.	<p>Recommendation 85</p> <p>All interlocutory applications (other than time summonses and applications for relief against the implementation of sanctions imposed by self-executing orders previously made) should be placed before the master who may either to determine the application on the papers and without a hearing or to fix the summons for hearing either directly before a judge in chambers or before a master.</p>		
52.	<p>Recommendation 86</p> <p>Rules and practice directions should be issued, in respect of the setting of the timetable and the filing of evidence, skeleton arguments and costs statements to enable the master to exercise his discretion as aforesaid.</p>		
Part 14: Interlocutory Applications Division 2 – Jurisdiction of Registrar and Master			
-	Not applicable	Order 32	Rule 185

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 15: Interlocutory Applications and Summary Assessment of Costs (Recommendations 88, 89 and 92)			
53.	Recommendation 88 The court should, whenever appropriate (whether as a response to an unwarranted application or unwarranted resistance to an application, with a view to saving costs; or otherwise), make a summary assessment of costs when disposing of interlocutory applications.	Order 62	Rules 186-188
54.	Recommendation 89 Rules and practice directions along the lines indicated in this section of the Final Report should be adopted to regulate the making and implementation of orders for the summary assessments of costs.		
55.	Recommendation 92 Judges and masters should be empowered to make provisional summary assessments of costs, whereby the assessed sum must promptly be paid but allowing either party, at the end of the main proceedings, to insist on a taxation of the relevant costs with a view to adjusting the quantum of the payment made, but with the party who insists on such a taxation being at risk as to a special order for the costs of the taxation and other possible sanctions in the event that the taxation does not result in a proportionate benefit to him.		
Part 16: Wasted Costs Recommendations 94 - 97			
56.	Recommendation 94 Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the exercise of the court's discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.	Order 62	Rules 189-191

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
57.	<p>Recommendation 95 Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.</p>		
58.	<p>Recommendation 96 Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side’s lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.</p>		
59.	<p>Recommendation 97 Barristers should be made subject to liability for wasted costs under O 62 r 8.</p>		
<p>Part 17: Witness Statements and Evidence Recommendation 100</p>			
60.	<p>Recommendation 100 Proposal 37 (for introducing greater flexibility in permitting a witness to amplify or supplement his witness statement) should be adopted, replacing O 38 r 2A(7)(b) by a rule along the lines of CPR 32.5(3) and (4).</p>	Order 38	Rule 192
<p>Part 18: Expert Evidence Recommendations 102, 103 and 107</p>			
61.	<p>Recommendation 102 A rule along the lines of CPR 35.3 declaring that expert witnesses owe a duty to the court which overrides any obligation to those instructing or paying the expert should be adopted.</p>	Order 38 New Appendix D	Rules 193-199

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
62.	<p>Recommendation 103</p> <p>A rule along the lines of CPR 35.10(2) combined with Part 36 of the NSW rules should be adopted, making it a requirement for the reception of an expert report or an expert’s oral testimony that (a) the expert declares in writing (i) that he has read the court-approved Code of Conduct for Experts and agrees to be bound by it, (ii) that he understands his duty to the court, and (iii) that he has complied and will continue to comply with that duty; and (b) that his expert report be verified by a statement of truth.</p>		
63.	<p>Recommendation 107</p> <p>The court should be given power to order the parties to appoint a single joint expert upon application by at least one of the parties, subject to the court being satisfied, having taken into account certain specified matters, that the other party’s refusal to agree to a SJE is unreasonable in the circumstances.</p>		
<p>Part 19: Case Management Trials Recommendation 108</p>			
64.	<p>Recommendation 108</p> <p>A rule along the lines of O 34 r 5A of the Western Australian Rules of the Supreme Court should be adopted, setting out the court’s powers of case management in relation to trials, together with a practice direction providing that such powers should primarily be exercised at the pre-trial review.</p>	Order 35	Rule 200
<p>Part 20: Leave to Appeal Division 1 - Recommendation 109</p>			
65.	<p>Recommendation 109</p> <p>An appeal should lie as of right from the master to the judge (whether from a decision on the papers or after a contested hearing) but with the introduction of fresh evidence for the purposes of the appeal precluded save in exceptional circumstances.</p>	Order 58	Rule 201

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 20: Leave to Appeal Division 2 - Recommendations 110 and 112			
66.	<p>Recommendation 110 Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.</p>	Order 59	Rules 202-204
67.	<p>Recommendation 112 A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered necessary, the Court of Appeal should be able to direct that there be an oral hearing before the original two judges or before a panel of three judges.</p>		
Part 21: Appeals Division 1 - Recommendation 120			
68.	<p>Recommendation 120 Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges.</p>	Order 59	Rule 205
Part 21: Appeals Division 2 - Miscellaneous			
-	Not applicable.	Orders 58, 59, 60A and 61	Rules 206-219

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 22: General Approach to Inter-party Costs Recommendation 122			
69.	<p>Recommendation 122 The principle that the costs should normally “follow the event” should continue to apply to the costs of the action as a whole. However, in relation to interlocutory applications, that principle should be an option (which would often in practice be adopted) but should not be the prescribed “usual order”. Costs orders aimed at deterring unreasonable interlocutory conduct after commencement of the proceedings should be given at least equal prominence in practice, with the court being directed to have regard to the underlying objectives mentioned in relation to Proposal 1. These powers should not apply to pre-action conduct.</p>	Order 62	Rules 220-222
Part 23: Taxing the Other Side’s Costs Division 1 - Recommendation 131			
70.	<p>Recommendation 131 Proposal 57 (for the abolition of a special rule governing taxation of counsel’s fees) should be adopted.</p>	First Schedule to Order 62	Rule 223
Part 23: Taxing the Other Side’s Costs Division 2 - Recommendation 134			
71.	<p>Recommendation 134 The court should have a general discretion to conduct provisional taxations on the papers, with any party dissatisfied with the award being entitled to require an oral taxation hearing, but subject to possible costs sanctions if he fails to do materially better at the hearing.</p>	Order 62	Rules 224-228

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
Part 23: Taxing the Other Side's Costs Division 3 - Recommendations 135 and 136			
72.	Recommendation 135 Rules or practice directions, backed by flexible costs sanctions, should be introduced requiring the parties to a taxation to file documents in prescribed form, with bills of costs supported by and cross-referenced to taxation bundles and objections to items in such bills taken on clearly stated grounds.	Order 62	Rules 229-234
73.	Recommendation 136 Rules conferring a broad discretion on the court in respect of the costs of a taxation and giving guidance as to the exercise of such discretion should be introduced along the lines of CPR 44.14 and CPR 47.18, suitably modified to fit local circumstances.		
Part 23: Taxing the Other Side's Costs Division 4 - Miscellaneous			
-	Not applicable.	Order 62	Rules 235-248
Part 23: Taxing the Other Side's Costs Division 5 – Transitional arrangement			
-	Not applicable.	Order 62	Rule 249
Part 24: Judicial Review Recommendations 144, 145 and 148			
74.	Recommendation 144 Rules along the lines of CPR 54.1 to 54.3, suitably adapted, retaining the present terminology, should be adopted for defining the scope of judicial review proceedings in Hong Kong.	Order 53 Appendix A – Form No. 86A New Form No. 86	Rules 250-258

Serial No.	Recommendations in Final Report	RHC Orders Affected	Amendment Rules
75.	<p>Recommendation 145 Provision should be made to enable persons wishing to be heard at the substantive hearing, subject to the court’s discretion, to be heard in support of, as well as in opposition to, an application for judicial review.</p>		
76.	<p>Recommendation 148 If leave is granted, the order granting leave and any case management directions should be required to be served by the applicant on the respondent (whether or not he has acknowledged service) and on all interested parties who have acknowledged service, such persons then becoming entitled, if they so wish, to file grounds and evidence to contest or to support on additional grounds, the claim for judicial review.</p>		
Part 25: Costs against Non-party			
-	Not applicable.	Orders 11 and 62	Rules 259-260
Part 26: Miscellaneous			
-	Not applicable.	<p>Orders 1, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18, 21, 23, 24, 25, 28, 29, 37, 38, 42, 43, 44, 45, 46, 47, 49, 52, 62, 63, 65, 67, 71, 75, 76, 77, 78, 80, 81, 83A, 84A, 86, 88, 89, 113 and 121</p> <p>Appendix A Forms No. 8, 14, 15, 17, 20, 52</p> <p>Appendix B Form No. 2B</p>	Rules 261-282

Comparison between the Rules of the High Court (“RHC”) and the Rules of the District Court (“RDC”) after Amendment

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>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>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>
<p>(3) Definitions of “aided person”, “practice direction”, “pre-action protocol” and “Amendment Rules 2007” in r.4</p>	<p>Amendments of RHC followed</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) specific to RDC 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)	
(3) Addition of r.12A) Amendments of RHC 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) — (2) Amendments of rr.8 and 9 (3) Addition of r.13	Consequential amendment in r.7 Amendments of RHC followed Amendments of RHC followed	The same
Order 21 - Withdrawal and Discontinuance		
(1) Amendments in r.3(2) (2) Amendments in r.5(2)	r.3(2) modified upon the repeal of RDC O.23A. 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.	The same
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>	
<p>Order 25 – Case Management Summons and Conference</p>		
<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>
<p>Order 26 – Interrogatories</p>		
<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) —	rr.2(1), 4 & 5 modified upon the repeal of RDC O.23A.	The same
(2) Amendments in r.3	Amendments in RHC not followed, as motions are not generally available in DC.	
Order 28 – Originating Summons Procedure		
(1) Addition of r.3A	Amendments of RHC followed	The same
(2) Amendments in rr.4(4) & 8(2)	rr.4(4) & 8(2) modified upon the repeal of RDC O.23A with the latest amendments in RHC followed.	
(3) —	r.9(3) of RHC added for consistency between RHC & RDC.	
(4) Amendments in r.9(4)	r.9(4) modified upon the repeal of RDC O.23A and the replacement of O.34, with the latest amendments in RHC followed.	

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 (2) — (3) Amendments in r.13(1)	Amendments of RHC followed r.10(b) amended, following the wordings of RHC to maintain consistency. Amendments in RHC not followed, as motions are not generally available in DC.	Substantially the same, with no provision for trial by jury in RDC.
Order 36 – Trial Before , and Inquiries by, Master		
(1) — (2) —	Heading of the Order amended, following that of RHC to maintain consistency. r.9(3)(d) amended,	The same

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	Amendments of RHC followed	
(10) Amendments of r.41	Amendments of RHC not followed, as they are not required for RDC	
(11) Amendments of r.43	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 legislation.

Major Proposed Amendments to RHC	Proposed Amendments to RDC	Comparison between the RHC & RDC after the Proposed Amendments
(2) — (3) Amendments of r.5A(2)(b)(vi)	r.4(3)(1) amended, following the wordings of RHC to maintain consistency. 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)	Amendments of RHC not followed, as motions are not generally available in DC.	The same
(2) —	r.3(1A) of RHC added for consistency between RHC & RDC	
(3) —	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) —	r.2 amended: (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; (2) to standardize the time limits for appeals to CA from HC & DC; and	
(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		
<p>(1) Addition of new definitions in r.1(1)</p> <p>(2) Amendments in r.2(2) and addition of r.2(2A)</p> <p>(3) Amendments in r.2(4)</p> <p>(4) Amendments in r.3</p> <p>(5) Amendments in r.4(3)</p> <p>(6) Amendments in rr.5, 6A & 7</p>	<p>Amendments of RHC followed</p> <p>Amendments of RHC not followed, as DC has no such jurisdiction</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed, with r.3(6) modified for consistency with RHC</p> <p>rr.4(2) and (3) of RHC (with the latest amendments and with modification to suit DC) added for consistency between RHC & RDC</p> <p>Amendments of RHC followed</p>	<p>Substantially the same, with the following major differences-</p> <p>(1) no provision in RDC to deal with taxation of bill of costs of solicitors under the Legal Practitioners Ordinance:</p> <p>(2) no provision in RDC to deal with taxation of costs in arbitration proceedings;</p> <p>(3) scale of costs is usually 2/3 of that awarded in the Court of First Instance (r.32(1A) of RDC);</p> <p>(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)</p>

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
(29) Amendments in Schedule 1, Part I, Item 3	Amendments of RHC not followed, as the figure is considered appropriate for DC	
(30) —	Schedule 1, Part I, Item 5(a)(viii) amended, following the wordings of RHC to maintain consistency	
(31) Deletion of Schedule 1, Part II, Item 1(1)	Amendments of RHC not followed, there is no such provision in RDC	
(32) Amendments in Schedule 1, Part II, Item 2	Amendments of RHC followed, except item 2(3) as DC has different provision for certificate of counsel.	
(33) Amendments in the scale costs and fixed costs in Schedule 2	Amendments of RHC generally followed, save that the costs in DC is approximately 2/3 as that in HC.	
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	Amendments of RHC not followed, as motions are not generally available in DC.	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).
(2) —	r.12(1) modified upon the repeal of RDC O.23A	
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
Order 84A – Actions Arising Out of Hire-Purchase or Conditional Sale Agreements		
—	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
(11) — (12) Amendments in Form No.81 (13) Amendments in Form No.85 (14) Addition of Form Nos.93 & 93A	Form No. 38 of RHC added, with modification to cater for proceedings in the District Court Form No.81 of RHC (with latest amendments) added, with modifications to cater for proceedings in DC Amendments of RHC followed Amendments of RHC followed	
Others		
Addition of the new Appendix D on Code of Conduct for Expert Witnesses	Amendments of RHC followed	The same
