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**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) of the Rules of the High Court (Cap. 4 sub. leg. A) 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 following are added 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*

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**Notes for Guidance**

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

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

**ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS**

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

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

See Notes 1,  
3, 4 and 5.

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

2. State whether the defendant intends to contest the liability for costs (tick appropriate box)

yes

no

3. State whether the defendant intends to contest the amount of those costs (tick appropriate box)

yes

no

Where words appear between square brackets, delete if inapplicable.

Service of the originating summons is acknowledged accordingly.

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

*Notes as to Address for Service*

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

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

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

## 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. 152 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 5 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 the ..... day 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	<i>A.B.</i>	Applicant
	AND	
	<i>C.D.</i>	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.

and substituting—

“See Direction 2.

Service of the Originating Summons is acknowledged accordingly.”

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.

(6) Appendix A is amended by adding—

---

Service of the Originating Summons is acknowledged accordingly.”

“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
<b>Total income</b>	<b>\$</b>	<b>per month</b>

**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
<b>Total expenses</b>	<b>\$</b>	<b>per month</b>

**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>	
	\$
	\$
<b>Total liabilities</b>	<b>\$</b>

**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		\$
<b>Total</b>		<b>\$</b>

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

Trade payables		\$
Tax payables		\$
Other payables		\$
Bank loans		\$
Other borrowings		\$
Others		\$
<b>Total</b>		<b>\$</b>

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

<input type="checkbox"/> I can pay the amount admitted on	<input type="text"/>
or	
<input type="checkbox"/> I can pay by [weekly/monthly etc.] instalments of	\$ <input 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) &amp; 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) &amp; (5), 9(4) &amp; 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) &amp; 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 

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
<b>Total income</b>	<b>\$</b>	<b>per month</b>

**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
<b>Total expenses</b>	<b>\$</b>	<b>per month</b>

**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>	
	\$
	\$
<b>Total liabilities</b>	<b>\$</b>

**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		\$
<b>Total</b>		<b>\$</b>

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

Trade payables		\$
Tax payables		\$
Other payables		\$
Bank loans		\$
Other borrowings		\$
Others		\$
<b>Total</b>		<b>\$</b>

**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) &amp; (9), 9(4) &amp; 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 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 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**


Defendant('s solicitor)

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

**Date**


**With company chop**  
 (if applicable)

**Note:** To the plaintiff

If you wish to accept the payment made into court and the Court's leave for acceptance is not required, you should complete Form No. 24, 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 \_\_\_\_\_.

<b>Signed</b>		<b>Position or office held</b> (If signing on behalf of a firm, company or corporation)	
	Plaintiff/Defendant(s) solicitor		
<b>Date</b>		<b>With company chop</b> (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)

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**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).

<b>Signed</b>		<b>Position or office held</b> (If signing on behalf of a firm, company or corporation)	
	Receiving party('s solicitor)		
<b>Date</b>		<b>With company chop</b> (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
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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 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 sub-paragraph (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 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) 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<br>plaintiff is legally<br>represented and<br>500 if the plaintiff<br>is not legally<br>represented    |
| sub-paragraph (b) of paragraph 1  | 10,000 if the<br>plaintiff is legally<br>represented and<br>600 if the plaintiff<br>is not legally<br>represented   |
| paragraph 1A                      | 10,000 if the<br>plaintiff is legally<br>represented and<br>600 if the plaintiff<br>is not legally<br>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 4th day of June 2008.

The Hon. Mr. Justice MA  
Chief Judge of the High Court

The Hon. Mr. Justice A. CHEUNG

The Hon. Mr. Justice REYES

Mr. MOK Yeuk-chi

Mr. Godfrey LAM

Mr. Andrew JEFFRIES

Mr. Thomas SO

Mr. Wesley WONG

Mr. Kim-wan LUNG  
Secretary

## 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.