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By Hand

17 March 2009

Clerk to LegCo Panel on
Administration of Justice and Legal Services
(Attn: Miss Flora TAI)
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Miss Tai,

Civil Justice Reform - Information Leaflets

In February this year, the Judiciary informed the Legislative Council Subcommittee on Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009, District Court Civil Procedure (Fees) (Amendment) Rules 2009 and Civil Justice (Miscellaneous Amendments) Ordinance 2008 (Commencement) Notice that we will take a number of publicity initiatives to promote public understanding of the Civil Justice Reform (CJR). The Subcommittee paper entitled "Response to Issues Raised at the Subcommittee Meeting on 13 February 2009" is relevant.

2. We are pleased to inform you that as part of our publicity initiatives, a poster and a series of 13 information leaflets prepared or updated in the light of the CJR for unrepresented litigants will be available for distribution at the relevant court premises, and District Offices of the Home Affairs Department of the Administration. These printed materials will be distributed to the two legal professional bodies, other organizations concerned and non-governmental organizations providing free legal advice. The information leaflets will also be made available at the Resource Centre for Unrepresented Litigants for the convenience of litigants in person, and uploaded onto a revamped dedicated website on the CJR at www.civiljustice.gov.hk later today. A video on CJR is under production. It will be shown at the Resource Centre for Unrepresented Litigants and uploaded onto the CJR website as from 2 April 2009.

3. As requested, we provide herewith 20 sets of leaflets (in English and Chinese) and several copies of the posters. We should be grateful if you would help distribute the leaflets to Members of the Panel on Administration of Justice and Legal Services accordingly.

4. Topics covered by the 13 information leaflets include:

(a) Civil Justice Reform : An Overview;
(b) What should be considered before taking legal action;
(c) What should be noted about civil proceedings;
(d) What are the stages in a civil action;
(e) How to prepare for a hearing or trial;
(f) How is a trial or hearing conducted in court;
(g) What are Statements of Truth;
(h) How to shorten legal proceedings: Order 13A Admissions in Monetary Claims;
(i) How to shorten legal proceedings: Sanctioned Offers and Sanctioned Payments;
(j) How to apply for judicial review;
(k) How to appeal;
(l) What is taxation of costs; and
(m) Civil Justice Reform: Transitional Arrangements.

5. The CJR marks a major milestone in the development of the civil justice system in Hong Kong. With the many invaluable efforts and contributions from all parties concerned (including the Legislative Council, the Administration, the legal professions, the universities etc.), the necessary amendment legislation has been enacted, the detailed Practice Directions promulgated, and a series of preparatory work duly completed over the past years. We would like to take this opportunity to extend our gratitude to the work and support rendered by Legislative Council in these regards.

Yours sincerely,

Clara Tang

(Miss Clara Tang)
for Judiciary Administrator

司法機構

民事司法制度改革概述

Civil Justice Reform
An Overview

JUDICIARY

Civil Justice Reform: An Overview

Introduction

The commencement date of the Civil Justice Reform (CJR) is 2 April 2009. This major reform applies to civil proceedings of the High Court and the District Court, except for specialist lists to which the application of the new rules will be determined by the judges concerned. Some of the new rules and procedures also apply to the Lands Tribunal and the Family Court with necessary modifications. To facilitate smooth transition of the CJR, Rules of the High Court and Rules of the District Court have provided for various transitional arrangements.

Objectives

2. The underlying objectives of the CJR are:

(1) to increase the cost-effectiveness of any practice and procedure to be followed in relation to civil proceedings before the Court;

(2) to ensure that a case is dealt with as expeditiously as is reasonably practicable;

(3) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;

(4) to ensure fairness between the parties;

(5) to facilitate the settlement of disputes; and

(6) to ensure that the resources of the Court are distributed fairly.

3. The following paragraphs give an overview of how these objectives are to be met.

Case Management

4. Before the CJR, the pace of proceedings was largely party-driven. That sometimes led to problems, for example,

(1) too many interlocutory applications;

(2) discovery getting out of hand;

(3) proceedings lacked focus until a very late stage, that is, at trial; and

(4) consequently, delay and expense.

5. Proper case management is the most crucial and integral part of the CJR. The Court will assume greater control of the proceedings from an early stage of the action. This ensures that cases are dealt with as quickly as is practicable in order to increase the cost-effectiveness of Court's practices and procedures.

6. To closely monitor the progress of proceedings, parties are now required to file a timetabling questionnaire within 28 days after the close of pleadings and where appropriate, a case management summons. The parties are expected to agree on a timetable for the progress of the case up to trial. If there is no agreement, the parties should indicate in the questionnaire how the case should proceed to trial. Based on the agreement of the parties and/or the information in the questionnaire, the Court will set a timetable for the progress of the case.

7. A court-determined timetable will set "milestone dates" for the major steps in the proceedings and these dates must be adhered to. Milestone Dates include the dates fixed for a case management conference, a pre-trial review, the trial dates or the period in which a trial is to take place.

Interlocutory applications and appeals

8. One of the leading causes of additional delay and expense in litigation is the over-use of interlocutory applications. To tackle this problem, the CJR seeks to reduce the number of interlocutory applications. The Court may make orders specifying automatic sanctions for non-compliance of their orders. This will dispense with the need for further applications to enforce the orders.

9. Where interlocutory applications cannot be avoided, the CJR has introduced measures to streamline the process by permitting applications to be dealt with on paper and without a hearing. A party who is found to have made an unnecessary or wasteful interlocutory application will have to bear the costs of that application, even if he ultimately wins the case.

10. The CJR also extends the leave requirement to interlocutory appeals, in particular, appeals against interlocutory decisions of Judges of the Court of First Instance. The purpose is to reduce unnecessary delay and expense caused by litigation on interlocutory issues, which are often of only marginal significance to the outcome of the case.

Statements of truth

11. Another change brought by the CJR is the requirement that pleadings, witness statements and expert reports must be verified by statements of truth.

12. A statement of truth is a statement that the maker of the document believes the facts stated in it are true, or, in the case of an expert report, the opinion expressed in it is honestly held.

13. This requirement aims to deter sloppy and speculative pleadings and to provide a disincentive against parties advancing a dishonest case. In this way, the parties' minds can be focused on the real issues in the case and they will not just put forward pleadings in the hope that something might turn up later on.

14. If a person has made a statement of truth falsely, proceedings for contempt of court may be brought against him by the Secretary for Justice or by a person aggrieved by the false statement with the permission of the Court.

To encourage settlement of disputes

15. **Sanctioned offers and sanctioned payments:** A new regime called **"sanctioned offer"** and **"sanctioned payment"** is introduced to encourage early settlement of litigation. Previously, a defendant may offer to settle a monetary claim by making payment into court. The CJR brings greater flexibility to the parties in reaching a settlement. Not only can a defendant make an offer to settle a claim by way of payment into court, a plaintiff can also make an offer to settle the claim. There will be consequences in terms of costs and interest where the party concerned fails to do better than the sanctioned offer or sanctioned payment.

16. **Admissions in monetary claims:** Early settlement of litigation is further facilitated by enabling a defendant to make admission to a monetary claim and to make proposal regarding payment terms. The Court has power to determine the time and rate of payment where the parties cannot reach agreement.

17. **Alternative dispute resolution:** Another important feature of the CJR is to encourage and facilitate the parties to resolve their dispute by means other than litigation in court, before they start the court action. Alternative dispute resolution allows the parties to resolve their disputes in a way that can be less costly and more efficient than litigations in court. A common mode of alternative dispute resolution is mediation. The parties jointly engage a mediator to help them in settling their dispute either before or after court proceedings are brought. If a party fails to make a reasonable attempt to settle a dispute out of court, it may be taken into account by the Court in deciding costs at the conclusion of the proceedings.

18. **Pre-action discovery:** To facilitate alternative dispute resolution, the CJR extends the scope of application of pre-action discovery to cases other than personal injury or death claims. This enables the parties in other types of cases to have more information about their claims or defence before the commencement of an action. They will then be able to conduct negotiations on a properly informed basis before going to court.

19. **Costs-only proceedings:** To further enable pre-action settlements, a new proceeding called "costs-only proceedings" is introduced. The procedure can be invoked when costs is the only issue that remains unresolved, and the parties can seek to have the matter of costs decided by the Court.

Fair distribution of court resources

20. To enable better deployment of court resources and to enhance the efficiency of a trial, the Court may, based on information from the parties, limit the number of witnesses, the time taken to question each witness and the time for making oral submissions.

21. With the CJR, parties are required to pay attention to proportionality when incurring costs for and conducting litigations.

22. Under the CJR, the previous rule of "costs follow event" (i.e. the unsuccessful party pays the costs of the winning party) is not always applicable. The Court will have greater flexibility in awarding costs. When awarding costs to the successful party, the Court may also take into account the six objectives of the CJR, including the intention to promote a sense of reasonable proportion between the amount claimed and the legal costs as well as procedural economy in the conduct of the proceedings.

23. For better use of court resources, summary assessment of costs for interlocutory applications instead of taxation of costs is encouraged. In addition, taxing masters may conduct provisional taxation of costs on paper without holding an oral hearing.

Conclusion

24. The new measures under the CJR will bring improvement to the civil justice system in Hong Kong by ensuring fair and expeditious administration of justice.

Judiciary
March 2009

For details, please visit our websites:
www.civiljustice.gov.hk
rcul.judiciary.gov.hk

For enquiries, please call:

High Court Registry	2523 2212
District Court Registry	2845 5696
Lands Tribunal Registry	2771 3034
Family Court Registry	2840 1218
Resource Centre for Unrepresented Litigants	2825 0586

提出訴訟前應考慮甚麼事項

What should be considered before taking legal action

- This leaflet is designed to provide you with a brief outline of the practice and procedure of civil proceedings in the High Court and the District Court.
- You should read Rules of the High Court (or Rules of the District Court, as the case may be) for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

What should be considered before taking legal action

1. Questions that you should ask before taking court action to resolve your disputes

1.1 If you are a litigant in person in civil litigation, it is advisable that you read this pamphlet carefully before you start taking court action.

1.2 You should ask yourself the following questions before taking action in court:

1. Can I settle the disputes without going to court?
2. Will I get my money?
3. What are the expenses?
4. Can I afford the time?
5. Will I need a solicitor?

1.3 <u>Can I settle the disputes without going to court?</u>

Court action should be your last resort. You should first consider other ways to settle the disputes. For example, if another person owes you money, you could write a demand letter to him. In your letter, say how much he owes you and what it is for, what steps you have already taken to recover it and give him the warning that if he does not repay you by the date you designate, you will take out court action against him. Sometimes this warning will encourage him to pay and you do not have to go to court. Keep a copy of your letter and any reply. If you have to go to court, you may have to use them as evidence.

You may also consider using other alternative ways such as mediation to resolve the dispute. If you want to know more about mediation, you can read the leaflet "What is Mediation" published by the Judiciary.

1.4 Will I get my money?

It is important to consider whether the person, firm or company you are claiming from is likely to be able to pay. If they

- are unemployed or bankrupt;
- have no money of their own; no personal property and nothing else of value belonging to them (such as a car), which is not hired or subject to a hire purchase or lease agreement;
- ceased to trade; or
- have other substantial debts to pay,

the court may not be able to help you get your money. However, you may be able to get your money if you are prepared to accept small instalments over a period of time. You may also negotiate with your debtor for payments by instalments without going to court.

If the person is bankrupt or the company is wound up, you will probably not get your money. You can contact the Official Receiver's Office at 10th Floor, Queensway Government Offices, 66 Queensway, Hong Kong (by telephone 2867 2448 or by fax 3105 1814). They will tell you if the person is bankrupt or the company in compulsory liquidation, which means that the company has stopped trading and probably has neither money nor other assets.

If the person you are claiming from has already been taken to court by others, and has not paid, you may also have little chance of getting your money.

Remember, even if you win your case and obtain judgment, the court does not guarantee that you will get the money you claim and the costs you incur for the case.

1.5 What are the expenses?

You will usually need to pay a fee to the court to start your claim. If the person you are suing (the defendant) surrenders and pays you, you may recover your fee as well. In very rare and special circumstances, you may apply to court for exemption of paying the court fees.

If the defendant defends your claim, you may need witnesses to help to tell the court what happened. You may have to pay a deposit to the court ($500 for each witness, subject to change) for the witness expenses. You have to bear your own expenses of traveling and meals for attending court for lodging (filing) the documents or for the hearing or trial. If you engage a lawyer to represent you, you have to pay your lawyer's fees and expenses. You may ask the court to order the defendant to reimburse you if you win your case. But usually, you may not get the full amount of your expenses. You will only get a portion of them: on the average, about 70% of your expenses.

You may also need to obtain a report from an expert, for example, a doctor, mechanic or surveyor. You may also need to ask this expert to come to court to give evidence on your behalf. You will have to pay expert's expenses and charges. But if you win, the court may order the defendant to pay towards these.

If you have a solicitor, you will usually have to pay for fees and the expenses yourself. Even if you win your case and the court orders the defendant to pay your solicitor's fees and expenses, the court will not automatically take steps to make sure that the money is paid. If the defendant does not pay, you will need to ask the court to take action (called 'enforcing your judgment'), for which you may have to pay another fee. You may obtain the information on enforcing your judgment from the “Bailiff’s Office” leaflet of the “Guide to Court Services” series.

1.6 Can I afford the time?

If the case is not defended, you may obtain judgment without going to court or going to court once. But you should bear in mind that if your claim is defended, you will need to take time to prepare your case. For example, you will have to put together copies of all relevant documents or spend time getting statements from witnesses. You will probably be required to go to court hearing and, even if you win the case, you may have to spend more time completing forms to enforce your judgment.

1.7 Will I need a solicitor?

If your claim is a simple money claim and the facts are simple without involving complicated argument on law, you may not consider it necessary to consult a solicitor. Other types of claims, for example, personal injury claims, can be more complicated and it may be preferable to get some professional help and advice no matter what the value of your claim is. It involves things like writing to the person you are claiming from to set out the details of your claims, exchanging some evidence, allowing him to see your medical records and trying to agree the medical expert you will use.

Remember that you also have to prove your case. To do this, you will need evidence, for example, a report from a doctor, or statements from witnesses who saw your accident. You are the witness yourself and you have to prepare a witness statement. You will also need to make a realistic assessment of the amount of damages you are seeking. It may save time and money to first ask a solicitor if it is worth your making a claim and, if it is, how best to prepare it, what evidence you need and what amount of damages to ask for.

If you are claiming on behalf of a company, you may need a solicitor to go to the hearing for you. If you wish to have a director of the company to represent the company, you may have to ask permission (leave) from the court for matters in the High Court. The procedures are different in the District Court. This will be discussed in a separate section on the procedure of the court proceedings in Leaflet 2 “What should be noted about civil proceedings” of this series.

If you have considered all the questions above and decide to take your matter to court for resolution, you should pay attention to other things for court hearings. There are other leaflets that are designed to help you. However, they can only give you a general idea of what is likely to happen. They cannot explain everything about court rules, costs and procedures, which may affect different types of claim in different ways.

Court staff can help you on court procedures, give you the forms you need and assist you to fill them in. But they cannot give you legal advice. For example, they cannot tell you if you have a good claim or whom you should sue. You may be able to get free legal

advice through the Free Legal Advice Scheme of the Duty Lawyer Service at some District Offices. For details, please refer to the website of the Duty Lawyer Service at http://www.dutylawyer.org.hk. The pro-bono scheme of the Bar Association may also give you some help. Its office is situated at LG2 Floor of the High Court Building.

2. Things you should pay attention to if you decide to take court action

The judicial system

2.1 The function of the court is to solve the disputes between the parties. All parties are equal before the court. They have the right of acting in person. Alternatively, they have the right of getting solicitors and barrister (counsel) to represent them to present their case to court. If one party is a Limited company, see "Where the parties are limited companies" section in Leaflet 2 "What should be noted about civil proceedings" of this series.

2.2 Although the judge will take into consideration that a litigant in person may not fully understand the rules or the procedures, on the principle that all parties are equal before the court, litigants in person are required to comply with the requirements of the rules for the proceedings. The rules for civil proceedings in the High Court are Rules of the High Court. The rules for civil proceedings in the District Court are Rules of the District Court. They can be found in Chapter 4A and Chapter 336H of the Laws of Hong Kong in both Chinese and English languages.

2.3 The judicial system in Hong Kong is adversarial. The parties should present their case to the court for its determination. The judge will be acting as an umpire and makes decisions after considering the evidence and hearing the arguments from all parties. It is the duty of the parties to present their case to the court. The court does not make investigation into the case. Therefore parties should make good preparation to present evidence to the court to prove their case. They may submit the relevant case law, legislation or other materials in support of their arguments in court. If you are a litigant in person, you may not expect the

judge to give much assistance in presenting your case. The judge may only give you guidance as to the requirements of the rules or to remind you of the steps that you should take in the proceedings. You should not assume that the judge acts as your own lawyer.

2.4 After the court has heard the evidence and the legal arguments, it will pass a judgment. The losing party will normally be ordered to pay the costs to the winning party. It makes no exception if any party is a litigant in person. The costs are the expenses that the winning party has to spend on the preparation and hearing of the matter. These include the expenses for the solicitors and barristers representing them. The amount for the costs can be substantial, depending on the complexity of the case, the work required for preparation for hearing and the length of the hearing. The situation for the appeal to the higher courts is the same. The court may order the costs to be paid at the end of the trial or forthwith.

Getting a lawyer, legal aid, settlement

2.5 Since litigation is like a tug of war between the one who sues (called the plaintiff) and the one to be sued (called the defendant), it is therefore advisable to get legal representation for civil litigation.

If you can afford the cost, you should get your own lawyers. If you cannot afford the cost, you should consider applying for legal aid. If you do not have the sufficient means for the cost but you are not eligible for legal aid, you may have to act in person yourself in the proceedings. Whether or not you can afford legal costs or you have legal aid, before you proceed to court, you should explore the possibility of settling the disputes without going to court. You may make proposals to the other side for settlement. This does not mean that you admit that your case is a weak case. It is only proposing a practical solution to solve the disputes. You may protect your own position by specifying clearly that the proposals for the settlement are for settlement only and they are not binding on you if the matter goes to trial in court. If you want this protection, you should mark your letters concerning settlement with "without prejudice", which means you and other party agree that the court should not consider the terms of your agreement of settlement when the matter comes to trial. You may settle your

disputes at any stage of the proceedings before the court passes the judgment.

2.6 After the commencement of the legal proceedings, you may also consider to use the procedures called "sanctioned offer" and "sanctioned payment" to settle the dispute with the other party. If you want to know more about such procedures, you can read Leaflet 8 "How to shorten legal proceedings: Sanctioned offers and sanctioned payments" of this series. You should also note that if the claim is only for payment of money, the defendant may make an admission of liability to pay and request for time to pay. If you want to know more about this procedure, you can read Leaflet 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.

2.7 If you have settled your dispute, you should inform the court immediately, particularly when your case has been set down for trial.

Preparation for the proceedings

2.8 If you have to resort to court to solve the disputes and you have to act in person, then you should pay attention to the following things.

2.9 The best policy for a litigant in person is to get full preparation for the proceedings. You have to note that civil litigation may be a long-drawn battle, which will take months or even years before the case is heard and the court passes the judgment. The pressure on the preparation of the evidence and the procedures under the rules will be tremendous.

The following are the preparations for the trial:

1. Collect all the materials to support your case.
2. Prepare the writ or originating summons if you are the plaintiff. Prepare the defence and counterclaim if you are the defendant.
3. Attend court from time to time for the proceedings before trial.
4. Comply with the court orders. If you fail to do so without good reason, the

court may enter judgment against you without a trial.

5. Complete the case management questionnaires in accordance with the Rules and Practice Directions of the Court.
6. Prepare the list of documents, the witness statements and the expert reports, if any, in accordance with the procedures and directions of the court.
7. Before trial, you have to put all relevant documents into bundles for the trial.
8. Lodge your bundles of documents with the court before trial.
9. You should come to court with your witnesses for the trial. You may take out subpoenas to make sure your witnesses attend. You should do so at least 3 weeks before the trial, otherwise there will not be sufficient time for the bailiff to serve the subpoenas on your witnesses.
10. You must be punctual for the trial. If you are absent, the trial will proceed in your absence.
11. At the trial, you have to follow the guidance of the court.

<u>The practice to be observed</u>

2.10 You should also observe the following practice:

1. You may have to pay the prescribed court fee for filing the court documents.
2. Whilst the court staff will give you assistance in the filing of the court documents, they should not give legal advice to you. If you wish to have legal advice, you have to consult your own lawyer.
3. The parties are entitled to use Chinese or English in their pleadings or other court documents. If one of the parties requires the other party to use English or Chinese in the pleadings or other court documents, an application may be made to the court. The court will take all relevant factors into consideration and make the order. The court may order that all the proceedings be in Chinese or in English. Alternatively, the court may order a party to provide translation of the documents for the other party. The court may order the requesting party to pay the costs for the translation of the documents. Such

costs may be ordered to be paid at the end of the trial or forthwith.

4. You should NEVER directly contact the judge or master by any means in the course of the proceedings or relating to the matter. You should address your letters to the clerk to the judge or master. You should also send a copy of the letter to the other party as well. You should not send letters to the judge to state the merits of your case. Your case should be clearly set out in the pleadings and you may state your facts in the witness statements.

5. You should read the explanatory notes of the sample forms carefully before you prepare any court documents.

6. You should also remember that when you file a document with the court, you have to send a copy of that document to the other party or parties as well in order to give him or them notice. For the same reason, you should check your mailbox to see if the other party or parties are sending you court documents. This is your own duty. You have no excuse for not doing this and tell the court that you have no notice of the court documents at the hearing.

7. You will only be required to attend court upon notice or by summons. You may make inquiries at the Court Registry.

8. You have to observe the deadlines set by the court about the various steps in the preparation of the case. You may lose the case or suffer other serious consequences if you fail to observe these deadlines. Unless there are very good reasons, the court will not change the date of the trial.

9. Be punctual for the hearing or trial. You do not have to bring your witness to court for the hearings before trial unless the court has made an order. For the trial, you have to come to court with your witnesses. You should also bring along the bundles of documents and the original documents for the inspection of the court or the other party. If you want to secure the attendance of your witnesses, you may apply to the court for subpoena. You should do it at least 3 weeks before the trial. You have to serve the

subpoenas on your own witnesses yourself at least 4 days before the trial. You should apply early in order to give yourself sufficient time to serve the subpoenas on your witnesses. If you fail to subpoena your witnesses for the trial, the trial may have to be adjourned. You may have to bear the costs for the adjournment.

10. At the hearing or trial, you should act according to the direction of the judge. The parties will take turns to make speeches. When the other party is making a speech, you should not intervene even if you disagree. You may take down notes of your disagreement and put forward your arguments when your turn comes to make a speech. The judge may also set a time limit for you to make a speech or to ask questions from a witness. It is important that you should behave properly in court. You must not use abusive language or remarks. Although the atmosphere during the argument will sometimes become heated or even emotional, you should bear in mind that the best way to put forward your arguments is to speak in a calm, cool and polite manner. Therefore you should control your temper in court.

11. After the hearing or trial, if the judge delivers the judgment and the reasons orally, you should not intervene even if you do not agree with the judge. There is no use to argue with the judge. You have the right to appeal against the judge's decision except in those cases where leave to appeal is required.

Difference of proceedings in High Court and District Court

2.11 The proceedings in High Court and those in District Court are very similar. But they are not identical. The major differences will be outlined below.

2.12 The High Court has unlimited power to deal with civil claims. The District Court can deal with civil claims for an amount over $50,000 but not more than $1 million, after taking into account of the undisputed amount claimed by the defendant by way of set-off or counterclaim. If your claim exceeds $1 million, you may still start the action in the District

Court if you give up the excess. If you are the defendant and your counterclaim exceeds $1 million after taking in account of the plaintiff's undisputed claim, you may give up the excess so that the action can be dealt with by the District Court.

The District Court can deal with claims for possession of land or building, the annual rent or rateable value or the annual value of which does not exceed $240,000. In most tenancy cases where possession of the premises or renewal of tenancies is claimed, application should be filed with the Lands Tribunal. For these proceedings, you should refer to the "Lands Tribunal" leaflet of the "Guide to Court Services" series.

Where the proceedings relate to land, the District Court has power to deal with claims not exceeding $3 million.

3. What are "sample court forms"?

3.1 To help you prepare the court documents, there is a separate "samples court forms" file, which you may obtain from the staff of the Resource Centre for Unrepresented Litigants. You may select the appropriate form for your case. Please return the file to the staff of the Resource Centre after use. Alternatively, you may download the forms from the Judiciary website. You should note the following when you use the sample forms.

3.2 The samples are just examples designed for your reference only. They are not meant to be the samples that suit your case. You should make adjustments or variations to them to suit your own case. If you have any doubt, you should consult your own lawyer. If you cannot find the appropriate sample for your case, you have to seek independent legal advice.

3.3 Before you consider the forms, you should first read the explanatory notes carefully. They give you the guidelines for completing the forms.

3.4 You may find the following court forms together with the explanatory notes on the file:

1. statement of claim
2. defence and counterclaim
3. reply and defence to counterclaim
4. statement of truth
5. case management questionnaires
6. list of documents
7. witness statement
8. affidavit or affirmation
9. affidavit or affirmation of service of a writ or originating summons
10. affidavit of affirmation of service of documents other than writ or originating summons

4. Assistance that you can get from this series of leaflets

4.1 The purpose of this series of leaflets is to introduce to litigants in person the broad outlines of the civil proceedings in High Court and District Court. It is designed to give information about the proper procedures of the proceedings, the manner the parties should present their case, evidence and other materials to court. This will also assist the court hearing the matter so that the judge does not have to explain the procedures described here again to the litigant in person in the course of the proceedings.

4.2 The leaflets are not intended to be a summary of the civil practice, Rules of the High Court or Rules of the District Court. They only give guidelines on the procedures generally. For details and further information, you should refer to the Rules themselves. The

Rules of the High Court can be found in Chapter 4A of the Laws of Hong Kong. The Rules of the District Court can be found in Chapter 336H of the Laws of Hong Kong. You should also refer to the relevant Practice Directions as well. The English and Chinese versions of these documents can be found on the Judiciary website. You may make enquiry with the staff at the Resource Centre for Unrepresented Litigants.

4.3 The leaflets do not touch on any law on civil right, claim or liability.

Judiciary
March 2009

民事訴訟程序須知

What should be noted about civil proceedings

- This leaflet is designed to provide you with a brief outline of the practice and procedure of civil proceedings in the High Court and the District Court.
- You should read Rules of the High Court (or Rules of the District Court, as the case may be) for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

What should be noted about civil proceedings

1. **To start civil proceedings**

1.1 The one who sues is called the plaintiff and the other party being sued is called the defendant. To start the suit, the plaintiff has to apply to the court to issue a document called a writ of summons or an originating summons, which has to be served on the defendant.

1.2 A writ of summons is suitable for cases where there is a serious dispute as to facts. An originating summons is suitable for cases where there is no dispute as to facts, the argument is on points of law or solely relates to the interpretation of certain terms in a legal document. The defendant who has received the writ or the originating summons has to acknowledge service of it. Therefore the writ or the originating summons has to be served on the defendant with the acknowledgement of service.

1.3 You may obtain the writ of summons, the originating summons and the acknowledgement of service from the Resource Centre for Unrepresented Litigants, the Registries of the High Court and the District Court.

1.4 You may also read the charts in Leaflet 3 “What are the stages in a civil action” of this series for an overview of an action begun by writ and proceedings begun by originating summons.

1.5 Before issuing the writ, the plaintiff should ascertain the name of the defendant and his last known address. If the defendant is a limited company, the plaintiff should make a company search to obtain updated information about its name and its registered office. If the defendant is a business, the plaintiff should make the business registration search at the Inland Revenue Department to ascertain the trade name and the principal place of business.

2. Service of the writ or originating summons

2.1 Generally there are three alternative ways of service on the defendant or each of the defendants who is within the territory of the HKSAR, namely,

(a) by personal service: handing a sealed (i.e., sealed with the court's seal) copy of the document to and leaving it with the addressee personally;

(b) service by post: posting a sealed copy of document by registered post addressed to the addressee at his usual or last known address; or

(c) service by inserting a sealed copy of the document enclosed in a sealed (i.e., not open) envelope addressed to the addressee through the letter box of the addressee.

2.2 Where the defendant is a limited company, you can serve the document by posting it or leaving it at its registered office.

2.3 Where the defendant is an individual or a business run by a sole proprietor or partnership, you can adopt any one of the three ways of service. However, for service on a partnership business, you can also serve the document on any one of the partners or on the person having control or management of the business at the principal place of business of the partnership, or you can mail it to that address by registered post.

2.4 You have to prove by affidavit or affirmation (i.e. a document by which you have to make an oath) the service of the writ or originating summons. In the affidavit, you have to state that the sealed copy of the writ or originating summons has been served on a date (including the day of the week) by you personally on the defendant. If the service was by post or by insertion through the letter box, the affidavit will have to state that the document has not been returned through the post and that it will come to the defendant's knowledge within 7 days from the date of posting. If you have an agent to serve the document, your agent has to make such an affidavit.

2.5 The plaintiff should pay attention to the instructions in the writ or the originating summons. In particular, the plaintiff should state the address for service. The defendant should also pay attention to the instructions and warnings on the acknowledgement of service. The defendant should state clearly the address for service on the acknowledgement of service.

2.6 Under normal circumstances, you cannot serve the writ or originating summons outside Hong Kong unless you have obtained the permission of the court. You should apply for permission before you serve the writ. For this application, you should consult your own legal advisor. You may refer to Order 11 of Rules of the High Court or the same Order in Rules of the District Court.

2.7 Every writ or originating summons served on a defendant must be accompanied by three copies of acknowledgment of service. The defendant should read the acknowledgment of service carefully and complete them. Two copies of the acknowledgement of service should be filed with the court within the time prescribed. The defendant can keep one copy for record.

3. Acknowledgment of service

3.1 The defendant who has received the writ or the originating summons is required to acknowledge service of it and to state whether he intends to contest within 14 days. The copies of acknowledgement of service have to be filed with the court and the Registry will send a copy to the plaintiff. If the defendant fails to do so, in case of an action begun by a writ of summons, the plaintiff may apply to court for judgment against the defendant without a trial. In case of an originating summons, the matter should proceed to hearing on the assumption that the defendant does not intend to defend.

3.2 After 2 April 2009, if the plaintiff's claim is only for payment of money, the defendant may admit the plaintiff's claim using the form enclosed with the writ. This can save time and costs. In such form, the defendant may also make a request for time to pay the

admitted sum, including any proposal for payment by instalments. If you want to know more about this procedure, you can read Leaflet 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.

Where the parties are limited companies

4.1 For proceedings in the High Court, if any of the parties is a limited company, it has to be represented by a solicitor unless leave is granted by the Registrar for a director to represent the company. You may rely on the reason that the company is unable to afford to pay for the service of a solicitor or for some other good reasons. The application has to be made to the Registrar. It has to be supported by affidavit or affirmation made by its director exhibiting a board resolution of the company authorizing the director to represent the company in the proceedings. If the application is on the ground that the company is unable to afford the service of a solicitor, the audited accounts and current bank accounts of the company showing the current financial position of the company should be exhibited to the supporting affidavit or affirmation. If the application is based on some other good reasons, then such reasons should be stated and the exhibits in support must be exhibited. Whether to grant the leave or not is purely the discretion of the Registrar. The applicant cannot appeal against this decision. You may make enquiries about the application from our staff at Resource Centre for Unrepresented Litigants or at the Registry of High Court.

4.2 If the proceedings are in the District Court, the authorized director of the plaintiff has to file an affidavit or affirmation stating that he or she has been duly authorized by the board of directors to represent the company in the proceedings, exhibiting a copy of the board resolution duly certified by its secretary. For a corporate defendant, a person duly authorized by the defendant may act for the defendant.

The evidence and burden of proof

5.1 Each party to the proceedings must collect evidence to support his case. Generally speaking, the burden of proof is on the party who makes the allegation. But this is always subject to the directions of the court, which may in appropriate cases order the other party to adduce the evidence. Evidence can be in various forms, including oral evidence from witnesses, documents, photographs, things or materials, audio or video tapes or discs or electronic data contained in any tapes or discs etc.

5.2 It will be advisable for the plaintiff to obtain all the evidence, in particular, statements in writing from the witnesses (those persons who have personal knowledge of the facts relevant to the case and will attend court to give evidence) at an early stage. The defendant should likewise prepare his own witnesses' statements after receiving the statement of claim (a document attached to the writ in which the plaintiff sets out the account of the facts and the claims against the defendant). As to how witness statements should be prepared, please see the "sample court forms" file available at the Resource Centre for Unrepresented Litigants or at the Judiciary website.

5.3 After the court proceedings have started and before the matter goes to trial by the judge, you may have to go through other proceedings before trial (see below). These include case management conference, application for amendment to the statement of claim or defence etc. generally called "the pleadings", extension of time for complying with the rules or the directions of the court, further and better particulars of the pleadings etc. These are called interlocutory proceedings. They are designed to ensure that preparations are properly done and evidence is put in place for the matter to be tried by the Court.

The proceedings before trial

6.1 There are two kinds of proceedings before trial (also referred to as interlocutory proceedings). The first one is called Case Management Conference or directions hearing. In such hearing, the court would give a timetable about the progress of the case. The court would set various deadlines for the parties to comply with the things that they have to do before the trial, including the filing of witness statements and lists containing the documents relevant to the case. The court can also fix the trial date in such hearing. For more details, please read the part about case management in Leaflet 3 "What are the stages in a civil action" of this series.

6.2 The second kind of interlocutory proceedings is about particular application taken out by a party before the trial. The usual applications for these proceedings include:

(1) application for extension of time for complying with certain direction under the rules or the court order;

(2) application for an order that unless the other party complies with the rules or the directions of the court, judgment may be entered against him;

(3) application to set aside judgment obtained by the plaintiff because the defendant has failed to comply with rules or court order;

(4) application for amendment to the pleadings;

(5) application for summary judgment (judgment without a full trial) by the plaintiff because the defendant has no defence;

(6) application for further and better particulars of the pleadings of the other;

(7) application for striking out the pleadings or part of the pleadings of the other party (for reason that they are bad pleadings i.e. they show no good reason for the claims or defence); and

(8) application for documents to be disclosed (discovery of documents) from the other party.

6.3 The above applications are more frequently used. There are other applications that involve more technical issues and arguments, which are time consuming and will incur costs. It is not advisable to take out such proceedings unless upon legal advice. It is also not advisable for litigants in person to consider making use of the proceedings to take tactical advantage. The court does not approve of any unnecessary proceedings, the purpose of which is to delay the matter. The matter will proceed more expeditiously without unnecessary applications before trial.

6.4 Interlocutory applications

Interlocutory applications are usually made by summonses, supported by affidavits or affirmations, which have to be filed with the court and served on the other party. You have to prove service of the documents by affidavit or affirmation. For details on preparations of affidavit or affirmation, please see the "sample court forms" file that can be obtained from the staff of Resource Centre for Unrepresented Litigants or at the Judiciary website.

The other party to the application may file affidavit or affirmation to oppose the application. Such affidavit or affirmation has to be filed with the court and served on the other party.

The applicant may, upon receiving the affidavit or affirmation in opposition, file and serve further affidavit or affirmation in reply to the oppositions. There should be no further affidavit or affirmation from either party unless there is a court order granting permission to any party to do so.

6.5 Hearing of interlocutory application

The summons will be heard by a master or a judge on a date fixed by the court. At the hearing, no witness should be called to give evidence unless the court has specifically ordered it. The court will only consider the evidence in the affidavits or affirmations and arguments from the parties. The procedures of the hearing are those described under "Trial or hearing not involving oral evidence" section in Leaflet 5 "How is a trial or hearing conducted in court" of this series.

At the end of the hearing, the master or the judge will make an order or pass a judgment. The master or the judge will usually order costs against the party who fails in the hearing. The costs may be ordered to be paid at the end of the main trial or to be paid forthwith.

In some cases, a master may determine an interlocutory application without an oral hearing.

Judiciary

March 2009

民事訴訟中的各個階段

What are the stages in a civil action

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on the Civil Justice Reform and the various stages in a civil action.
- You should read Rules of the High Court (or Rules of the District Court, as the case may be) and the Practice Directions for full details.
- Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
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What are the stages in a civil action

Civil Justice Reform

1. *Objectives*

The Civil Justice Reform commenced operation on 2 April 2009. The main objectives of the Reform are to increase cost-effectiveness, ensure fair and expeditious administration of justice and facilitate settlement of disputes between parties at an early stage. The Court will be taking a more pro-active role in case management in order to achieve those objectives. Parties should bear in mind that litigation should be the last resort for resolution of their disputes. The salient features of the Civil Justice Reform are set out below.

2. *Case management*

2.1 There are two important emphases of the Civil Justice Reform. First, there should be minimum delay in getting an action to trial. Second, unnecessary interlocutory applications should be eliminated.

2.2 Parties are expected to identify the real issues at the early stage of the action and the Court will give a tight but realistic timetable for the parties to prepare for the trial. The Court will also be much less tolerant of non-compliance of its orders. Instead, it will be more ready to make drastic orders to ensure compliance with its orders and make summary assessment of costs against the party who has not complied with its orders.

3. *Alternative disputes resolution (ADR)*

Before taking out legal proceedings, parties should consider alternative resolutions for their disputes such as mediation or other forms of negotiations to settle their disputes. Even after legal proceedings have been taken out, they are encouraged to settle their disputes at any stage of the proceedings. In actions involving unrepresented litigants, the Court may in appropriate cases direct the parties to attempt mediation. See Practice Direction 31 on Mediation for details.

4. *Statement of truth*

Under Order 41A of Rules of the High Court and Rules of the District Court, pleadings, witness statements and expert reports are required to be verified by a statement of truth, unless the Court has directed that the document needs not be verified by a statement of truth. For more details, please see Leaflet 6 "What are statements of truth" of this series.

5. *Order 13A admissions*

Under the new Order 13A of Rules of the High Court and Rules of the District Court, a defendant in a money claim may make admission to the whole or part of the liability in order to save costs and time. For more details, please see Leaflet 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.

6. *Sanctioned offers and sanctioned payments*

To facilitate settlement between parties, Order 22 of Rules of the High Court and Rules of the District Court now provides that parties to an action may make sanctioned offer and sanctioned payment with a view to compromising the action. As they may have serious

consequences on costs and interests, litigants should pay careful attention to any sanctioned offer or sanctioned payment made by the other party and should consider seeking legal advice on such offer or payment. Please note that our staff in the Resource Centre for Unrepresented Litigants cannot give you any legal advice. For more details, please see Leaflet 8 "How to shorten legal proceedings: Sanctioned offers and sanctioned payments" of this series.

7. *Questionnaire and case management conference*

Under the Civil Justice Reform, after the close of pleadings, parties are required to prepare, file and serve timetabling and listing questionnaires and attend case management summons hearing (if applicable) and case management conference (note that checklist review hearings will continue to be held in personal injury actions). For more details, see the section below on "Proceedings after pleadings".

8. *Milestone date*

8.1 Under the Civil Justice Reform, certain dates in the course of the litigation are regarded as the "milestone dates". They are dates that the Court has fixed for a case management conference, a pre-trial review, the trial or the period in which a trial is to take place.

8.2 The parties may by consent vary the timetable for the preparatory steps for the trial provided that such variations cannot affect the milestone dates. The parties may not vary the milestone dates by consent. They have to make an application to the Court for doing so. The Court will only vary the milestone dates in exceptional circumstances.

8.3 It is very important to attend the hearing or trial on the milestone dates. Failure to attend these hearings or trial can lead to very serious consequences. For more details, please see the section below on "Proceedings after pleadings".

Proceedings commenced by a writ of summons

9. *Application*

9.1 This section explains the procedures in an action commenced by a writ of summons. Unless otherwise stated, the practice and procedure stated below is applicable in both the High Court and the District Court.

9.2 The writ of summons is most commonly used for commencing a civil litigation where there is a substantial dispute of the facts between the parties.

9.3 The writ of summons is a prescribed statutory form. Copies of it can be obtained from the Court Registry.

10. *An overview of an action begun by writ of summons*

The following chart outlines the main stages and proceedings in a civil action begun by way of writ of summons.

10.1 Pleading stage:

- The plaintiff issues a writ of summons indorsed with a statement of claim (verified by a statement of truth).
- If applicable, the writ should be accompanied by Form No. 16 or Form No. 16C for making admission under Order 13A.

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- The defendant files an acknowledgment of service.
- If the defendant fails to do so, the plaintiff may enter judgment.

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- The defendant files a defence and (if applicable) counterclaim (verified by a statement of truth).
- The defendant may (if applicable) make admission in Form No. 16 or Form No. 16C.

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- The plaintiff may file a reply (if necessary).
- If there is a counterclaim, the plaintiff has to file a defence to counterclaim (verified by a statement of truth).
- If there is a defence to counterclaim, the defendant may file a reply to defence to counterclaim (verified by a statement of truth).

10.2 Close of pleading and preparation for trial stage:

- The parties have to fill in, file and serve timetabling questionnaire.
- If applicable, the parties may issue case management summons.
- Case management conference(s) held before Master/Judge.
- The parties have to make discovery and inspection of documents, exchange witness statements and (if applicable) expert reports.

10.3 Getting to trial:

- Pre-trial review hearing(s) held before Judge.
- Setting down the action for trial.
- The trial.

10.4 After the trial:

- Enforcement of judgment.
- Taxation of costs.

11. *The pleading stage*

11.1 The usual procedures at the pleading stage are as follows:

- The plaintiff commences the action by issuing and filing with the Court Registry a writ of summons. The writ of summons should be endorsed with a statement of claim. The plaintiff has to verify the statement of claim by making a statement of truth.
- The plaintiff has to serve the writ and statement of claim on all the defendants.
- With the commencement of the Civil Justice Reform, if the plaintiff's claim is only for payment of money, he should also serve the defendant with a statutory form (Form No. 16 or Form No. 16C) for the defendant to make admission under Order 13A of the Rules of the High Court (or the Rules of the District Court as the case may be).
- Within 14 days after being served with the writ, the defendant files an acknowledgement of service at the Court Registry, stating in it whether he intends to contest the claim. The Court will send a copy of it to the plaintiff.
- If the defendant is served with a Form No. 16 or Form No. 16C and he admits the monetary claim or any part of it and/or having admitted the claim, wishes to pay by instalments, he should complete the form, file it with the Court and also serve a copy on the plaintiff.
- If the defendant contests the claim, he should file and serve on the plaintiff a defence and (if applicable) a counterclaim. The defence and counterclaim have to be verified by a statement of truth. This has to be done within 28 days after the service of the writ or the statement of claim, whichever is the later.
- If a defence is served, the plaintiff may file and serve a reply. If there is a counterclaim, the plaintiff has to file and serve a defence to counterclaim. The reply and defence to counterclaim has to be verified by a statement of truth and must be filed and served within 28 days after being served with the defence and counterclaim.

- If there is a defence to counterclaim, the defendant may file and serve a reply to defence to counterclaim, verified by a statement of truth, within 28 days after the service of the defence to counterclaim.
- At this stage, the pleadings are said to be closed.
- If a defendant does not file the acknowledgement of service and/or fails to serve a defence on the plaintiff within the prescribed time, the plaintiff can apply to the Court to enter judgment on his claim. If judgment is granted, a full trial is not required.
- If the plaintiff has an unliquidated claim (i.e. the amount of award has to be assessed by the Court, for example, for loss of profits or damages for injury to person or property), judgment on liability will be entered if the defendant fails to file the acknowledgement of service or defence. But the plaintiff will have to attend Court so that a Master or a Judge will assess the amount that he is entitled to.

11.2 **You should also note**

- The writ of summons may be amended once without first obtaining the Court's permission. The plaintiff and the defendant may also amend his own pleadings once before close of pleadings without first obtaining the Court's permission.
- Further amendments require permission from the Court. For amendment made without Court's permission, the other party shall have 14 days after service of the amendment to amend his own pleading and to file and serve the amended pleading.
- For amendment made with Court's permission, the Court will specify the time within which the other party may amend his pleading and file and serve the amended pleading.

- All amended pleadings have to be verified by a statement of truth.
- If the defendant intends to defend the plaintiff's claim, he must plead to every allegation as pleaded in the statement of claim specifically. Any allegations not specifically denied by the defendant in the defence are deemed to be admitted by the defendant. The defendant should set out his own case if he denies the plaintiff's allegation. If he denies the plaintiff's allegation without setting out his own case, then the plaintiff only has to prove his case at the trial. The defendant is not permitted to put his case at the trial. The same applies to the plaintiff pleading to the counterclaim of the defendant.
- The allegations in the defence are deemed to be denied by the plaintiff even if the plaintiff does not file a reply.
- For guidance on preparing statement of claim, defence and reply, see the Explanatory Notes in the Sample Court Forms file available at the Resource Centre for Unrepresented Litigants or the Judiciary website.
- For details on making admissions in monetary claims under Order 13, see Leaflet 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.
- For details on verifying a pleading by a statement of truth, see Leaflet 6 "What are statements of truth" of this series.

12. *Preparation for trial stage*

The usual procedures after close of pleadings are as follows:

- The parties have to exchange list of documents and make inspection of the documents. They also have to prepare and exchange witness statements and (if applicable) expert reports. For details, see Leaflet 4 "How to prepare for a hearing or trial" of this series.
- Upon close of pleadings, the parties are required to complete a timetabling questionnaire and file and serve it on all the other parties in the action.

- If one of the parties is a litigant in person, the plaintiff has to take out a case management summons to seek case management directions from the Court. Sample case Management summons may be obtained from the Resource Centre for Unrepresented Litigants or downloaded from the Judiciary website.
- A Master may give case management directions by making an order *nisi* without a hearing, but the parties may apply to vary the directions within 14 days after the order is made. Alternatively, the Master may call for a hearing to be attended by all the parties before giving case management directions.
- In the order *nisi* or at the hearing of the case management summons, the Court will give directions for the preparation for the trial. The Court will also fix the date for the case management conference (CMC).
- Before attending the CMC, the parties have to file a listing questionnaire. You should read Practice Direction 5.2 on Case Management for details. If the parties have completed all the preparations for trial, the Court may give leave at the CMC to set the action down for trial. If parties are not ready for trial, the Court may fix another CMC.
- Unless the Court directs otherwise, there will be a pre-trial review (PTR) before the trial Judge at least 8 weeks before the trial begins.
- All parties have to attend the CMC and the PTR, which are milestone dates. If the plaintiff does not attend the CMC or the PTR, the Court will strike out the plaintiff's claim provisionally. If the defendant does not attend the CMC or the PTR, the Court will strike out his counterclaim provisionally. The plaintiff or the defendant may apply to restore the claim or the counterclaim within 3 months after it is struck out. The Court will only restore it upon being satisfied that there is good reason for the party's absence. If there is no application to restore the proceedings within 3 months from the hearing of the CMC or the PTR, the claim or the counterclaim stands dismissed accordingly.

13. *Getting to trial stage*

13.1 When the case is ready for trial, the Court will give permission for the action to be set down for trial. The plaintiff will file an Application to Set Down an Action for Trial. The plaintiff has to give notice of setting down to all the parties in the action.

13.2 The action will be placed in either the Running List or the Fixture List. For actions in the Running List, the Court will not specify the trial dates in advance. The action will be called upon for trial a few days before the trial date and the parties will be given notice of it. For actions in the Fixture List, they will be listed for trial on specified dates.

13.3 For cases listed for trial on the Fixture List, the PTR will be held no later than 8 weeks before the trial begins. At the PTR, the trial Judge may consider the action and the issues and evidence involved and give further directions for the conduct of the trial. There may be more than one PTR if the Judge considers it necessary.

13.4 For details on how to prepare for a trial, see Leaflet 4 "How to prepare for a hearing or trial" of this series.

14. *Trial*

At the trial, the Court will hear the evidence and submissions adduced by the parties. At the conclusion of the trial, the Court may give judgment immediately or hand down the judgment in writing at a later date.

15. *After the trial*

The usual procedures after the Court has given the judgment are:

- Enforcement of the judgment by the successful party.
- Taxation of the costs of the action of the party ordered by the Court to be entitled to costs.

Proceedings commenced by originating summons

16. *Application*

16.1 This section explains the procedures in an action commenced by originating summons. Unless otherwise stated, the practice and procedures are applicable in both the High Court and the District Court.

16.2 Originating summons is usually suitable for cases where there is only little or no dispute of fact and the parties only raise issues of law for the Court's determination. In case the Court finds that there is a substantial dispute of facts, the Court may order that the proceedings should proceed as if they were by way of writ. The Court may then give directions appropriate to the proceedings of a writ of summons. The procedures applicable to an action begun by writ will also apply.

17. *An overview of an action commenced by originating summons*

The following chart outlines the main proceedings in a civil action begun by way of originating summons.

- The plaintiff issues an originating summons containing a concise statement of the relief sought.
- If applicable, the originating summons should be accompanied by Form No. 16 or Form No. 16C for making admission under Order 13A.

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- The defendant files an acknowledgment of service.
- The defendant may (if applicable) make admission in Form No. 16 or Form No. 16C.

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- The plaintiff files and serves affidavit / affirmation in support of the originating summons.

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- The defendant files and serves affidavit / affirmation in opposition.

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- The plaintiff files and serves affidavit / affirmation in reply.

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- Hearing of the originating summons.
- If the Court orders the proceedings to continue as if begun by writ and gives direction appropriate for proceedings begun by writ, the action will proceed accordingly. Please refer to the procedures described in the chart under paragraph 10 above.

18. *The originating summons*

18.1 The originating summons is a prescribed form. Copies of it can be obtained from the Court Registry.

18.2 The plaintiff should set out a concise statement of the claim and the relief or remedy he seeks in the originating summons.

18.3 If the plaintiff's only claim is for payment of money, he should serve the originating summons together with Form No. 16 or Form No. 16C for making admission to the whole or part of the claim.

18.4 The procedures of filing and serving an originating summons are similar to those for filing and serving a writ of summons.

18.5 Within 14 days after being served with the originating summons, the defendant has to file and serve an acknowledgement of service, indicating whether he wishes to contest the action.

18.6 If the defendant is served with Form No. 16 or Form No. 16C and he admits the whole or any part of the claim and/or having admitted the claim, wishes to pay by instalments, he should complete the form, file it with the Court and also serve a copy on the plaintiff. See Leaflet entitled 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.

18.7 The defendant may make a counterclaim in the same proceedings instead of bringing a separate action.

19. *Affidavits / affirmations*

19.1 Within 14 days after the service of the acknowledgment of service, the plaintiff has to file and serve the affidavit (or affirmation) in support of the originating summons.

19.2 Within 28 days after receipt of the plaintiff's affidavit or affirmation in support of the originating summons, the defendant may file and serve the affidavit / affirmation in opposition if he is disputing the plaintiff's application.

19.3 Within 14 days after the defendant files the opposing affidavit / affirmation, the plaintiff may file further affidavit / affirmation to reply to the defendant's affidavit / affirmation. No further evidence may be filed unless the Court gives permission to do so.

19.4 For the preparation of affidavit / affirmation, see Leaflet 4 "How to prepare for a hearing or trial" of this series.

20. *At the hearing*

20.1 Unless the Court makes an order that the persons who had made affidavits / affirmations have to attend Court for cross-examinations, the deponents are not required to attend Court at the hearing. If the Court has made such an order, they must attend Court to be cross-examined. If they fail to attend, their affidavits / affirmations may not be admitted as evidence at the hearing.

20.2 At the hearing, if no oral evidence is to be adduced, the plaintiff will make submission first to open his case. This will be followed by the defendant's submission in opposition. The plaintiff can make a final submission in reply.

20.3 If witnesses are to be called, the plaintiff's witnesses will testify after the plaintiff makes the opening submission. The defendant's witnesses may give evidence after the defendant has opened his defence. Afterwards, the defendant will make the closing submission, followed by the plaintiff's closing submission.

20.4 After hearing the evidence and submissions, the Court may give judgment immediately or hand down the written judgment at a later date.

20.5 If a defendant does not file an acknowledgement of service within time or if he states in the acknowledgement of service that the proceedings are not contested, the plaintiff still has to fix a date to have the matter heard. The Court will give relief to the plaintiff if it is satisfied that the plaintiff is entitled to such relief.

21. *After the hearing*

The usual procedures after the Court has given the judgment are:

- Enforcement of the judgment by the successful party.
- Taxation of the costs of the action of the party ordered by the Court to be entitled to costs.

Judiciary
March 2009

如何準備聆訊或審訊

How to prepare for a hearing or trial

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on preparation for a hearing or a trial.
- You should read the relevant provisions in Rules of the High Court or Rules of the District Court and Practice Directions for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
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- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

How to prepare for a hearing or trial

General notes

1. This leaflet deals with preparations for court hearing or trial. The guidance here is subject to the Practice Directions issued by the court from time to time. You should also pay attention to the Practice Directions.

2. The guidance applies to civil proceedings in the High Court and in the District Court.

3. *Interlocutory applications*

The evidence for the hearing of interlocutory applications (such as applications for summary judgment, striking out of pleadings, security for costs, discovery of documents etc.) is usually contained in affidavits or affirmations and the exhibits annexed to them.

4. *Hearing of originating summons*

The evidence for the hearing of originating summons is usually also contained in affidavits or affirmations and the exhibits annexed to them.

5. *Trial*

Preparations of evidence for a trial include preparing lists of documents, witness statements, expert reports and trial bundles for the trial.

6. Preparations for affidavits / affirmation, lists of documents, witness statements, expert reports, hearing bundles, trial bundles, skeleton arguments for interlocutory applications and written openings and submissions for trials are described in more details below.

Affidavits / affirmations

7. When you issue a summons, you normally need to file an affidavit or affirmation in support. In the paragraphs below, references to affidavit shall include affirmation as well.

8. Alternatively, if you are served with a summons and you wish to oppose it, you have to file an affidavit setting out the evidence in support of your oppositions.

9. The purpose of an affidavit is to set out the facts on oath in support of or in opposition to the application stated in the summons.

10. The facts must be those of which you have personal knowledge. If you do not have personal knowledge, you should state the source of your knowledge, information or belief and state whether or not you believe in the truth of those facts. Alternatively, you can ask the person who has personal knowledge to make the affidavit.

11. For details about the contents, the format and the filing and service of affidavits, please refer to the "sample court forms" file available at the Resource Centre for Unrepresented Litigants at LG1, High Court Building.

Lists of documents

12. After the pleadings are closed (i.e. parties having set out all their facts and disputes in the statement of claim, defence and reply, supported by a statement of truth respectively), the parties should within 14 days prepare their own list of documents and exchange it with the other party to the action.

13. The purpose of a list of documents is to inform the opposite party what documents relevant to the issues in the case are in your possession, or can be obtained by you from any third party (e.g. a bank) or had once been in your possession, and what documents you object to produce.

14. For details about the contents, the format and the service of list of documents, please refer to the "sample court forms" file available at the Resource Centre for Unrepresented Litigants.

Witness statements

15. A witness is a person having personal knowledge of facts relating to the matters in dispute in a case. A witness statement is a statement of facts given by the witness for the legal proceeding. The maker of the witness statement has to take the personal responsibility for the contents of his statement. He may be liable for perjury for deliberately making false statements. A witness is required to verify the truth of his witness statement by making a statement of truth. Please refer to Leaflet 6 "What are statements of truth" of this series for details.

16. For details about the contents, the format, the filing and service / exchange of witness statements, please refer to the "sample court forms" file available at the Resource Centre for Unrepresented Litigants.

Expert reports

17. Where the evidence involves technical opinions from experts, parties may have to obtain the assistance of experts.

18. A party who seeks to adduce expert evidence at the trial has to obtain permission from the court first. The application for permission to call expert witness is usually made after close of pleadings. The application may be made by filling in the relevant section in the timetabling questionnaire. See Appendix A to Practice Direction 5.2 for the timetabling questionnaire.

19. In making the application, you should set out the areas of the expertise and the issues on which you require the expert evidence.

20. You should also consider agreeing with the other parties to appoint a single joint expert. The single joint expert will compile the expert report. The report can be adduced as evidence without having to call the expert to give oral evidence at the trial. In this way, time and costs of the trial can be saved.

21. If there is no agreement for the appointment of a single joint expert, the court will, when giving permission to adduce expert evidence at trial, also give directions for the parties to exchange the expert reports within a specified period of time.

22. The expert is required to verify his report by making a statement of truth. See Leaflet 6 "What are statements of truth" of this series for details.

Hearing bundles for interlocutory applications

23. For contested interlocutory applications listed for 30 minutes or more before a judge or master, the parties should place before the court a set of hearing bundles, a chronology of the relevant events and where a number of companies, firms or individuals may be referred to in submissions, a *dramatis personae*. Parties should try to agree on and jointly prepare the hearing bundles, the chronology and *dramatis personae*.

24. The hearing bundles should be paged consecutively on the top right-hand corner. They should contain only documents relevant to the particular application to which the parties will need to refer to at the hearing. The hearing bundles should include:

- Bundle of copies of court documents (pleadings, summons, order for directions, affidavits/ affirmations etc);
- Bundle of copies of the exhibits to the affidavits/ affirmations that are relevant to the particular application; and
- Bundle of copies of correspondence between the parties (if any).

25. The hearing bundles, chronology and *dramatis personae* should be lodged with the court and served on the other parties at least 3 clear days before the hearing (i.e. excluding Saturdays, Sundays and general holidays).

26. You should refer to Practice Direction 5.4 for details on the requirements for preparations of interlocutory hearings and of interlocutory applications to be disposed of by master on the papers. Failure to comply with the Practice Directions may result in costs penalty.

Trial bundles

27. Before trial, parties should prepare bundles for the trial, which usually consist of :

- Bundle of pleadings and relevant court documents;
- Bundle of witness statements and expert reports; and
- Bundle of documents.

28. The bundle of documents should be prepared based upon the lists of documents filed by the parties. Parties should seek to agree on a bundle of documents. If they cannot come to an agreement, each party will have to prepare his bundle of documents.

But this will cause delay in the trial and incur more costs. Any party who has unreasonably refused to agree the bundle of documents for the trial may be penalized for costs.

29. Documents in the bundle of documents need not be the original documents. The original documents, if available, should be made available for the court's inspection at the trial.

30. The bundle of documents for trial should be put in lever-arch files or ring-binders and must be:

- firmly secured (not stapled);
- arranged in chronological order from the front;
- paged consecutively on the top right-hand corner; and
- fully and easily legible (typed copies if necessary).

31. You should refer to Practice Direction 5.6 for details on the requirements for documents for use at trial.

32. There should be several identical sets of trial bundles, one set for each party, one set for the court and a spare bundle for the witnesses to refer to at the trial.

33. Trial bundles must be lodged with the court at least 3 clear days before the date fixed for the trial.

Skeleton arguments for interlocutory applications

34. Parties to a contested interlocutory application should prepare skeleton submissions in support of or in opposition to the application. The skeleton argument should be concise and succinct, but at the same time include all the arguments that the party intends to take. You should refer to Practice Direction 5.4. for the detailed requirements for a skeleton argument.

35. The skeleton argument should be lodged with the court and served on the other parties at least 3 clear days before the hearing.

Written openings and submissions for trials

36. You may prepare written introduction of your case and submit it to the trial judge for the opening of your case. In general, a written opening should give a succinct outline of:

- the party's own case and arguments;
- the opposite party's case and arguments; and
- the issues that require the court's determination.

37. The written opening should be sent to the court at least 3 clear working days before the trial or hearing. You have to send a copy of it to the other party as well.

38. If you want to give your written conclusions to the court at the end of the trial or hearing, you may do so after the court has heard the evidence.

39. As far as it is practicable, you should cause the written opening or conclusion to be typed. Otherwise, you must ensure that the handwriting is fully and easily legible.

Judiciary
March 2009

法庭審訊或聆訊如何進行

How is a trial or hearing conducted in court

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on how is a trial or hearing conducted in court.
- You should read Rules of the High Court (or Rules of the District Court, as the case may be) and the Practice Directions for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
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How is a trial or hearing conducted in court

The opening

1. It is an introduction of the case to the court. Each side may give its own introduction to the judge before it calls its witnesses to give evidence. It is not absolutely necessary to have an opening. For cases where the facts are very complicated and there are many witnesses, it will be helpful for the parties to give an introduction of their case to the judge before the judge hears the evidence. For simple cases, the opening may be dispensed with and the parties may commence by calling the witnesses to give evidence. The judge will give direction as to whether or not it is necessary to have an opening of the case.

Evidence

2. *Examination in chief*

At the trial, the Court will hear evidence of witnesses and submissions (arguments or speeches from lawyers for the parties or the parties themselves only if they have no lawyers to act for them) of the parties. Usually, the plaintiff who has the burden of proof will first open the case. He may give evidence himself and call witnesses to give evidence. Alternatively, he may just call his witnesses to give evidence. This process is called examination in chief by the plaintiff.

3. *Cross-examination*

The defendant may put questions to each of the plaintiff's witnesses after they have given evidence. This process is called cross-examination by the defendant.

4. *Re-examination*

After cross-examination by the defendant, the plaintiff may put questions to the witness to clarify the matters raised in the cross-examination only. This process is called re-examination by the plaintiff.

5. After all witnesses of the plaintiff have given evidence, the defendant may give evidence himself and call witnesses to give evidence. Alternatively, the defendant may just call witnesses to give evidence, without giving evidence himself. The plaintiff may cross-examine (ask questions) each of the defence witnesses after they have given evidence. The defendant may re-examine (ask questions for clarification) the witness after cross-examination by the plaintiff.

Final submission

6. After all witnesses have given evidence, the defendant has the right to make final submissions (speeches) to the court. The plaintiff will follow the defendant and make final submissions (speeches) to the court.

7. The Court may adjourn the case (postpone the hearing) to another date if further information and/or evidence are needed.

8. At the end of the trial, the Court may pass judgment or it may pass / hand down judgment in written form at a later date.

Trial or hearing not involving oral evidence

9. In case of a hearing where no witness is called to give oral evidence, the plaintiff will make the speech and argue the case first, followed by the defendant. The plaintiff will have the right to make a reply speech to the arguments put forward by the defendant.

10. After hearing the submissions, the court may make the order or pass judgment or it may pass / hand down the order or the judgment in written form at a later date.

11. This form of hearing is common in the Court of Appeal or the Court of Final Appeal because appeal courts usually hear arguments on law. They do not hear evidence because the facts had already been decided by the trial court, which had heard the evidence of the witnesses. Only in exceptional circumstances will the appeal court hear oral evidence from the parties.

12. In actions begun by originating summons, it is also common not to have oral evidence at the trial or substantive hearing. The evidence is contained in affidavits (or affirmations).

13. The above are the usual procedures for the trial or hearing. The judge can always give other directions. You must follow the directions of the judge.

Judiciary
March 2009

屬實申述

What are Statements of Truth

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on statements of truth.
- You should read Order 41A of Rules of the High Court (or Rules of the District Court, as the case may be) and Practice Direction 19.3 for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to the Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
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- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

What are statements of truth

1. As from the commencement of the Civil Justice Reform, the following documents must be verified by a statement of truth in accordance with Order 41A of Rules of the High Court or Rules of the District Court, as the case may be:

(a) a pleading, which includes particulars of a pleading and the amendments to them ;

(b) a witness statement;

(c) an expert report; and

(d) any other document that requires verification by a statement of truth under any other provisions of the Rules of the High Court or the Rules of the District Court or by a practice direction;

Who should sign the statement of truth

2. Witness statement: by the maker of the witness statement;

3. Expert report: by the maker of the expert report;

4. In any other case: by the party putting forward the verified document or by his next friend or *guardian ad litem*, or the legal representative of the party or next friend or *guardian ad litem*.

5. Under the following situations, the appropriate person to sign is:

(a) Where a party is a limited company or association: by a person holding a senior position such as a director, manager, corporate secretary or other similar office.

(b) Where a party is a partnership: by a partner or a person having the control or management of the business.

The effects of statement of truth

6. It is a statement that the party putting forward the document believes that the facts stated in the document are true. In the case of a witness statement, it means that the maker of the witness statement believes that the facts stated in it are true. In the case of an expert report, it means that the maker of the expert report believes that the facts stated in the document are true and the opinion expressed in it is honestly held.

7. If a party is conducting proceedings by a next friend or *guardian ad litem*, the statement of truth relating to a pleading is a statement that the next friend or *guardian ad litem* believes that the facts stated in the document being verified are true.

Form of statement of truth

8. The statement of truth should preferably be contained in the document it verifies. A sample of this is at Appendix A. If the statement of truth is not contained in the document it verifies, then a separate statement of truth has to be prepared. Please refer to Appendix B and Appendix C for the relevant samples.

Consequences of failure to verify by a statement of truth

9. If it is a pleading, the Court may order it to be struck out. If it is a witness statement or an expert report, it is not admissible as evidence unless the Court allows it to be admissible without a statement of truth.

The Court's discretion

10. The Court has the power to order that a document needs not be verified by a statement of truth. You may assume that the Court will not exercise this discretion unless there is good reason to do so upon an application being made.

11. The Court may order a person who has failed to verify a document in accordance with the requirements of Order 41A to verify the document.

Contempt of court

12. If a person has made a statement of truth falsely, proceedings for contempt of court may be brought against him by the Secretary for Justice or by a person aggrieved by the false statement with permission of the Court. The Court will consider whether the punishment for contempt of court is proportionate and appropriate under the circumstances.

Appendix A

Form of Statement of Truth that is contained in the document that it verifies

(1) The form of a Statement of Truth verifying a witness statement or an expert report is as follows:

I believe that the facts stated in this _____ *[fill in the name of the document being verified]* **are true and** *(if applicable)* **the opinion expressed in it is honestly held.**

(2) The form of a Statement of Truth verifying a document other than a witness statement or expert report is as follows:

I believe / The _____ *(state the party verifying e.g. plaintiff, defendant etc.)* **believes* that the facts stated in this _____** *[fill in the name of the document being verified]* **are true**.

* Delete if inappropriate

Appendix B

Form of Statement of Truth not contained in the document that it verifies for use in the High Court

HCA/HCMP*_____ /20___

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

ACTION NO./ MISCELLANEOUS PROCEEDINGS NO.* _____ OF 20___

BETWEEN

ABC Plaintiff

and

XYZ Defendant

I believe that the facts stated in the following document(s) are true and *(if applicable)* **the opinion expressed in it is honestly held:**

□ Pleading: _____ *(state the name of the pleading)* issued on _____ *(date)*

□ Particulars of _____ *(state the name of the pleading)* issued on _____ *(date)*

□ Amendment of _____ *(state the name of the pleading amended)* made on _____ *(date)*

☐ Witness statement of _____ *(name of the witness)* served / filed* on _____ *(date)*

☐ Expert report made by _____ *(name of expert)* disclosed to the _____ *(name of the party to which the report is disclosed)* on _____ *(date)*

☐ Others :_____

Name: _____

Signed: _____

Date: _____

☐ *Please put a √against the appropriate document*

* *Please delete if inappropriate*

Appendix C

Form of Statement of Truth not contained in the document that it verifies for use in the District Court

DC_____ /20___

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

CIVIL JURISDICTION

ACTION NO./ MISCELLANEOUS PROCEEDINGS NO.* _____ OF 20___

BETWEEN

ABC Plaintiff

and

XYZ Defendant

I believe that the facts stated in the following document(s) are true and *(if applicable)* **the opinion expressed in it is honestly held:**

□ Pleading: _____ *(state the name of the pleading)* issued on _____ *(date)*

□ Particulars of _____ *(state the name of the pleading)* issued on _____ *(date)*

□ Amendment of _____ *(state the name of the pleading amended)* made on _____ *(date)*

□ Witness statement of _____ *(name of the witness)* served / filed* on _____ *(date)*

□ Expert report made by _____ *(name of expert)* disclosed to the _____ *(name of the party to which the report is disclosed)* on _____ *(date)*

□ Others :_____

Name: _____

Signed: _____

Date: _____

□ *Please put a √against the appropriate document*
* *Please delete if inappropriate*

Judiciary
March 2009

如何縮短法律程序：在金錢申索中按第13A號命令作出「承認」

How to shorten legal proceedings : Order 13A admissions in monetary claims

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and District Court on making admissions under Order 13A in monetary claims.
- You should read Order 13A of Rules of the High Court (or Rules of the District Court, as the case may be) for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

How to shorten legal proceedings:
Order 13A Admissions in Monetary Claims

Introduction

1. A new set of procedure has been introduced under the Civil Justice Reform to encourage the plaintiff and the defendant to consider settling their disputes at an early stage of the proceedings, that is after the writ of summons or the originating summons or the counterclaim is served and before the defence is served and filed in the court. It is intended at the end to save the time of litigation and the costs of the parties.

2. This leaflet gives a brief summary of the provisions under the new Order 13A of Rules of the High Court, Cap. 4A and Rules of the District Court, Cap. 336H, which came into effect on 2 April 2009. The new Order affects actions commenced before and after this date. You are advised to read carefully the provisions in Order 13A before deciding whether and how to make admissions in accordance with them.

3. All the prescribed forms under Order 13A are available at the High Court and District Court Registry and can also be downloaded from the Judiciary website. You should read the prescribed forms carefully. If you have any query in how to fill up the forms, you may consult the staff at the Resource Centre for Unrepresented Litigants. While the staff there will explain how you can fill up the relevant forms, they cannot give you any legal advice. In case of doubt, you should consult a lawyer.

Application

4. Order 13A applies only to a monetary claim, i.e. the only remedy sought is the payment of money, whether the amount claimed is a liquidated sum or an unliquidated sum. Whether a sum is liquidated or unliquidated is a question of law, which you should seek explanation and clarification from lawyers. In general, a claim for a liquidated sum refers to a claim for a specific sum of money. Its amount is either already ascertained or capable of being ascertained as a mere matter of arithmetic calculation. On the other hand, a claim for an unliquidated sum refers to a claim for an unascertained sum that involves investigation beyond calculation and assessment by the court. For the purpose of Order 13A, the amount of a claim is treated as unliquidated if the claim consists of a claim for a liquidated amount of money and also a claim for an unliquidated amount of money.

5. Order 13A does not apply to other kinds of claim such as those seeking injunctive or declaratory relief or possession of land, in which cases, parties can make admission in the pleadings or such other ways as allowed by the law.

6. Order 13A also applies to a counterclaim brought by a defendant. In this leaflet, the matters stated about a plaintiff apply to a defendant who makes a counterclaim, and the matters stated about a defendant apply to a defendant to a counterclaim.

7. For cases where Order 13A applies, the plaintiff must attach an appropriate form of admission when he serves a writ of summons or originating summons on the defendant. For a claim for a liquidated amount, **Form No. 16** should be attached. If the claim is for an unliquidated amount, **Form No. 16C** should be attached.

Making an admission

8. Upon being served with the writ of summons or the originating summons, a defendant may make an admission. In a liquidated claim, a defendant may admit the whole or part of the claim. In a claim for an unliquidated amount of money, a defendant may make an admission of liability to pay the whole of the plaintiff's claim or, while admitting the liability to pay, offer a liquidated amount of money in satisfaction of the plaintiff's claim.

9. At the same time when filing an admission in appropriate form, a defendant may make a request for time to pay, i.e. a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.

10. You should consider carefully before making an admission. Once an admission is made, it cannot be amended or withdrawn without permission of the court.

Time for making the admission

11. In cases where a defendant is served with a writ of summons, the appropriate admission form should be filed and served by a defendant within the period fixed by the Rules for service of the defence, i.e. within 28 days after the time limited for acknowledging service of the writ or after the service of the statement of claim, whichever is later. In any event, no admission in accordance with Order 13A can be made after a default judgment is obtained by the plaintiff against the defendant.

12. Where a defendant is served with an originating summons, he may file and serve the appropriate admission form within 28 days after the plaintiff serves the supporting affidavit on him. No admission can be made in these cases after the date fixed for hearing of the originating summons.

Procedure subsequent to an admission

13. The plaintiff may request to enter judgment within 14 days after the defendant files the admission form. If the plaintiff fails to respond to an admission made by the defendant by filing the appropriate prescribed form within the aforesaid time, his claim will be stayed until such form is filed.

If the defendant has not requested time for payment

14. *Liquidated claim*: if the defendant admits the whole claim, the plaintiff may obtain judgment for the whole claim admitted by filing a request in **Form No. 16A**. If the defendant admits only part of the claim in satisfaction of the whole claim, the plaintiff may accept such amount in satisfaction of the whole claim by filing **Form No. 16B** to request for judgment to be entered. Upon receipt of the request, the court shall enter judgment accordingly. The plaintiff may also indicate in the form that he does not accept the defendant's part admission, in which case, the proceedings will continue as usual.

15. *Unliquidated claim*: if the defendant admits liability only without making any offer to pay an amount in satisfaction of the claim, the plaintiff may obtain judgment by filing a request in **Form No. 16D**. Upon receipt of the request, the court shall enter judgment for an amount to be decided by the court. If the defendant admits liability with an offer to pay a liquidated amount of money in satisfaction of the plaintiff's claim, the plaintiff shall state in a reply in **Form No. 16E** whether he accepts the amount in satisfaction of the claim. If he accepts, he may in the same form request for judgment on the accepted sum. If the plaintiff indicates in the form that he does not accept the offer, he may request for judgment to be entered for an amount to be decided by the court. In either case, the court will enter judgment accordingly.

16. The plaintiff may also 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 the judgment debt is to be paid by instalments. The court shall then enter judgment for the amount to be paid by the specified date or at the times and rate as specified in the request. If no time is specified for payment, the judgment debt shall be paid immediately.

If the defendant requests for time to pay

17. A defendant may make a request for time to pay in either of the following situations:

(a) A defendant who makes admission of the whole of a claim for liquidated amount of money,

(b) A defendant who makes admission of part of a claim for liquidated amount of money, or

(c) A defendant who makes admission of liability to pay a claim for unliquidated amount of money and offers to pay a liquidated amount of money in satisfaction of the claim.

The defendant may state in the appropriate admission form his proposal as to the date of payment of the sum admitted or a proposal to pay by instalments at the times and rate specified.

18. If the plaintiff accepts the defendant's request for time to pay, he may obtain judgment by filing an appropriate form of request for judgment (as explained above). Upon receipt of the request, the court shall enter judgment for the appropriate amount and costs and the amount shall be paid by the date or at the time and rate as specified in the defendant's request.

19. If the plaintiff does not accept the defendant's request, he shall state his non-acceptance in an appropriate form of request for judgment to be filed in the court. The plaintiff may make his own proposal as to time to pay. After the court receives the plaintiff's notice, it shall enter judgment for the amount admitted to be paid by the date or at the times and rate of payment as determined by the court. The court may initially determine the date or the times and rate of payment without a hearing after considering the information in the defendant's admission, the reasons why the plaintiff does not accept the defendant's proposal and all other relevant matters. Either party may apply to the court for re-determination if the first determination was made without a hearing.

20. Unless the court otherwise orders, execution of the judgment for payment by instalments at the times and rate specified is stayed pending payment by the defendant. If the defendant makes default in payment, the stay of execution will cease and the plaintiff may enforce payment of the whole unpaid balance under the judgment immediately.

A brief summary of what the plaintiff and the defendant have to do under Order 13A

If you are the plaintiff (or the defendant who makes a counterclaim):

- You should attach to the writ of summons or the originating summons (or counterclaim) an appropriate form of admission: **Form No. 16** for a claim (or counterclaim) for liquidated amount; **Form No. 16C** for a claim (or counterclaim) for an unliquidated amount.
- Within 14 days after receipt of the admission form from the other party, you have to respond to the admission by filing the appropriate form; otherwise, your claim (or counterclaim) will be stayed until the said form is filed.
- In a liquidated claim (or counterclaim), if the other party admits the whole claim (or counterclaim), you may request for judgment by filing **Form No. 16A**. If only part of the claim (or counterclaim) is admitted, you may accept such amount in satisfaction of the whole claim (or counterclaim) and request for judgment to be entered by filing **Form No. 16B**. On the other hand, you may reject the admission of part of the claim (or counterclaim), in which case the proceedings will continue as usual.
- In an unliquidated claim (or counterclaim), if the other party admits liability only without offering to pay any amount, you may request for judgment for an amount to be decided by the court by filing **Form No. 16D**. If the other party offers to pay a liquidated amount of money in satisfaction of your claim (or counterclaim), you may accept such offer in satisfaction of your claim (or counterclaim) and request for judgment on the accepted sum by filing **Form No. 16E**. You may decide not to accept the offer and request for judgment for an amount to be decided by the court.

- If the other party requests for time to pay, you may accept the request and may obtain judgment with time given to the defendant to pay as requested. You may also reject the defendant's request but make your own proposal as to the time to pay. The court may make an initial determination on the date or times and rate of payment without a hearing. You may apply for a re-determination if the determination is made without a hearing.

If you are the defendant (or the party served with a counterclaim):

- Upon receipt of the writ of summons or the originating summons (or the counterclaim), you may consider making an admission by filling up the appropriate form of admission as attached to the writ or originating summons (or counterclaim). You must consider carefully before making an admission. Once it is made, it cannot be amended or withdrawn without permission of the court.
- You may request for time to pay the claim (or counterclaim) by making a proposal as to the date of payment or by instalments in the admission form.
- You must file the appropriate admission form with the Court Registry and serve it on the plaintiff within 28 days after the time limited for acknowledging service or the service of the statement of claim (or counterclaim), whichever is later in case of an action begun by writ.
- For an Originating Summons, the admission form must be filed and served within 28 days after the plaintiff serves the supporting affidavit on you.
- You may receive a response of the other party in respect of your admission when he files the appropriate form in court. If no response is received, the claim (or counterclaim) will be stayed until the other party files and serves on you such response.
- If the other party requests for judgment, after the court approves the judgment, a sealed copy judgment will be served on you.
- If the other party accepts your request for time to pay the admitted claim (or counterclaim), a judgment will be entered against you with the time for payment as proposed. You have to pay the amount at the time and rate as stated in the judgment; otherwise, the other party may enforce payment of the whole unpaid balance under the judgment immediately.

Judiciary
March 2009

如何縮短法律程序：「附帶條款和解提議」及「附帶條款付款」

How to shorten legal proceedings : Sanctioned offers and sanctioned payments

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on Sanctioned Offers and Sanctioned Payments.
- You should read Order 22 of the Rules of the High Court (or Rules of the District Court, as the case may be) and the Practice Direction for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

How to shorten legal proceedings: Sanctioned Offers and Sanctioned Payments

Introduction

1. Court action should be your last resort. Even after the commencement of the action, you should still seriously consider if the dispute with the other side can be settled. If settled, the dispute will come to an end without going through the trial process. It will save time and costs.

2. One of the ways to settle is by sanctioned offers and sanctioned payments made under Order 22 of Rules of the High Court, Cap. 4A (or Rules of the District Court, Cap. 336H, as the case may be). Generally speaking, a party (called "the Offeror") may, after the commencement of the action, make a sanctioned offer or sanctioned payment to the other side (called "the Offeree"). If the Offeree refuses to accept the offer or payment and it is not bettered when judgment is obtained, he may be liable for enhanced interest (up to 10% above judgment rate) and the Offeror's costs assessed on an indemnity basis. This procedure aims at encouraging the parties to take possible settlement seriously and providing an incentive for them to settle disputes at an early stage. It does not prohibit a party from making an offer to settle in any way he chooses. However, if the offer does not comply with the provisions in Order 22, the consequences specified in the rules will not apply.

3. This leaflet sets out a brief summary of the provisions for your easy reference. You are strongly advised to read Order 22 carefully before deciding to make, accept or refuse a sanctioned offer or sanctioned payment, as it may give rise to important consequences.

What is a sanctioned offer and sanctioned payment?

4. Sanctioned offer means an offer made (otherwise than by way of a payment into court) in accordance with Order 22.

5. Sanctioned payment means an offer made by way of a payment into court in accordance with Order 22.

Who can make a sanctioned offer or sanctioned payment?

6. A plaintiff can only make a sanctioned offer.

7. Depending on circumstances, a defendant can make a sanctioned offer or a sanctioned payment or both.

When to make a sanctioned offer or sanctioned payment?

8. A sanctioned offer can be made at any time after the commencement of the action.

9. A sanctioned payment may only be made after the proceedings have commenced.

How to make a sanctioned offer or sanctioned payment?

10. A sanctioned offer must be in writing. There is no prescribed form but if the offer includes the payment of a sum of money, the Offeror should make a sanctioned payment by Form No. 23 as well. The Offeror must serve the offer on the Offeree.

11. The Offeror making a sanctioned payment must file with court a notice in Form No.23 and serve it on the Offeree.

What should be stated in the sanctioned offer or sanctioned payment?

12. The sanctioned offer or the sanctioned payment must state, among other things, if it relates to the whole claim or to part of it or to any issue arising from it and if so, to which part or issue.

Can a sanctioned offer and a sanctioned payment be withdrawn?

13. A sanctioned offer and a sanctioned payment may not be withdrawn or diminished before the expiry of 28 days from the date when it is made unless the court grants leave to do so.

How to accept a sanctioned offer or a sanctioned payment?

14. A sanctioned offer or a sanctioned payment may be accepted without leave by service of a written notice of acceptance (for a sanctioned payment, in Form 24) within 28 days after the offer or payment is made, if it is made not less than 28 days before trial. Otherwise, leave is required unless the parties have agreed on the liability for costs.

What are the consequences of acceptance?

15. If a sanctioned offer or sanctioned payment relates to the whole claim is accepted, the claim is stayed. For a sanctioned offer, the stay is upon the terms of the offer and either party may apply to enforce those terms.

16. If a sanctioned offer or sanctioned payment relating only to a part of the claim or an issue arising from the claim is accepted, the claim is stayed as to that part or issue.

17. Normally, the plaintiff will get his costs of the proceedings up to the date of the acceptance.

What are the consequences of non-acceptance?

18. The consequences of non-acceptance of a sanctioned offer or sanctioned payment depend on the outcome of the proceedings.

19. If a plaintiff has made a sanctioned offer which is not accepted, and he obtains a judgment better than the offer, the defendant may have to pay the plaintiff's costs on an indemnity basis, enhanced interest (up to 10% above judgment rate) on those costs and enhanced interest (up to 10% above judgment rate) on any sum awarded to the plaintiff.

20. On the other hand, if a defendant has made a sanctioned offer or sanctioned payment which is not accepted, and the plaintiff fails to obtain a judgment better than the offer or payment, the plaintiff may have to pay the defendant's costs on an indemnity basis and enhanced interest (up to 10% above judgment rate) on those costs. In addition, the court may disallow interest on the whole or part of the sum or damages awarded to the plaintiff.

Judiciary
March 2009

如何申請司法覆核

How to apply for judicial review

- This leaflet is designed to provide you with a brief outline of the procedure for making applications for judicial review. It does not cover the substantive law on judicial review. You should seek legal advice if you require assistance on the substantive law.
- Applications for judicial review must be made in accordance with Order 53 Rules of the High Court and Practice Direction SL3. You should read them for full details of the procedure and practice.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

- In principle, applicants applying for judicial review may act in person. However, this area of the law, together with the drafting and preparation of the necessary documents can be highly technical. An applicant should carefully consider the advisability of instructing a solicitor either at your own expense or through legal aid.

How to apply for judicial review

Introduction

1. Application for judicial review

Application for judicial review includes an application for a review of the lawfulness of an enactment, or of a decision, action or failure to act in relation to the exercise of a public function.

2. Timing

2.1 Judicial review proceedings must be brought promptly and in any case within 3 months of the date when grounds for the application first arose.

2.2 The Court can extend the time limit but will only exercise this power where it is satisfied there are very good reasons for doing so. If an extension of time is sought, the grounds in support of that application must be set out in the application for leave to apply for judicial review and verified by affidavit/ affirmation.

3. Leave to apply for judicial review

Application for judicial review is by way of a two-stage procedure. The first step is to obtain from the court, permission (which is often referred to as "leave") to bring an application for judicial review. If the court refuses to grant leave, no application for judicial review can be brought.

4. Relief

It is important to state clearly the relief that you seek by way of judicial review. The relief sought may include one or more of the following:

(a) Mandamus

This is an order compelling the respondent to perform an act specified in the order

of the court, which is in the nature of a public duty or obligation. The act or obligation has to be specified in the application.

(b) Certiorari

This is an order to quash or set aside a decision already made by the respondent.

(c) Prohibition

This is an order to prevent the respondent from acting or continuing to act in excess of his power or to act against the rules of natural justice.

(d) Declaration

This is an order declaring the legal rights and duties of the parties.

(e) Injunction

This is an order restraining unlawful acts or interference with the rights of the applicant.

(f) Damages

Damages may be claimed as additional relief to other remedies. But you cannot commence judicial review proceedings for seeking these remedies alone.

(g) Interim relief

The court may make interim orders before the application for judicial review is decided. However, interim relief will not be granted before leave to apply for judicial review is granted.

Application for leave

5. Notice of Application for Leave (Form 86)

5.1 To obtain leave, you must file with the High Court Registry a Notice of Application for Leave (Form 86). A filing fee[1] is payable.

[1] Currently, the filing fee is HK$1,045. This is subject to adjustment from time to time. You can find out the current fee from the High Court Fees Rules.

5.2 You must include in the notice:

(a) your name, description and an address for service;

(b) the name, description and address of the respondent;

(c) the date and a description of the decision or act of the respondent that you seek to challenge;

(d) the relief you seek, including any interim relief;

(e) the name and address of all interested parties (if any) known to you;

(f) the grounds on which your application is based; and

(g) if there is delay in seeking judicial review, the reasons for the delay.

5.3 A copy of Form 86 together with the accompanying Notes for Guidance is at Appendix 1.

6. Supporting affidavit / affirmation

You also have to file with the High Court Registry an affidavit/ affirmation verifying the facts you rely upon in support of your leave application. You should exhibit in the affidavit/ affirmation the documents that are relevant to your application. If the documents are more than 10 pages, you should prepare a list showing the pages that are relevant or relied on by you.

7. Filing

The original copy of the Form 86 and the supporting affidavit/ affirmation will be kept by the court. You should therefore make sufficient copies for your own reference and for service on other parties.

8. Determination

8.1 Application for leave is made ex parte. It is determined by a judge of the Court of First Instance of the High Court on consideration of the papers filed.

There will be no oral hearing unless a hearing is requested in the notice of application or if the judge directs otherwise.

8.2 On consideration of the papers, the judge may either grant leave to apply for judicial review or may refuse leave. The judge may also direct the named respondent to attend court and to make representations on the leave application if he considers that it is not possible to decide the leave application on paper or without also hearing the respondent.

8.3 No matter what order the judge makes on your leave application, it will be communicated to you or your solicitors, if you are legally represented.

9. Challenging the grant or refusal of leave

If leave is refused, you may appeal against the refusal to the Court of Appeal of the High Court within 14 days after the order of refusal is made. If leave is granted on your application, the respondent may apply to the judge to set aside the leave.

10. Service of the order granting leave to apply for judicial review

If the court grants leave to apply for judicial review, you should within 14 days after the order granting leave, serve a copy of the order and any directions made by the court on the respondent and such interested parties as may be directed by the court.

Application for judicial review

11. Originating summons (Form 86A)

11.1 When leave to apply for judicial review is granted, you should proceed to make your application for judicial review by filing with the High Court Registry an Originating Summons (Form 86A). The Originating Summons must be filed within 14 days after leave is given.

11.2 A copy of Form 86A is in Appendix 2.

12. Service of the originating summons and other court documents

12.1 The Originating Summons must be served on the respondent and all interested parties, namely, parties directly affected by the application for judicial review. The Originating Summons should be served together with the notice of application for leave (Form 86) and the affidavit/ affirmation in support of the application for leave.

12.2 Service must be effected promptly. There should be at least 10 days between the date of service and the date of the hearing of the application for judicial review.

12.3 The person who effects service must make an affidavit/ affirmation setting out the names of all parties that have been served with the Originating Summons, and also the date(s), place(s) and manner of such service. If there is any person who ought to be served, but has not been served, this fact together with the reason(s) for not effecting service should be stated in the affidavit/ affirmation of service. The affidavit/ affirmation of service must be filed within 7 days of effecting the service.

13. Affidavit / affirmation

13.1 The respondent may file affidavit/ affirmation in reply to the application for judicial review. The respondent's affidavit/ affirmation should be filed within 56 days from being served with the Originating Summons, unless the court has directed otherwise.

13.2 As an applicant, if you wish to rely on further affidavit/ affirmation, you must seek permission from the court at the hearing of the application for judicial review. However, you must give prior notice to every other party of your intention to do so.

The hearing of judicial review

14. Date of hearing

The court will either fix a date for hearing the application for judicial review or notify the parties to go before the listing officer to fix a date for the hearing. A notice of hearing, setting out the date, time and place for the hearing, will be issued by the court and sent to the parties.

15. Mode of hearing

The hearing of the application for judicial review is conducted in open court. Generally, the judge will determine the application on the basis of the affidavit/ affirmation evidence and there will not be any cross-examination of witnesses. In rare cases where there is a conflict of the relevant evidence, the court may direct for cross-examination of witnesses.

16. Hearing bundles and skeleton arguments

16.1 The applicant should prepare a hearing bundle for use at the hearing. The bundle should be lodged with the Court and served on the other parties at least 7 clear working days before the hearing, unless the judge has directed otherwise. You should read Practice Direction SL3, para. 18 to 20 on the form and content of the hearing bundle.

16.2 An applicant and any interested party who wishes to make submissions in support of a judicial review application should lodge with the Court and serve on the other parties a skeleton submission 7 clear days before the hearing.

16.3 A respondent and any interested party who wishes to make submissions in opposition to a judicial review application should lodge with the Court and serve on the other parties a skeleton submission 3 clear days before the hearing.

16.4 You should read Practice Direction SL3, para. 21 and 22 on the content of a skeleton submission.

17. Judgment

At the conclusion of the hearing, the judge may deliver his judgment or he may reserve his judgment and hand it down on a date to be notified to the parties.

18. Appeal

Appeal against the grant or refusal of judicial review must be brought in the Court of Appeal within 28 days from the date the judgment was made.

19. Costs

The Court has a discretion on what order to make on the costs of the judicial review proceedings. Normally, the losing party will be ordered to pay the costs of the other parties.

Summary of the steps in commencing judicial review proceedings

(i)	Complete the Form 86
(ii)	Prepare the supporting affidavit/ affirmation and have it sworn/ affirmed at the Oaths and Declarations Office on LG1 Floor of the High Court. Note: You should not file the application form without a supporting affidavit/ affirmation.
(iii)	Pay the filing fee at the Accounts Office on LG2 Floor of the High Court.
(iv)	Get a case serial number at the High Court Registry on LG1 Floor of the High Court.
(v)	Go for documentation at the Clerk of Court's Office at Room G32 on Ground Floor of the High Court.
(vi)	Return to the High Court Registry on LG1 Floor of the High Court to file the application form (after xeroxing a copy for your own use).

Appendix 1

Form 86 and Notes for Guidance

No. 86
Notice of application for leave to apply for judicial review
(O. 53 r. 3(2))

HCAL No. .....…..... /20 …..

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO._____OF 20____

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, address and description of applicant	
Name, address and description of proposed respondent	
Judgment, order, decision or other proceeding in respect of which relief is sought	

Relief Sought

Name 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.

NOTES FOR GUIDANCE

These notes, issued at the direction of the Registrar, High Court, are not intended to be exhaustive but merely to offer an outline of the procedure to be followed. Applicants and their legal advisers should consult Order 53 of Rules of the High Court made under section 54 of the High Court Ordinance, Cap. 4.

A1. Legal Aid

The Court itself cannot grant legal aid for judicial review. Applications should be made to Legal Aid Department.

In principle, judicial review can be applied for by applicants acting in person. However, this area of the law, together with the drafting of the necessary documents is highly technical. Citizens should carefully consider the advisability of instructing a solicitor, either at their own expense or through legal aid.

A2. Time

All applications for judicial review must begin with application for leave to apply for judicial review.

An application for leave for judicial review must be made as soon as possible after the date of the judgment, order, decision or other proceeding in respect of which relief is sought, but in any event within 3 months from the date of such judgment etc.

The court can extend the time limit but will only exercise this power where it is satisfied there are very good reasons for doing so: Order 53 rule 4(1). If an extension of time is sought the grounds in support of that application must be filed and verified by affidavit.

A3. Fees

A fee of $1,045* is payable on an application for leave to apply for judicial review. Payments should be made by cash to the Accounts Office of the High Court, LG2 Floor, High Court Building.

*This is subject to adjustment from time to time. Applicants should find out the current fee from the High Court Fees Rules under section 54 of the High Court Ordinance, Cap. 4.

A4. Form of Application

Applications for leave to apply for judicial review must be made in Form 86 (as laid down in Rules of the High Court) and must be supported by an affidavit verifying the facts relied on: Order 53 rule 3(2). The original copy will be kept by the court and an applicant has to provide sufficient copies for himself/herself and for service on other parties after leave was granted.

A5. Leave to Apply for Judicial Review

All applications for leave must be made ex parte. The judge may determine the application with or without an oral hearing, unless an oral hearing is requested in the notice of application. Whichever way the judge decides the application for leave, the result will be communicated to the applicant, or, if represented, to his/her solicitor.

Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal of the High Court within 14 days after such order: Order 53 rule 3(4).

A6. Applying for Judicial Review

When leave has been granted to make an application for judicial review, the application shall be made by Originating Summons (Form 86A) to a High Court Judge. An Originating Summons must be prepared and taken to the Clerk of Court's Office where a date for hearing will be allocated. This must be done within 14 days after the grant of leave. The Originating Summons must then be served on all persons directly affected by the application for judicial review. Unless the court granting leave has otherwise directed,

there must be at least 10 days between the service of the Originating Summons and the day named for hearing: Order 53 rule 5(4).

An affidavit giving the names and addresses of, and the places and dates of service on all persons who have been served with the Originating Summons must be filed with the court, and must be before the court on the date of the hearing of the Originating Summons: Order 53 rule 5(6).

A7. Hearing of Originating Summons

Application for judicial review will be heard by a single judge sitting in open court unless the court otherwise directs: Order 53 rule 5(1) and (2).

A8. Costs

It is a general rule that the party who loses is ordered to pay the costs of the other side.

Special rules apply to applicants with legal aid. Applicants should consult the Legal Aid Ordinance, Cap.91 for details.

A9. Appeals

An appeal from an order of a judge granting or refusing an application for judicial review lies to the Court of Appeal: Order 53 rule 13. The notice of appeal must be served, within 28 days from the date the judgment was made, on all parties to the judicial review who are directly affected by the appeal.

If in doubt about any procedural matters, applicants or their advisers should direct their enquiries to the High Court Registry LG1 Floor, High Court Building.

Form 86A

No. 86A
Originating Summons -- judicial review
(O. 53 r. 5)

HCAL No. ..... /20 .....

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO._____OF 20____

Between *A.B.* Applicant

and

C.D. Respondent

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

_____
_____
_____

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

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

_____
_____)

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

_____
_____

Dated the_____ day of_____20_____.

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

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

(or where the plaintiff acts in person:
This summons was taken out by the applicant whose address for service is at
_____)

To : _____
_____

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

Judiciary
March 2009

如何進行上訴
How to appeal

- This leaflet is designed to provide you with a brief outline of the practice and procedure relating to appeals in the High Court and the District Court.
- You should read Rules of the High Court (or the Rules of the District Court, as the case may be) and Practice Directions 4.1 and 5.4 for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the Centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

How to appeal

Introduction

1. This leaflet deals only with appeals to the Court of Appeal, Court of First Instance and District Court in general civil matters.

2. The District Court hears appeals from decisions of District Court Masters. The District Court also exercises limited appellate jurisdiction in hearing appeals from Tribunals and Statutory Bodies conferred on it under various ordinances, e.g. the Rating Ordinance (Cap. 116), the Stamp Duty Ordinance (Cap. 117), the Pneumoconiosis (Compensation) Ordinance (Cap. 360) and the Occupational Deafness (Compensation) Ordinance (Cap. 469). This leaflet only covers appeals from decisions of District Court Masters to District Court Judges.

3. The Court of First Instance hears appeals from decisions of High Court Masters, the Small Claims Tribunal, Labour Tribunal and Minor Employment Claims Adjudication Board (MECAB).

4. The Court of Appeal hears appeals on civil matters from the Court of First Instance, District Court, Lands Tribunal and tribunals and statutory bodies as provided by statutes.

General points to note

5. Any party to an appeal, who is an individual, can act in person. If a party is a limited company, it must engage a solicitor to act on its behalf in appeals in the Court of First Instance and the Court of Appeal unless a Master of the High Court has given leave for a director to act on its behalf. No appeal lies against a Master's decision giving or refusing such leave.

6. You should not directly communicate with the judge by writing letters, sending emails or making telephone calls. All communications must be done through the clerk to the judge. When an appeal hearing is concluded and the court has reserved the decision, you should not send additional arguments or further materials to the court. If you have good reasons and must write to the court, you should copy your letter to all the other parties to the proceedings.

Is leave to appeal required?

7. Please refer to **Appendix 1**, which summarizes the types of appeals from various courts, whether leave to appeal is required, when to apply for leave, to whom you should apply and when the notice of appeal, if required, should be issued and served. You should comply with the time limit for applying for leave or for appealing. If you cannot give good reasons, the court may not extend the time for you to do so.

8. When granting leave to appeal, the court may impose conditions, e.g. requiring a party to pay costs, or pay the amount involved into court or provide a specified sum of money as security for the costs of the appeal. The court may, of course, refuse leave and in some instances that refusal will bar you from proceeding further. It is therefore important that before lodging an appeal, you should read the Ordinance governing the relevant Court from which the decision is appealed against, the High Court Ordinance, Rules of the High Court, the District Court Ordinance, Rules of the District Court (whichever is applicable) and also the relevant Practice Directions.

9. You should also note that an application for leave to appeal or an appeal will not operate as a stay of execution. In other words, the party who lost in the lower court is still liable to satisfy the judgment even though he is appealing against it, unless the court otherwise directs.

10. You should now read **Appendix 1** to decide to which court you should appeal. If the appeal is to the District Court against a decision of District Court Master, please read Part A. If the appeal is to the Court of First Instance, please read Part B. If the appeal is to the Court of Appeal, please read Part C.

Part A: Civil appeals to the District Court

Appeals against Master's decisions on interlocutory matters

11. Generally, a District Court Judge in chambers has jurisdiction to hear an appeal against a decision of a District Court Master made on the basis of written submissions only or after an oral hearing in chambers. No leave is required. All you need to do is to file a notice of appeal (see **Appendix 2**) within 14 days of the decision. No fee is payable.

12. The appellant should serve a notice (sometimes referred to as a notice of appeal) on every other party to the proceedings in which the judgment, order or decision was given. The notice must be issued within 14 days after the Master gives the judgment, order or decision. It must then be served within 5 days after issue.

13. On appeal, a District Court Judge will deal with the matter as if it has come before the court for the first time. The parties are not allowed to submit further evidence unless it is evidence as to matters which have occurred after the date of the judgment, order or decision of the Master.

14. If you are not satisfied with the decision of the District Court Judge, you can appeal to the Court of Appeal with leave from the District Court Judge or from the Court of Appeal. Please refer to Part C.

15. For decisions and judgments made by a District Court Master in open court, generally the appeal is to the Court of Appeal. Leave to appeal is required. Please refer to Part C.

Part B: Civil appeals to the Court of First Instance

Appeals against Master's decisions on interlocutory matters

16. Generally, a Court of First Instance Judge in chambers has jurisdiction to hear an appeal against a decision of a High Court Master made on the basis of written submissions only or after an oral hearing in chambers. No leave is required. All you need to do is to file a notice of appeal (see **Appendix 3**) within 14 days after the Master gives the judgment, order or decision. No fee is payable.

17. The appellant should serve a notice (sometimes referred to as a notice of appeal) on every party to the proceedings in which the judgment, order or decision was given. The notice must be served within 5 days after issue.

18. On appeal, a Court of First Instance Judge will deal with the matter as if it has come before the court for the first time. But you are not allowed to submit further evidence unless it is evidence as to matters which have occurred after the date of the judgment, order or decision.

19. If you are not satisfied with the decision of the Court of First Instance Judge, you can appeal to the Court of Appeal. Please refer to Part C.

20. For decisions and judgments made by a High Court Master in open court, generally the appeal is to the Court of Appeal. Leave to appeal is not required. Please refer to Part C.

Appeals against decisions of the Labour Tribunal / Small Claims Tribunal / MECAB

21. You may act in person or engage a lawyer. In the case of a limited company, please see paragraph 5 above. Leave to appeal is required. An application for leave to appeal should be made in the prescribed form, which shall set out the grounds of appeal and the

reasons in support of such grounds. The prescribed form may be obtained from the Resource Centre for Unrepresented Litigants or downloaded from the Judiciary website. The fee for filing an application for leave to appeal[1] is (i) $45 for appeal from the Labour Tribunal or MECAB, and (ii) $61 for appeal from the Small Claims Tribunal. The Tribunals or the MECAB will usually send you the written reasons for determination after it has been prepared. If you think the transcript of some part or all of the evidence will help you or the Court on appeal, you should apply in good time to the Tribunal or the MECAB for the transcript. A fee may be payable.

22. There will be a hearing only attended by the applicant in the application for leave to appeal. Leave will only be given if the applicant can show an arguable case that the lower court has made an error in point of law or acted outside its jurisdiction. Generally, fresh evidence will not be received on appeal and the Court of First Instance has no power to reverse or vary the lower court's finding of facts. In appropriate cases, the court may only grant leave to appeal on some of the grounds relied upon by the applicant. A refusal by the Court of First Instance to grant leave to appeal is final and there can be no further appeal.

23. If you are the respondent to the appeal and want to cross appeal, you have to seek leave to appeal within the time set out in **Appendix 1**.

24. If leave is granted, the applicant (appellant) has to file a Notice of Motion setting out the grounds of appeal for which leave to appeal has been given. A fee of $1,045 is payable.[2] The parties should then go to the Clerk of Court's Office on Ground Floor of the High Court Building to fix a hearing date for the appeal.

[1] The fee may be revised from time to time.

[2] The fee may be revised from time to time.

25. At the appeal, arguments will be limited to those grounds of appeal for which leave has been granted. If you want to rely on other grounds, you should apply for permission to do so within a reasonable time before the hearing of the appeal. You should also give prior notice to the other parties of your intention to do so.

26. If you are not satisfied with the decision of the Court of First Instance on the appeal, you may, within 7 days after the date of the decision, apply to the Court of Appeal for leave to appeal. If the Court of Appeal considers that a question of law of general public importance is involved, it may grant leave. In seeking leave to appeal, you have to set out the question of law and lodge the application with the Appeals Registry of the High Court. A further fee of $1,045 is payable[3]. At the appeal, arguments will be limited to the grounds of appeal for which leave has been granted. A refusal by the Court of Appeal to grant leave to appeal is final.

[3]The fee may be revised from time to time.

Part C: Civil appeals to the Court of Appeal

Application for leave to appeal to the Court of Appeal

27. An application for leave to appeal to the Court of Appeal shall first be made to the Judge or Presiding Officer (in the case of Lands Tribunal) giving the judgment or order. The grounds on which leave to appeal is sought must be specified. The application shall be by way of an inter partes summons if the proceedings giving rise to the appeal are inter partes. No fee is payable.

28. If the Judge has refused to grant leave, and the aggrieved party is not satisfied with the refusal, he may apply to the Court of Appeal for leave to appeal.

29. An application to the Court of Appeal for leave to appeal must be made by way of an inter partes summons if the proceedings giving rise to the appeal are inter partes. A sample of the summons is in **Appendix 4.** A fee of $1,045 is payable[4].

30. The leave application must be 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. In most cases, the first requirement can be fulfilled by providing a draft grounds of appeal. The leave application should also be accompanied by draft grounds of appeal, affidavit evidence (where appropriate, such as to show why extension of time should be granted), and written skeleton arguments as to why leave to appeal should be granted. Two sets of these documents must be lodged with the court. A copy of the summons together with the supporting statement and affidavit (if any) and the written skeleton argument must be served on the respondent.

[4] The fee may be revised from time to time.

31. A party who intends to resist an application for leave to appeal made inter partes, must 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 leave to appeal should not be granted or why leave should only be granted on terms to be imposed by the Court. In most cases, the requirement can be fulfilled by filing affidavit evidence (where appropriate) and lodging with the Court a written skeleton argument. Two sets of these documents must be lodged with the Court.

32. The Court of Appeal may determine the leave application on the basis of the written submissions alone and without an oral hearing. Alternatively, the court may direct that the application be heard at an oral hearing. In either case, the court may give such directions as it thinks fit. Accordingly, any party applying for or resisting leave to appeal should state in the documents he serves on the other party whether the application can be determined on the basis of written submissions only or otherwise (and providing the reasons) and whether any directions are required.

33. Where an application for leave to appeal is made, no date for hearing will be given by the court. It is only when the Court of Appeal directs that the application is to be heard at an oral hearing that a date for hearing will be given and the parties will be notified accordingly.

34. A party aggrieved by a determination made without a hearing may within 7 days after receiving notice of the determination, request the Court of Appeal to reconsider the determination at an oral inter partes hearing. He may at the same time lodge with the court any additional written submission as to why leave should or should not be given.

35. If the Court of Appeal determines the application on the basis of written submissions only and considers that the application is totally without merit, it may make an order that no party is allowed to request that the determination be reconsidered at an oral inter partes hearing.

36. The written skeleton arguments or submissions referred to in paragraphs 30 to 34 above should not normally exceed 5 pages on A4 size paper and, if type-written, in no smaller than 14 pt font size. All written materials must be legible.

37. Leave to appeal to the Court of Appeal will not be granted unless: (i) the appeal has a reasonable prospect of success; or (ii) there are some other reasons in the interests of justice why the appeal should be heard.

38. No appeal lies from a decision of the Court of Appeal as to whether or not to grant leave to appeal.

What happens after you get leave to appeal or where there is a right of appeal?

39. You should prepare a notice of appeal, which may be either in respect of the whole or any specified part of the judgment or order of the court below. You must specify the grounds of the appeal and the precise form of the order that you propose to ask the Court of Appeal to make. You should identify the evidence and state precisely why you say the judge has, e.g. misdirected himself, or that his findings should be reversed or that his decision should be set aside. Except with leave of the court, you cannot at the hearing of an appeal rely on additional or amended grounds of appeal or apply for any relief not specified in the notice of appeal. A sample of the notice of appeal is in **Appendix 5**.

40. You should make at least 3 sets (4 sets if it is an appeal from the District Court or Lands Tribunal) of the completed notice of appeal. Within 7 days of the grant of leave to appeal or within the time allowed for making an appeal, you should serve one set of the notice of appeal on each party to the proceedings in the court below who is directly affected by the appeal. If the decision you are appealing against is from the District Court or Lands Tribunal, you should also serve one set on its Registrar. After service, you should endorse the date of service on the back sheet of one set of the notice of appeal.

41. You should bring with you 2 sets of the notice of appeal (one being the original) to the High Court. After you pay the filing fee of $1,045[5] at the Accounts Office (LG2, High Court Building), a receipt will be endorsed on the original notice of appeal. After that, you should proceed to the office of the Deputy Clerk of Court (Appeals) at Room G30, Appeals Registry, Clerk of Court's Office on the ground floor of the High Court Building. There you should lodge with the Registrar:

(i) a sealed copy of the judgment or order appealed from;

(ii) 2 sets of the notice of appeal, including the one endorsed with the amount of the fee paid, and the other endorsed with the date of service; and

(iii) a copy of the reasoned decision of the judge appealed against (if any). This will enable the Registrar to properly estimate the time required for the appeal.

These requirements must be strictly complied with before your appeal will be set down in the appeals list. Therefore it is in your interest to act promptly and not to wait until the last day of the appeal period.

42. Within 4 days (excluding Sundays and public holidays) after an appeal has been set down, you must give notice of setting down to all persons on whom the notice of appeal had been served. A sample form of notice of setting down is in **Appendix 6.**

If you are a respondent to the appeal

43. If you are served with a notice of appeal, and if you wish to contend that the decision below should be varied, or affirmed on different grounds or if you wish to bring a cross appeal against the decision, then you must give a Respondent's Notice. If your cross appeal requires leave, you must apply for leave to appeal. The grant of leave to appeal to an appellant does not mean that the respondent to the appeal also has leave to appeal or to issue a Respondent's Notice. The matters set out in paragraphs 5 to 8 above equally apply to a respondent. Except with leave of the court, you cannot at the hearing of an appeal rely on

[5] The fee may be revised from time to time.

additional or amended grounds of appeal or apply for any relief not specified in the Respondent's Notice.

44. You have to serve the Respondent's Notice on the appellant and all parties in the proceedings in the court below who are directly affected by your Respondent's Notice within:

(i) 14 days of the service on you, where the notice of appeal relates to an interlocutory order; and

(ii) 21 days of the service on you, in any other case.

45. Within 2 days (excluding Sundays and public holidays) after service of the Respondent's Notice, the respondent should give 2 sets of the notice to the Registrar, one of which should be endorsed with a certificate of service. See the back sheet of the notice of appeal at **Appendix 5** for a sample of the certificate of service.

Application to fix a date for the hearing of an appeal

46. If you are an appellant, you should make an application to the Appeals Registry, Clerk of Court's Office to fix a date for the hearing of an appeal. In this application, you should state the estimated time for hearing the appeal. A sample of the application form is in **Appendix 7.** If the application to fix a date is not made by you within a reasonable time, the respondent may make such application.

47. The Registrar of Civil Appeals ("Registrar CA") may give directions for the hearing of the appeal on paper or at a directions hearing. To enable the Registrar CA to give such directions, an unrepresented appellant should prepare one draft paginated appeal bundle. A sample of the draft index to that bundle is in **Appendix 8.** Please see the section on Appeal bundle below.

48. The Registrar CA will inform you whether the draft appeal bundle is in order. Once directions given by the Registrar CA have been complied with, a hearing date will be fixed and the parties will be notified in writing.

Preparation for Hearing

Appeal bundle

49. Depending on the number of judges, you will have to prepare a sufficient number of appeal bundles for use at the hearing. Normally three judges will hear an appeal against a final decision and two judges will hear an interlocutory appeal. Subject to directions of the Registrar CA, bundles have to be lodged not less than 14 days before the date on which the appeal is listed for hearing.

50. Normally, the index to the appeal bundle has to be sent to the respondent for him to consider if he has objections or amendments to the inclusion of documents.

51. The appeal bundle should be paged consecutively at the bottom of the right hand corner. It should include documents that were used in the hearing in the court below which are relevant and necessary for decision of the issues in the appeal by the Court of Appeal. Inclusion of unnecessary or irrelevant materials in the appeal bundle may waste your photocopying costs. Those materials are also liable to be removed from the appeal bundle at the direction of the Registrar CA.

52. If the appeal bundle consists of more than 500 pages, a core bundle should be prepared. The core bundle must include the judgment under appeal, the notice of appeal, the order appealed against, any other orders (if relevant) made in the court below, and the Respondent's Notice (if any). It should only contain documents central to the appeal and no more, i.e. only those documents in support of, or in opposition to, the appeal which the court will need to read in advance or which are likely to be referred to in the course of oral argument.

53. The Registrar CA may, in appropriate cases, permit you to put into the draft appeal bundle fresh evidence that has never been adduced in the court below. You must remember, however, that it is the Court of Appeal and not the Registrar CA who has power to permit you to adduce fresh evidence. Therefore, subject to directions of the Registrar CA, you should apply to the Court of Appeal for leave to adduce the fresh evidence.

Skeleton argument

54. You should prepare a succinct skeleton argument identifying and summarizing, instead of arguing fully, the points you wish to make. If you are an appellant, your skeleton argument should:

(i) begin with a brief statement of the nature of the proceedings below;

(ii) give a brief statement of the facts, so far as material to the resolution of the issues which are said to arise on the appeal;

(iii) give a short statement of those issues; and

(iv) outline the points which you intend to take and a brief statement of your argument on each of those points.

55. Skeleton arguments should not normally exceed 10 pages in the case of an appeal on law and 15 pages in the case of an appeal on fact. In the case of points of law, the skeleton argument should state the points and cite the principal authorities in support, with references to the particular page(s). In the case of questions of fact, the skeleton argument should state briefly the basis on which it is argued that the Court of Appeal can interfere with the findings of facts concerned, with cross-references to the passages in the transcript or notes of evidence that bear on the point. The skeleton argument should be accompanied by a written chronology of relevant events cross-referenced to the core bundle or the appeal bundle. The chronology must be a separate document.

56. You should also prepare a list of authorities that lists out all the cases, statutes and/or page/paragraph numbers of the law books that you wish to rely on.

57. The skeleton argument and list of authorities have to be lodged with the Court of Appeal and served on the other party no later than 14 days before the day on which the appeal is listed to be heard. Where there is a cross appeal, the skeleton argument and list of authorities should be served no later than 21 days before the day on which the appeal is listed to be heard. If possible, copies of the authorities should also be provided.

58. A respondent should lodge a skeleton argument and list of authorities no later than 7 days before the application or appeal is to be heard. If possible, copies of the authorities should also be provided.

59. If the appellant or the respondent (who has given a Respondent's Notice) does not lodge the skeleton argument as required, the case may be taken out of the list and refixed for another date. In that event, the Court may order the party at fault to pay the costs of the other parties.

Hearing of the appeal

60. Generally, appeals are heard in open court. Cases can be conducted in one of the two official languages, Chinese or English. The language used in the appeal is usually the same as that used in the court below unless a party applies to the Court of Appeal to use the other language. If interpreter's service is required, the court should be notified within a reasonable time before the hearing of the appeal.

61. The Court of Appeal does not generally interfere with the findings of facts of the court below, particularly where they turn on credibility of witnesses or the weight to be attached to particular evidence. Further, unless leave is granted, no fresh evidence can be adduced in an appeal.

62. For more detailed procedures on appeals in the Court of Appeal, you should read Order 59 of Rules of the High Court, Order 58 of Rules of the District Court and also Practice Direction 4.1.

Further appeal

63. A party who is not satisfied with the decision of the Court of Appeal may in appropriate case make an application for leave to appeal to the Court of Final Appeal. For details, please refer to the “Court of Final Appeal” leaflet.

Appendix 1: Leave to appeal and when to appeal

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
Labour Tribunal / MECAB	Error in point of law or the award is outside the jurisdiction of the Tribunal	Court of First Instance	Yes	Court of First Instance only Refusal of leave is final	7 days after the award or order is served on the party appealing	Not necessary to issue a notice of appeal After leave to appeal is given, issue and serve a Notice of Motion setting out the grounds for which leave to appeal has been granted
Small Claims Tribunal	Involving a question of law or the claim is outside the jurisdiction of the Tribunal	Court of First Instance	Yes	Court of First Instance only Refusal of leave is final	1. 7 days after the award or order is served on the party appealing; or 2. If within the 7 days mentioned above, the party appealing has applied to the Tribunal for written reasons for award, within 7 days after the date on which the reasons are served on him.	Not necessary to issue a notice of appeal After leave to appeal is given, issue and serve a Notice of Motion setting out those grounds for which leave to appeal have been granted

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
Lands Tribunal	Error of law in interlocutory decisions made by a Presiding Officer	Court of Appeal	Yes	1. To the Presiding Officer who heard the application. 2. If the Presiding Officer refuses leave, apply to the Court of Appeal	1. Within 14 days from the date the order is given 2. Within 14 days from the date of refusal of leave by the Presiding Officer	Within 7 days from the date on which leave to appeal is granted
Lands Tribunal	Error of law in matters (other than interlocutory decisions) heard by Presiding Officer	Court of Appeal	Yes	1. To the Presiding Officer who heard the matter 2. If the Presiding Officer refuses leave, apply to the Court of Appeal	1. Within 28 days from date of order 2. Within 14 days from the date of refusal of leave by the Presiding Officer	Within 7 days from the date on which leave to appeal is granted
District Court	Against Master's decision on interlocutory matters made on the basis of written submissions only or after an oral hearing in chambers	District Court Judge in chambers	No	Not applicable	Not applicable	Within 14 days after the decision is made, issue a notice to attend before a judge on a day specified (sometimes referred to as a notice of appeal) and serve it on the other party to the proceeding within 5 days after issue

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
District Court	Against Master's order for imprisonment given or made under Order 49B of Rules of the District Court in examination of debtor proceedings	Court of Appeal	No	Not applicable	Not applicable	Within 28 days from the date of the order
District Court	Against Master's decision made in open court, including: (1) A judgment, order or decision on any cause, question or issue tried or assessed before him under Order 14, rule 6(2) and Order 36, rule 1, Order 37 or Order 84A rule 3 of Rules of the District Court; and (2) A judgment, order or decision (other than an interlocutory judgment, order or decision or an order for imprisonment) given or made under Order 49B of Rules of the District Court.	Court of Appeal	Yes	1. To the Master who heard the application 2. If the Master refuses leave, apply to the Court of Appeal	1. Within 28 days from the date of the judgment, order or decision 2. Within 14 days from the date the Master refuses leave	Within 7 days after the date when leave to appeal is granted
District Court	Against an interlocutory order or decision made by a Judge	Court of Appeal	Yes	1. To the Judge who heard the application 2. If the Judge refuses leave, apply to the Court of Appeal	1. Within 14 days from the date of the interlocutory order or decision 2. Within 14 days from the date the Judge refuses leave	Within 7 days after the date when leave to appeal is granted

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
District Court	Against a judgment, order or decision made by a Judge (other than an interlocutory order or decision)	Court of Appeal	Yes	1. To the Judge who heard the application or trial 2. If the Judge refuses leave, apply to the Court of Appeal	1. Within 28 days from the date of the judgment, order or decision 2. Within 14 days from the date the Judge refuses leave	Within 7 days after the date when leave to appeal is granted
District Court	Against an order made by a Judge in employee's compensation cases where the amount in dispute is not less than HK$1,000	Court of Appeal	No	Not applicable	Not applicable	Within 30 days of the date of the order
District Court	Against an order made by a Judge pursuant to: (1) s.20 of District Court Ordinance (committal for contempt of court); (2) s.29 of District Court Ordinance (conviction for rescuing goods seized in execution under process of court or under distress for rent); (3) s.48B of District Court Ordinance (punishment for disobedience of judgment or order, breach of undertaking etc); (4) s.52D of District Court Ordinance (order for arrest or	Court of Appeal	No	Not applicable	Not applicable	Within 28 days from the date when the order is granted

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
District Court (Cont'd)	imprisonment to enforce a judgment for the payment of a specified sum of money); (5) s.52E of District Court Ordinance (prohibiting a debtor from leaving Hong Kong); and (6) s.53(3) of District Court Ordinance (wasted costs order).					
Court of First Instance	Against Master's decision on interlocutory matters made on the basis of written submission only or after an oral hearing in chambers	A Judge in the Court of First Instance	No	Not applicable	Not applicable	Within 14 days after the decision is made, file a notice to attend before a judge on a day specified (sometimes referred to as a notice of appeal) and serve it on the other party to the proceedings within 5 days of issue.
Court of First Instance	Against Master's decision made in open court, including: (1) Determination under Order 14, rule 6(2) and Order 36, rule 1 of Rules of the High Court; (2) Assessment of damages; (3) Determination of an application	Court of Appeal	No	Not applicable	Not applicable	Within 28 days from the date the decision is made, except for bankruptcy petition presented prior to 10 December 2007, it is within 21 days from the date the order or

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
Court of First Instance (Cont'd)	under Order 84A, rule 3 of Rules of the High Court (hire purchase agreement or conditional sale agreement); (4) Determination of an application under Order 49B of Rules of the High Court (examination of judgment debtor); and (5) An order or decision made at the hearing of a petition for winding up or bankruptcy.					decision appealed against is pronounced or made.
Court of First Instance	Against an interlocutory judgment or order made by a Judge, except the following [1]: (1) A judgment or order determining in a summary way the substantive rights of a party to an action [2]; (2) A wasted costs order made under section 52A(4) of High	Court of Appeal	Yes	1. The CFI Judge who made the judgment or order 2. If the CFI Judge refuses leave, apply to the Court of Appeal	1. Within 14 days from the date of the judgment or order 2. Within 14 days from the date the Judge refuses leave	Within 7 days after the date when leave to appeal is granted

[1] For appeals falling within exceptions (1) to (11) in this section, leave to appeal is not required.

[2] This includes: (a) a summary judgment under Order 14 or Order 86, (b) an order striking out an action or proceedings or a pleading or any part of a pleading, (c) a judgment or order determining a question of law or construction of a document under Order 14A rule 1(1), (d) a judgment or order made under Order 14A rule 1(2) dismissing a cause or matter upon the determination of a question of law or construction of a document, (e) a judgment on an issue tried under Order 33 rule 3, (f) an order dismissing or striking out an action or proceeding 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 other new issue, and (j) a judgment or order on admission under Order 27 rule 3.

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
Court of First Instance (Cont'd)	Court Ordinance; (3) An order prohibiting a debtor from leaving Hong Kong; (4) An order for imprisonment of a judgment debtor under Order 49B of Rules of the High Court; (5) An order for committal for contempt; (6) An order granting relief made at the hearing of an application for judicial review; (7) An order granting an application for a writ of habeas corpus ad subjiciendum; (8) An order made in connection with arbitration proceedings under Order 73 of Rules of the High Court, other than an order against which leave to appeal is required under the Arbitration Ordinance; (9) A judgment given inter partes in a money lenders' action under Order 83A rule 4, or relating to hire purchase/ conditional agreements under Order 84A rule 3, or in a mortgage action under Order 88 of Rules of the High Court; (10)An order under Order 121 of Rules of the High Court; and					

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
Court of First Instance (Cont'd)	(11)A decree nisi of divorce or nullity of marriage.					
Court of First Instance	Against a judgment, order or decision given in the matter of bankruptcy or of winding up	Court of Appeal	No	Not applicable	Not applicable	Within 28 days from the date the judgment, order or decision is made except for bankruptcy petition presented prior to 10 December 2007, it is within 21 days from the date the order or decision appealed against is pronounced or made
Court of First Instance	Against a summary judgment made by a Judge in interpleader proceedings (subject to the next section)	Court of Appeal	Yes	1. The CFI Judge who made the judgment or order 2. If the CFI Judge refuses leave, apply to the Court of Appeal	1. Within 14 days from the date of the judgment or order 2. Within 14 days from the date the Judge refuses leave	Within 7 days after the date when leave to appeal is granted
Court of First Instance	Against a decision of a Judge in interpleader proceedings made after trial	Court of Appeal	No	Not applicable	Not applicable	Within 28 days from the date the decision is made

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
Court of First Instance	Against an order of a Judge relating only to costs	Court of Appeal	Yes	1. The CFI Judge who made the judgment or order 2. If the CFI Judge refuses leave, apply to the Court of Appeal	1. Within 14 days from the date of the judgment or order 2. Within 14 days from the date the Judge refuses leave	Within 7 days after the date when leave to appeal is granted
Court of First Instance	Against an order made with the consent of the parties	Court of Appeal	Yes	1. The CFI Judge who made the judgment or order 2. If the CFI Judge refuses leave, apply to the Court of Appeal of leave	1. Within 14 days from the date of the judgment or order 2. Within 14 days from the date the Judge refuses leave	Within 7 days after the date when leave to appeal is granted
Court of First Instance	In judicial review proceedings, (1) Against an order refusing to grant leave to apply for judicial review; and (2) Against a judgment or order granting or refusing an application for judicial review.	Court of Appeal	No	Not applicable	Not applicable	(1) For appeal against refusa1 to grant leave to apply judicial review, within 14 days after the order. (2) For appeal against the grant or refusal of judicial review, within 28 days from the date the judgment or order is made.

Appeal from	*Nature of appeal*	*Appeal to*	*Is leave to appeal required?*	*Where to apply for leave to appeal?*	*When to apply for leave to appeal?*	*When to issue or serve notice of appeal?*
Court of First Instance	Against a judgment, order or decision made by a Judge of the CFI other than above	Court of Appeal	No	Not applicable	Not applicable	Within 28 days from the date the judgment, order or decision is made
Court of First Instance	Against a judgment made in an appeal against a decision of the Labour Tribunal or of the MECAB – where it involves a question of law of general public importance	Court of Appeal	Yes	Court of Appeal only Refusal of leave to appeal is final	Within 7 days after the date of the judgment	After leave to appeal is granted, issue and serve a Notice of Motion setting out the question of law and the grounds for which leave to appeal has been given
Court of First Instance	Against a judgment made in an appeal against a decision of the Small Claims Tribunal – where it involves a question of law of general public importance	Court of Appeal	Yes	Court of Appeal only Refusal of leave to appeal is final	Within 7 days after the date of the judgment	After leave to appeal is granted, issue and serve a Notice of Motion setting out the question of law and the grounds for which leave to appeal has been given

Appendix 2: Sample Notice of appeal for appeal against the decision of a District Court Master

DCCJ_____/20___

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CIVIL JURISDICTION
[(a)] Action No._____ OF 20____

General Reference

[(a)] Insert case number

BETWEEN

[(b)] Insert name of Plaintiff(s)

(b) (1) Plaintiff(s)

and

[(c)] Insert name of Defendant(s)

(c) (1) Defendant(s)

NOTICE OF APPEAL TO JUDGE IN CHAMBERS (ORDER 58) – APPEAL AGAINST MASTER'S DECISION

Take notice that the above-named *Plaintiff(s) / Defendant(s)_____ intends to appeal against the Decision of Master _____ of the District Court given on the _____ day of _____, 20 ___ ordering / refusing to order that

[(d)] State in full the Master's Decision / Order appealed against

(d) (2)

And further take notice that you are required to attend before *His/ Her Honour Judge _____ in Chambers * (open to public / not open to public) at the District Court of Hong Kong, Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Hong Kong on _____ day, the ___ day of _____, 20 __ at ____ o'clock in the *fore / after noon, on the hearing of an application by the said *Plaintiff(s) / Defendant(s)_____for an Order that

[(e)] State the order(s) to be sought

(e) (2)

*And that the time for appealing against the said order be extended until after the hearing of this appeal.
(if the time for appeal has expired.)

And that the costs of this appeal be paid by the *Plaintiff(s) / Defendant(s) _____to the *Plaintiff(s) / Defendant(s) _____.

[(f)] Delete if not to be attended by Counsel

(f) *And further take notice that it is the intention of the said *Plaintiff(s) / Defendant(s) _____to attend by Counsel.

Dated this _____ day of _____, 20___

Registrar

[g] Insert name of the person bringing the Appeal

[h] Insert address of the person bringing the

This Appeal was brought by the *Plaintiff(s) / Defendant(s) [g] _____ _____acting in person, whose address for service is [h] _____ _____Telephone No.: _____

The following are the names and addresses of all persons / solicitors on whom this Notice is to be served:

[i] State the names and addresses of all other persons / solicitors on whom this notice is to be served

To: [i] [2]
Name: _____
Address: _____
_____
Name: _____
Address: _____
_____

[j] Give the time estimate of the hearing.

[j] Time estimate
_____*minutes/ hour(s)/ day(s)

Signed
_____
*Plaintiff(s) / Defendant(s)

Footnotes

* Delete whichever is inapplicable.
(1) Or to fill in details which appear on the originating document.
(2) If the space here is insufficient, blank paper may be used and attached to this Notice.

Appendix 3: Sample Notice of appeal for appeal against the decision of a High Court Master

HCA_____/20___

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE

General Reference

[(a)] Action No._____ OF 20____

(a) Insert case number

BETWEEN

(b) Insert name of Plaintiff(s)

[(b) (1)] Plaintiff(s)

and

(c) Insert name of Defendant(s)

[(c) (1)] Defendant(s)

NOTICE OF APPEAL TO JUDGE IN CHAMBERS (ORDER 58) – APPEAL AGAINST MASTER'S DECISION

Take notice that the above-named *Plaintiff(s) / Defendant(s) _____ intends to appeal against the Decision of Master _____ of the High Court given on the ____ day of _____, 20____ ordering / refusing to order that

(d) State in full the Master's Decision / Order appealed against

[(d) (2)]

And further take notice that you are required to attend before the Honourable *Mr / Madam Justice _____ in Chambers *(open to public / not open to public) at the High Court of Hong Kong, High Court Building, 38, Queensway, Hong Kong on ____ day, the _____ day of _____, 20 __ at _____ o'clock in the *fore/after noon, on the hearing of an application by the said *Plaintiff(s) / Defendant(s)_____ for an Order that

(e) State the order to be sought

[(e) (2)]

*And that the time for appealing against the said order be extended until after the hearing of this appeal.
(if the time for appeal has expired.)

And that the costs of this appeal be paid by the *Plaintiff(s) / Defendant(s) _____to the *Plaintiff(s) / Defendant(s) _____.

(f) Delete if not to be attended by Counsel

[(f)] *And further take notice that it is the intention of the said *Plaintiff(s) / Defendant(s) _____to attend by Counsel.

Dated this _____ day of _____, 20___.

Registrar

[g] Insert name of the person bringing the Appeal

[h] Insert address of the person bringing the

This Appeal was brought by the *Plaintiff(s) / Defendant(s) [g] _____ _____acting in person, whose address for service is

[h] _____

_____Telephone No _____

The following are the names and addresses of all persons / solicitors on whom this Notice is to be served:

[i] State the names and addresses of all persons / solicitors on whom this Notice is to be served.

To: [i] [2]

Name: _____

Address:_____

_____

Name: _____

Address:_____

_____

[j] Give the time estimate of the hearing.

[j] Time estimate

_____ *minutes/ hour(s)/ day(s)

Signed

_____

*Plaintiff(s) / Defendant(s)

Footnotes

* Delete whichever is inapplicable.

(1) Or to fill in details which appear on the originating document.

(2) If the space here is insufficient, blank paper may be used and attached to this Notice.

Appendix 4: Sample Summons to apply for leave to appeal

HCMP_____/20___

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

General Reference

[(a)] Insert case number

Miscellaneous Proceedings No. HCMP _____ of 20 __
[(a)] (On an intended Appeal from No. _____of 20 __)

BETWEEN

[(b)] Insert name(s) of Plaintiff(s)

[(b)] (1) Plaintiff(s)

and

[(c)] Insert name(s) of Defendant(s)

[(c)] (1) Defendant(s)

S U M M O N S

NOTE: @
A hearing date will be given only where the Court of Appeal directs that the application be heard at an oral hearing

[(2)] Order ____ rule___of Rules of the High Court

LET ALL PARTIES CONCERNED ATTEND before the Honourable *Mr/ Madam Justice _____of the Court of Appeal *in Chambers *(open to public) / (not open to public) at the High Court of Hong Kong, High Court Building, 38, Queensway, Hong Kong on ____ day, the ___ day of _____, 20____ at ____ o'clock in the *fore/after noon on the hearing of an application on the part of the *Plaintiff(s) / Defendant(s) _____ for an Order that

[(d)] State the order to be obtained

[(d)] (3)

(1) The *Plaintiff(s) / Defendant(s) do have leave to appeal * (out of time) against the judgment / order of _____ given on the _____day of _____ of 20____.

*(2)

[(e)] Use a separate paragraph for each ground of appeal and number the grounds in consecutive numbers.

[(e)] The Grounds of the proposed appeal will be as follows:-

[(f)] State the costs order asked for, if necessary.

[(f)] And that the costs of this application be paid by the *Plaintiff(s) / Defendant(s) _____ to *Plaintiff(s) / Defendant(s) _____.

Dated this _____ day of _____, 20___.

Registrar

[g] Insert name of the person taking out this summons.
[h] Insert address of the person taking out this summons

This summons was taken out by the *Plaintiff(s) / Defendant(s) [g] _____ _____acting in person, whose address for service is [h] _____ _____Telephone No. _____

[i] State the names and addresses of all persons / solicitors on whom this Notice is to be served.

The following are the names and addresses of all persons / solicitors on whom this Notice is to be served:
To: [i](3)
Name: _____
Address: _____
_____
Name: _____
Address:_____

[j] Give the time estimate of the hearing

[j] Time estimate:
_____*minutes /hour(s) /day(s)

Signed
_____
*Plaintiff(s) / Defendant(s)

Guidance for applicant(s):

- The leave application must be 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.
- The leave application should also be accompanied by a draft grounds of appeal, affidavit evidence, where appropriate, (such as to show that extension of time should be granted), and written skeleton arguments as to why leave to appeal should be granted.

Guidance for respondent(s):

- Under Order 59 rule 2A(4) of the Rules of the High Court, Cap.4, any party who intends to resist this application shall, within 14 days after the application is served on him, file in the Court of Appeal and serve on the applicant(s) a statement (which may be in the form of affidavit evidence, where appropriate, and/or written skeleton argument) as to why leave to appeal should not be granted or why leave should only be granted on terms to be imposed by the Court.
- The documents in opposition (if any) should be filed in the Appeals Registry, High Court located at Counter No.2, Clerk of Court's Office, Ground Floor, High Court.

Footnotes:

@. 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

* Delete whichever is inapplicable

(1) Or to fill in details which appear on the originating document

(2) Set out the provision of the Rules of the High Court or relevant laws under which the application is made

(3) If the space here is insufficient, use separate papers and attached them to this summons.

Appendix 5: Sample notice of appeal to the Court of Appeal

CACV_____/20 __

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

General Reference

[(a)] Insert lower court's case number.

Civil Appeal No._____ of 20 ___

[(a)] (On Appeal from _____ No. _____ of 20 ___)

BETWEEN

[(b)] Insert name(s) of Plaintiff(s)

[(b)(1)] Plaintiff(s)

and

[(c)] Insert name(s) of Defendant(s)

[(c)(1)] Defendant(s)

NOTICE OF APPEAL

Take notice that [(2)] (pursuant to the leave granted by * His / Her Honour Judge/ the Honourable [*] Mr / Madam Justice _____ on the _____day of _____of 20__), the Court of Appeal will be moved as soon as the above-named [*] Plaintiff(s) / Defendant(s) acting in person (or as the case may be) can be heard.

On appeal from the Judgment or Order herein of *His/ Her Honour Judge/ the Honourable [*]Mr / Madam Justice _____ given on the _____ day of _____, of 20__, whereby it was adjudged / ordered that [(d)(3)]

[(d)] State the Order to be appealed against.

For an Order that the said [*]Judgment / Order may be set aside and that [(e)(3)]

[(e)] State the particulars of order sought.

And for an Order that the [*] Plaintiff(s) / Defendant(s) _____ pays to the [*] Plaintiff(s) / Defendant(s) _____the costs of this appeal.

And further take notice that the grounds of this appeal are that [(f) (3)]

[(f)] State the grounds of appeal

*1. *The learned Judge was wrong in fact and in law in holding that [set out the issue of law which the appellant says as wrongly decided in the court below]. The learned Judge ought to have held that [set out the conclusion of the appellant argues that the court below ought to have reached*].

General Reference

**2. The learned Judge wrongly exercised his discretion in that [set out the basis why you say it was wrong]. Having regard to the following circumstances [set them out], the learned Judge ought to have [set out the decision which you say he should have reached].*

**3. There was [no or no sufficient] evidence upon which the learned Judge could find [set out the finding of fact concerned].*

**4. The learned Judge's conclusion that [set out the finding] is inconsistent with his finding of fact that [set out the finding].*

And further take notice that *[the Plaintiff or Defendant or as the case may be] proposes that this appeal be assigned to the *[List of Final Appeals or List of Interlocutory Appeals or as the case may be].

Dated this _____ day of _____ , 20 __

Signed

_____

*(Plaintiff(s) / Defendant(s))

This Notice was taken out by the *Plaintiff(s) / Defendant(s) (g) _____ _____acting in person, whose address for service is (h)

_____

_____Telephone No: _____

The following are the names/addresses of all persons / solicitors on whom this Notice is to be served:

To: (i)(3)

Name: _____

Address: _____

_____

Name: _____

Address: _____

_____

(g) Insert name of the person taking out this Notice.

(h) Insert address of the person taking out this Notice.

(i) State the names and addresses of all persons / solicitors on whom this Notice is to be served.

Foot-notes:

* Delete whichever is inapplicable

(1) Or see lower court documents for reference.

(2) Where leave to appeal is required, the Notice of Appeal should recite the judge who granted leave.

(3) If the space here is insufficient, blank paper may be used and attached to this Notice.

CACV_____/ 20___

IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL
(Civil Appeal No. _____ of 20 ____)
(On Appeal from _____ No. _____ of 20 ___)

BETWEEN

Plaintiff(s)

and

Defendant(s)

_____

NOTICE OF APPEAL

_____

Dated : ____ day of _____ , 20 _____

Filed on ____ day of _____ , 20 ____

*(Plaintiff / Defendant / as the case may be) in person
(Address for service)
(Tel No.)

Certificate of service

I, (name) , have served this Notice of Appeal on the *[Plaintiff / Defendant / as the case may be] by ordinary post to [address]
on _____ 20__.

(Signed)

I, (name), have served this Notice of Appeal on the Registrar of the District Court at the Registry on 6/F Wanchai Law Courts, 12 Harbour Road, Wanchai, Hong Kong by hand on _____ 20___.

(Signed)

Appendix 6: Sample notice of setting down an appeal

CACV _____/_____

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

Civil Appeal No. _____ of 20___
(On Appeal from _____ No. _____ of 20 ___)

BETWEEN

Plaintiff (s)

and

Defendant(s)

NOTICE OF SETTING DOWN AN APPEAL

TAKE NOTICE THAT the appeal herein, notice of which was served on you on _____, has this day been set down in the List of *Interlocutory/ Final Appeal.

Dated this _____ day of _____ 20___.

*(Plaintiff / Defendant / as the case may be) in person

To: (1) Registrar, District Court
(2) Messrs. _____, solicitors for the *[Plaintiff / Defendant / as the case may be]

** Delete whichever is inapplicable.*

Appendix 7: Sample application to fix a date for the hearing of an appeal

CACV _____/____

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

Civil Appeal No. _____ of 20___
(On Appeal from _____ No. _____ of 20 ___)

BETWEEN

Plaintiff (s)

and

Defendant(s)

APPLICATION TO FIX A DATE FOR THE HEARING OF AN APPEAL

---

1. *I/ We estimate that the time for hearing of this appeal will be ____ day(s).
2. The parties *have/ have not consulted together concerning the estimated length of this appeal.
3. There *is/ is no agreement concerning the length of time for the hearing.

Dated this _____ day of _____ 20____.

*(Plaintiff / Defendant / as the case may be) in person

To: (1) Registrar, High Court
(2) Messrs. _____, solicitors for the *[Plaintiff / Defendant / as the case may be]

** Delete whichever is inapplicable.*

Appendix 8: Sample index to an appeal bundle

CACV _____/_____

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

Civil Appeal No. _____ of 20____
(On Appeal from _____ No. _____ of 20 ___)

BETWEEN

Plaintiff (s)

and

Defendant(s)

APPEAL BUNDLE

INDEX

Item No.	**Date**	**Description**	**Page No.**
		(A. Document filed in this Appeal)	
1.	xx-xx-xx	Notice of Appeal	1 – 2
2.	xx-x-xx	Respondent's Notice	3 – x
3.	x-xx-xx	Supplementary Notice of Appeal	x – x
		(B. The judgments and order in the Court below)	
4.	x-x-xx	Written judgment given by Hon Mr Justice xxx (or transcript of relevant proceedings)	x xx
5.		Sealed copy judgment	
		(C. Pleadings in the Court below)	
6.		Statement of Claim	
7.		Defence (and Counterclaim)	
8.		Reply (and Defence to Counterclaim)	
		(D. Evidence at the trial/ proceedings below)	
9.		e.g. Transcript of ABC	
10.		Witness statement of DEF	
11.		Affidavit of XYZ	
		(E. Documents in evidence at the trial/ proceedings below)	
12.		e.g. List of Exhibits	
13.		AAA (Exhibit No. P1)	
14.		BBB (Exhibit No. P2)	
15.		CCC (Exhibit No. D1)	

16. DDD (Exhibit No. D2)

(F. New evidence which the Appellant intends to adduce at the appeal hearing)

17.

****

Note:
1. The appellant has a duty to consider carefully and to decide what documents are relevant to the appeal.
2. Please insert page number (from 1 to the end) at the **right hand bottom corner** of each page.
3. Each bundle must preferably not exceed 250 pages.
4. Where there are more than one bundle, the bundle number must be marked prominently on the ridge and cover of the file.
5. Copy of List of Exhibits (if any) can be obtained from the Judge's Clerk.
6. Parts D and E should include the part of the evidence and those documents admitted at the trial and that are relevant and necessary for the determination of the appeal in the Court of Appeal.
7. Part F should be placed in a separate bundle and can only be referred to if the Court of Appeal has given permission to do so.
8. Please read Part IV of Practice Direction 4.1 on the detailed requirements for documentation for appeals in the Court of Appeal.

Judiciary
March 2009

訟費的評定

What is taxation of costs

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on taxation of costs in civil proceedings.
- You should read Order 62 of Rules of the High Court (or Rules of the District Court, as the case may be) and Practice Direction 14.3 for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

What is taxation of costs?

1. After a hearing or a trial, the Court may make an order of costs in favour of a party. Usually the winning party will be awarded costs, which include fees, charges, disbursements, expenses and remuneration incurred for that hearing or trial or the entire case. The party in whose favour the costs order is made is called the **Receiving Party**. The party who has to pay costs is called the **Paying Party**.

2. Taxation is the process whereby the court assesses the amount of costs payable under the costs order. In the taxation proceeding, the court can only decide the amount of costs but cannot vary the costs order already made. Hence, if you are not satisfied with the costs order, you should consider appeal instead of raising objections to the costs order during taxation.

3. Usually, costs will be allowed if they are necessary or proper for the legal steps taken by the winning party. On taxation of the costs of a litigant in person, he may be allowed costs to compensate for his monetary loss for the legal actions. The maximum costs will be either the actual loss or two-thirds of the amount if the work were carried out and charged by his solicitor. Where in the opinion of the taxing master the litigant has not suffered any monetary loss in doing any work for the legal proceedings, he will only be allowed costs for the time reasonably spent on the work. The maximum costs for the time charge is $200 per hour.

4. Taxation of costs is a very technical process and will involve extra time and efforts as well as costs for drafting the bill, preparation for the hearing, attendance in court and payment of taxing fees. Parties should try to agree the amount of costs without resorting to taxation by the court. You may do so at any stage before the court has completed taxation.

5. Apart from trying to reach an out-of-court settlement, one way to shorten taxation proceeding is by way of a sanctioned offer or sanctioned payment under Order 62A of Rules of the High Court (or Rules of the District Court, as the case may be). You may make a sanctioned offer or sanctioned payment on the amount of costs at any stage before taxation of the bill. If the other side accepts your offer, the taxation proceeding will end. This procedure will be explained further in paragraphs 25 to 29 below.

How do I commence taxation proceeding?

6. If you are the Receiving Party, you should draft a bill of costs containing:

- the title of the action;
- the relevant costs order, setting out the date and by whom it was made;
- the fee earner (probably only yourself) and the hourly rate claimed;
- the items of work done, by whom and on what dates they were done. The items should be numbered and in chronological order;
- the costs charged on each item of work, either in a fixed sum permissible by Rules of the High Court (or Rules of the District Court, as the case may be) or on an hourly basis. For disbursements like counsel's fees, expert fees or filing fees, you should set out the amounts as you have paid them;
- costs of taxation, i.e. the amount of time spent on drafting the bill, preparation for the taxation, attendance in court for the purpose of taxation, calculation and drawing up of the taxed bill and the application for the certificate of costs etc. at the fee earner's rate; and
- the total amount of all costs claimed.

A sample of such a bill is in **Appendix 1**.

7. You should send a copy of your bill to the Paying Party so that the parties may discuss and try to reach an amicable settlement or narrow down the dispute. You should only commence proceeding for taxation of costs if the Paying Party is not willing to pay or the parties are unable to agree the amount of costs claimed.

8. The proceeding for taxation of your costs is commenced by the filing of a Notice of Commencement of Taxation (NOCT) and the bill of costs at the appropriate Court Registry. A sample of the NOCT is in **Appendix 2.** You should file the NOCT and the bill in the Registry of the court from which you obtained the costs order. You will be required to pay the prescribed taxing fee, which is calculated based on the amount of costs claimed in the bill, when you file the NOCT.

9. You should send a copy of the NOCT to the Paying Party immediately, together with a copy of the bill of costs if you have not previously sent it to the Paying Party.

How do I object to the costs claimed in a bill of costs?

10. If you are the Paying Party, as soon as you have received the NOCT and the bill of costs, you should try to negotiate with the Receiving Party to reach a lump sum settlement or to resolve as many disputed items as possible. If attempts to settle fail, you should then proceed to prepare the List of Objections. You should file your List of Objections with the Registry and send a copy to the Receiving Party or his solicitors within 28 days after service of the NOCT on you.

11. You should number the items of costs objected to in your List of Objections. For each item objected to, you should identify the page reference and item number in the Receiving Party's bill of costs and give brief reasons for your objection. For example, you may object to an item of costs claimed on the ground that:

- the work done is not covered by the terms of the costs order;
- the work done is not necessary or proper;
- the hourly rate charged is excessive;
- the time claimed to have been incurred is excessive;
- the amount of costs claimed is excessive; or
- the person doing the work is not qualified or over-qualified.

You should also suggest an amount which you are willing to pay for each of the items objected to. A sample of the List of Objections is in **Appendix 3**.

12. If you fail to file and serve a List of Objections, the Receiving Party may apply to the court for the costs claimed in his bill of costs to be allowed.

What will happen if no settlement is reached and the Paying Party has failed to file and serve a List of Objections?

13. If you are the Receiving Party, you may apply to the court for the costs claimed in your bill of costs to be allowed if no settlement is reached and the Paying Party has failed to file and serve a List of Objections within 28 days from service of the NOCT. Such an application is made by:

- filing an affidavit to prove due service of the NOCT and the bill on the Paying Party; and
- completing Part A of the Application to Set Down a Bill for Taxation and file it in court and serve it on the Paying Party. A sample of the Application to Set Down a Bill for Taxation is in **Appendix 4**.

You will then be informed of the court's decision.

What will happen after the Paying Party has filed and served a List of Objections?

14. In the event that no settlement on the whole bill can be reached within 28 days after service of the List of Objections, the Receiving Party shall file in court and serve on the Paying Party an Application to Set Down a Bill for Taxation. A sample is at **Appendix 4**.

15. Upon receipt of the Application to Set Down a Bill for Taxation, the court may:

- set the bill down for provisional taxation without a hearing by a Chief Judicial Clerk if the amount claimed in the bill does not exceed $200,000;
- set the bill down for provisional taxation without a hearing by a taxing master if the amount claimed in the bill exceeds $200,000; or
- set the bill down for taxation by a taxing master with a hearing if he is satisfied that there is good reason to do so.

What will happen after provisional taxation?

16. If the bill is set down for provisional taxation without a hearing by a Chief Judicial Clerk or a taxing master, the parties will be notified in writing of the court's decision on the amount allowed or disallowed. Such an order is called an "order *nisi*".

17. Parties may seek clarification on the amount allowed or disallowed within 14 days of the notification. Any party objecting to the order *nisi* should apply within 14 days of the notification to the taxing master in writing for a hearing identifying his objections and

giving an estimation of the hearing time. Upon receipt of an application for a hearing, the taxing master will set the bill down (wholly or partly) for taxation with a hearing and give further directions as he deems fit.

18. If no clarification is sought and no objection is made to the order *nisi* within 14 days of the notification, the order *nisi* becomes absolute and there will be no oral hearing.

What will happen at the oral hearing for taxation of a bill?

19. There will be a court hearing if the bill is set down for taxation with a hearing or when there is an objection to the order *nisi*. At the hearing, the court will go through each item of costs objected to. Each party will be permitted to make submission. The taxing master will pronounce the amount he allows item by item. If the Receiving Party or the Paying Party fails to appear at the hearing, the court may dismiss the bill claimed or allow the amount claimed in the bill as the case may be.

What will happen upon completion of the taxation?

20. Upon completion of the taxation, the parties should calculate the total amount that the taxing master has allowed. The parties can jointly submit a certificate (called an Allocatur) to the taxing master for approval. If the taxing master approves it, a certificate will be issued. With that certificate, the costs can be enforced just like any judgment sum.

How do I review the decision of a taxing master?

21. If you are not satisfied with the taxing master's decision, you may apply to the taxing master for review within 14 days after the conclusion of the taxation. At the time you make such application, you must deliver to the taxing master written objections

specifying which items of costs you object to and give brief reasons. A copy of the objections must be delivered to the other party.

22. If, on the other hand, you are served with an application for review, you should, within 14 days after delivery of the grounds of objection, deliver to the taxing master and the applicant written answers to the objections and give brief reasons.

23. If you are dissatisfied with the decision of the taxing master on review, you may apply to a judge for an order to review the taxation. A summons should be issued within 14 days after the taxing master's certificate is signed.

Is there a time limit for a Receiving Party to commence taxation proceeding?

24. A Receiving Party should note that you will not be entitled to commence taxation proceeding after the expiry of two years from the date of the final judgment or costs order absolute.

How to shorten the taxation proceeding by making Sanctioned Offers and Sanctioned Payments?

25. Under Order 62A of Rules of the High Court (or Rules of the District Court as the case may be), the Receiving Party can make a sanctioned offer and the Paying Party can make a sanctioned payment before the taxation of the bill. You will have to read the relevant parts of the Rules first before deciding to make a sanctioned offer or sanctioned payment under the Rules.

26. Sanctioned offer by a Receiving Party

26.1 A sanctioned offer must be in writing and must state whether it relates to the whole or part of the costs. It must provide that after the expiry of 14 days from the date the sanctioned offer is made, unless with the leave of the court, the Paying Party may only accept it if the parties agree on the liability for and the quantum of costs of taxation incurred after the period.

26.2 The Receiving Party shall serve the sanctioned offer on the Paying Party.

26.3 If there is no pending application for withdrawal or diminution of the sanctioned offer, the Paying Party may accept a sanctioned offer at any time before taxation 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.

27. Sanctioned payment by a Paying Party

27.1 A sanctioned payment is made by payment into court the offered amount and file with the court a Notice of Sanctioned Payment (Form No.93). The Paying Party shall serve the notice on the Receiving Party and file with the court a certificate of service.

27.2 If there is no pending application for withdrawal or diminution of the sanctioned payment, the Receiving Party may accept a sanctioned payment at any time before taxation without requiring the leave of the court if he files with the court and serves on the Paying Party a written notice of acceptance. The notice of acceptance must be in Form No.93A and must be filed and served no later than 14 days after the offer was made.

27.3 Except where the sanctioned payment is made by one or more of the Paying Parties but not all of them (in which case Order 62A, Rule 16 is applicable), the Receiving Party may after a sanctioned payment is accepted, obtain payment out of the sum in court by making a request for payment in Form No.93B.

28. If a sanctioned offer or a sanctioned payment relating to the whole costs is accepted, the taxation proceeding is stayed.

29. If a sanctioned offer or a sanctioned payment has been made but not accepted, the Paying Party or Receiving Party (as the case may be) may face adverse consequences on interest and costs if the Receiving Party does better than what he has proposed in his sanctioned offer or if he fails to better a sanctioned payment. You should refer to Order 62A, rules 19 and 20 for details of the possible consequences.

Appendix 1

Sample Bill of Costs

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION NO. OF 20

Between :

ABC Plaintiff

- and -

XYZ Defendant

Plaintiff's Bill of Costs

The Plaintiff's costs of the action to be taxed against the Defendant pursuant to the Order of [Master _____ / _____ J] made on [*date*].

I certify that the amount claimed in this bill does not exceed [the Plaintiff's / Defendant's] liability for costs to my firm in respect of this [summons / hearing / action, etc.]

_____ (Signature)
The plaintiff

I certify that:

* No costs have been awarded on a summary assessment basis.

* Summary assessment of costs have been ordered as follows:

[e.g.(1) Security for costs application: $ _____ to Plaintiff

(2) Summons for specific discovery : $_____ to Defendant

(3) ___x___number of time summonses each at $800]

* Delete as may be appropriate

Section A: Solicitors' Costs

Fee Earners:

SP - (admitted 1990 - [ ] per hour)

AS - (admitted 2007 – [ ] per hour)

TS - [ ] per hour

LE - [ ] per hour

No.	*Description*	*Scale Cost*
	Stage 1: Pre-action Stage (15.06.09 – 25.10.09)	
1.	[insert particulars of work done in this period in compliance with pre-action protocols]	
	Sub-total for Stage 1:	
	Stage 2: From Writ to the day before filing of the first Timetabling Questionnaire (26.10.09 – 27.12.09)	
2.	Writ of Summons and Acknowledgement of Service 2.1. drafting Writ (SP – 20 min) 2.2. drafting Acknowledgement of Service (SP – 5 min) 2.3. prescribed forms and statement of claim to accompany (10 pages)	C:[1] F: S:
3.	Statement of Claim 3.1. drafting instructions to counsel to settle (SP – 1 hr) 3.2. considering settled draft (SP – 30 min) 3.3. documents enclosed for counsel (50 pages)	C: F: S:

[1] C stands for "copying charges".
F stands for "attendance filing".
S stands for "service".

No.	*Description*	*Scale Cost*
4.	Acknowledgement of Service Perusing (SP – 10 min)	
5.	Defence Considering (SP – 45 min)	
6.	Amended Defence Considering (SP – 10 min)	
7.	Reply Considering draft of counsel (SP – 35 min)	C: F: S:
8.	Conferences: (a) with client (SP – 4 hrs) (b) with counsel (SP – 1 hr 30 min)	
9.	Communications: 9.1. with client 9.1.1. routine communication: 6 in and 5 out (AS - 1 hr 10 min) 9.1.2. non-routine communication: 5 in and 5 out - to take instructions to sue, to discuss draft statement of claim and reply, etc., obtaining comments (SP – 4 hrs; AS – 1 hr) 9.1.3. 2 long letters out & 1 long email to advise on tactics, to take instructions to sue, to discuss draft statement of claim and reply (SP – 1 hr, 2 hrs & 1 hr respectively) 9.2. with counsel – to discuss pleadings, to seek advice on [issue] (SP – 2 hrs; AS – 30 min) 9.2.1. routine communication: 6 in and 5 out (AS - 1 hr 10 min)	

No.	*Description*	*Scale Cost*
	9.2.2. non-routine communication: 5 in and 5 out – to discuss draft statement of claim and reply, etc., obtaining comments (SP – 4 hrs; AS – 1 hr) 9.2.3. 3 long letters in and 1 long phone call out to advise on tactics, to discuss draft statement of claim and reply (SP – 45 min, 1 hr & 1 hr respectively) 9.3. with Defendant's solicitors Sub-total for stage 2:	
	<u>Stage 3: The day of filing of the first Timetabling Questionnaire to the day of last CMC (28.12.09 – 01.09.10)</u>	
10.	Questionnaire 10.1. reviewing files (SP – 20 min) 10.2. drafting questionnaire (SP – 15 min)	C: F: S:
11.	Questionnaire filed by Defendant Considering (SP – 15 min)	
12.	Agreed Timetable 12.1. drafting consent summons (SP – 20 min) 12.2. drafting agreed timetable (SP – 20 min)	C: F: S:
13.	Order approving agreed timetable Drafting (SP – 10 min)	C: F: S:

No.	*Description*	*Scale Cost*
14.	List of Documents Drafting (AS – 1 hr)	C: F: S:
15.	Defendant's List of Documents 15.1. Considering (AS – 1 hr) 15.2. Paid copying charges to D's solicitors	 C:
16.	Statement of *AAA* Drafting (AS – 3 hrs)	
17.	Summons and Request for further and better particulars (F&BP) of the Defence Drafting (SP – 3 hrs)	C: F: S:
18.	Defendant's Summons to Strike Out Perusing (SP – 25 min)	
19.	Affirmation of *BBB* for Defendant Perusing (SP – 40 min)	
20.	Affirmation of *CCC* for Plaintiff Drafting (SP – 2 hr)	C: F: S:
21.	Summons for F&BP and summons to strike out 21.1. Call over hearing before Master _____ (AS – 30 min) 21.2. Drafting order (AS – 10 min)	C: F: S:
22.	Affirmation of *DDD* for Defendant Considering (SP – 1 hr 20 min)	

No.	*Description*	*Scale Cost*
23.	Consent Summons for [specify] 23.1. Considering (SP – 10 min) 23.2. Drafting order (SP – 10 min)	C: F: S:
24.	Preparation of hearing bundles 24.1. drafting index (AS – 50 min) 24.2. collating documents (TS – 2 hrs)	C: F: S:
25.	Brief to counsel to appear on summons for F&BP and summons for striking out Drafting (AS – 15 min)	C: F: S:
26.	Preparation for hearing (SP – 6 hrs) 26.1. considering skeleton submission of defendant and authorities 26.2. considering skeleton submission of counsel and authorities 26.3. reviewing hearing bundle	
27.	Hearing before Master _____ 27.1. Attending (SP – 3 hrs) 27.2. Drafting order (SP – 15 min)	C: F: S:
28.	Witness statement of EEE Considering (SP 1 hr 30 min)	
29.	Defendant's summons for discovery 29.1. considering (SP – 10 min) 29.2. appearing before Master _____ for call over (AS – 30 min) 29.3. considering sealed order of Master _____ (AS – 10 min)	

No.	*Description*	*Scale Cost*
30.	Amended Defence Considering (SP – 20 min)	
31.	Amended Reply Drafting (SP – 40 min)	C: F: S:
32.	Supplemental list of documents Drafting (AS – 50 min)	C: F: S:
33.	Affirmation of PQR to comply with order for specific discovery Drafting (SP – 1 ½ hrs)	C: F: S:
34.	Witness statements of *FFF*, *GGG*, *HHH* Drafting (SP – 13 hrs)	C: F: S:
35.	Notice of change of solicitors filed by Messrs. *XXX* Perusing (SP – 5 min)	
36.	Land search and companies search records Perusing (AS – 30 min)	
37.	Instructions to expert Drafting (SP – 40 min)	C: F: S:
38.	Witness statements of *BBB* and *CCC* for Defendant Considering (SP – 3 hrs)	

No.	*Description*	*Scale Cost*
39.	Supplemental witness statement of *AAA* Drafting (AS – 40 min)	C: F: S:
40.	Report of expert Considering (SP – 2 hrs)	
41.	Hearsay notice of the Plaintiff Drafting (AS – 30 min)	C: F: S:
42.	Hearsay notice of Defendant Considering (SP – 15 min)	
43.	Report of Defendant's expert Considering (SP – 1 hr)	
44.	Listing Questionnaire for CMC Drafting (SP – 15 min)	C: F: S:
45.	CMC 45.1. attendance before Master Lung (SP – 30 min) 45.2. drafting order of Master Lung (SP – 20 min)	
46.	2nd supplemental list of documents Drafting (AS – 1 hr)	C: F: S:

No.	*Description*	*Scale Cost*
47.	Conferences within stage 3: 47.1. with client 47.2. with counsel	
48.	Communications within stage 3: 48.1. with client 48.2. with counsel 48.3. with expert 48.4. with Defendant's solicitors 48.5. with Court	
	Sub-total for stage 3:	
	<u>Stage 4: The day after last CMC to the day of last PTR (02.09.10 – 28.12.10)</u>	
49.	Preparation for PTR 49.1. drafting questionnaire (SP – 15 min) 49.2. drafting index to trial bundle (SP – 30 min) 49.3. drafting brief to counsel to attend PTR (AS – 10 min)	C: F: S:
50.	PTR 50.1. appearing before _____ J (SP – 20 min) 50.2. drafting order of _____ J (SP – 10 min)	
51.	Perusing notice of date fixed for trial (SP – 5 min)	
52.	Conferences within stage 4: 52.1. with client 52.2. with counsel	

No.	*Description*	*Scale Cost*
53.	Communications within stage 4: 53.1. with client 53.2. with counsel 53.3. with Defendant's solicitors 53.4. with Court Sub-total for stage 4:	
	<u>Stage 5: The day after last PTR to trial (29.12.10 –01.02.11)</u>	
54.	Drafting briefs: 54.1. to senior counsel (AS – 10 min) 54.2. to junior counsel (AS – 10 min)	C: F: S:
55.	Preparation of trial bundles 55.1. revising index (SP – 10 min) 55.2. collating documents (TS – 5 hrs)	C: F: S:
56.	Preparation for trial: 56.1. considering opening submission of counsel (SP – 2 hrs) 56.2. considering opening submission of defence counsel (SP – 2 hrs) 56.3. considering authorities (SP – 1 hr) 56.4. considering closing submission of counsel (SP – 3 hrs) 56.5. considering closing submission of defence counsel (SP – 3 hrs) 56.6. reviewing 7 trial bundles (SP – 5 hrs)	

No.	*Description*	*Scale Cost*
57.	Attending trial before _____ J: Day 1 – SP – 5 hrs Day 2 – SP – 4 ½ hrs Day 3 – SP – 5 hrs	
58.	Considering judgment (SP – 1 hr)	
59.	Perusing sealed order (SP – 20 min)	
60.	Conferences within stage 5: 60.1. with client and counsel – SP 2 hrs	
61.	Communications within stage 5: 61.1. with client 61.2. with counsel 61.3. with expert 61.4. with Defendant's solicitors 61.5. with Court	
	Sub-total for stage 5:	
	General	
62.	Legal research on [issue] (SP – 5 hrs)	
63.	General care and conduct (SP – 2 hrs)	
	Total:	

Section B: Disbursements

B.1 & B.2 Counsel's Fees

No.	*Description*	*Senior Counsel*	*Junior Counsel*
1.	Settling statement of claim and telephone conference with solicitors Stage [ ]		
2.	Drafting Reply Stage [ ]		
3.	Attending before Master _____for summons for F&BP and summons for striking out Stage [ ]		
4.	Conference with client and solicitors Stage [ ]		
5.	Attending before _____ J for PTR Stage [ ]		
6.	Conference with client and solicitors Stage [ ]		
7.	Brief to appear before _____ J Stage [ ]		
8.	2 Refreshers Stage [ ]		
	Total:		

B.3 Other Disbursements

No.	*Description*	*HK$*
1.	Court fees Stage[__]	
2.	Land search fees Stage[__]	
3.	Expert's fees Stage[__]	
	Total:	

Section C: Costs of Taxation

No.	*Description*	*Cost*	*Disbursement*
1.	Instructions to LCD to draft bill and collating documents (SP 1 hr)		
2.	Commencement of taxation (LCD – 8 hrs) 2.1 Reviewing 10 files 2.2 Drafting bill 2.3 Drafting NOCT		
3.	Approving Bill of Costs (SP – 1 hr)		
4.	Considering List of Objections (SP – 30 min)		
5.	Communications with Defendant's Solicitors to try and agree on costs		
6.	Taking instructions with client on settlement		
7.	Drafting application to set down for taxation (LCD – 15 mins)		
8.	Perusing directions from taxing Master (LCD – 15 min)		
9.	Writing Letter of Appointment to Court to fix date for taxation (SP –5 mins)		
10.	Reviewing files and preparing taxation bundle		
11.	Attending Court for taxation / considering figures after taxation on the papers		
12.	Checking calculations after taxation (LCD – 30 min)		
13.	Drafting allocatur (LCD – 10 min)		
14.	Photocopies - For service (21 pages) - To keep (21 pages)		

No.	*Description*	*Cost*	*Disbursement*
15.	Attendances - Filing - Serving - Fixing date - Lodging taxation bundle		
	Total:		

Summary

Case type: Land law
Case Nature: Construction of DMC
Hearing type: interlocutory / trial
No. of days of main hearing: 3 days
Receiving Party: Plaintiff / Defendant

Section	*Description*	*Cost / Fees Claimed*	*Costs / Fees Allowed*
A	Solicitor's Profit Costs (PQE of *main* handler – >10 years) Stage 1: $X Stage 2: $Y Etc. Total for this case / matter:		
B B1	Disbursements Counsel's Fees ([Senior Counsel / > 7 years]): Brief $ Refresher rate $ Conference rate $ Stage 1: $X Stage 2: $Y Etc. Total for this case / matter		

Section	***Description***	***Cost / Fees Claimed***	***Costs / Fees Allowed***
B2 C	Other disbursements Court fee $ Land search $ Expert $ Stage 1: $X Stage 2: $Y Etc. Total for this case / matter Costs of Taxation		
	Total:		

(*To be filled in only after the taxation when the summary is submitted with the draft allocatur.)*

Has a sanctioned offer or sanctioned payment* under Order 62A ever been made? Yes No

By whom? Plf Dft

Has it ever been beaten? Yes No

Does any of the following sanctions apply to this taxation?

- disallowance of interest on costs Yes No
- interest on costs above judgment rate? Yes No
- cost on indemnity basis? Yes No

**Delete as appropriate*

Sample Notice of Commencement of Taxation

[Insert Title of Action]

NOTICE OF COMMENCEMENT OF TAXATION

1. Take notice that the [Plaintiff] has commenced taxation by filing a bill of costs on [*date*] pursuant to the costs order of [Master _____ / _____ J] made on [*date*].

2. [The bill of costs has previously been served on you on _____ and it will not be served on you again / The bill of costs is served together with this Notice][*].

3. You are required to file and serve a list of objections within 28 days of the service of this notice of commencement of taxation on you, i.e. on or before _____. If you do not file the list of objections as stated above, I / We will apply to the Taxing Master for the appropriate directions, including an order for the bill to be taxed as drawn with costs of the taxation against you.

4. I / We* will file an application for setting down for taxation within 28 days of the service of your list of objections on me / us*, i.e. on or before _____.

5. If you are not a party named in the aforesaid costs order but claim to have a financial interest in the outcome of the taxation, you must give notice in writing to [the Plaintiff] and the Registrar within 7 days after service of this Notice on you stating:

(a) your financial interest in the outcome of the taxation; and

(b) whether you intend to take part in the taxation proceedings.

If you fail to do so, you will not receive any notification relating to the taxation and will not be entitled to take part in the taxation proceedings.

Dated _____ day of _____, 20 __

[signed, solicitors for the Plaintiff]

---

[*] Delete if inappropriate.

Sample List of Objections

[Insert title of action]

The Defendant's List of Objections to the [Plaintiff's] Bill of Costs

No.	Page No.	Bill item No.	Grounds of Objection and proposed costs	Taxing Master's Ruling[2]
1.	2	Hourly rates	Rate of ABC excessive and propose $per hr	
2.	4	37	Quantum excessive. Suggest reduction of 15 mins.	
3.	7	49	Duplication with item 31. Tax off	
			Total deductions if all objections are upheld: $_____	

Estimated time for taxation: hours / days

We [do / do not]* request for a taxation with an oral hearing.

Dated _____ day of _____, 20____

[signed, solicitors for the Defendant]

**Please delete the inappropriate.*

[2] Delete this column if you are asking for a taxation with an oral hearing.

Sample Application to Set Down a Bill for Taxation

[Insert title of action]

APPLICATION TO SET DOWN A BILL FOR TAXATION

Part A: ***To be completed by the Receiving Party if no list of objections has been served***

The Receiving Party do apply for the bill of costs filed herein on …… to be taxed as drawn.

- ❑ I / We* confirm that the Notice of Commencement of Taxation and the abovementioned bill have been served on the Paying Party on …… and an affidavit proving due service has been filed.

- ❑ I / We* confirm that the abovementioned Paying Party has not served a list of objection and that time for doing so has expired on …….

- ❑ I / We* apply for the following additional costs of taxation not already stated in the abovementioned bill:
  ……..

Part B: ***To be completed when a list of objections has been served***

The Receiving Party [and the Paying Party]* do apply to set the bill of costs filed herein on ……. down for taxation.

- ❑ I / We* confirm that the amount of costs claimed in the abovementioned bill is [below / of / more than]* $200,000.

- ❑ I / We* [do / do not]* request for taxation with an oral hearing. If you request for an oral hearing, please state the reason(s):
  ……..……..

- ❑ I / We* have made my / our best endeavor to reach an agreement on the whole of the bill or on as many items as possible. The following items in the List of Objections are still disputed and require adjudication:
  ……..

- ❑ I / We* estimate the time required to tax the abovementioned disputed items is ……. [hours / days]*. (If parties cannot agree on the time estimates, state respective estimate.)

- ❑ This application is consented to by the Paying Party.
  ……...

Part C: ***To be completed if the Receiving Party is on legal aid***

- ❑ This application has been served on the Director of Legal Aid.

* Please delete the inappropriate item(s).

Dated _____ day of _____, 20.

_____	_____
[Solicitors for]* Receiving Party	[Solicitors for]* Paying Party

民事司法制度改革：過渡安排

Civil Justice Reform: Transitional Arrangements

- This leaflet is designed to provide you with a brief outline of the transitional arrangements in the High Court and the District Court for Civil Justice Reform.
- You should read the Rules of the High Court (or the Rules of the District Court, as the case may be) for full details.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

Civil Justice Reform: Transitional Arrangements

1. The Civil Justice Reform has come into effect on 2nd April 2009 ("commencement date"). Arrangements are in place to facilitate smooth transition.

2. This leaflet is designed to highlight those transitional arrangements which are more likely to be encountered by litigants. The transitional arrangements outlined in this leaflet are not exhaustive and you should read the Rules of the High Court ("RHC") and the Rules of the District Court ("RDC") for full details of the arrangement.

Admissions in claims for payment of money

3. The new procedure for admission in claims for payment of money under RHC/RDC Order 13A (except rule 13) is applicable to the following types of cases commenced before the commencement date and pending before the court:

(i) for writs of summons served before the commencement date, if the plaintiff has not obtained default judgment;

(ii) for originating summons served before the commencement date, if the admission is filed and served before the date fixed for parties to attend court or the period fixed for the plaintiff to apply for an appointment; and

(iii) for any other originating process served before the commencement date, if the period specified for filing and serving an admission has not expired.

For full details, please refer to RHC/RDC Order 13A, rule 14(1).

Pleadings

4. Where the statement of claim has already been served before the commencement date, the new timing under RHC/RDC Order 18, rules 2 and 3 for service of defence, reply and defence to counterclaim does not apply. In such cases, parties should follow the practice immediately before the commencement date and serve a defence, reply or defence to counterclaim (as the case may be) as follows:

(i) A defendant who has given notice of intention to defend should, unless the court gives leave to the contrary, serve a defence before the expiration of 14 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later. This does not apply to cases falling within (ii) and (iii) below.

(ii) If a summons for summary judgment or specific performance has been served on a defendant before he serves his defence, he should serve a defence within 14 days after the order granting him leave to defend.

(iii) Where a defendant has made an application to dispute the jurisdiction of the court and the court either makes no order on the application or dismisses the application, he should serve a defence 14 days after the final determination of the application or within such other period specified by the court.

(iv) A plaintiff should serve a reply before the expiration of 14 days after the service on him of the defence.

(v) A plaintiff should serve a defence to counterclaim before the expiration of 14 days after the service on him of the counterclaim.

For full details, please refer to RHC/RDC Order 18, rule 24, and the version of Order 18, rules 2 and 3 before the commencement date.

Payments into court

5. The new practice under RHC/RDC Order 22 on offers to settle and payments into court does not apply to payments into court made before the commencement date and the disposal of which is still pending, and the practice previously in force before the commencement date continues to apply.

For full details, please refer to RHC/RDC Order 22, rule 28, and the version of Order 22 before the commencement date.

Case management

6. The new practice under RHC/RDC Order 25 on case management summons and conference applies to cases commenced before the commencement date and are pending before the court with the following modification:

(i) A summons for directions taken out by a plaintiff before the commencement date and pending before the court will be deemed a case management summons taken out under RHC Order 25, rule 1(1B)(b) (or RDC Order 25, rule 1(3)(b)).

(ii) A summons for directions taken out by a defendant before the commencement date and pending before the court will be deemed a case management summons taken out under RHC Order 25, rule 1(4)(a) (or RDC Order 25, rule 1(5)).

(iii) Where the pleadings are deemed to be closed but no summons for directions has been taken out before the commencement date, parties should file and serve a questionnaire in accordance with RHC/RDC Order 25, rule 1(1) within 28 days after the commencement date.

7. Additionally, for cases pending before the District Court:

(i) Where the court has given a direction requiring the plaintiff to apply for a pre-trial review or a memorandum setting out such a direction has been filed, and the

plaintiff has not made the application, then such a direction is deemed to be a direction requiring the plaintiff to take out a case management summons under RDC Order 25, rule 1(3)(b).

(ii) Where an application for a pre-trial review is pending before the court, then the application is deemed to be a case management summons taken out under RDC Order 25.

For full details, please refer to RHC Order 25, rule 11, and RDC Order 25, rule 13.

Statements of truth

8. The new practice under RHC/RDC Order 41A on statements of truth does not apply to a document already filed, served or exchanged before the commencement date. However, you need to comply with the new practice if you amend such document after the commencement date.

For full details, please refer to RHC/RDC Order 41A, rule 10.

Costs

9. The new taxation procedure in RHC/RDC Order 62 does not apply to bills of costs filed before the commencement date, and the procedure in force before the commencement date continues to apply.

10. For work undertaken before the commencement date:

(i) no costs will be disallowed if such costs would have been allowed before the commencement date; and

(ii) such costs will be taxed in accordance with the First and Second Schedule to RHC/RDC Order 62 as it was in force immediately before the commencement date.

11. The amendments to the High Court Fees Rules (Cap.4D) and the District Court Civil Procedure (Fees) Rules (Cap.336C) do not apply to appointments to tax obtained before the commencement date.

12. For full details, please refer to RHC/RDC Order 62, rules 36 and 37, the version of Order 62 before the commencement date, and the High Court Fees Rules and the District Court Civil Procedure (Fees) Rules.

Judicial review

13. The new practice under RHC Order 53 on judicial review does not apply to applications for leave to apply for judicial review or applications for judicial review pending before the court immediately before the commencement date.

Judiciary

March 2009