

L.N. 153 of 2025

Construction Industry Security of Payment Rules

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Construction Industry Security of Payment Rules

(Made by the Chief Judge under section 50 of the Construction Industry Security of Payment Ordinance (Cap. 652))

Part 1

Preliminary

1. Commencement

These Rules come into operation on 5 September 2025.

2. Interpretation

In these Rules—

Cap. 4A (《第4A章》) means the Rules of the High Court (Cap. 4 sub. leg. A);

Cap. 336H (《第336H章》) means the Rules of the District Court (Cap. 336 sub. leg. H);

CFI Judge (原訟法庭法官) means a judge, recorder or deputy judge mentioned in section 4(1)(b), (ba) or (c) of the High Court Ordinance (Cap. 4);

Court (法院) means the Court of First Instance or the District Court;

District Judge (區域法院法官) means a judge as defined by section 2 of the District Court Ordinance (Cap. 336);

enforcement application (強制執行申請) means an application for leave to enforce a determination under section 49 of the Ordinance;

Master of the District Court (區域法院聆案官) means a master as defined by Order 1, rule 4(1) of Cap. 336H;

Master of the High Court (高等法院聆案官) means a master as defined by Order 1, rule 4(1) of Cap. 4A;

set aside application (撤銷申請) means an application to set aside a determination under section 48 of the Ordinance.

3. Application of Rules of District Court or Rules of High Court to proceedings under Ordinance

- (1) Except as provided by these Rules, the practice and procedure under Cap. 336H apply, with necessary modifications, to all proceedings under the Ordinance before the District Court.
 - (2) Except as provided by these Rules, the practice and procedure under Cap. 4A apply, with necessary modifications, to all proceedings under the Ordinance before the Court of First Instance.
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Part 2

Applications to Court

4. Court to which applications are to be made

- (1) If the adjudicated amount in a determination under section 42 of the Ordinance is not more than \$3,000,000, a set aside application or an enforcement application in relation to the determination is to be made to the District Court.
- (2) If the adjudicated amount in a determination under section 42 of the Ordinance is more than \$3,000,000, a set aside application or an enforcement application in relation to the determination is to be made to the Court of First Instance.
- (3) In ascertaining an adjudicated amount for the purposes of this rule, the amount of interest accrued up to, but not after, the date on which the determination is made is to be included.

5. Applications may be heard by masters or judges

- (1) A set aside application or an enforcement application made to the District Court may be heard by a Master of the District Court or a District Judge in chambers.
- (2) A set aside application or an enforcement application made to the Court of First Instance may be heard by a Master of the High Court or a CFI Judge in chambers.

6. Set aside applications—originating summons

- (1) A set aside application to the District Court must be made by originating summons in Form No. 10 in Appendix A to Cap. 336H.

- (2) A set aside application to the Court of First Instance must be made by originating summons in Form No. 10 in Appendix A to Cap. 4A.
- (3) The originating summons for a set aside application must state which of the grounds set out in section 48(2) of the Ordinance is relied on.

7. Enforcement applications—originating summons

- (1) An enforcement application to the District Court must be made ex parte by originating summons in Form No. 11 in Appendix A to Cap. 336H.
- (2) An enforcement application to the Court of First Instance must be made ex parte by originating summons in Form No. 11 in Appendix A to Cap. 4A.

8. Service of originating summons, summons or order

- (1) This rule applies to the service of—
 - (a) an originating summons or a summons issued under these Rules; or
 - (b) an order made on such originating summons or summons.
- (2) The originating summons or summons issued in relation to a set aside application must be served on the adjudicator who made the determination and on all the other parties to the adjudication proceedings.
- (3) Service out of the jurisdiction of the originating summons, summons or order is permissible with the leave of—
 - (a) for the originating summons or summons by which an application is made under these Rules—the Court to which the application is made; or
 - (b) for the order—the Court that makes the order.

- (4) An application for leave under subrule (3) must be supported by an affidavit stating—
 - (a) the ground on which the application is made; and
 - (b) in what place the person to be served is, or may probably be found.
 - (5) No leave may be granted under subrule (3) unless it is made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.
 - (6) The following rules apply to the originating summons or summons by which an application is made under these Rules to the Court, or the order made on such originating summons or summons by the Court, as they apply to a writ—
 - (a) if the Court is the District Court—Order 11, rules 5, 5A, 6, 7, 8 and 8A of Cap. 336H;
 - (b) if the Court is the Court of First Instance—Order 11, rules 5, 5A, 6, 7, 8 and 8A of Cap. 4A.
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Part 3

Specific Provisions for Applications

9. Specific provisions for set aside applications

- (1) Within 14 days after the date on which a set aside application is made to the Court (or such longer period as that Court considers appropriate), the applicant (*applicant*) must pay into that Court the security required under section 48(5) of the Ordinance (*security*).
- (2) The amount of the security is to be ascertained in accordance with the following formula—

$$A + I + C - P$$

where each variable set out in column 1 of the Table represents the amount of the item set out in column 2 of the Table opposite to it.

Table

Column 1	Column 2
A	the total amount payable in relation to the payment dispute under the determination
I	the interest of the above item accrued up to the date on which the determination is made
C	the costs of the adjudication proceedings payable by the applicant under the determination
P	any portion of the above 3 items paid by the applicant on or before the date on which the set aside application is made

- (3) The security must be accompanied by an affidavit by the applicant stating—
 - (a) the amount of the security as ascertained in accordance with subrule (2); and
 - (b) the amount of each of the items set out in column 2 of the Table in that subrule.
- (4) If the applicant fails to comply with this rule, the Court to which the application is made may order that the application be dismissed.

10. Specific provisions for enforcement applications

- (1) In stating in an affidavit supporting an enforcement application that the adjudicated amount has not been paid in full at the time the application is made for the purposes of section 49(4)(b)(i) of the Ordinance, the amount that has been paid (if any) and the amount that has not been paid as at that time must also be stated in the affidavit.
 - (2) An enforcement application may be made ex parte but the Court hearing the application may direct a summons to be issued.
 - (3) If the Court directs a summons to be issued under subrule (2), the summons may be an originating summons in Form No. 10 in Appendix A to Cap. 336H or Form No. 10 in Appendix A to Cap. 4A (as the case requires).
 - (4) An order granting leave for enforcement must be drawn up by or on behalf of the applicant of the enforcement application.
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Part 4

Transfer of Proceedings

- 11. Transfer of proceedings from District Court to Court of First Instance**
 - (1) If the District Court considers that a set aside application or an enforcement application made to the District Court should have been made to the Court of First Instance, the District Court may order the transfer of all or part of the application or its proceedings to the Court of First Instance.
 - (2) An order may be made under this rule at any stage of the proceedings of the District Court's own motion or on the application of any party.
 - (3) In considering whether an application is to be transferred to the Court of First Instance under subrule (1), the District Court may, in addition to the adjudicated amount, have regard to the importance or complexity of any issue arising in the application or its proceedings, and any other reason for which the proceedings ought to be transferred to the Court of First Instance.
- 12. Transfer of proceedings from Court of First Instance to District Court**
 - (1) If the Court of First Instance considers that a set aside application or an enforcement application made to the Court of First Instance should have been made to the District Court under rule 4(1), the Court of First Instance may order the transfer of all or part of the application or its proceedings to the District Court.

- (2) An order may be made under this rule at any stage of the proceedings of the Court of First Instance's own motion or on the application of any party.

Part 5

Appeal

13. Appeal against decisions to grant or refuse applications

- (1) Subject to section 48(6) or 49(8) of the Ordinance—
 - (a) an appeal lies to a District Judge from a decision of a Master of the District Court to grant or refuse a set aside application or an enforcement application;
 - (b) an appeal lies to a CFI Judge from a decision of a Master of the High Court to grant or refuse a set aside application or an enforcement application; and
 - (c) an appeal lies to the Court of Appeal from a decision of a District Judge or a CFI Judge to grant or refuse a set aside application or an enforcement application.
- (2) An appeal from a decision of a Master of the District Court or a Master of the High Court to grant or refuse a set aside application or an enforcement application is to be dealt with by way of rehearing.

14. Application for leave to appeal

- (1) For the purposes of section 48(6) of the Ordinance, an application for leave to appeal against a decision to grant or refuse a set aside application may only be made within 14 days after the date of the decision.
- (2) For the purposes of section 49(8) of the Ordinance, an application for leave to appeal against a decision to grant or refuse an enforcement application may only be made within 14 days after the date of the decision.

- (3) So far as is practicable, an application for leave to appeal under this rule must be made to the Master of the District Court, the Master of the High Court, the District Judge or the CFI Judge against whose decision the appeal is sought.
- (4) An application for leave to appeal under this rule must be made inter partes if the proceedings to which the decision relates are inter partes.
- (5) The Court may extend the period for making an application to that Court for leave to appeal under this rule before, on or after the expiry of the period.

Jeremy POON
Chief Judge

7 July 2025

Explanatory Note

The main purpose of these Rules is to provide for the practice and procedure relating to—

- (a) an application to set aside a determination under section 48 of the Construction Industry Security of Payment Ordinance (Cap. 652) (*set aside application*); and
 - (b) an application for leave to enforce a determination under section 49 of that Ordinance (*enforcement application*).
2. Part 1 provides for commencement, definitions of terms and application of rules of court in certain enactments to proceedings under the Construction Industry Security of Payment Ordinance (Cap. 652).
3. Part 2 provides for matters relating to the procedure of a set aside application or an enforcement application, including the court to which the application is made, the form to be used for the application and the service of an originating summons, summons and order.
4. Part 3 provides for certain specific provisions for the procedure of a set aside application or an enforcement application.
5. Part 4 provides for the transfer of a set aside application or an enforcement application from the District Court to the Court of First Instance, and the transfer of the application from the Court of First Instance to the District Court.
6. Part 5 provides for the appeal against a decision to grant or refuse a set aside application or an enforcement application.