WHAT IS A CIVIL CASE? I. WHAT IS A CIVIL CASE? A civil case relates to the legal rights and obligations between two or more persons or institutions. In the event that the parties concerned cannot resolve a dispute themselves, either party may start a civil litigation. This is done in order to seek an independent and impartial tribunal's or court's determination as to whether one's legal rights and obligations are being infringed, and if so, to obtain appropriate compensation and remedy. Civil litigation should be distinguished from criminal litigation. The main difference is that civil litigation is normally undertaken by an individual to seek monetary compensation, to recover properties, or to enforce obligations, while the criminal litigation is instituted in the name of the Government (i.e. the Hong Kong Special Administrative Region) to suppress crime and to punish criminals. A person or a company or even the Government can be a party in a civil case. The party who sues is called "the plaintiff" or "the claimant", and the party being sued is called "the defendant" or "the respondent". The plaintiffs/claimants have a duty to prove that what they claim is correct based on the balance of probabilities (i.e. it is more likely than not that what they claim is true). The following are some common examples of civil litigation: Debt Recovery Example: You may start a civil action to recover a debt if someone owes you money but refuses to pay. Claiming Compensation Example: You may start a civil action to claim monetary compensation if someone has failed to perform an obligation under a contract, wrongfully damaged your property or injured you. In litigation documents, a claim for monetary compensation is referred to as a claim for damages. Claiming Possession of Property Example: You may start a civil action to terminate a tenancy and repossess your flat if your tenant has failed to pay rent or breached certain terms of the tenancy agreement. In addition, you may claim for the unpaid rent or other losses that you might have suffered. Infringement of Copyright Example: You have published a book and someone sells photocopies of this book without your permission. You may start a civil action to obtain a court order prohibiting the person from selling the photocopies and forcing them to hand over to you all the remaining photocopies. You may in addition claim monetary compensation for the loss in sales that you have suffered. If you want to obtain more information regarding the differences between civil litigation and criminal litigation, please go to another topic – Hong Kong Legal System. MATTERS TO BE CONSIDERED BEFORE STARTING A CIVIL ACTION II. MATTERS TO BE CONSIDERED BEFORE STARTING A CIVIL ACTION You may need to spend considerable time and money in bringing and concluding a civil action. You may not always be able to obtain what you want at the end, and you may be held responsible for the other party's huge legal costs if you lose. Hence, you should consider very carefully before you decide to start a civil action, and it is generally advisable for you to first obtain legal advice to guide your decision. If you are not be able to afford the legal costs, you may consider trying to obtain some free or subsidised legal services provided by the Legal Aid Department, Duty Lawyer Service or the Hong Kong Bar Association. The following questions may assist your decision as to whether or not to start a civil action to resolve your dispute: The above considerations are by no means exhaustive. You should also take into account the unavoidable element of hostility, the chance that your action may not succeed, and the inevitable mental and physical strain, when considering whether it is worth your while to begin a legal action. 1. CAN I SETTLE THE DISPUTE WITHOUT GOING TO COURT? 1. CAN I SETTLE THE DISPUTE WITHOUT GOING TO COURT? Court action should generally be your last resort. You should first consider other ways to settle your dispute. For example, if a person owes you money, you may first write him a demand letter. In the demand letter, you should state how much money he owes you and what it is for, and give him a warning that if he does not repay you by the date you mention, you will take legal action against him. Sometimes this warning, in particular if given by your lawyer on your behalf, will be effective in getting the debtor to repay you and so you do not have to go to court to start a civil action. If your debtor is willing to repay but is not able to make a lump sum payment of all the money he owes, you may negotiate with him for settlement by instalments. You must keep a copy of the demand letter and any reply record from the debtor. In case you do eventually have to go to court, you may need to use them as evidence. There are also some alternative channels which may help you settle

disputes. For example, if you are facing a commercial dispute, you could possibly consider arbitration as an alternative to a civil court action . Please contact the Hong Kong International Arbitration Centre if you are interested in arbitration services. However, please note that before commencing the arbitration procedure, both parties must agree to solve the dispute by arbitration. For more details about arbitration, please click here. As from 2 April 2009, under the Civil Justice Reform, mediation was introduced as a voluntary resolution process. The aim is to encourage settlement and to achieve cost-effectiveness. The Court may now stay the Court proceedings to enable the parties to explore alternative dispute resolution (“ADR”). Mediation is the recommended ADR by the Court. If you are facing an employment dispute, you may call the Labour Relation Division of the Labour Department in order to obtain preliminary advice. 2. DO I HAVE SUFFICIENT LEGAL BASIS TO START A CIVIL ACTION? WILL IT BE POSSIBLE FOR MY OPPONENT TO SUE ME BACK IN RESPECT OF THE SAME CASE? 2. DO I HAVE SUFFICIENT LEGAL BASIS TO START A CIVIL ACTION? WILL IT BE POSSIBLE FOR MY OPPONENT TO SUE ME BACK IN RESPECT OF THE SAME CASE? Before you start a civil action, you should first consider whether or not you have a sound legal basis for a claim. Apart from considering the legal basis of your claim you should also bear in mind that sometimes both you and your opponent may have respectively committed some faults in relation to the same event. For example, let us say you have entered into a contract to sell some toy cars to your customer. Your customer did not pay you for any of the goods because some of the toy cars manufactured by you were defective. If you start a civil action against your customer to recover the price of the goods sold, your customer may "counterclaim" against you in the same civil action. Your customer might seek monetary compensation from you for any damages which he has suffered due to some of the toys cars which you supplied being defective. If this happens, you may have to face a prolonged lawsuit and may end up gaining nothing. Therefore, in order to ascertain whether you have any legal basis to start a civil action and in order to assess whether your opponent would have a valid "counterclaim" against you, you should seek legal advice before starting a civil action. You may also consider settling the dispute out of court in order to minimise the legal costs. 3. HOW AND WHERE CAN I GET LEGAL ADVICE OR REPRESENTATION (INCLUDING FREE OR SUBSIDISED LEGAL ASSISTANCE)? 3. HOW AND WHERE CAN I GET LEGAL ADVICE OR REPRESENTATION (INCLUDING FREE OR SUBSIDISED LEGAL ASSISTANCE)? You can obtain a lot of useful information by going to another topic - Legal Aid. The following is intended to be a brief summary only. If you want to seek some preliminary legal advice as to your legal position but are unable to pay for the services of a lawyer, the Duty Lawyer Service's Free Legal Advice Scheme may be able to assist you. There is no means test to assess your financial status and the service is absolutely free of charge. For more details about this scheme, please click here. (You should note that the Scheme will not offer any follow up service or representation for you.) The High Court's Resource Centre for Unrepresented Litigants also provides preliminary assistance to you for starting civil actions in the High Court or the District Court. However, the assistance provided at this Centre is confined to procedural matters only and the staff will not give legal advice or make any comments on the merits of the case. For more information about this centre, please click here. As to legal representation in court proceedings, you can engage a legal practitioner in private practice to act on your behalf if you can afford the relevant legal costs. Otherwise, you can apply for legal aid under the Legal Aid Scheme . Legal aid will be granted if you pass the means test (your financial resources do not exceed the prescribed limit) and the merits test (there is legal basis for your claim). For more details about this scheme, please click here. The Bar Free Legal Service Scheme run by the Hong Kong Bar Association may also give you some help. If legal aid is not available to you or where you are unable to afford the cost of appointing a lawyer and your case is thought to be one in which assistance should be given, the scheme may provide free legal advice and representation for you. For more details about this scheme, please click here. 4. CAN I OBTAIN WHAT I WANT IF I WIN THE CASE? 4. CAN I OBTAIN WHAT I WANT IF I WIN THE CASE? Remember, even if you win your case and obtain a court judgment in your favour which awards you all sums which you have claimed, there is no guarantee that you will be able to recover all the sums that have been awarded by the court. Before you

start a legal action, it is important to consider at the outset whether or not the person, firm or company you are going to sue is likely to be able to pay you if you win the civil action. If they are unemployed, bankrupt or wound up; 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; have ceased to trade; have already been taken to court by others and have not paid; or have other substantial debts to pay, you may have little chance of getting your money even if you win a civil action. The Official Receiver's Office at 10 th Floor, Queensway Government Offices, 66 Queensway, Hong Kong (Telephone no: 28672448) will be able to tell you whether a person is bankrupt, or whether a limited company is in compulsory liquidation/winding-up (meaning that the company has stopped trading and probably has neither money nor other assets). Limited companies can also be wound-up voluntarily. To check whether a company has been wound up voluntarily, you can contact the Companies Registry. On the other hand, you may be able to get some money if you are prepared to accept small instalments over a period of time. You should therefore try to negotiate with your debtor (or the defaulting party) for payments by instalments first, before considering going to court. 5. CAN I AFFORD THE EXPENSES? 5. CAN I AFFORD THE EXPENSES? You will usually need to pay a fee to the court in order to start your claim. (However, if the person you are suing (the defendant) surrenders and pays you, you may recover this fee as well.) If the defendant defends your claim, you may need witnesses to help tell the court what happened. You have to pay a deposit to the court for the witness expenses. You may also need to obtain a report from an expert (e.g. a doctor, mechanic or surveyor) and ask this expert to go to court to give evidence on your behalf. You will have to pay the expert's expenses and charges. (But if you win, the court may order the defendant to pay towards these.) In addition, you have to bear your own expenses for going to court (for filing documents or attending hearings) and for travelling expenses and meals. If you engage a lawyer to represent you, you will have to pay for the legal services rendered. You may ask the court to order the defendant to reimburse you if you win your case. But usually, you will only get a portion (about 70% on average) of your lawyer's fees and expenses. You should also note that the court will not automatically take steps to ensure that the losing party pays the winning party. So if you win your case but the defendant does not pay, you will need to ask the court to take action to enforce your judgement, for which you will have to pay another fee. What will happen if you are the losing party? If you are the losing party, you will normally be ordered to pay the costs (this generally means legal costs) to the winning party. It makes no difference if you are a litigant in person (without appointing a lawyer). The costs are the expenses that the winning party has had to spend on the preparation and hearing of the matter. These include the expenses for the lawyers representing the winning party (if any). The amount of these costs can be substantial, depending on the complexity of the case, the preparation work required and the length of the hearing. 6. CAN I AFFORD THE TIME? 6. CAN I AFFORD THE TIME? You have to bear in mind that civil litigation may be a long-drawn-out battle, which can take months or even years before the case is heard and the court passes judgment. If your claim is not defended (i.e. your opponent does not defend against your claim), you may obtain judgment without attending any court hearing. But if your claim is defended, you 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 attend court hearings and, even if you win the case, you may have to spend more time to enforce your judgment. 7. IS THERE ANY DEADLINE FOR STARTING A CIVIL ACTION? 7. IS THERE ANY DEADLINE FOR STARTING A CIVIL ACTION? There is always a deadline for starting a civil action against another. The deadline to start a civil action is prescribed in the Limitation Ordinance. For example, a civil action for breach of a commercial contract must be instituted within 6 years from the date on which the breach of contract happened (section 4(1)(a) of the Limitation Ordinance, Cap. 347 of the Laws of Hong Kong). In respect of a claim which causes personal injuries, the time limit is 3 years (section 27(4) of the Limitation Ordinance). Action for employees' compensation/work-related injuries must be brought within 2 years from the date of the accident that causes the

injury (section 14(1)of the Employees' Compensation Ordinance, Cap. 282). The time limits set out in the Limitation Ordinance can only be extended in exceptional circumstances, such as where the plaintiff was mentally incapacitated for a certain period or the action is based upon the fraud of the defendant (the time limit only begins to run after the plaintiff has recovered from the mental illness or has recognised the fraud). Despite the time limits set out in the Limitation Ordinance, you should always start your claim as early as possible and should not wait until the last minute. If you are not sure about the time limit for your case, you should consult a lawyer. 8. WHAT RISKS WILL I FACE IF I START A CIVIL ACTION? AM I PREPARED TO BEAR THESE RISKS? 8. WHAT RISKS WILL I FACE IF I START A CIVIL ACTION? AM I PREPARED TO BEAR THESE RISKS? Before starting a civil action, you should bear in mind the risk that after hearing your case, the court may find that you are unable to prove your case and consequently you will lose your case. If you lose your case, you would not be able to recover the sum which you have claimed nor would you be able to recover any legal costs or expenses that you have incurred in bringing your claim to court. In addition, you will have to bear your opponent's costs for defending him against your claim. This would include legal costs if your opponent is legally represented. Further, if your opponent has made a counterclaim against you and you lose your case, you will also have to pay any compensation sought by your opponent that has been awarded to your opponent by the court. In order to assess the strength of your case and the risks involved in starting a civil action, it is recommended that you obtain legal advice. HOW TO START A CIVIL ACTION III. HOW TO START A CIVIL ACTION If, after considering all the relevant factors as mentioned in Part II, you decide to take your dispute to court for resolution, there are still some other matters that you must also pay attention to. If you have to start a civil action, you should first consider the nature of your claim and the amount involved. You can then work out the appropriate court in which to start your action. For example, if your claim involves an employment dispute, then generally, you should start your claim in the Labour Tribunal. Different courts have different authority to handle different kinds of civil cases and therefore it is essential to have some basic understanding of the authority of each court. These courts include the Labour Tribunal, the Small Claims Tribunal, the District Court and the Court of First Instance of the High Court. Please note that the first four questions (see below) describe the different authority of the major civil courts and tribunals in Hong Kong. The other questions cover legal procedures involved in these courts/tribunals and other general matters. 1. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE LABOUR TRIBUNAL? 1. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE LABOUR TRIBUNAL? The Labour Tribunal offers a quick, informal and inexpensive way of settling monetary disputes between employees and employers. It hears claims arising from the failure of a person to comply with the provisions of the Employment Ordinance (Cap. 57 of the Laws of Hong Kong) or the Apprenticeship Ordinance (Cap. 47). It also deals with cases involving breaches of a term of a contract of employment, whether for performance in Hong Kong or under a contract to which the Contracts for Employment Outside Hong Kong Ordinance (Cap.78) applies, and claims arising from the breach of a term of a contract of apprenticeship. However, the Labour Tribunal only hears cases where the amount of the claim exceeds $15,000 for at least one of the claimants in a claim, or where the number of claimants in the claim exceeds 10. There is no upper limit on the amount of a claim. (Claims lodged by not more than 10 claimants for a sum of money not exceeding $15,000 per claimant are dealt with by the Minor Employment Claims Adjudication Board which is located at 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon [Tel no.: 2927 8000].) Parties to the disputes are not allowed to have legal representation in actions heard in the Labour Tribunal. However, they may consult a lawyer before attending the tribunal. Common items of claim lodged by employees in the Labour Tribunal include: wages due for work done; wages in lieu of notice of termination of a contract of employment owed by an employer who failed to give the required notice; wages deducted contrary to the Employment Ordinance; pay for statutory holidays, annual leave, rest days, sickness allowance, maternity leave, or severance; end of year payment, double pay or annual bonus; commission; long service

payment; terminal payments; compensation for unlawful dismissal; unpaid wages of up to 2 months against the principal contractor and superior sub-contractors in the building and construction industry; orders for reinstatement or re-engagement; other benefits conferred by law or employment contract. Common items of claim lodged by employers include: wages in lieu of notice on resignation or termination of a contract of employment; wages or leave advanced to the employee. What should I do if I decide to file a claim in the Labour Tribunal? For details about the document submission, fees and hearing procedures of the Labour Tribunal, please go to another topic - Employment Disputes. You can also contact the Labour Tribunal at 2625 0020 or visit the Judiciary website for more information. 2. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE SMALL CLAIMS TRIBUNAL? 2. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE SMALL CLAIMS TRIBUNAL? The Small Claims Tribunal deals quickly, informally and inexpensively with claims for money not exceeding $75,000. Although the Tribunal is a court, the rules governing the presentation of evidence are less strictly adhered to than in most other courts. Furthermore, parties to the disputes are not allowed to have legal representation in actions heard in the Small Claims Tribunal. However, they may consult a lawyer before attending the tribunal. The main types of claims handled by the Small Claims Tribunal are: recovery of debts; recovery of service charges; damage to property; claims in relation to goods sold; consumer claims (more information can be found under the topic of Consumer Complaints). However, the Small Claims Tribunal does not handle claims for: wages; possession of land (more information can be found under the topic of Landlord and Tenant); alimony (more information can be found under the topic of Matrimonial Matters) money lenders' loans; libel and slander (more information can be found under the topic of Defamation). If your claim exceeds $75,000, you are not allowed to subdivide it in order to bring to the Small Claims Tribunal a number of cases that are each below the $75,000 limit. However, you can abandon any amount above $75,000 in order to enable you to bring one claim below $75,000. What should I do if I decide to file a claim in the Small Claims Tribunal? For details about the documents you will be required to submit, fees and hearing procedures of the Small Claims Tribunal, please visit the Judiciary's webpage. For more information about how to prepare for a trial at this Tribunal (from both the claimant's and the defendant's perspective), please click here. 3. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE DISTRICT COURT? 3. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE DISTRICT COURT? The most common types of civil action handled by the District Court are: breach of contract; breach of quasi-contract; tort (including personal injuries claims); recovery of land or premises (more information can be found under the topic of Landlord and Tenant); claims in equity, such as, the administration of the estate of a deceased person, trust, mortgage, specific performance (a court order requiring one of the parties to a contract to perform his part of the contract), maintenance of an infant, dissolution of partnership, relief against fraud or mistake; distress (more information can be found under the topic of Landlord and Tenant); employees' compensation cases relating to work-related injuries (there is no limit on the amount claimed); sex discrimination, disability and family status discrimination cases (more information can be found under the topic of Anti-discrimination); matrimonial cases including divorce, maintenance, custody and adoption of children (the court which handles these types of cases is also known as the Family Court, and more information can be found under the topic of Matrimonial Matters). Claims for contract, quasi-contract and tort For a claim in relation to a contract, quasi-contract or tort to be handled by the District Court, the amount of the claim must be over $75,000 but not more than $3 million . Even where your claim does not exceed $3 million, if the defendant counterclaims against you for over $3 million, the claim and the counterclaim or just the counterclaim may be transferred to the Court of First Instance of the High Court. If there are good reasons, the District Court may continue to handle the claim when the counterclaim exceeds $3 million, but first a report has to be made to the High Court, and then the High Court may transfer the case back to the District Court. Note that if your claim exceeds $3 million, you may still start the action in the District Court provided you abandon the excess. (Equally, if the

counterclaim exceeds $3 million, the defendant may waive the excess.) This can be a very practical strategy when the excess is small, since the legal costs incurred in an action that is commenced at the Court of First Instance are usually higher than that of the District Court. Claims for possession/recovery of land or premises The District Court deals with buildings or premises, where the annual rent or rateable value does not exceed $320,000. (However, in most tenancy cases where possession of the premises is claimed following the expiration of the term/period of the tenancy, or when the tenant is in breach of the terms of the tenancy, application for possession may also be made in the Lands Tribunal.) Claims under equity jurisdiction The two major types of civil litigation concerning equity are seeking court orders for specific performance (a court order requiring one of the parties to a contract to perform his part of the contract) and applying for an injunction (a court order requiring someone to stop doing something). Generally speaking, where proceedings do not relate to land, the maximum value involved shall not exceed $3 million. where proceedings do relate to land, the maximum value involved shall not exceed $7 million; and further, for proceedings for the recovery of land or relating to the title to land, the rateable value of the land must not exceed $320,000. Claims for arrears of rent only If you merely want to recover arrears of rent and not to get back the premises, there is a special procedure known as "distress", whereby the court makes an order directing the goods of the tenant to be seized by the bailiff. If the tenant still fails to pay the rent, the goods will be sold and the proceeds of sale of the goods will be applied towards the outstanding rent. (The application form and pro forma affidavit/affirmation can be obtained from the District Court Registry. You can complete the preliminary procedure yourself by returning the completed forms to the District Court Registry. The court will inform you when execution has been levied. However , it is recommended that you appoint a lawyer to handle a distress action.) However, if you are claiming more than 12 months' rent, you cannot use the distress procedure. You should sue the tenant for breach of contract instead. 4. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE COURT OF FIRST INSTANCE OF THE HIGH COURT? 4. WHAT IS THE AUTHORITY AND WHAT TYPES OF CIVIL CASES CAN BE HANDLED BY THE COURT OF FIRST INSTANCE OF THE HIGH COURT? The Court of First Instance has unlimited jurisdiction over all civil matters. Common types of civil proceedings in the Court of First Instance include actions in the following areas: admiralty (disputes in relation to maritime transport); bankruptcy (more information can be found under Bankruptcy and Winding-up); breach of contract; tort; company winding-up (more information can be found under Bankruptcy and Winding-up); construction and arbitration; custody and ancillary relief in matrimonial proceedings (more information can be found under Matrimonial Matters); hire-purchase; injunction; intellectual property (more information can be found under Intellectual Property); judicial review; mortgage (concerning the failure to make mortgage repayment); personal injury (more details can be found under Personal Injuries); probate and administration (more information can be found under Probate). If the monetary value of your claim does not exceed $3 million, you normally have to start your legal action in the District Court. Note that if a claim is for an amount slightly in excess of $3 million, the excess can be abandoned to bring the claim within the jurisdiction of the District Court (in which the maximum amount that can be claimed is $3 million), since the legal costs incurred in an action that is commenced in the District Court are generally lower than those of the Court of First Instance. 5. WILL I NEED A LAWYER TO HANDLE MY CASE? 5. WILL I NEED A LAWYER TO HANDLE MY CASE? You have the right to act in person (i.e. to handle your case by yourself). Alternatively, you may instruct a lawyer to represent you and present your case to the court. You should note that if your claim is brought in the Labour Tribunal or the Small Claims Tribunal, then no legal representation is permitted. Claims in the Labour Tribunal and the Small Claims Tribunal are generally more straightforward. However, in many other types of cases, the legal procedure involved can be considerably more complicated. For example, a personal injury claim involves matters like writing to the person you are claiming from to set out the details of your claim, exchanging evidence, trying to agree on the medical reports to be used, preparing witness statements for yourself and for those who saw your accident, etc. You will also need to

make a realistic assessment of the amount of damages you are seeking. It may therefore be preferable to get some professional help and advice from a lawyer. You should note that while court staff can assist you with enquiries on court procedures (e.g. what forms you need and how to fill them in), they will not provide any legal advice or offer any comment or assistance on the conduct of specific court cases and proceedings. Thus, if you want to know whether you have a good claim or whom you should sue, you have to consult your own lawyer. You should also bear in mind that it is the duty of the parties to present their case to the court for its determination. The court itself does not investigate the case. In other words, the judge will be acting as an umpire and makes decisions after considering the evidence presented and hearing the arguments from all parties. You cannot expect the judge to give much assistance to a litigant presenting his case in person. Where the parties are limited companies For cases which are heard in the Court of First Instance of the High Court, a limited company must engage a solicitor to attend the court hearing on its behalf unless leave (permission) is obtained from the court for it to be represented by one of its directors. The company's application for such leave has to be made to the Court Registrar and supported by an affidavit or affirmation made by the director concerned, stating and verifying the reasons. The company may rely on the reason that it is unable to afford to pay for the services of a solicitor or for some other good reasons. Apart from the relevant exhibits in support (i.e. supporting documents such as copies of the company's audited accounts and current bank accounts showing the up-to-date financial position), a board resolution of the company authorizing the director to appear on its behalf in the proceedings must be exhibited (attached) to the director's affidavit or affirmation. Whether to grant the leave or not is purely at the discretion of the Court Registrar. The company cannot appeal against the decision. If the matter is heard in the District Court , a limited company may begin or carry on proceedings by one of its directors if the director has filed an affidavit or affirmation stating that he has been duly authorized by the board of directors to represent the company and exhibiting a copy of the board resolution duly certified by another director or the secretary of the company. In other words, the relevant company is not required to seek permission from the court (unlike a case in the High Court) if it has duly prepared the affidavit/affirmation together with the company's board resolution. 6. WHAT HAPPENS IF A MENTALLY INCAPACITATED PERSON OR AN INFANT/MINOR WANTS TO START A LEGAL ACTION? 6. WHAT HAPPENS IF A MENTALLY INCAPACITATED PERSON OR AN INFANT/MINOR WANTS TO START A LEGAL ACTION? A mentally incapacitated person means a person suffering from a mental disorder or a person who is or appears to be mentally handicapped. A minor is a person who has not attained the age of 18. Mentally incapacitated persons and minors are classified as persons under a disability in law. To start civil actions for persons under a disability, a "next friend" must be appointed to act on behalf of the person under the disability. Further, such a person under a disability cannot defend a civil action unless a "guardian ad litem" is appointed to act on his behalf. Normally, a "next friend" or a "guardian ad litem" would be a relative of the person under disability or someone who takes charge of the person under disability. A "next friend" or "guardian ad litem" must be represented by a lawyer. 7. HOW CAN I START A CIVIL ACTION AGAINST ANOTHER PARTY IN THE DISTRICT COURT OR THE HIGH COURT? 7. HOW CAN I START A CIVIL ACTION AGAINST ANOTHER PARTY IN THE DISTRICT COURT OR THE HIGH COURT? If it is a monetary claim for a sum of not exceeding $75,000, please refer to the section regarding the Small Claims Tribunal. For claims in relation to employment disputes (excluding employees' compensation/work-related injuries' claims), please go to the Labour Tribunal. For other kinds of civil action, you should go to the District Court or the High Court. (Please go back to question 3 and question 4 for the areas of authority of these two courts). In civil proceedings, t he party who sues is usually called "the plaintiff" and the party being sued is usually called "the defendant". Before submitting any documents to the court to start a lawsuit, it is advisable for the plaintiff to issue a letter (formally called the "demand letter ") to the defendant asking for rectification, compensation or repayment (as the case may be) within a certain period of time (usually ranges from 7 to 14 days). If a demand letter is issued, the plaintiff must keep a copy of the demand letter as it will be one piece of evidence

that the plaintiff will have to submit to the court later. If the defendant fails to comply with the requirements stipulated in the demand letter, or does not give any reply, the plaintiff may then go to the court to start a lawsuit. To start a lawsuit, the plaintiff has to apply for the court to issue a document called a writ of summons or an originating summons , which then has to be served on (i.e. delivered to) the defendant. These two modes are the most common modes for commencing an action in the District Court or the Court of First Instance of the High Court. You can obtain the court forms for a writ of summons or an originating summons from the Registries of the High Court and the District Court, and from the Resource Centre for Unrepresented Litigants. For more information about these two kinds of summons, please go to the next question. 8. IF I WANT TO START A CIVIL ACTION AGAINST SOMEBODY THROUGH THE DISTRICT COURT OR THE HIGH COURT, SHOULD I COMMENCE THE ACTION BY FILING A WRIT OF SUMMONS OR BY FILING AN ORIGINATING SUMMONS? 8. IF I WANT TO START A CIVIL ACTION AGAINST SOMEBODY THROUGH THE DISTRICT COURT OR THE HIGH COURT, SHOULD I COMMENCE THE ACTION BY FILING A WRIT OF SUMMONS OR BY FILING AN ORIGINATING SUMMONS? A writ of summons must be used to commence an action based on contract, tort, fraud, damages for personal injuries or death, damages to property arising out of a breach of duty, and generally for all actions which would involve a substantial dispute of facts (examples of such disputes include whether the defendant owes you money and how much; whether the defendant has damaged your goods/property; whether the defendant has failed to perform a contractual obligation). As you can see, the majority of civil actions are begun by a writ of summons. An 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, or the interpretation of certain terms in a legal document, for the court's determination. In other words, if the parties only have different interpretations on certain terms or wordings in a legal document (or the existing ordinance provisions) without having any dispute over the facts of the case, the legal action should be commenced by an originating summons. (Note: In case the court finds that there is a substantial dispute over facts, the court may order that the proceedings should proceed as if they were by way of a writ. The court may then give directions appropriate to the proceedings of a writ of summons.) If you are still not sure whether your legal action should be commenced by a writ of summons or an originating summons, you should try to seek preliminary legal advice before submitting the documents to the court. If you cannot afford the legal costs, the Free Legal Advice Scheme (run by the Duty Lawyer Service) or the Bar Free Legal Service Scheme (provided by the Hong Kong Bar Association) may offer preliminary legal advice to you. Regarding the procedure of a civil action commenced by a writ of summons, please go to question 9. For a civil action commenced by an originating summons, please refer to question 10. 9. HOW DO I START A CIVIL ACTION BY ISSUING A WRIT OF SUMMONS? 9. HOW DO I START A CIVIL ACTION BY ISSUING A WRIT OF SUMMONS? An overview of a civil action begun by writ of summons The following chart is made with reference to the website of the Resources Centre for Unrepresented Litigants, maintained by the Hong Kong Judiciary. It outlines the major steps involved in an action begun by a writ of summons. (Note: You should bear in mind that it can take a long time to complete the abovementioned steps to bring a civil case to trial and that most cases do not result in trial. Before a civil case is brought to trial, there may be court hearing(s), called interlocutory proceedings, held with the purpose of settling some procedural disputes, or dealing with urgent applications to preserve a party's rights. There are also various means of disposing of a civil action before trial.) Before issuing the writ, the plaintiff should ascertain the name of the defendant and his last known address. If the defendant is a corporation/limited company, the plaintiff should make a company search to obtain up to date information about its name and its registered office. If the defendant is a business (sole proprietorship or partnership), the plaintiff should conduct a business registration search at the Inland Revenue Department to ascertain the trade name and the principal place of business. Samples of writs of summons can be downloaded from the Judiciary website. For cases in the High Court, please click here. For cases in the District Court, please click here. When issuing the writ of summons, the plaintiff has to set out in Chinese or English an endorsement of claim (a concise statement of the

nature of the claim) or a statement of claim giving details of the legal basis of the claim together with the facts that the plaintiff is relying on, and the relief and remedy that he is claiming. (Note: If the plaintiff wants to wait and see whether the defendant intends to contest the case, he may only prepare the endorsement of claim when issuing the writ. If the plaintiff only attaches an endorsement of claim into the writ, a statement of claim has to be filed and served on the defendant within 14 days after the defendant has acknowledged service of the writ and given notice of intention to defend.) Please click here to obtain guidelines (given by the Resource Centre for Unrepresented Litigants) for preparing a statement of claim and to get some sample statements of claim. The writ of summons has to be issued and filed with the court at the Registry. (Note: You have to pay a filing fee at the Accounts Office of the court upon filing the writ. To check the exact amount of the filing fee, please contact the relevant Court Registry.) Service of the writ of summons (delivering the writ to the defendant) Every writ must be accompanied by three copies of the acknowledgment of service form. It is the plaintiff's responsibility to serve the writ of summons and the accompanying three copies of the acknowledgment of service form on the defendant. Samples of the acknowledgment of service form can be downloaded from the Judiciary website. For cases in the High Court, please click here. For cases in the District Court, please click here. Generally speaking, there are three alternative ways to serve a writ of summons on a defendant who is in Hong Kong, namely: by personal service: handing a "sealed copy" (i.e. sealed with the court's seal) of the writ of summons to (or leaving it with) the defendant personally; by registered mail: posting a sealed copy of the writ of summons by registered post addressed to the defendant at his usual or last known address; or by insertion through letter box: inserting a sealed copy of the writ of summons enclosed in a sealed (not open) envelope addressed to the defendant through his letter box. Remarks: If the defendant is a limited company, the plaintiff can serve the writ of summons by posting it to, or leaving it at, its registered office. If the defendant is a partnership business, the plaintiff may serve the writ of summons on any one or more of the partners or on any person having control or management of the business at its principal place of business. Alternatively, the plaintiff may send the writ of summons to of the principal place of business by registered post. In an action for recovery of possession of land/flat, the plaintiff must also post a copy of the writ of summons at the entrance of the premises in question. Under normal circumstances, the plaintiff cannot serve a writ of summons on a defendant outside Hong Kong unless he has obtained the permission of the court. The plaintiff should apply for permission before serving the writ of summons outside Hong Kong . For details of this application, please refer to Order 11 of the Rules of the High Court (Cap. 4A of the Laws of Hong Kong) or Order 11 of the Rules of the District Court (Cap.336H) as appropriate. Please also note that the plaintiff has to prove by affidavit or affirmation that the writ of summons has been served on the defendant. In the affidavit or affirmation, the plaintiff has to state that he has personally served the sealed copy of the writ of summons on the defendant on a specific date (including the day of the week). If the service was by post or by insertion through the letter box, the affidavit or affirmation has to state that the writ of summons has not been returned through the post (as the case may be) and that it will have come to the defendant's knowledge within 7 days thereafter. (Note: If the plaintiff has an agent/representative to serve the writ, that agent/representative has to make such an affidavit or affirmation.) For more information about the service of a writ of summons within Hong Kong , and a sample affidavit/affirmation for service, please click here. What happens after the plaintiff has served the writ of summons? After the plaintiff serves the writ of summons on the defendant, the defendant will have a period of 14 days to acknowledge receipt of the writ of summons. To find out how this 14 days' period is calculated, you should refer to the question of "How to calculate the period of 14 days for filing of the acknowledgment of service form". If the writ of summons was served with an endorsement of claim (without a statement of claim), then within 14 days after the date on which the defendant files the acknowledgment of service form indicating an intention to defend the civil action, the plaintiff will have to file and deliver to the defendant a statement of claim setting out the details of the legal

basis of the claim together with the facts that the plaintiff is relying on and the relief and remedy that he is claiming. If the writ of summons was served with a statement of claim, and the defendant files an acknowledgment of service form indicating that he wishes to contest the civil action, then within 28 days following the expiry of the time limit for the defendant to file an acknowledgment of service, the defendant should file and serve on the plaintiff his defence to the plaintiff's claim and a counterclaim against the plaintiff (if any). See the question of "What should I do if I decide to defend the case?" If the defendant does not file an acknowledgment of service form or a defence within the time limit, the plaintiff can apply for a court judgment to be entered against the defendant. See the question of "What happens if the defendant does not file an acknowledgment of service form or a defence?" If the defendant files a defence (and counterclaim), the plaintiff may need to file a reply (and defence to counterclaim, if any). See the question of "What happens if the defendant files a defence (and counterclaim)?" What should the plaintiff know about "payment into court"? Payment into court is one of the most valuable weapons in the armoury of the person being sued by you (i.e. the defendant). For more information on this, you should refer to the question of "If the defendant considers that he does in fact owe the plaintiff some money, what action can be taken by the defendant?" 10. HOW DO I START A CIVIL ACTION BY ISSUING AN ORIGINATING SUMMONS? 10. HOW DO I START A CIVIL ACTION BY ISSUING AN ORIGINATING SUMMONS? Set out below is some basic information regarding civil actions commenced by an originating summons. Due to the complexity of the procedures, you are strongly recommended to appoint a lawyer to represent you. An overview of a civil action begun by an originating summons The following chart is made with reference to the website of the Judiciary's Resources Centre for Unrepresented Litigants. It shows the major steps for an action begun by way of an originating summons. i. Filing of an Originating Summons by the plaintiff The plaintiff should set out in the originating summons a concise statement of the questions which the plaintiff seeks the court to decide or answer, or, a statement of the relief or remedy claimed (where appropriate). The originating summons should also contain sufficient particulars to identify the cause of action in respect of which he claims the relief or remedy. The procedures for filing and serving an originating summons are similar to those for filing and serving a writ of summons. For details, please go back to question 9. ii. Filing of acknowledgment of service by the defendant A defendant who has been served with an originating summons must acknowledge service of the summons as if it were a writ. If the defendant does not file an acknowledgment of service form within the required time, or if in the acknowledgment of service form the defendant states that the proceedings are not contested, the plaintiff still has to proceed to court 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. iii. Plaintiff's affidavit/affirmation If the defendant has filed an acknowledgment of service, the plaintiff's originating summons should be supported by an affidavit or affirmation of evidence. In that case, the plaintiff has to file an affidavit or affirmation in support of the originating summons within 14 days after the defendant has acknowledged its service. Explanatory notes for preparing an affidavit or affirmation and a sample affidavit / affirmation can be obtained from the website of the Resource Centre for Unrepresented Litigants. iv. Defendant's affidavit/affirmation Where a defendant who has acknowledged service wishes to submit evidence, he must, within 28 days after service on him of the plaintiff's affidavit or affirmation, file his own affidavit or affirmation. Please refer to point (iii) above for guidelines on how to prepare an affidavit/affirmation. v. Plaintiff's affidavit/affirmation in reply If the defendant serves an opposing affidavit or affirmation on the plaintiff, the plaintiff may within 14 days of such service file a further affidavit or affirmation to reply to the defendant's affidavit or affirmation. No further evidence can be filed unless special leave (permission) is granted by the court. The defendant may make a counterclaim in the same proceedings instead of bringing a separate action. vi. At the hearing At the hearing, the plaintiff will make his submission first (i.e. telling his arguments to the court), followed by the defendant's submission in opposition. The plaintiff has the right of final reply. The court will

either make a decision after the hearing or reserve it to be given later. (Note: Unless the court makes an order that the persons who have made the affidavits or affirmations have to attend court for cross-examination, they are not required to attend court at the hearing. If the court has made such an order, these persons must attend court to be cross-examined. The procedure will be similar to the trial of an action commenced by a writ of summons. For details, please refer to question 3 in section VII. HOW TO DEFEND MYSELF AGAINST A CIVIL ACTION IV. HOW TO DEFEND MYSELF AGAINST A CIVIL ACTION The following legal procedures are related to a civil action commenced by a writ of summons (which constitutes the majority of civil cases). If you receive a writ of summons naming you as the defendant, you are required to acknowledge service of the writ of summons (i.e. confirming that the document has been delivered to you) and to state whether or not you wish to defend the action brought against you by the plaintiff. To do so, you should complete all three copies of the acknowledgment of service form which accompany the writ of summons. Two copies of the acknowledgment of service form should be sent to the relevant Court Registry of the court within 14 days. You should keep one copy for your records. PREPARING A CASE FOR A COURT TRIAL V. PREPARING A CASE FOR A COURT TRIAL After the parties file the statement of claim, defence (and counterclaim, if any) and reply (and defence to counterclaim, if any), the parties will have to tender their evidence to the court in order to prove their case. In a civil action, the burden of proof rests on the party who asserts the fact (i.e. the party who makes an allegation must prove it). In that case, not only the plaintiff but also the defendant will have the burden to prove his allegations if the defendant counterclaims that the plaintiff is liable for the subject matter. The standard of proof is "on the balance of probabilities". Which facts are at issue at the trial depends partly on substantive law and partly on the contents of the documents which have already been filed with the court (including the statement of claim, defence and counterclaim (if any)). This is because the parties may have already admitted to some facts relevant to the case in those documents. The party who bears the burden of proof can prove the facts in various ways, including oral evidence from witnesses, documents, photographs, audio or videotapes, or electronic data contained in any tapes or discs, etc. It is always advisable to obtain all the evidence at an early stage in the proceedings (and possibly before the commencement of the trial). All these forms of proof will be tendered before the court at the trial. In a civil action, any evidence which is relevant to the disputes at issue, and which a party intends to rely on at the trial, will have to be disclosed to the other parties to the civil action prior to the trial. The process whereby documentary evidence is disclosed is called discovery and the process in which oral factual evidence is disclosed is called exchange of witness statements (please refer to question 1 and question 2). WHAT KINDS OF APPLICATIONS MAY BE MADE TO COURT BEFORE THE COMMENCEMENT OF A TRIAL? VII. WHAT KINDS OF APPLICATIONS MAY BE MADE TO COURT BEFORE THE COMMENCEMENT OF A TRIAL? "Interlocutory proceedings" are proceedings that deal with the rights of the parties (plaintiff and defendant) in the interval between the commencement of the civil action and its final determination (i.e. before the court delivers the final judgment). One of the main functions is to ensure that the matter proceeds expeditiously and properly to trial. A party usually takes interlocutory proceedings to: apply to the court for an extension of time for submitting certain documents; seek directions from the court regarding the conduct of the case; compel the other party to comply with the rules of the court or the court's directions; or apply to the court to grant such interim relief or remedy (e.g. an interim payment/compensation or injunction) as may be just or convenient. Some common interlocutory applications are listed below. Application for extension of time for complying with certain directions under the rules of court or a court order. For example, the plaintiff may apply (with substantial reasons) to extend the deadline for filing a reply to a defence. Application for further and better particulars (more detailed information) of the other party's pleadings. Application for striking out a particular pleading or part of the pleading of the other party. The applying party may rely on the grounds that the other party's pleading (i) discloses no reasonable cause of action or defence, as the case may be; (ii) is scandalous, frivolous or vexatious; (iii) may prejudice, embarrass or delay the fair

trial of the action; or (iv) is otherwise an abuse of the process of the court. Application for amendment to the pleadings. The plaintiff and the defendant may each amend their own pleadings once before the close of pleadings (note), without the court's prior permission. Further amendments require the permission of the court. For an amendment made by one party without the court's permission, the other party shall have 14 days (after receiving the first party's amended pleading) to amend his own pleading. For an amendment that requires the court's permission, the court will specify the time for the other party to amend his own pleading. (Note: When both parties have set out all their facts in the statement of claim, defence (or defence and counterclaim) and reply to defence (or defence to counterclaim), the pleadings are considered to have been closed.) Application for documents to be disclosed from the other party. For more details, please go to another section - discovery (disclosure) of documents. Interlocutory applications can also be made by parties to a civil action to: (i) preserve a party's rights before trial, or (ii) to dispose of or to settle a civil action before the parties have to attend a full trial. You can find more information concerning these two matters on questions 5 to 12 below. It must be noted that some interlocutory proceedings involve technical issues and arguments. It is not advisable to start such proceedings without legal advice. The court does not approve of the misuse of interlocutory procedure, which only wastes time and money. Parties are able to obtain justice from the court more expeditiously and economically without unnecessary applications before the commencement of the trial. Interlocutory proceedings and interim court orders (Q.1-4) Applications to preserve a party's rights before the commencement of a trial (Q.5-10) Disposing of or settling a civil action before proceeding to a trial (Q.11-14) HOW TO FIX A TRIAL DATE AND WHAT MAY HAPPEN AT A TRIAL VIII. HOW TO FIX A TRIAL DATE AND WHAT MAY HAPPEN AT A TRIAL For proceedings in the Court of First Instance of the High Court When a case is ready for trial, the plaintiff should issue an inter-parte summons directing both parties to attend a court hearing before the Listing Master. The purpose of this hearing is for the plaintiff to apply for leave (permission) to set the case down for trial (to fix the trial date). If the Listing Master is satisfied that the parties are ready for trial, he will grant permission for fixing a trial date, and give directions regarding the manner for trial including the list on which the trial date will be fixed: the Fixture List or the Running List . At this hearing, the Listing Master will normally also order the parties to fix a date for them to attend a pre-trial review. A pre-trial review is usually held six weeks in advance of a trial to ensure that the case is ready to proceed to trial on the allocated date. The plaintiff should then file with the court an application to set a case down for trial and a notification of setting down. When filing the application to set the case down for trial, a prescribed fee has to be paid. In addition, a bundle of documents have to be lodged (see Order 34 rule 3 of the Rules of the High Court for the requirements of making this bundle). You can also find a sample of the "Notice (application to set a case down for trial)" and the "Notice (to set down)" form on the Judiciary webpage (for cases in the High Court only). For cases in the Fixture List , both parties should attend before the Listing Officer on the date scheduled for fixing the trial date. The Listing Officer will then list the case for trial (fix a trial date for the case). For cases in the Running List , no fixed date will be offered for the trial. Once the title of the action has been fixed, its action number will appear at the bottom of the Pending List (a list of cases pending trial by the court) if it is expected that it will be tried during the next succeeding month. Parties must therefore check the Pending List regularly to see if their case has been listed yet. Cases will be tried by judges who are found available to try them, generally in accordance with the order set out on the Pending List. Every Wednesday, a number of cases listed on the Pending List will be warned that they are likely to be called and tried during the next week. These cases are put on a separate list called the Warned List (please go to the Judiciary webpage if you want to see this list). If the case has been put on the Warned List, the parties concerned are required to check this List every day to see if their case has been fixed to be tried on the next day. The Warned List is posted on the Notice Board outside the Clerk of Court's office and the Pending List is posted on the Notice Board in the

Reception area of the Clerk of Court's Office on the Ground Floor. At 2:30 pm in every afternoon, the Listing Clerk will mark on the Warned List those cases that will be tried the next day, specifying the place and the time where and when the case will be tried. It is the responsibility of the parties concerned to ensure that they attend the trial on time. For proceedings in the District Court The plaintiff has to apply for a pre-trial review within the prescribed period or the period fixed by the previous court direction. If the plaintiff fails to do this, the defendant may apply for a pre-trial review, or the defendant may apply to the court to dismiss the plaintiff's action for want of prosecution. A pre-trial review will be conducted without an oral hearing unless an oral hearing is ordered by the court on its own motion, or requested by written notice by any of the parties to the civil case. At the pre-trial review, if the court is not satisfied that the action is ready for trial, it may give directions and orders to the parties so that the parties will make all necessary preparations for trial. If the court is satisfied that the case is ready for trial, it may permit the action to be set down (to fix the trial date). Once the court has fixed the date for trial, the plaintiff will be notified in writing. The trial hearing WHAT CAN I DO IF I LOSE THE CASE (HOW TO APPEAL)? IX. WHAT CAN I DO IF I LOSE THE CASE (HOW TO APPEAL)? A party (either the plaintiff or the defendant) in a civil case who is not satisfied with a decision of a judge in the District Court can apply to that judge for leave (permission) to appeal. The party must do so within 28 days from the date on which the judgment or order of the Court was sealed or otherwise finalized. If the judge refuses to grant the permission to appeal, the party may apply to the Court of Appeal for that permission. The application must be made within 14 days from the date of the judge's refusal. No prior permission to appeal is required for cases which were previously heard in the Court of First Instance of the High Court (except for appeals concerned solely with the question of legal costs). The appeal must be lodged within 28 days from the date on which the judgment or order of the Court was sealed or otherwise finalized. After permission is granted, or when there is a right of appeal without the need to seek prior permission, the appellant (i.e. the party making the appeal) should: file a Notice of Appeal (a sample notice can be downloaded from the Judiciary website) with the trial court and at the same time serve a copy of the Notice on the other party (the appellant should try to deliver this Notice to the other party by hand); lodge with the Registrar a sealed copy (bearing a court's chop) of the judgment or order appealed from and two copies of the Notice of Appeal, one of which shall be endorsed with the amount of the court fee paid, and the other endorsed with a date of service of the notice; Notice of setting down (fixing the hearing date) must be given to all parties on whom the Notice of Appeal was served within 4 days after an appeal has been set down; and make an application to fix a date for the hearing of an appeal to the Registrar of Civil Appeals (application forms are available at the Clerk of Court's Office in the High Court). The application to fix a date for the hearing of an appeal should also include the appellant's estimate as to the length of the hearing. If the appellant does not apply to fix a date for the hearing of an appeal within a reasonable time, the respondent (i.e. the party opposing the appeal) may make such an application. After application has been made to fix a date for the hearing of an appeal, the Registrar of Civil Appeals will instruct the Clerk of Court to fix a date for the hearing. The parties will be notified in writing. Cases are heard by the Court of Appeal , comprising normally three, sometimes two, Justices of Appeal. An appeal to the Court of Appeal is by way of a rehearing. This means that the Court will rehear the case based on the documents. It considers the materials which were before the judge below (i.e. the judge of the lower court in which the case was first heard) and decides whether the judgment being appealed against is wrong. But normally speaking, the witnesses who had given oral evidence in the previous trial will not be called back to give their evidence again at the appeal hearing. In the hearing of an appeal to the Court of Appeal, the appellant addresses the court first, followed by the respondent. The appellant has the right to reply to the respondent's arguments. After hearing arguments from both parties, the Court of Appeal will pass a judgment either immediately after the hearing on a later date. The losing party will normally be ordered to pay the winning party's legal costs in the appeal (and possibly the costs for the previous

trial). It should be noted that comprehensive directions for the conduct of the civil business of the Court of Appeal are provided in Practice Direction 4.1 (Civil Appeals to the Court of Appeal). Generally, appeals involve further arguments on the relevant legal points and a layman is not in a position to handle that type of argument. You should try to appoint a lawyer to deal with your appeal case. CAN I RECOVER ALL MY LEGAL COSTS IF THE COURT ORDERS ANOTHER PARTY TO PAY MY LEGAL COSTS? X. CAN I RECOVER ALL MY LEGAL COSTS IF THE COURT ORDERS ANOTHER PARTY TO PAY MY LEGAL COSTS? After a hearing or a trial, the court may make an order of costs in favour of the plaintiff or the defendant. Normally, the winning party will be awarded costs (i.e. the costs of the winning party will be paid by the losing party). In the context of litigation, the meaning of "costs" covers fees, charges, disbursements, expenses and remuneration incurred for the court hearing or trial. The party in whose favour the costs order is made is called the Receiving Party . The party who has to bear costs is called the Paying Party . If the Paying Party is not willing to pay or disputes the amount of costs claimed, the Receiving Party can proceed to taxation of the relevant bill of costs. (Note: The word "taxation" has a special legal meaning in relation to the litigants' costs. It generally means the assessment of the amount of legal costs by the court. For further details, see question 1 below.) It is open to the parties to agree on the amount of costs without resorting to assessment by the court. Indeed, they should first try to do so as assessment of costs by the court will involve extra costs for drafting a bill of costs, preparation for the assessment hearing, attendance in court and taxing fees. HOW TO ENFORCE A COURT JUDGMENT AFTER WINNING THE CASE XI. HOW TO ENFORCE A COURT JUDGMENT AFTER WINNING THE CASE A litigant who obtains a court judgment against the other party does not automatically obtain the remedy (e.g. compensation) sought in the legal proceedings. This is because the court never enforces a judgment for the winning party on its own initiative. It is always for the winning party to decide when and how it would be best to enforce it. Different methods are used for different forms of assets. If the court judgment is related to debt recovery or monetary compensation, the party who is ordered to pay according to that judgment is called the "judgment debtor ", and the party who is entitled to enforce execution under the judgment is called the "judgment creditor ". The following questions and answers only highlight the usual options available for enforcing a court judgement. If you are the plaintiff or the judgment creditor, you must consult a lawyer before adopting any of these options. JUDICIAL REVIEW XI. JUDICIAL REVIEW Judicial review is a procedure by which the Court of First Instance of the High Court exercises its supervisory jurisdiction over the activities of administrative bodies and inferior courts. The administrative bodies concerned are usually government departments and those public bodies which were set up according to certain ordinances. The party who applies for a judicial review is called "the applicant" and the party who made the decision under dispute is called "the respondent". The first important note is that judicial review does not aim at reviewing the merits of an administrative decision. Instead, the court will review the relevant decision-making process . In other words, the court will not examine whether the decision under challenge is right or wrong, but it will check whether there was any error made during the decision-making process. The second note is that the decision under review must affect the public interest . If the subject decision only undermines your own interest, or it is only a personal dispute between you and the decision-maker, the court will reject your application. An example of a personal dispute would be an argument between you and the decision-maker in relation to a contract term. The third note is that a judicial review is normally brought to the court on at least one of the following grounds: The decision was made by a person who does not have the relevant statutory authority. The decision was made under an improper or incorrect procedure. (For example, the decision-maker did not observe the procedural rules as written in a particular ordinance.) The decision was unreasonably made. (For example, the decision-maker failed to take into account a relevant matter when making the decision). (Note: The above does not cover the substantive law of judicial review. You should seek legal advice concerning the appropriateness of commencing such a legal action.) 1. WHAT IS TAXATION OF LEGAL COSTS? 1. WHAT IS TAXATION OF LEGAL COSTS? Taxation is the process

whereby the court assesses the reasonable amount of costs payable under the costs order. The Paying Party who is not satisfied with a bill of costs and wants to apply for taxation must make the application within 12 months following the receipt of such a bill (section 67 of the Legal Practitioners Ordinance). A bill of costs is one prepared by the Receiving Party to list in detail all items of the costs claimed. For bills in the amount of $200,000 or below, the assessment will be done by a Chief Judicial Clerk of the Registry. For those above $200,000, the assessment will be done by a taxing master. Neither the taxing master nor the Chief Judicial Clerk of the Registry can vary the costs order (i.e. they cannot change the previous decision of a court concerning which party would have to bear the legal costs). They can only decide the amount of costs to be paid. Hence, if a party is not satisfied with the costs order, he should consider lodging an appeal instead of raising objections to the amount of costs before the taxing master. On taxation of the costs of a litigant in person (without legal representation), if that litigant has suffered monetary loss for attending to the legal action, he may be allowed to claim costs to compensate for his loss. The maximum costs will be either the actual loss or two thirds of the amount if the work was carried out and charged by his lawyer (if any). 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 to claim costs for the time reasonably spent on the work. The maximum cost for time spent is $200 per hour. Taxation of costs is a technical process and you are recommended to consult a lawyer before making the relevant application. For further details of the taxation procedure, please read Order 62 of the Rules of the High Court or Order 62 of the Rules of the District Court as appropriate. You can also refer to the webpage of the Resource Centre for Unrepresented Litigants to get a summary of the taxation procedure. 2. FURTHER TO QUESTION 1, IF I HAVE APPOINTED A LAWYER TO HANDLE MY LAWSUIT, CAN I APPLY FOR TAXATION IF I AM NOT SATISFIED WITH MY OWN LAWYER'S BILL? 2. FURTHER TO QUESTION 1, IF I HAVE APPOINTED A LAWYER TO HANDLE MY LAWSUIT, CAN I APPLY FOR TAXATION IF I AM NOT SATISFIED WITH MY OWN LAWYER'S BILL? Yes, you can have your bill taxed by the court. Your lawyer also has a duty to inform you about this right. However, you should bear in mind that additional costs for the taxation procedure may be incurred. You may need to appoint another lawyer to represent you in the taxation hearing. If the Taxing Master or Chief Judicial Clerk does not reduce your original bill by one-sixth or more , you will be liable for the costs of the taxation hearing, and will have to pay your lawyer's costs and your own costs (i.e. the costs of both the new lawyer (if any) and the previous lawyer). Therefore, taxation should only be applied for in the last resort. 1. WHAT ARE THE OTHER IMPORTANT MATTERS THAT I SHOULD KNOW ABOUT JUDICIAL REVIEW? 1. WHAT ARE THE OTHER IMPORTANT MATTERS THAT I SHOULD KNOW ABOUT JUDICIAL REVIEW? Timing Judicial review proceedings must be brought promptly and in any case within 3 months of the date when grounds for the application first arose. In other words, if you want to apply for a review of a particular administrative decision, you must start your legal action within 3 months from the date when the decision was made. Leave (permission to apply for the review) An application for judicial review is by way of a two-stage process. You, as the applicant, must first obtain leave from the Court of First Instance of the High Court to bring an application for judicial review. If the court grants leave, you can then proceed with the substantive application. Relief (solutions or ways to settle the dispute) In your "Notice of application for leave to apply for Judicial Review" (Form 86A), it is important to state clearly the relief that you seek by way of judicial review. (You can read the notes for guidance and get a sample of Form 86A from the website of the Resource Centre for Unrepresented Litigants.) 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 any person from acting in an

office in which he is not entitled to act. (f) Damages (compensation) Damages may be claimed as relief in addition to other remedies. You cannot commence judicial review proceedings solely in order to seek damages. (g) Interim (temporary/provisional) relief The court may make interim orders before the substantive application for judicial review is decided. However, interim relief will not be granted before leave to apply for judicial review is given. Further information The application for judicial review is regulated under Order 53 of the Rules of the High Court and Practice Direction SL3 (Directions made by the Judge in charge of the Constitutional and Administrative Law List pursuant to O 72 r 2(3) of the Rules of the High court). Order 53 and the Practice Direction comprehensively set out the procedures you should follow in this type of application. You can also refer to the webpage of the Resource Centre for Unrepresented Litigants to get a summary of the procedure. 1. HOW CAN I KNOW IF THE JUDGMENT DEBTOR HAS THE FINANCIAL RESOURCES TO SATISFY THE COURT JUDGMENT AND TO PAY THE DEBT? 1. HOW CAN I KNOW IF THE JUDGMENT DEBTOR HAS THE FINANCIAL RESOURCES TO SATISFY THE COURT JUDGMENT AND TO PAY THE DEBT? If you are the judgment creditor, it may be that you know little about the judgment debtor's assets. Without further information, you will not be able to make the best choice regarding the available methods of enforcement. By virtue of the provisions of Order 48 or Order 49B of the Rules of the High Court (see also Order 48 or Order 49B of the Rules of the District Court as appropriate), a judgment debtor can be called to the court to answer questions about his assets. One significant difference between Order 48 and Order 49B is that while the former specifically allows the examination of a corporation's officers, there is no corresponding provision in the latter. However, the Order 49B procedure has two advantages: (i) the judgment debtor can be arrested before the examination to secure his attendance in court; and (ii) the court has wider powers to order disclosure of assets by the judgment debtor. Examination of the judgment debtor under Order 48 The court may, on your ex parte application (without giving notice to the debtor) with a supporting affidavit or affirmation, order the judgment debtor to attend before the Registrar or such officer as the court may appoint and be orally examined on the following questions: whether any and, if so, what debts are owing to the judgment debtor by other persons; and whether the judgment debtor has any and, if so, what other property or financial resources that could be used for satisfying the judgment or order in your favour. (If the judgment debtor is a limited company, the order can be made against a senior officer of the company.) The court may also order the judgment debtor or officer to produce any documents in the judgment debtor's possession relevant to the questions mentioned above at the time and place appointed for the examination. The order for examination must be delivered by hand to the judgment debtor and to any senior officer of a body corporate ordered to attend for examination. The judgment debtor's failure to attend the examination may lead to an order for imprisonment. Examination of the judgment debtor under Order 49B Where a judgment for the payment of a specified sum of money is unsatisfied (either wholly or partly), the court, on your ex parte application, may order the examination of the judgment debtor on his assets, liabilities, income and expenditure and of the disposal of any assets or income. For the purpose of securing the attendance of the judgment debtor at the examination, the court may order the judgment debtor to appear before the court at a time appointed by it, with such documents or records as it may specify. Such an order must be delivered to the judgment debtor by hand. If, from all the circumstances of the case (including the judgment debtor's conduct), it appears to the court that there is reasonable cause to believe that an order to appear before the court for examination may be ineffective to secure the judgment debtor' s attendance, the court may order that the judgment debtor be arrested and be brought before the court on the day following the day of arrest. It should be noted that, on an application for the above examination by the judgment creditor, the court has the power to make an order prohibiting the judgment debtor from leaving Hong Kong. Where a judgment debtor fails to appear as ordered, the court may order that he be arrested and brought before the court for examination on the day following the day of arrest. The power of the court after examining the judgment debtor Following the examination conducted under either Order 48 or Order 49B, (NB If the judgment debtor fails to comply with such an order, you may

apply to the court, on not less than 2 clear days notice to the judgment debtor, for an order for the imprisonment of the judgment debtor. Unless the judgment debtor shows good reason to object, the court may order the imprisonment of the judgment debtor for a period not exceeding 3 months.) if the court is satisfied that the judgment debtor: is able to satisfy the judgment, wholly or partly, but did not do so; or has disposed of assets with a view to avoiding satisfaction of the judgment or the liability which is the subject of the judgment, wholly or partly; or has wilfully failed to make a full disclosure as required or to answer any question, it may, in its discretion, order the imprisonment of the judgment debtor for a period not exceeding 3 months. if the court is satisfied that the judgment debtor is able or will be able to satisfy the judgment, wholly or partly, by instalments or otherwise, it may order him to satisfy the judgment in such manner as it thinks fit. 2. HOW CAN I PREVENT THE JUDGMENT DEBTOR FROM LEAVING HONG KONG AS A WAY TO ESCAPE LIABILITY FOR PAYING THE JUDGMENT DEBT? 2. HOW CAN I PREVENT THE JUDGMENT DEBTOR FROM LEAVING HONG KONG AS A WAY TO ESCAPE LIABILITY FOR PAYING THE JUDGMENT DEBT? You may apply for a prohibition order. It is an order prohibiting the judgment debtor from leaving Hong Kong to facilitate the chasing of the judgment debt. The application may be made ex parte (without giving notice to the debtor). There should be an affidavit or affirmation in support. In relation to a judgment for the payment of a specified sum of money, the supporting affidavit or affirmation should recite and attach the judgment (and whether any part of it has been paid), and explain with relation to the case facts that a prohibition order is required to facilitate the enforcement of the judgment. Regarding a judgment or order for the payment of an amount to be assessed, or requiring the delivery of any property or the performance of any other act, the supporting affidavit or affirmation must show probable cause for believing that the judgment debtor is about to leave Hong Kong, and satisfaction of the judgment or order is thereby likely to be obstructed or delayed. The court may make a prohibition order subject to such conditions as it thinks fit, including the condition that the order shall have no effect if the judgment debtor satisfies the judgment (pays all the money required). The form used for this order is Form No 106 in Appendix A of the Rules of the High Court or Form No 106 in Appendix A of the Rules of the District Court as appropriate. A copy of any prohibition order must be delivered to the Director of Immigration, the Commissioner of Police and the judgment debtor (if he can be found). If a judgment debtor who has received a copy of the order or has otherwise been informed of its effect attempts to leave Hong Kong in contravention of that order, he may be arrested by any immigration officer, police officer or bailiff. The judgment debtor who is prohibited by a prohibition order from leaving Hong Kong may, on 2 days clear notice to you and upon being present in person in court, apply for the order to be discharged. In such an application, the court may, after the assessment of the amount due to you, discharge the order (if appropriate). The case will then be proceeded as if the judgment debtor appears under arrest for examination under Order 49B (please see question 1 for details of Order 49B). A prohibition order lapses after one month but the court may, on your application, extend or renew the order for a period which does not exceed, with the initial period of one month and any other period of extension or renewal, 3 months. The order also lapses when you notify the Director of Immigration that the order is no longer required, and file a notice advising that the order is no longer required with the relevant Court Registrar. (Note: You must serve and file the notice as soon as reasonably possible after the order is no longer required.) 3. HOW CAN THE BAILIFF'S OFFICE ASSIST ME TO RECOVER MY DEBT/COMPENSATION/PREMISES FROM THE JUDGMENT DEBTOR/DEFENDANT? 3. HOW CAN THE BAILIFF'S OFFICE ASSIST ME TO RECOVER MY DEBT/COMPENSATION/PREMISES FROM THE JUDGMENT DEBTOR/DEFENDANT? Bailiffs can execute the orders and judgments of a court or tribunal. For example, if the judgment debtor refuses to pay the money, or the person who has been ordered to vacate premises fails to do so, application can be made to the Bailiff's Office to take appropriate steps to try to recover the debt or get back the premises for you (as the applicant). Bailiffs are authorised to: seize goods and chattels of the debtor/defendant at a value equivalent to the judgment debts plus the incidental expenses of the execution; and recover lands/premises. However, it is worth bearing the

following points in mind: Judgments cannot always be enforced, for example, if the judgment debtor/defendant does not have any money or assets (or that person cannot be located). Bailiffs only execute court orders and judgments upon the instructions given by you (as the applicant). It is not the job of the Bailiff's Office to trace the location of the debtors or to ensure that the sum owed to you is recovered. There is no guarantee that the bailiffs will succeed in getting any sum or seizing any goods of value. In such cases, you still have to bear the costs of execution incurred by the bailiffs. You must be very careful in the instructions you give to the bailiffs. If goods and chattels are seized from the wrong persons or wrong locations, then any claim for wrongful seizure will be made against you and not the bailiffs. You should, if possible, accompany the bailiffs when they go to execute the writ. This enables you to give any further instructions on the spot. Ways to execute a court order/judgment by the bailiffs You can apply for a writ of execution by the bailiffs depending on the nature of your case. The three major options are: (i) writ of fieri facias; (ii) warrant of distress and (iii) writ of possession. (i) Writ of fieri facias This writ is useful when you cannot get the compensation/judgment debt from the defendant/debtor. If there are sufficient goods and chattels on the defendant/debtor's premises to justify a seizure, the bailiff will seize them up to the amount endorsed on the writ, plus the estimated costs of the execution. You have to give an undertaking to the bailiff to pay the necessary costs involved in effecting a seizure. If the action is successful, the bailiff will take an inventory of all items seized. One copy will be passed to the security guard responsible for keeping watch over the items to ensure that they will not be tampered with or removed unlawfully. The defendant has a period of 5 working days (following the date of seizure) to settle the debt plus the estimated costs incurred for the execution. If the defendant does not pay the total amount due, then the seized items will be sold on the first working day after this period by public auction. The proceeds at auction will then be used to settle the money due to you after defraying the necessary execution charges. (Note: If you think the seized goods may not be sold at the best price via public auction, you can apply to the court for permission to sell the goods in another way.) (ii) Warrant of distress Distress means the seizure and sale of chattels/goods found in a rented property to satisfy the arrears of rent . It is mostly used in cases in which a tenant is still operating a business at the rented property. This warrant may be obtained by a winning party who has filed a distraint case in the District Court. The procedure of execution is similar to that for the writ of fieri facias. If the bailiff cannot enter the target premises, you can apply for a break open order to break into the premises after the bailiff has made two unsuccessful attempts to enter at different times. (iii) Writ of possession It is commonly used for regaining possession of premises where the debtor fails to pay rent or make mortgage repayment to the landlord/mortgagee. It can also be used for taking over premises which are subject to a charging order while the property owner (i.e. the debtor) fails to repay. If the bailiff cannot enter the target premises, there is no need for you to further apply for a break open order. A locksmith will be in attendance (when the bailiff goes to that premises for the third time) in order to break into the premises. Costs for the bailiffs You have to pay: a filing fee for the writ of execution; a deposit for the bailiff's travelling expenses ($400 for the Hong Kong and Kowloon areas or $800 for the New Territories); and a deposit for the cost of a maximum of 8 days' services by the security guard (note). (Note: The Bailiff's Office can arrange a private security guard service on your behalf. The security guard will accompany the Bailiff to carry out the execution and safeguard the goods and chattels seized after a successful execution. You should check with the Bailiff's Office about the approximate daily cost for this arrangement.) Regardless of whether or not the execution is successful, the bailiff's expenses and the security guard service fees are deducted from these deposits for each attempt at execution. The costs you incur may only be recovered if the execution is successful and the payment of the defendant or the proceeds of the sale of goods and chattels are enough to cover the judgment debt plus the costs incurred. Further information For more details on the application procedure and other information about the Bailiff's Office, please visit the Judiciary's website. 4. IF I (AS A JUDGMENT

CREDITOR) REALISE THAT SOMEONE OWES MONEY TO THE JUDGMENT DEBTOR, CAN I GET MY MONEY DIRECTLY FROM THAT THIRD PARTY? 4. IF I (AS A JUDGMENT CREDITOR) REALISE THAT SOMEONE OWES MONEY TO THE JUDGMENT DEBTOR, CAN I GET MY MONEY DIRECTLY FROM THAT THIRD PARTY? In such a case, garnishee proceedings may be considered. Garnishee proceedings provide the simplest method of enforcement where the judgment debtor is himself the creditor of a third party. Through garnishee proceedings, the obligation of the third party to pay money to the judgment debtor is transformed into an obligation of the third party to pay the money directly to you (as the judgment creditor). Garnishee proceedings is most commonly used to attach or freeze the sums of money which belong to the judgment debtor located in his bank account. Where (i) you have obtained a judgment or order for the payment by the judgment debtor of a sum of money amounting in value to at least $1,000 , and (ii) any other person (i.e. the third party who is considered as "the garnishee") within Hong Kong is indebted to that judgment debtor, the court may order the garnishee to pay you the amount of any debt due or accruing due to the judgment debtor from the garnishee (or so much of it as is sufficient to satisfy that judgment or order), and the costs of the garnishee proceedings. An application for a garnishing order must be made ex parte (without notifying the debtor) supported by an affidavit or affirmation: stating the name and the last known address of the judgment debtor; identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application for the garnishee order; stating that, to the best of your information or belief, the garnishee, (i.e. the person who owes a sum of money to the judgment debtor) who must also be named, is within Hong Kong and is indebted to the judgment debtor, and stating the sources of your information or the grounds for your belief; and stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held or, if it be the case, that this information (about the debtor's account) is not known to you. A garnishee order must at first be an order nisi. That is, an order directed to the garnishee instructing him to show cause (to give any reasons to object the application) why the debt claimed to be due or accruing from him to the judgment debtor should not be utilized to satisfy the judgment debt and the costs of the garnishee proceedings. The order nisi specifies the time and place for further consideration of the matter, and in the meantime attaches the debt claimed to be due or accruing from the garnishee to the judgment debtor, or so much of it as may be specified in the order. (See Form No 72 in Appendix A of the Rules of the High Court or Form No 72 in Appendix A of the Rules of the District Court as appropriate.) Unless the court otherwise directs, the garnishee order nisi must be served (delivered): on the garnishee by hand, at least 15 days before the day appointed thereby for the further consideration of the matter; and on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter. As from the service of the garnishee order nisi on the garnishee, the order binds in his hands any debt specified in the order or so much of it as may be so specified. Where, on the further consideration of the matter, the garnishee does not attend the court hearing or does not dispute the debt due or claimed to be due from him to the judgment debtor, the court may make a garnishing order absolute (finalized order) against the garnishee. (See Form Nos. 73 and 74 in Appendix A of the Rules of the High Court or Form Nos. 73 and 74 in Appendix A of the Rules of the District Court as appropriate.) Upon granting of the garnishee order absolute, the garnishee should pay the amount specified in the garnishee order to the judgment creditor. The garnishee order absolute may be enforced in the same manner as any other order for the payment of money. Where, on further consideration of the matter, the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the court may have to examine the questions at issue in order to determine the liability of the garnishee. If the garnishee has paid you the amount specified in the relevant garnishee order, he will be deemed to have settled his debt to the judgment debtor. 5. IF THE JUDGMENT DEBTOR DOES NOT HAVE ANY CASH BUT OWNS A PROPERTY/FLAT, CAN I (AS THE JUDGMENT CREDITOR) TAKE LEGAL ACTION AGAINST THE DEBTOR'S FLAT? 5. IF THE JUDGMENT DEBTOR DOES NOT HAVE ANY CASH BUT OWNS A PROPERTY/FLAT, CAN I

(AS THE JUDGMENT CREDITOR) TAKE LEGAL ACTION AGAINST THE DEBTOR'S FLAT? In such a case, a charging order may be considered. For the purpose of enforcing the judgment in your favour, the court may make an order imposing on any such property of the judgment debtor as may be specified in the order, a charge for securing the payment of any money due or to become due under that judgment. Such an order is known as a "charging order". The effect of a charging order is similar to the creation of a mortgage on the debtor's flat, and your position is thus similar to a "mortgagee". The types of property that a charging order can be imposed on include land/real estate, securities, or funds in court (section 20A(2) of the High Court Ordinance). As a judgment creditor, you should note that a charging order is an indirect mode of enforcement as it provides you with security only. If the judgment debtor fails to pay you pursuant to the charging order, you have to take further action to apply for an order to take over the subject property and sell it before you can recover the fruits of your judgment. If the relevant property is a flat (and it is already mortgaged to a bank), the charging order would be treated more or less the same as a second mortgage. The judgment creditor's application for a charging order in respect of the judgment debtor' s beneficial interest may be made ex parte (without notifying the debtor). The application must be supported by an affidavit or affirmation: identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application; stating the name of the judgment debtor and of any creditor of his whom you (as the applicant) can identify; giving full particulars of the subject-matter of the intended charge; and verifying that the interest to be charged is owned beneficially by the judgment debtor (i.e. the debtor has contributed whole or part of the purchase price of the flat). Unless the court otherwise directs, the supporting affidavit or affirmation may contain statements of information or belief together with the sources and grounds for such information/belief. Any order made on such an application must at first be an order nisi. That is, an order directing the debtor to show cause (to give any reasons for objecting to the application). The order specifies the time and place for further consideration of the matter, and imposing the charge in any event until that time. The order nisi must be made on Form No 75 in Appendix A of the Rules of the High Court or Form No 75 in Appendix A of the Rules of the District Court as appropriate. On the making of the order nisi, notice of the order must, unless the court otherwise directs, be served as follows: a copy of the order, together with a copy of the affidavit or affirmation in support, must be served on the judgment debtor; where the order relates to securities other than securities in court, copies of the order must also be served: in the case of stock of any company incorporated within Hong Kong (usually a limited company), on that company; in the case of stock of any company incorporated outside Hong Kong, being stock registered in a register kept in Hong Kong, on the keeper of the register; and in the case of units of any unit trust in respect of which a register of unit holders is kept in Hong Kong, on the keeper of the register. where the order relates to a fund in court, a copy of the order must be served on the Registrar at the Registry; and where the order relates to an interest under a trust, copies of the order must be served on such of the trustees as the court may direct. (NB (i) The court may also direct the service of copies of the order nisi, and of the affidavit or affirmation in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances. (ii) Documents to be served must be served at least seven days before the time appointed for the further consideration of the matter.) On the further consideration of the matter, the court must either make the charging order absolute (finalized order), with or without modifications, or discharge it. In deciding whether to make the order, the court must consider all the circumstances of the case and, in particular, any evidence before it as to: the personal circumstances of the judgment debtor; and whether any other creditor of the judgment debtor would be likely to be unduly prejudiced by the making of the order. (NB Where the order is made absolute (finalized), it must be made using Form No 76 in Appendix A of the Rules of the High Court or Form No 76 in Appendix A of the Rules of the District Court as appropriate.) On the application of the judgment debtor or of any person interested in any property to which a charging order relates, the court may make an order discharging or varying the

charging order. 6. AS A JUDGMENT CREDITOR, CAN I ENFORCE THE JUDGMENT IF THE JUDGMENT DEBTOR HAS LODGED AN APPLICATION FOR PERMISSION TO APPEAL? 6. AS A JUDGMENT CREDITOR, CAN I ENFORCE THE JUDGMENT IF THE JUDGMENT DEBTOR HAS LODGED AN APPLICATION FOR PERMISSION TO APPEAL? The fact that the judgment debtor has lodged an application for leave (permission) to appeal does not mean that enforcement of an award or order must be withheld. However, an order withholding enforcement of judgment may be made by the Tribunal, the Court of First Instance or the Court of Appeal on such terms as the court thinks fit. If you realise that the debtor is appealing, you must check whether there is any court order granted to withhold your enforcement before taking further action. 7. IF I AM THE JUDGMENT DEBTOR AND WILL LAUNCH AN APPEAL TO THE COURT OF APPEAL, WHAT STEPS HAVE TO BE TAKEN IF I WANT TO HAVE A STAY OF EXECUTION (SUSPEND THE EXECUTION) OF THE JUDGMENT OR ORDER AGAINST ME? 7. IF I AM THE JUDGMENT DEBTOR AND WILL LAUNCH AN APPEAL TO THE COURT OF APPEAL, WHAT STEPS HAVE TO BE TAKEN IF I WANT TO HAVE A STAY OF EXECUTION (SUSPEND THE EXECUTION) OF THE JUDGMENT OR ORDER AGAINST ME? The application for a stay of execution of the judgement must be made firstly to the lower court (either the Court of First Instance of the High Court or the District Court) which heard the original trial of your case. If the application is refused, it can be made to the Court of Appeal within a reasonable time. It should be made by way of a summons inter partes (i.e. notifying the other party) with an affidavit or affirmation setting out the reasons in support. 1. DOES THE COURT OF FIRST INSTANCE OF THE HIGH COURT (NOT THE COURT OF APPEAL) ALSO HAVE THE AUTHORITY TO HEAR APPEAL CASES? 1. DOES THE COURT OF FIRST INSTANCE OF THE HIGH COURT (NOT THE COURT OF APPEAL) ALSO HAVE THE AUTHORITY TO HEAR APPEAL CASES? Yes. The Court of First Instance functions as an appeal court for cases heard in the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Minor Employment Claims Adjudication Board (which handles employment claims involving not more than 10 claimants for a sum of money not exceeding $8,000 per claimant). The party concerned should file an Application for Leave (permission) to Appeal with the Clerk of Court's Office within the time limit specified in the respective Ordinances. This form is available from the Resource Centre for Unrepresented Litigants situated in the High Court Building, Clerk of Court's Office, or from the Registries of the respective Tribunals or Board. The appeal hearing will be heard by a judge of the Court of First Instance. If permission to appeal is granted, the parties will be informed in writing. The party making the appeal will then need to file a Notice of Originating Motion with a prescribed fee to be paid. They will be invited to the Clerk of Court's Office to fix a date for hearing the appeal. If the judge of the Court of First Instance refuses to grant leave to appeal, that decision is final. A party who fails to lodge an appeal within the time limit may apply to the Registrar of the High Court for leave to appeal out of time. The applicants must have substantial reasons and the decision of the Registrar is final. 2. WHAT TYPES OF CIVIL MATTERS CAN BE HEARD BY THE COURT OF FINAL APPEAL? 2. WHAT TYPES OF CIVIL MATTERS CAN BE HEARD BY THE COURT OF FINAL APPEAL? The Court of Final Appeal hears appeals of civil matter at discretion where, in the opinion of the Court of Appeal or the Court of Final Appeal, the question involved in the appeal is one which, because of its great general or public importance, or otherwise, ought to be submitted to the Court of Final Appeal for decision. Leave (permission) to appeal to the Court of Final Appeal is required. No appeal can be admitted unless leave to appeal has been granted either by the Court of Appeal or the Court of Final Appeal. 1. HOW CAN THE PARTIES PREPARE THE BUNDLE OF DOCUMENTS BEFORE GOING TO THE TRIAL (COPIES OF THE DOCUMENTS THAT WILL BE PLACED BEFORE THE JUDGE AND THE RELEVANT PARTIES AT THE TRIAL)? 1. HOW CAN THE PARTIES PREPARE THE BUNDLE OF DOCUMENTS BEFORE GOING TO THE TRIAL (COPIES OF THE DOCUMENTS THAT WILL BE PLACED BEFORE THE JUDGE AND THE RELEVANT PARTIES AT THE TRIAL)? If the parties intend to place documents before the trial judge, it is their responsibility to seek to agree and prepare a paginated (i.e. each page of the bundle off documents must be numbered, for easy reference and identification) bundle of documents in loose-leaf files. The bundle must be lodged with the court at least three clear working days before the trial date . (Each party should also have an identical bundle for their own use at the trial. There should be a spare bundle for the witnesses as well.) The documents can be copy documents (including

photocopies) but they must be legible. The original documents, if available, should be ready for inspection at the trial. The documents should be arranged in chronological order according to their dates. Please refer to Practice Direction 5.6 (Documents for use at trial) for further guidance. 2. IF I AM A PARTY TO THE CASE AND HAVE CALLED WITNESSES TO GIVE EVIDENCE FOR ME, SHOULD I MEET WITH MY WITNESSES BEFORE ATTENDING THE TRIAL? 2. IF I AM A PARTY TO THE CASE AND HAVE CALLED WITNESSES TO GIVE EVIDENCE FOR ME, SHOULD I MEET WITH MY WITNESSES BEFORE ATTENDING THE TRIAL? If you do not have a lawyer to represent you, you must meet with your witnesses and have a discussion with them before attending the trial. The purpose of that meeting is to assess their credibility, see what they know about your case and what they will probably say at the trial. However, you must NOT make up the answers for them. Bad inference would be drawn by the court if your witnesses are just reading out your "scripts" during the trial. If it is proved that a witness has wilfully given false evidence, that person would be liable to a fine and imprisonment. You may briefly tell your witnesses what you are going to ask during the trial, and tell them about the possibility of being questioned by your opponent and the judge. This could help reduce your witnesses' anxiety and encourage them to make preparations before entering the courtroom. You should also remind your witnesses not to turn to you for looks of approval when answering questions from your opponent or the judge. The attendance of your witnesses must be secured well in advance (preferably three weeks prior to the trial date). If you are not sure whether they will attend the trial, you may try to secure their attendance by issuing a writ of subpoena (i.e. a witness summons compelling the target witness to attend the trial, see Form No 28 or 29 in Appendix A of the Rules of the High Court (Cap. 4A) or Form No 28 or 29 in Appendix A of the Rules of the District Court (Cap. 336H) as appropriate). The appropriate office for issuing such a writ is the Registry of the relevant court. Every writ of subpoena should be accompanied by a deposit that will be used to cover the witness's reasonable expenses. 5. WHAT MAY HAPPEN DURING A CIVIL TRIAL? WHAT IS THE USUAL PROCEDURE THAT THE PLAINTIFF AND THE DEFENDANT NEED TO FOLLOW AT THE TRIAL? 5. WHAT MAY HAPPEN DURING A CIVIL TRIAL? WHAT IS THE USUAL PROCEDURE THAT THE PLAINTIFF AND THE DEFENDANT NEED TO FOLLOW AT THE TRIAL? Both parties should attend court punctually on the trial date, bringing the relevant original documents and photocopies for the judge and for the other party if necessary. Your witnesses should come with you. The ground floor lobby notice board will show which court is hearing your case. At the trial, the court will hear the evidence of witnesses and the submissions (arguments) of the parties involved. The court may adjourn the case to another date if further information and/or evidence is needed. The court may deliver judgment at the end of the trial or deliver/hand down the judgment at a later date. Due to the complexity of the civil court procedure, you are recommended to appoint a lawyer to represent you. The following chart shows the ordinary course of a civil trial: (A) The plaintiff's opening speech (B) Plaintiff's witnesses will in turn be: (i) examined in chief by the plaintiff; (ii) cross-examined by the defendant; and (iii) re-examined by the plaintiff (After all the plaintiff's witnesses have given evidence, the plaintiff will close his case) (C) The defendant's opening speech (if any) (D) Defendant's witnesses will in turn be: (i) examined in chief by the defendant; (ii) cross-examined by the plaintiff; and (iii) re-examined by the defendant (After all the defence witnesses have given evidence, the defendant will close his case) (E) The defendant's closing speech (F) The plaintiff's closing speech (G) Delivery of judgment Explanatory notes: A. The plaintiff has the right to begin by making an opening speech. The object of an opening speech is to give the court a general introduction of the dispute (e.g. the facts, the issues and questions to be determined, etc). In this opening speech, the plaintiff may state the substance of the evidence he is going to give and its effect on proving the case. The plaintiff may also point to the strength of his case and the weakness of the defendant's case. (NB In a simple case, the trial judge may give directions dispensing with the plaintiff's opening speech.) B. After the plaintiff has opened the case, he will call his witnesses to give evidence. If the plaintiff intends to give evidence at the trial personally, it is customary that he is the first one to go into the witness box. Each witness will take the oath or make a solemn affirmation, and is followed by:

Examination-in-chief: The plaintiff should start with questions as to the witness's name, address, relationship to the parties or the proceedings and, if an expert witness, qualifications. After that, the plaintiff should ask questions, which are relevant to the case facts. Where a witness statement made by this witness has previously been disclosed to the defendant, the plaintiff should show a copy of that document to this witness, get that witness to confirm that it is his statement, and later ask the judge if the statement may stand as the evidence of this witness in this case. The plaintiff should bear in mind that, as a general rule, he cannot ask his witness leading questions on disputed matters. Cross-examination: The defendant will ask the same witness a series of questions to try to destroy or discredit the evidence given by this witness. When planning the questions for cross-examination, the defendant should identify the aspects of the witness's evidence which are most vulnerable to attack. Generally speaking, the weaknesses which the witness may have are ambiguity, insincerity, faulty perception and erroneous memory. It is important to note that: (i) leading questions are allowed to be asked in cross-examination; and (ii) a failure to challenge evidence given in the examination-in-chief implies acceptance of it (but you should try to avoid asking trivial/tedious questions in order to show your objection). Re-examination: The plaintiff can use the re-examination to restore his witness's credibility. The plaintiff can also try to use re-examination to allow his witness to explain points made in cross-examination which seem adverse to his case but in fact are not. However, re-examination must be confined to matters arising out of the cross-examination. After all the plaintiff's witnesses have given evidence, the plaintiff will close his case. C. If the defendant chooses to give evidence, he is entitled to open his case. However, in most cases, the defendant proceeds to call his witnesses without making an opening speech. (NB If the defendant chooses not to give evidence personally and not to call any witness, the plaintiff may then make a second speech to close his case, i.e. to sum up his evidence and stress why the judge should find for him by referring to the relevant points of fact and law. On the conclusion of this speech, the defendant will make his speech in reply. The next stage would then be (G) below.) D. The defendant calls his witnesses. If the defendant intends to give evidence personally, he is normally the first one to go into the witness box. The defence witnesses will in turn be examined in chief by the defendant, cross-examined by the plaintiff, and re-examined by the defendant. The defendant should pay attention to what has been mentioned in (B) above. After all the defence witnesses have given evidence, the defendant will close his case. E. The defendant is entitled to make a closing speech. He should closely analyse all the witnesses' evidence and suggest why their evidence should be accepted or rejected. He may also advance arguments on the legal questions involved in the case with reference to the relevant authorities (including case precedents and ordinances). In that case, a lawyer would normally be in a better position to do the job. F. After the defendant's closing speech, the plaintiff may make a speech in reply. G. After the parties have made their closing speeches, the trial judge will either verbally deliver the judgment immediately or hand down the judgment in written form on a later date. In many cases, the party obtaining judgment (who wins the case) usually has its costs paid by the losing party. Addressing the judge, the witnesses and your opponent During the trial, you must address the judge as "Your Honour" (in the District Court) or "My Lord/My Lady" (in the High Court). You should also address the witnesses and your opponent as "Mr.", "Mrs." or "Miss". Do not use threatening or insulting words in the courtroom. The above mentioned points are only the usual procedure for a trial. Depending on the circumstances, the judge may give other directions which you must follow. 1. HOW ARE INTERLOCUTORY APPLICATIONS MADE? 1. HOW ARE INTERLOCUTORY APPLICATIONS MADE? Interlocutory applications are usually made by a summons, supported by affidavits or affirmations, which have to be filed with the court and served on the other party. You can find examples of the forms used to apply for a "summons (to extend time to file & serve defence)" and a "summons (for directions)" for High Court cases on the Judiciary website. The other party may then file affidavits or affirmations with the court to oppose the application. A copy of such opposing affidavits or affirmations must also be served on (delivered to) the party making the original application for interlocutory

proceedings. The applying party may, upon receiving the affidavits or affirmations in opposition, file and serve affidavits or affirmations in reply. There should be no further affidavit or affirmation from either party unless there is a court order granting permission for any party to do so. 2. HOW TO PREPARE AN AFFIDAVIT OR AFFIRMATION? 2. HOW TO PREPARE AN AFFIDAVIT OR AFFIRMATION? An affidavit or affirmation is a statement of facts made by a person under oath. Generally, this is the means by which the parties or their witnesses submit evidence to the court during the hearing of an interlocutory application (or other kinds of application). A Catholic or a Christian should make affidavits. People of other religious beliefs or no religious belief should make affirmations. The form used for an affidavit or affirmation is obtainable from the Registries of the High Court and the District Court and the Resource Centre for Unrepresented Litigants (see the last paragraph). The person who gives written evidence in an affidavit or affirmation is called a deponent. A deponent should only give facts as evidence in his affidavit or affirmation (unless he is an expert witness, who can also give opinion within his expertise as evidence). The evidence given must be within the deponent's personal knowledge. (However, the affidavit or affirmation may contain statements of information or belief if the sources of the information and the grounds of the belief are stated.) It should be noted that a deponent is personally liable for the truthfulness or accuracy of the contents of his affidavit or affirmation. He commits perjury if he knowingly gives false or misleading evidence in his affidavit or affirmation. The contents of an affidavit or affirmation should be set out in short, numbered paragraphs. The sentences in the paragraphs should be clear and concise. The documents referred to in the affidavit or affirmation should be marked as exhibits (similar to attachments) annexed (attached) to the affidavit or affirmation. The exhibits should be numbered for easy identification. It is desirable to have a typewritten affidavit or affirmation. If it is hand-written, the deponent should write the words clearly on alternate lines. If an affidavit or affirmation is not legible, the court may order the deponent to put it in a proper form and manner (re do it, so that it is clear and legible). The hearing of the relevant interlocutory or other kinds of application may have to be adjourned for that purpose. (In such a case, the deponent, as the party who causes the adjournment, may be ordered to bear the costs for the time wasted.) After finalizing the contents of your affidavit/affirmation, your lawyer will arrange for you to swear and sign this document in front of another lawyer who is not involved in your case. Alternatively, you can swear and sign your affidavit/affirmation at the Oaths and Declarations Office of the High Court. More explanatory notes for preparing an affidavit or affirmation and a sample affidavit / affirmation can be obtained from the Resource Centre for Unrepresented Litigants. Reference should also be made to Practice Direction 10.1 (Affidavit Evidence). 4. HOW IS THE HEARING OF AN INTERLOCUTORY APPLICATION CONDUCTED? 4. HOW IS THE HEARING OF AN INTERLOCUTORY APPLICATION CONDUCTED? The summons for an interlocutory application is heard by a judge or a master on a date fixed by the court. At the hearing, the parties do not have to call witnesses to give evidence. The court only considers the evidence in the affidavits or affirmations. It assesses the reliability of the affidavit or affirmation evidence and decides how much weight should be given to the evidence. (Note, however, that the court can order a deponent of an affidavit or affirmation to attend the hearing for cross-examination (to be questioned by the lawyers). If the deponent does not attend the court hearing, his affidavit or affirmation may not be used as evidence.) As to the order of making speeches (presenting their own case), the applying party argues the case first, followed by the opposing party. The applying party has the right to make a reply to any points put forward by the opposing party. The judge or the master may make an order or pass a judgment at the end of the hearing, or at a later date. Costs are normally ordered against the party who fails (looses) at the hearing. The costs may have to be paid immediately, or at the end of the full trial. For the preparation of an interlocutory summons for a hearing, please refer to Practice Direction 5.4 (Preparation of Interlocutory Summons and Appeals to Judge in Chambers for Hearing) . 5. CAN THE PLAINTIFF OR THE DEFENDANT APPEAL AGAINST AN ORDER MADE ON AN INTERLOCUTORY APPLICATION? 5. CAN THE PLAINTIFF OR THE DEFENDANT APPEAL AGAINST AN ORDER MADE ON AN INTERLOCUTORY

APPLICATION? Generally yes, but the procedure varies as follow. If a party is not satisfied with the decision of a master Generally speaking, if a party is not satisfied with the decision of a master, he may appeal against it to a judge in chambers (i.e. not in open court) within 14 days after the decision. For the preparation of an appeal to be heard by a judge in chambers, please refer to Practice Direction 5.4 (Preparation of Interlocutory Summonses and Appeals to Judge in Chambers for Hearing). If a party is not satisfied with the decision of a judge For cases in the District Court , if a party is not satisfied with the decision of a judge, he may, within 14 days from the date of the judge's decision, apply to the judge for leave (permission) to appeal to the Court of Appeal of the High Court. If the judge refuses to grant leave to appeal, the party may apply, within 14 days from the date of the judge's refusal, to the Court of Appeal for leave to appeal. The Court of Appeal may grant leave on such terms as to costs, giving security for the prosecution of the appeal, etc as it thinks fit. For cases in the Court of First Instance of the High Court , an appeal goes to the Court of Appeal and no leave is required (except for appeals solely on the question of legal costs). The appeal is brought by a motion and the notice of motion is referred to as a notice of appeal. The time limit for appealing is 14 days (calculated from the date on which the judgment or order being appealed against was sealed). After hearing the arguments, the Court of Appeal will pass a judgment either on the spot or at a later date. The losing party will normally be ordered to pay the winning party's legal costs incurred during the appeal (and possibly, the costs for the previous court hearings). It should be noted that comprehensive directions for the conduct of the civil business of the Court of Appeal are provided in Practice Direction 4.1 (Civil Appeals to the Court of Appeal). The above appeal procedures are complicated and extra legal costs may be incurred. You should consult a lawyer before making such an appeal. 6. IF THE DEFENDANT FILED A DEFENCE, BUT IT DOES NOT CONTAIN ANY REASONABLE POINTS, CAN THE PLAINTIFF APPLY FOR A "FAST JUDGMENT" WITHOUT GOING THROUGH A TRIAL? 6. IF THE DEFENDANT FILED A DEFENCE, BUT IT DOES NOT CONTAIN ANY REASONABLE POINTS, CAN THE PLAINTIFF APPLY FOR A "FAST JUDGMENT" WITHOUT GOING THROUGH A TRIAL? In such a case, the plaintiff can apply for a summary judgment against the defendant, on the grounds that the defendant has no defence to the claim. In this context, "no defence" generally means the defence pleaded by the defendant is not supported with any reasonable grounds, concrete evidence or arguable points. The procedure for summary judgment enables the plaintiff to obtain judgment without the delay and expense of a full trial. In other words, the judgment is granted by the court without hearing the oral evidence/arguments from both parties and their witnesses in a trial. However, an application for summary judgment should not be made when the case involves serious important factual disputes. This is because, to defeat a summary judgment application, the defendant does not have to show he has a good defence but only that he has an arguable defence. If the defendant's assertions are believable, he will have leave (permission) to defend. The court will also permit the defendant to defend if the judge thinks that there should be a trial for some other reasons (e.g. the defendant is unable to get in touch with an important witness who might be able to provide him with material for a defence). For further information about the summary judgment procedure, please refer to Order 14 of the Rules of the High Court or Order 14 of the Rules of the District Court as appropriate. 7. THE TRIAL HAS NOT YET COMMENCED BUT THE DEFENDANT'S WRONGDOING HAS ALREADY CAUSED SOME DAMAGE TO THE PLAINTIFF. WHAT CAN THE PLAINTIFF DO TO STOP THE DEFENDANT'S WRONGDOING IN THE MEANTIME? 7. THE TRIAL HAS NOT YET COMMENCED BUT THE DEFENDANT'S WRONGDOING HAS ALREADY CAUSED SOME DAMAGE TO THE PLAINTIFF. WHAT CAN THE PLAINTIFF DO TO STOP THE DEFENDANT'S WRONGDOING IN THE MEANTIME? Permanent injunction Sometimes, the plaintiff will seek a court order at the trial either compelling the defendant to take specified steps (known as a "mandatory injunction") or restraining him from taking specified steps (known as a "prohibitory injunction"). These two types of injunction orders, if granted by the court, may permanently bind the wrongdoer/defendant. However, the case may take several years to reach court for a final settlement. By the time it comes to trial, the defendant's alleged wrongdoing may have already caused damage to the plaintiff. In such a case, the plaintiff may consider applying for an interlocutory injunction (see below). (Note:

Application for the above permanent injunction orders must be made by way of writ of summons. Due to the complexity of the application procedures, you should seek legal advice before making such an application.) Interlocutory injunction (a temporary court order) With a view to avoiding the potential injustice of such situations, the court has the power to make a provisional order before trial to regulate the position between the parties pending the trial. This order is called an "interlocutory injunction", and is usually a temporary version of the type of injunction the plaintiff will seek at the trial. An application for the grant of an interlocutory injunction must be made by motion or summons. The application must be supported by an affirmation or affidavit setting out the facts giving rise to the cause of legal action against the defendant, the facts giving rise to the claim for injunctive relief, and the relief sought. However, if the case is urgent, such application may be made ex parte (i.e. without giving notice to the defendant) supported by an affidavit or affirmation. If the application is made ex parte, the plaintiff must disclose to the court all facts which are important to the proceedings. It is advisable to read the Judiciary's Practice Direction 11.1 (Ex Parte, Interim and Interlocutory Applications for Injunctions) carefully for details of the application procedure to be followed. Generally, the court will grant an interlocutory injunction if the plaintiff can show that: there is a serious question to be tried (i.e. the claim must not be frivolous or vexatious and must have prospect of success); and the balance of convenience lies in favour of granting the injunction. In determining where the balance of convenience lies, the court will take all relevant circumstances of the case into account (e.g. the importance of the preservation of the existing situation, the relative strength of the parties' respective cases, etc). In particular, it will ask whether damages (monetary compensation) are an adequate remedy for the plaintiff and whether the defendant is able to pay the compensation. If "yes", the injunction will be refused. If "no", the court will next consider whether the giving of an undertaking as to damages by the plaintiff is adequate protection for the defendant and whether the plaintiff is able to honour such an undertaking. If the answer is "yes", the court will grant an interlocutory injunction. (Note: The undertaking as to damages is the plaintiff's promise to pay the defendant compensation if the plaintiff later fails to prove that he is entitled to such an injunction order.) A defendant in such a case must note that wilful failure to comply with the terms of an injunction order may lead to a sentence of imprisonment. 8. WHAT CAN THE PLAINTIFF DO IF THE DEFENDANT IS LIKELY TO DISPOSE OF HIS ASSETS IMPROPERLY BEFORE THE CASE PROCEEDS TO TRIAL? 8. WHAT CAN THE PLAINTIFF DO IF THE DEFENDANT IS LIKELY TO DISPOSE OF HIS ASSETS IMPROPERLY BEFORE THE CASE PROCEEDS TO TRIAL? In such case, the plaintiff may consider applying for a Mareva injunction. A Mareva injunction is a form of interlocutory injunction which is a court order made before trial to keep matters in their original state until the trial can be heard. It has the effect of restraining the defendant from disposing of, or dissipating, his assets before the court delivers the judgment at trial. In a very exceptional case, the court may even grant a world-wide Mareva injunction that affects the defendant's assets abroad. Breach of a Mareva injunction by the defendant may lead to imprisonment. The initial application for a Mareva injunction is usually made ex parte (i.e. without giving notice to the defendant). This is because knowledge by the defendant that the application is processing may well defeat the original purpose which the plaintiff is trying to achieve. The application procedure to be followed has been prescribed in Practice Direction 11.1 (Ex Parte, Interim and Interlocutory Applications for Injunctions) and must be carefully studied. It is important to note that: the plaintiff, as the applicant for an ex parte Mareva injunction, must ensure that he makes full and frank disclosure of all the important matters within his knowledge; and if the Mareva injunction is granted, the plaintiff will normally be required to give some undertakings, one of which being an undertaking in damages/compensation (i.e. a promise to pay the defendant compensation for any loss incurred as a result of the injunction if the plaintiff later fails to prove that he is entitled to such an injunction order). Sometimes the plaintiff may also have to pay reasonable costs to any third parties (e.g. banks) who have to check whether they hold any assets related to the case. Therefore, it is not rational

for the plaintiff to make such an application if the amount or value of the assets under dispute is small . The court will grant a Mareva injunction if the plaintiff can show that: there is a good arguable case on a substantive claim against the defendant; the defendant has assets within Hong Kong; the balance of convenience is in favour of granting this injunction order; and there is a real risk of dissipation or secretion of assets by the defendant before the court can make the final judgment at the coming trial. (Note: The requirements for the grant of a Mareva injunction have been effectively summarized in Practice Direction 11.2 (Mareva Injunctions and Anton Piller Orders). The Practice Direction also provides the standard form for use on an application for a Mareva injunction. It is therefore vital to pay close attention to the Practice Direction and legal advice must be sought if you have further queries.) A Mareva injunction granted ex parte will subsequently be heard at an inter-partes hearing (i.e. a hearing involving all parties, after notice has been given to the defendant) on a "return date". At the hearing, the defendant may apply to have the injunction set aside (for example, on the ground that the injunction was obtained as a result of important non-disclosure of information by the plaintiff). If the Mareva injunction is granted, the defendant could still withdraw a certain sum of money for daily living expenses and for carrying on his existing business (if any). 9. WHAT CAN THE PLAINTIFF DO IF HE WANTS TO ENTER THE DEFENDANT' S PREMISES TO SEARCH FOR AND SEIZE CERTAIN DOCUMENTS OR PROPERTY BEFORE THE CASE PROCEEDS TO TRIAL? 9. WHAT CAN THE PLAINTIFF DO IF HE WANTS TO ENTER THE DEFENDANT' S PREMISES TO SEARCH FOR AND SEIZE CERTAIN DOCUMENTS OR PROPERTY BEFORE THE CASE PROCEEDS TO TRIAL? In such a case, the plaintiff may consider applying for an Anton Piller Order. An Anton Piller Order compels the defendant to permit the plaintiff's representatives to enter his premises, search for and (in most cases) seize documents or other things which are relevant to the case. This order is especially useful in cases involving infringement of intellectual property rights and matrimonial proceedings where it is believed that a spouse has not truly disclosed his or her assets. The procedure for obtaining an Anton Piller order follows broadly the equivalent procedure for obtaining a Mareva injunction (see question 7 above). In order to prevent the defendant from concealing, destroying or disposing of the documents or articles in question, the application for an Anton Piller Order is invariably made ex parte (without giving notice to the defendant). The court will therefore require full and frank disclosure by the plaintiff. Otherwise, any order granted may be discharged. The plaintiff also has to give, among other things, the undertaking as to damages/compensation (to compensate the defendant for any loss that has been caused by the carrying out of such an order). Since an Anton Piller order involves the violation of the defendant's (residential and business) premises, it is regarded as a draconian measure. Whether to grant the order is a matter for the discretion of the judge hearing the application. In order to secure the grant of the order, the plaintiff has to satisfy the judge that: there must be a strong prima facie case of a civil cause of action (i.e. the claim/allegation against the defendant is likely to be justified); the danger to the plaintiff to be avoided by the grant of an order must be serious; the risk of destruction or removal of evidence by the defendant must be a good deal more than merely possible; and the harm likely to be caused by the execution of the order to the defendant and his business affairs must not be excessive or out of proportion to the legitimate object of the order. (Remarks: (i) In the affidavit or affirmation in support of the application, the plaintiff should therefore clearly describe the defendant's premises and the relevant documents or property and show strong evidence that serious harm or injustice will be suffered if the order is not made. (ii) The standard form and contents of an Anon Piller order to allow entry and search of premises have been prescribed by the Judiciary's Practice Direction 11.2 (Mareva Injunctions and Anton Piller Orders). The Practice Direction should be read carefully and legal advice must be sought if you have further queries.) At the time of application for the ex parte Anton Piller order, the plaintiff should also apply for a date to be fixed for an inter-partes hearing (i.e. a hearing involving all parties, after giving notice to the defendant). At this hearing, the defendant is at liberty to apply to set aside the order and to get back all the seized documents. It is important to note that an Anton Piller order does

not amount to a search warrant and therefore no forcible entry to the defendant's premises can be made. In other words, the plaintiff cannot break open the door and enter the premises if the defendant refuses entry. However, a defendant who fails to comply with the order can be committed for contempt of court and may be liable to imprisonment. 10. WHAT CAN THE PLAINTIFF DO TO REDUCE FINANCIAL HARDSHIP DURING THE PERIOD FROM THE COMMENCEMENT OF LEGAL ACTION UP TO THE DATE OF TRIAL? IS IT POSSIBLE FOR THE PLAINTIFF TO OBTAIN SOME COMPENSATION FROM THE DEFENDANT BEFORE THE CONCLUSION OF THE CASE? 10. WHAT CAN THE PLAINTIFF DO TO REDUCE FINANCIAL HARDSHIP DURING THE PERIOD FROM THE COMMENCEMENT OF LEGAL ACTION UP TO THE DATE OF TRIAL? IS IT POSSIBLE FOR THE PLAINTIFF TO OBTAIN SOME COMPENSATION FROM THE DEFENDANT BEFORE THE CONCLUSION OF THE CASE? The plaintiff may consider applying for an interim payment. This is an advance payment (made before the final conclusion of the case) that will be taken from any compensation, debt or other sum (excluding legal costs) which a defendant may eventually be held liable to pay. There are often occasions when it is clear that the plaintiff has a strong case against the defendant with respect to liability and will recover damages at the end. However, the administration of justice takes time. The system of interim payments is devised to prevent the plaintiff from being kept out of his money for an inappropriately long period. There are three grounds for the plaintiff to apply for an interim payment: the defendant has already admitted liability; the plaintiff has obtained judgment against the defendant but the amount of compensation is yet to be assessed by the court; or if the action proceeded to trial, the plaintiff would obtain judgment for substantial compensation against the defendant. (Note: The grounds for applying for an interim payment in respect of sums other than damages are different. For details, please refer to Order 29, r 12 of the Rules of the High Court or Order 29, r 12 of the Rules of the District Court as appropriate.) The plaintiff may make an application for interim payment by summons at any time after the writ has been served on the defendant and the time limit for him to acknowledge service has expired. The application must be supported by the plaintiff's affirmation or affidavit: verifying the amount of the damages, debt or other sums to which the application relates, and the grounds of the application; and attaching any documentary evidence relied upon by the plaintiff in support of the application. If the application is successful, the court may make an order for an interim payment of such amount as it thinks just. An interim payment may be ordered to be made in one lump sum or in specified instalments. The payment is normally ordered to be made directly to the plaintiff. Provisional damages for personal injuries An interim payment should be differentiated from an award of provisional damages for personal injuries. Generally, an award of damages in a personal injuries case is a once-and-for-all payment. However, this is not ideal for the plaintiff, as there are cases where there is a chance that the injury will get worse at some future date. To remedy the situation, the courts are given the power to make awards of provisional damages. Provisional damages are appropriate in personal injuries cases where there is proved or admitted to be a chance that at some definite or indefinite time in the future, the plaintiff will develop some serious disease or suffer some serious deterioration in his physical or mental condition. In such cases, the court can award damages (known as provisional damages) on the assumption that the plaintiff will not develop the disease or suffer the deterioration. If the plaintiff does develop the disease or suffer the deterioration, he can go back to the court for further damages at a future date. The plaintiff has to note that, in order to claim for provisional damages, it must be pleaded in his statement of claim. Where an application is made for an award of provisional damages, the defendant may at any time make a written offer to pay a sum in satisfaction of the plaintiff's claim for his present injuries and agreeing to the making of an award for provisional damages. The plaintiff is given 21 days to accept. If the offer is accepted, the plaintiff applies to the court by summons for the appropriate order. For more information concerning personal injuries litigation, please go to another topic - Personal Injuries. 11. IF THE DEFENDANT WINS THE CASE, HIS LEGAL COSTS MAY BE RECOVERED FROM THE PLAINTIFF. WHAT CAN THE DEFENDANT DO IF HE IS WORRIED THAT, IN THE EVENT OF DEFEATING THE PLAINTIFF'S CLAIM, THE PLAINTIFF WOULD BE UNABLE TO MEET ANY ORDER FOR LEGAL COSTS MADE AT THE TRIAL? 11. IF THE DEFENDANT WINS THE CASE,

HIS LEGAL COSTS MAY BE RECOVERED FROM THE PLAINTIFF. WHAT CAN THE DEFENDANT DO IF HE IS WORRIED THAT, IN THE EVENT OF DEFEATING THE PLAINTIFF'S CLAIM, THE PLAINTIFF WOULD BE UNABLE TO MEET ANY ORDER FOR LEGAL COSTS MADE AT THE TRIAL? In such a case, the defendant may consider making an application for the plaintiff to provide security for costs. If the application is granted, the plaintiff will be required to pay a specified sum of money into court (similar to a deposit) within a specified period. Normally, the proceedings will be temporarily halted until the plaintiff complies with the order for the payment of security for costs. In the event of the defendant being successful in defeating the plaintiff's claim, the money paid by the plaintiff can be used to settle the defendant's legal costs. The defendant can rely on any of the following grounds to make the application: the plaintiff is ordinarily resident out of Hong Kong; the plaintiff, not being a plaintiff who is suing in a representative capacity, is a nominal plaintiff who is suing for the benefit of some other person and there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; the plaintiff's address is not stated in the writ or other court documents or is incorrectly stated there (unless the court is satisfied that the failure to state the address or the misstatement was made innocently and without intention to deceive); the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation; or if the plaintiff is a limited company registered in Hong Kong or a company incorporated outside Hong Kong, the defendant can use section 905 of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong) – i.e. "if it appears on credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence". This application is made in chambers (not in open court) by means of a summons. Before making this application to the court, the defendant should send a written request to the plaintiff asking for the security payment. The defendant should prepare an affidavit or affirmation to support the application. However, no affidavit/affirmation is necessary if the grounds upon which the defendant relies is the fact that the plaintiff is ordinarily resident out of Hong Kong and that fact is stated on the writ. The summons or affidavit/affirmation should indicate the amount of security required, and a skeleton bill of costs (a detailed list of all the relevant items) should be prepared to show how that amount is made up. Although this application may be made at any stage of the proceedings, it should not be made too late or too close to the trial. This is because any delay may count against the defendant when the court considers the application. C. SETTLING DISPUTES OUT OF THE COURT C. SETTLING DISPUTES OUT OF THE COURT You may settle your dispute at any stage of the proceedings before the court passes judgment. Indeed, whether or not you can afford legal costs or you have legal aid, you should explore the possibility of settling your dispute before the case proceeds to trial. You should bear in mind that a reasonable compromise not only saves your time and expense but also the worry and psychological pressure of litigation. By making a proposal to the other party for settlement, you are not admitting that your case is weak. You are only suggesting a practical solution to solve the dispute more amicably. When making proposals to the other party for settlement, you may protect your own position by specifying clearly that the proposals are for settlement only and they are not binding on you if the matter goes to trial in court. You may get this protection by marking your letters concerning any such offer of settlement with the term "without prejudice", which means that you and the other party agree that the contents of the letters can not be used in court should the matter come to trial. If you and the other party have been able to settle the case yourselves, you should inform the court immediately, particularly when the trial date has already been fixed. You may file a notice to discontinue the case (note), or file a consent application setting out your agreement with the other party. You may also apply to the court at the trial to have the terms of settlement made an order of the court (i.e. applying to the judge for granting an order, which contains the proposed settlement terms). (Note: You can find a sample notice of discontinuance on the Judiciary webpage. For cases in the District Court, please click here. For cases in the High Court, please click here. You can also get the relevant form at the Registries of the High Court or District Court or at the Resource Centre for Unrepresented Litigants.

) B. SANCTIONED OFFERS AND SANCTIONED PAYMENTS B. SANCTIONED OFFERS AND SANCTIONED PAYMENTS After commencement of proceedings, both the plaintiff and the defendant can make settlement offers by way of “sanctioned offer” and/or “sanctioned payment”. Offers of settlement can relate to the whole or part of the claims (whether monetary or non-monetary), any claim within the proceedings or a part thereof, and even issues within claims. Notice of “sanctioned offer” and “sanctioned payment” must be given to the other party in writing (see judiciary.hk). What is a “sanctioned offer”? At any time after the commencement of proceedings, any party may offer in writing to settle a claim or part of it on less stringent terms than the pleaded case. A plaintiff may offer to accept a lesser amount in full satisfaction of what he claims in his pleadings. When a plaintiff makes a sanctioned offer to settle a monetary claim, no payment into court is required. A defendant may also make a sanctioned offer to settle non-monetary claims. What is a “sanctioned payment”? At any time after the proceedings have begun, a defendant may make a payment into court in settlement or all or part of a plaintiff’s claim. Consequence of Acceptance of “sanctioned offer” and “sanctioned payment” Once accepted by the other party, the case is resolved in whole or in part according to the terms of the “sanctioned offer” or “sanctioned payment”. The plaintiff will normally be entitled to his costs up to either: (1) the date of his acceptance of the defendant’s “sanctioned offer” or “sanctioned payment”; or (2) the date of the defendant’s acceptance of the plaintiff’s “sanctioned offer” or “sanctioned payment”, as the case may be. Consequence of Non-acceptance of “sanctioned offer” and “sanctioned payment” If a plaintiff decides to proceed to trial but he is not able to get a better result than the defendant’s “sanctioned offer” or “sanctioned payment”, the plaintiff may have to bear the defendant’s costs after the latest date when the “sanctioned offer” or “sanctioned payment” could have been accepted. He may have to bear costs on an indemnity basis with interest running on such costs at a penalty rate of up to 10% over the judgment rate. By the same token, if a defendant fails to improve upon the “sanctioned offer” of the plaintiff, he may have to bear the plaintiff’s costs, with some portion of those costs being charged on an indemnity basis from an appropriate date and with interest running thereon at up to 10% above judgment rate. He may also have to pay the whole or part of any sum awarded to the plaintiff at up to 10% over judgment rate. The Court has discretion on costs and the penal interest rate chargeable. The Court will consider: the terms of the “sanctioned offer”; the stage in the proceedings when the “sanctioned offer” was made; the information available to the parties at the time when the “sanctioned offer” was made; and the conduct o the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated. 1. WHAT IS A DISCOVERY (DISCLOSURE) OF DOCUMENTS? 1. WHAT IS A DISCOVERY (DISCLOSURE) OF DOCUMENTS? After the close of pleadings, within 14 days, each party to a civil action must disclose to the other the documents it possesses that relate to the case in the form of a list. This list is called a list of documents. (Note: When both parties have set out all their facts in the statement of claim, defence (or defence and counterclaim) and reply to defence (or defence to counterclaim), the pleadings are considered to have been closed.) It should be borne in mind that the parties have to disclose all documents relevant to the case that are in their possession or within their custody or control, even if some of them are harmful to their own case. Each party can also inspect the documents on the other party’s list. For the purpose of the list of documents, documents include paper documents, photographs, audio or video tapes, or electronic data contained in any tapes, discs or other electronic means. The documents to be included in the list of documents should be set out in a chronological order and the list of documents should be prepared in accordance with a specified form, which is obtainable from the Registries of the High Court and the District Court and the Resource Centre for Unrepresented Litigants. Please visit the website of the Resource Centre for Unrepresented Litigants to obtain more guidelines for preparing a list of documents and a sample list of documents. Two important points to note are as follows: If a party thinks that he has documents which are privileged (i.e. documents that the party can refuse to disclose to the other party under the law), he should put them under the category of privileged documents in the

list. He may refuse to disclose them or let the other party inspect them. If there is a dispute about whether or not the documents are privileged, the court will make a final decision. If a party considers that the other party has certain documents relevant to the case but has not yet disclosed them, he can apply to the court for an order compelling the other party to disclose those documents. If the court makes that order and the other party does not comply with it, an application can be made to the court for an order to enter judgment against the party that has not complied with the disclosure order (in which case the defaulting party will lose the whole case). Both sides must also allow the other side to inspect the actual documents. 2. WHAT IS AN EXCHANGE OF WITNESS STATEMENTS? 2. WHAT IS AN EXCHANGE OF WITNESS STATEMENTS? Normally, to prove one's case, apart from documentary evidence, one may also need to rely on oral evidence of certain persons who have witnessed certain facts relevant to any issues to be decided at the trial. If such oral evidence is relied upon by parties to a civil action, then before the commencement of the trial, the court normally directs that each party has to serve on (deliver to) the other party written statements of such oral evidence, within a specified period of time. These statements are called witness statements. Witness statements are not made on oath and are different from affidavits or affirmations. Witness statements will only be accepted as evidence by the court when the witnesses (who are the authors of these statements) confirm the contents to be true on oath in court at the trial. Witness statements should be prepared with proper care and attention. This is because the court usually orders that a witness statement stands as the witness's evidence-in-chief (or "examination-in-chief") at the trial. A good witness statement should be concise in style but comprehensive in contents, covering all the facts relevant to the case. Further explanatory notes for preparing a witness statement and a sample witness statement can be obtained from the Resource Centre for Unrepresented Litigants . Some important points to note are as follows: If the plaintiff and the defendant intend to give their own oral evidence in court, they should prepare their own witness statements as well. However, it is important to note that the plaintiff and the defendant can elect not to give evidence during the trial but only call their witnesses to give evidence. A witness statement should commence with the full name, address, occupation and the position held by the witness. It should then follow the chronological sequence of the relevant events (in separate numbered paragraphs), and be expressed in the witness's own language. The witness statement must only contain such facts as the witness can prove of his own knowledge (e.g. what he actually saw or heard). If what has been mentioned in the statement is not within the witness's personal knowledge, the court may refuse to admit it as evidence or give little or no weight to it. The witness should sign his name at the end of his statement. The parties must exchange their witness statements and file them with the court in accordance with any specific directions given by the court for those statements. A party who fails to comply with the court's directions may be prevented from giving any evidence affected by such directions. 3. WHAT SHOULD BE NOTED ABOUT EXPERT WITNESSES? SHOULD I CALL THEM TO GIVE EVIDENCE FOR MY CASE? 3. WHAT SHOULD BE NOTED ABOUT EXPERT WITNESSES? SHOULD I CALL THEM TO GIVE EVIDENCE FOR MY CASE? Sometimes, a case may involve technical matters which are likely to be outside the experience and knowledge of the parties and the judge. Examples include: a doctor to explain a medical report, a surveyor to advise on the value of a property, an engineer to explain a mechanical & engineering problem, a psychologist to explain the mental behaviour of a victim, etc. The parties and the judge may therefore find it beneficial to have some experts in the particular field of knowledge involved to help them understand the relevant issues. The major shortfalls on calling expert witnesses are the extra costs and time incurred. If the parties want to call expert witnesses to give evidence at the trial, they have to apply for leave (permission) from the court. The court may grant leave to the parties with appropriate directions (e.g. the number of expert witnesses from each side, the time allowed for the parties to file and exchange their expert reports, etc). A party who fails to comply with these directions may be disallowed to give expert evidence at the trial. Alternatively, the court may order that judgment be entered against a defaulting party who deliberately refuses to comply with the directions of the court without a valid reason. If the court

makes that judgment, the defaulting party will have lost the whole case. 5. WHAT ARE THE OTHER GENERAL MATTERS THAT I SHOULD PAY ATTENTION TO CONCERNING THE CONDUCT OF CIVIL ACTIONS IN COURT? 5. WHAT ARE THE OTHER GENERAL MATTERS THAT I SHOULD PAY ATTENTION TO CONCERNING THE CONDUCT OF CIVIL ACTIONS IN COURT? A litigant in person is required to comply with the rules or the procedures for court proceedings, on the principle that all parties are equal before the court. Language 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. Document exchange with the other party 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 them notice. For the same reason, you should check your mail-box 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 then trying to tell the court at the hearing that you had no notice of the court documents. Court attendance You will only be required to attend court upon notice or by summons (i.e. application by a party to the civil action). You may make inquiries at the relevant Court Registry (depending on which court or tribunal handles your case). You must be punctual in attending court. During the hearing or trial At a hearing or the trial, you should act according to the direction of the judge or master. The parties will take turns to make speeches. You may make notes of anything you disagree with and put forward your arguments when your turn comes to speak. You may refer to the relevant case law, legislation or other materials in support of your arguments. It is important that you behave properly in court. You must not use abusive language or remarks. Although the atmosphere during an argument will sometimes become heated or even emotional, you should bear in mind that the best way to put forward your argument is to speak in a calm, cool and polite manner. Therefore, you should control your temper in court. After the hearing or trial After a hearing or the trial, if the judge or master gives a decision and the reasons orally, you should not intervene even if you do not agree with the judge or master. It is no use to argue with the judge or master. If you are dissatisfied with the decision of the master or the judge, you have the right to appeal against that decision (unless it is from the Court of Final Appeal). Contact with the judge You should never directly contact the judge or master by any means in the course of a civil action. You should address your letters to the clerk of the relevant judge or master. You should also send a copy of any such letters to the other party as well. You should not send letters to the judge or master to state the merits of your case. Your case should be clearly set out in the documents which you file in court to support your case. 1. HOW DO I (AS THE DEFENDANT) CALCULATE THE PERIOD OF 14 DAYS ALLOWED FOR FILING THE ACKNOWLEDGMENT OF SERVICE FORM? 1. HOW DO I (AS THE DEFENDANT) CALCULATE THE PERIOD OF 14 DAYS ALLOWED FOR FILING THE ACKNOWLEDGMENT OF SERVICE FORM? A writ served on the defendant personally (i.e. delivered by hand) is treated as having been served on the day it was delivered to the defendant. A writ served by post or by insertion through the defendant's letter box is normally treated as having been served on the seventh day after the date of posting or insertion. However, if there is actual evidence showing the date when the posted or inserted writ actually came to the notice of the defendant, then that date would be treated as the date of service. The period of 14 days allowed for filing the acknowledgment of service form is to be calculated from (and including) the date of service. 2. SHOULD I DEFEND A CLAIM THAT IS STARTED AGAINST ME? 2. SHOULD I DEFEND A CLAIM THAT IS STARTED AGAINST ME? On the acknowledgment of service form, you need to state whether you wish to defend the action brought against you by the plaintiff or not. Therefore, upon receipt of a writ of summons, you should first consider whether you should defend the claim. Apart from considering whether you have a legal basis to defend the claim brought against you, you should also consider the

matters set out in the section "Matters to be considered before starting a civil action". In particular, you should be aware that if you defend the case and end up losing the case, you will normally be ordered to pay costs (this generally means legal costs) to the plaintiff. You are not exempt from this even if you are a litigant in person (defending yourself without appointing a lawyer). 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 lawyers representing the winning party (if any). The amount of the costs can be substantial, depending on the complexity of the case, the preparation work required and the length of the hearing. You are recommended to obtain legal advice before deciding whether or not you should defend a claim brought against you. 3. WHAT SHOULD I DO IF I DECIDE NOT TO DEFEND THE CASE? 3. WHAT SHOULD I DO IF I DECIDE NOT TO DEFEND THE CASE? You may fill in and file an acknowledgement of service indicating that you are not going to contest the proceedings. And in case of a pure monetary claim, you can make an admission by filling in, filing and serving the Forms 16 or 16C as attached in the Writ of Summons (or Originating Summons). In the Forms 16 or 16C, you may indicate whether you admit whole or part of the claim by the Plaintiff, and make payment proposal. Please note that the Forms 16 or 16C is required to be made on oath. 4. WHAT SHOULD I DO IF I DECIDE TO DEFEND THE CASE? 4. WHAT SHOULD I DO IF I DECIDE TO DEFEND THE CASE? If you wish to defend the claim brought against you by the plaintiff, you should file an acknowledgement of service at the Court Registry, stating in it whether you intend to contest the claim within 14 days after being served with the writ. The Court will send a copy of it to the plaintiff. You should then file and serve on the plaintiff a defence (explaining why you are disputing the plaintiff's claim) and a counterclaim against the plaintiff (if any). The defence and counterclaim have to be verified by a statement of truth. This has to be done before the expiration of 28 days after the time limited for acknowledging service of the writ or after the statement of claim is served on you, whichever is the later. Some explanatory notes about how to prepare a defence and counterclaim, and a sample defence and counterclaim, can be obtained from the Resource Centre for Unrepresented Litigants. One further point to note is that if you intend to defend the claim, you must specifically answer each and every allegation as set out in the plaintiff's statement of claim. In other words, you must reply in accordance with every point as written on the plaintiff's statement of claim. It will be deemed (considered) that you admit to any allegations that you do not specifically deny in your defence. (Note: The same applies to the plaintiff pleading to the counterclaim of the defendant.) 5. WHAT HAPPENS IF THE DEFENDANT DOES NOT FILE AN ACKNOWLEDGMENT OF SERVICE FORM OR A DEFENCE? 5. WHAT HAPPENS IF THE DEFENDANT DOES NOT FILE AN ACKNOWLEDGMENT OF SERVICE FORM OR A DEFENCE? If the defendant does not file an acknowledgment of service or a defence within the time allowed, the plaintiff can apply to the court for judgment in favour of his claim. In such a case, a full trial is not required. If the claim is related to a debt or liquidated damages (i.e. where the amount of the claim is fixed and ascertainable), such as an action on a dishonoured cheque, the plaintiff may enter judgment for the amount claimed and the relevant legal costs. Interlocutory judgment will be entered instead if the plaintiff is claiming for unliquidated damages (i.e. where the amount of damages has to be assessed by the court), for example, for loss of profits or damages for injury to person or property. In such a case, the plaintiff will have to appear in court so that a judge or a master can assess the amount of damages he is entitled to. 6. WHAT HAPPENS IF THE DEFENDANT FILES A DEFENCE (AND COUNTERCLAIM)? 6. WHAT HAPPENS IF THE DEFENDANT FILES A DEFENCE (AND COUNTERCLAIM)? The plaintiff may file a reply to a defence within 28 days after receiving the defence, setting out additional facts in answer to the defence. However, even if the plaintiff does not file a reply, the allegations in the defence are deemed to be denied by the plaintiff. If the defendant files a counterclaim, the plaintiff will have to file a defence to the counterclaim within 28 days after the counterclaim is served on the plaintiff, if the plaintiff wishes to dispute it. The defendant can apply for a court judgment against the plaintiff, in default of defence to the counterclaim, if the plaintiff fails to dispute the counterclaim within the allotted time. You should note that as far as the counterclaim is concerned, the plaintiff has become a defendant.

There are no prescribed forms for a reply or defence to a counterclaim. The plaintiff should combine the reply and any defence to the counterclaim in one single document. Please click here for more guidelines (given by the Resource Centre for Unrepresented Litigants) for preparing a reply and defence to a counterclaim, and to get a sample of this document. The pleadings are closed 14 days after the filing of the defence and counterclaim. 7. IF THE DEFENDANT CONSIDERS THAT HE DOES IN FACT OWE THE PLAINTIFF SOME MONEY, WHAT ACTION CAN BE TAKEN BY THE DEFENDANT? 7. IF THE DEFENDANT CONSIDERS THAT HE DOES IN FACT OWE THE PLAINTIFF SOME MONEY, WHAT ACTION CAN BE TAKEN BY THE DEFENDANT? The Defendant can file and serve Form 16 (or Form 16C as the case may be) by filling in expressly how much the amount he is going to admit. If the Plaintiff accepts the amount admitted by the Defendant, he can then file and serve a Form 16A (or Form 16D as the case may be) and request the Court to enter judgment on the amount you offered with costs. Conversely, if the Plaintiff does not accept the Defendant's amount admitted, he will file and serve a Form 16B (or Form 16E as the case may be) to reject it, and in such circumstances the case maybe proceeded as if the Defendant contests the proceedings. Unless and until the Plaintiff filed the above prescribed forms in response to the Defendant's admission, his claim will be stayed. Furthermore, the Defendant may consider making a "sanctioned payment", i.e. a payment into court pursuant to Order 22 of the Rules of the High Court (Cap. 4A) or the Rules of the District Court (Cap. 336H) as a settlement offer to the Plaintiff. The advantage of "sanctioned payment" is that if the Defendant's sanctioned payment is not accepted by the Plaintiff, and the Plaintiff fails to obtain a judgment better than the 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. This potential draconian consequence may serve as an incentive for the Plaintiff to reflect on his position and seriously consider the Defendant's offer. 1. WHY MAY MY LEGAL FEES NOT BE FULLY REIMBURSED EVEN THOUGH I HAVE WON THE CASE AND THE COURT HAS ORDERED THE OTHER SIDE TO PAY ME THE LEGAL COST? 1. WHY MAY MY LEGAL FEES NOT BE FULLY REIMBURSED EVEN THOUGH I HAVE WON THE CASE AND THE COURT HAS ORDERED THE OTHER SIDE TO PAY ME THE LEGAL COST? First, whether you could recover any legal costs from the losing party depends on that party's ability to pay. It means that if the losing party is insolvent, you may be unable to recover any legal costs even though there is a costs order granted by the Court in favour of you. Second, even if the losing party has the ability to pay, the amount to be paid will be subject to agreement or taxation. Generally speaking, the winning party in a litigation can only recover about 60% to 70% of the legal costs actually incurred the under the normal scale of party and party taxation. For more details of taxation, please refer to "Can I recover all my legal costs if the court orders another party to pay my legal costs?". 2. DOES THE COURT NECESSARILY ORDER THE LOSING PARTY TO FULLY PAY THE LEGAL COST OF THE WINNING PARTY? WHAT ARE THE POSSIBLE CAUSES THAT MAKE THE COURT ORDERS DIFFERENTLY? 2. DOES THE COURT NECESSARILY ORDER THE LOSING PARTY TO FULLY PAY THE LEGAL COST OF THE WINNING PARTY? WHAT ARE THE POSSIBLE CAUSES THAT MAKE THE COURT ORDERS DIFFERENTLY? No. Subject to statutory provisions, the court has an unfettered discretion on the matter of costs. Sometimes, the losing party may well before the commencement of proceedings or trial offer a reasonable settlement offer. If the winning party refuses the proposal and then wins the case at trial but fails to beat the offer, the court may refuse to award costs to the winning party. Furthermore, if there are some unreasonable litigation conducts on the part of the winning party throughout the proceedings (i.e. insist on running some unmeritorious points at trial), the court may exercise discretion to refuse costs (all or part) being awarded to the winning party. 9. IF I DO NOT MIND AFFORDING TIME AND MONEY AT ALL, CAN I START A CIVIL ACTION JUST TO MAKE TROUBLE FOR THE DEFENDANT, EVEN THOUGH MY CASE IS WEAK? 9. IF I DO NOT MIND AFFORDING TIME AND MONEY AT ALL, CAN I START A CIVIL ACTION JUST TO MAKE TROUBLE FOR THE DEFENDANT, EVEN THOUGH MY CASE IS WEAK? It should be strongly discouraged. First, the Court has the power to make a restricted proceedings order ("RPO") to prohibit a litigant from commencing any fresh proceedings on matters which have already been determined by the Court, if the litigant has abused, and is

likely to continue abusing, the Court’s process by seeking persistently to re-litigate it in fresh proceedings without viable legal grounds. In a more serious situation, if a person has habitually, persistently and without any reasonable ground instituted vexatious legal proceedings (even though not on the same subject matter), the Court can even make an Order restraining him or her from instituting any legal proceedings under section 27 of the High Court Ordinance (Cap. 4). 10. WHAT CAN BE CLAIMED IN A GENERAL CIVIL ACTION? WHAT ARE THE EXAMPLES OF CLAIMS ON AN UNLIQUIDATED SUM? APART FROM A SUM OF MONEY (LIQUIDATED OR NOT), ARE THERE ANY OTHER POSSIBLE CLAIMS THAT CAN BE MADE IN A CIVIL ACTION? 10. WHAT CAN BE CLAIMED IN A GENERAL CIVIL ACTION? WHAT ARE THE EXAMPLES OF CLAIMS ON AN UNLIQUIDATED SUM? APART FROM A SUM OF MONEY (LIQUIDATED OR NOT), ARE THERE ANY OTHER POSSIBLE CLAIMS THAT CAN BE MADE IN A CIVIL ACTION? Generally, the major claims by the parties in a civil action can be divided into three categories, i.e. (1) monetary claim; (2) non-monetary claim; or (3) a mixed claim (comprising both monetary and non-monetary claims). For monetary claim, it can be sub-divided into a liquidated claim (which does not require the Court’s assessment of loss such as suing for a fixed sum of debt) or an unliquidated claim (which the amount requires the Court’s assessment). Common examples of unliquidated claim include suing for damages for negligence or for breach of contract where the loss suffered by the Plaintiff needs to be assessed by the Court. Apart from monetary claim (liquidated or not), some other common examples that the plaintiff may also claim in a civil action includes: Injunction (to order the defendant to rectify or prohibit his or her wrongdoing); Declaration (by the court as to a party’s right); and Possession of land (for example in a trespass case). 11. WHAT INFORMATION ABOUT A CIVIL CASE CAN BE DISCLOSED TO THE PUBLIC? ARE ALL THE EVIDENCE, DOCUMENTS, OR WITNESS STATEMENTS AVAILABLE FOR PUBLIC INSPECTION? 11. WHAT INFORMATION ABOUT A CIVIL CASE CAN BE DISCLOSED TO THE PUBLIC? ARE ALL THE EVIDENCE, DOCUMENTS, OR WITNESS STATEMENTS AVAILABLE FOR PUBLIC INSPECTION? In general, only the originating process (i.e. Writ of Summons or Originating Summons in a general civil case) is available for public search in the Court’s Registry. All the pleadings (unless they are endorsed in the Writ of Summons), witness statements and documentary evidence are not available for public inspection. Furthermore, in light of the inherent sensitive and confidential nature, the originating processes of some kinds of civil cases such as family, personal injuries or bankruptcy cases will not be available for public search. 1. WOULD JUDGES TAKE INTO CONSIDERATION THAT THE LITIGANTS IN PERSON ARE DISADVANTAGED IN UNDERSTANDING COURT PROCEDURES AND GIVE LEGAL ADVICE TO THEM? 1. WOULD JUDGES TAKE INTO CONSIDERATION THAT THE LITIGANTS IN PERSON ARE DISADVANTAGED IN UNDERSTANDING COURT PROCEDURES AND GIVE LEGAL ADVICE TO THEM? The judge is the administrator of the law and is neutral in adjudicating cases between the parties no matter whether they are legally represented or not. Therefore, the judge will not and cannot give any legal advice to litigants in person. 2. CAN I ASK A FRIEND TO SPEAK AND REPRESENT ME IN COURT? 2. CAN I ASK A FRIEND TO SPEAK AND REPRESENT ME IN COURT? A litigant in person is allowed to have a friend sitting with him who can give him advice and help him with the presentation of his case. It is commonly called a "McKenzie" friend, but he does not have a right of audience in the Court. Generally only the litigant in person or his or her legal representative(s) has the right of audience before the court. Currently, there is a Legal Advice Scheme for Unrepresented Litigants on Civil Procedures (Procedural Advice Scheme) launched by the Government. It may provide free legal advice on civil procedural matters for eligible unrepresented litigants. For details, please visit: https://www.admwing.gov.hk/eng/public_service/paso.html. Unrepresented litigant may also consider to seek assistance from the Resource Centre for Unrepresented Litigants of the Judiciary. For details, please visit: https://rcul.judiciary.hk/rc/eng/aboutReso.jsp. 11. CAN I START A CIVIL ACTION AGAINST SOMEONE: (A) WITHOUT A PERMANENT ADDRESS? (B) ORDINARILY RESIDES OUTSIDE HONG KONG? (C) WHO IS MISSING? (D) WHOSE NAME IS UNKNOWN? 11. CAN I START A CIVIL ACTION AGAINST SOMEONE: (A) WITHOUT A PERMANENT ADDRESS? (B) ORDINARILY RESIDES OUTSIDE HONG KONG? (C) WHO IS MISSING? (D) WHOSE NAME IS UNKNOWN? (a) Yes. The court does not require the defendant to have a permanent address before one can commence proceedings against him or her. There are a number of legally acceptable ways of serving the originating legal process (i.e. Writ of Summons or Originating Summons)

on the defendant. Some common ways are: serving the legal process on him or her personally. sending the legal process (enclosed in a sealed envelope) by registered post to the defendant at his/her usual or last known address. inserting the legal process through the letter box of the usual or last known address of the defendant. Therefore, if the plaintiff believes that the defendant will leave Hong Kong soon, it is advisable for him or her to commence proceedings immediately and serve the legal process on him or her as soon as possible in Hong Kong. (b) Yes. However, you will need to apply for leave from the Court if you want to serve the legal process out of the jurisdiction of Hong Kong on specified grounds set out in Order 11 of the Rules of the High Court (Cap. 4A) or the Rules of the District Court (Cap. 336H). (c) Yes. The court does not prohibit you from commencing a legal proceedings against a defendant even though the defendant is missing. However, as the plaintiff, you have the duty to serve the legal process and bring the legal proceedings to the defendant's attention. If the defendant is missing and it is impracticable to serve documents on him or her in the manner prescribed by the court rules, you may consider applying to the court for substituted service of the legal process on the defendant (for example, effecting service by advertising the legal proceedings on newspaper). The plaintiff in such circumstances must satisfy the Court that (1) service on the defendant was attempted but in vain and that the Plaintiff has exhausted all reasonable means to serve on the defendant; and (2) the proposed mode(s) of substituted service can reasonably bring notice of the proceedings to the defendant. (d) Yes, instituting an action against an unnamed defendant who is identified by description is permissible where the circumstances so warrant. The crucial point is that the description of the defendant must be sufficiently certain so as to identify those who are included and those who are not. For example, if the plaintiff's land is trespassed and unlawfully occupied by some unknown trespasser(s) or occupier(s) and he would like to institute a legal proceedings for recovery of land, one possible description of the defendant in such situation could be "All Occupier(s) the [full address of the land]". 12. WHAT IS PLEADING? WHAT DOCUMENTS DO THE PLAINTIFF AND DEFENDANT NEED TO SERVE IN THE PLEADING STAGE? 12. WHAT IS PLEADING? WHAT DOCUMENTS DO THE PLAINTIFF AND DEFENDANT NEED TO SERVE IN THE PLEADING STAGE? Pleadings are the court documents that set out each party's case, including all material facts, the grounds of claim and the reliefs sought (if applicable). Common types of pleadings include "statement of claim" (for plaintiff), "defence (and counterclaim)" (for the defendant), "reply (and defence to counterclaim)" (for the plaintiff), and "further and better particulars" of pleadings. Subject to the Court's discretion, unpleaded case/points may not be run in the trial. Only the material facts in support of the party's case (but not the documents or evidence) should be included in the pleadings. For example, in a claim for breach of contract, the terms of contract may be the material facts that needs to be pleaded in the pleadings, while the signed contract itself is a documentary evidence in support of your case. If necessary, a point of law may be pleaded in the pleadings. All of the pleadings need to be verified by a Statement of Truth. The pleadings are deemed to be closed at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after the service of the defence to counterclaim. If neither a reply nor a defence to counterclaim is served, the pleadings are deemed to be closed at the expiration of 28 days after the service of the defence. 13. WHAT ARE THE GENERAL PRINCIPLES OF DRAFTING A GOOD PLEADING? 13. WHAT ARE THE GENERAL PRINCIPLES OF DRAFTING A GOOD PLEADING? A good pleading shall be a precise and concise document containing all (and only) the material facts with sufficient particularity that clearly support and set out the party's case. Further, it shall also be able to easily assist the Court to define and narrow the scope of the issues in dispute at the trial. 14. WHAT WOULD BE THE CONSEQUENCE IF THE PLAINTIFF EXAGGERATES THE AMOUNT TO BE CLAIMED AND EXPECTS THE DEFENDANT TO MAKE OFFERS AT A CUT? 14. WHAT WOULD BE THE CONSEQUENCE IF THE PLAINTIFF EXAGGERATES THE AMOUNT TO BE CLAIMED AND EXPECTS THE DEFENDANT TO MAKE OFFERS AT A CUT? The plaintiff may be suffering from adverse costs consequence even if he or she eventually wins the case or obtains damages from the defendant. For example, if the plaintiff exaggerates his or her claims (over HK$3,000,000) resulting in the action being wrongfully commenced in the

High Court and ultimately the settlement amount or offer from the defendant is much lower (below HK$3,000,000) and falls within the jurisdiction of the District Court, the court may refuse to award costs to the plaintiff on the High Court scale (which is a higher and more favourable scale to the winning party). 15. WHEN SHOULD I HAND IN MY EVIDENCE? SHOULD I ATTACH THEM TO THE STATEMENT OF CLAIM OR ORIGINATING SUMMONS? 15. WHEN SHOULD I HAND IN MY EVIDENCE? SHOULD I ATTACH THEM TO THE STATEMENT OF CLAIM OR ORIGINATING SUMMONS? The Statement of Claim or other pleadings, or the originating process (i.e. Writ of Summons or Originating Summons) shall not contain or be attached with any evidence. You will have the chance to file and exchange the evidence with the other party to the proceedings at the stage of discovery after the close of pleadings. 8. I AM THE DEFENDANT OF A CIVIL ACTION BUT I BELIEVE ANOTHER PARTY SHOULD BE RESPONSIBLE FOR THE PLAINTIFF' S CLAIM INSTEAD. WHAT SHOULD I DO? 8. I AM THE DEFENDANT OF A CIVIL ACTION BUT I BELIEVE ANOTHER PARTY SHOULD BE RESPONSIBLE FOR THE PLAINTIFF' S CLAIM INSTEAD. WHAT SHOULD I DO? In case that party is already one of the defendants in the action, you shall issue and serve that co-defendant a notice (known as "contribution notice") containing a statement of the nature and grounds of his claim against that party, or the question or issue required to be determined by the Court (as the case may be) (including the reason why that party shall be ultimately responsible for the Plaintiff' s claim). Upon service of the said notice on the co-defendant, that co-defendant will need to and have the right to defend your claim made against him in the said notice as if there is a separate proceedings against him. It is usually called a "Third Party Proceedings". If that co-defendant contests your claim, then you as the de facto plaintiff in the Third Party Proceedings will need to apply to the Court for further directions by way of summons. (Please see Order 16, rules 4 and 8 of the Rules of the High Court or the Rules of the District Court for details) 4. HOW WILL THE COURT GIVE DIRECTIONS FOR THE MANAGEMENT OF A CASE BEFORE THE COMMENCEMENT OF A TRIAL? 4. HOW WILL THE COURT GIVE DIRECTIONS FOR THE MANAGEMENT OF A CASE BEFORE THE COMMENCEMENT OF A TRIAL? In order for the Court to manage and monitor the progress of a civil action and to ensure that all preparations before trial will be conducted in a proper manner (including discovery, exchange of witness statements and exchange of experts' reports (if any)), the following steps shall be taken by the parties after close of pleadings. 1. Within 28 days of the closing of pleadings, parties to the proceedings shall file and serve their respective Timetabling Questionnaire ("TQ") to provide information about their cases, and propose case management directions for the Court' s consideration. 2. Then the Plaintiff shall take out a Case Management Summons with the Court to fix a Case Management Summons Hearing ("CMS Hearing") before the court so that the court can give the appropriate directions to the parties to prepare the case for trial, such as fixing the timetable for the parties to exchange list of documents, to exchange witness statement, and to prepare expert report (if appropriate) etc. 3. In giving the case management directions as aforesaid, the Court will usually adjourn the CMS Hearing or fix a Case Management Conference ("CMC"). In case of the adjourned CMS hearing, an updated TQ will need to be filed and served before the next hearing. For the CMC, a Listing Questionnaire together with a CMC Bundle will be required to be filed and served beforehand. SETTLEMENT VI. SETTLEMENT REMOTE HEARING XII. REMOTE HEARING In light of the COVID-19 pandemic in 2020 which disrupted the court business, the Court has been gradually expanded the use of remote hearing (without requiring the physical presence of the litigants or their legal representatives in Court) to conduct court business by way of using the telephone or video-conferencing facilities (VCF). A. Use of video conferencing facilities (VCF) for hearings Use of VCF is one of the common ways to conduct remote hearing for court business. The Court will consider which cases, for which hearings have been fixed for future dates, might be suitable for disposal (in whole or in part) by a remote hearing using VCF, and give appropriate directions to the parties in advance. It is a case management question within the discretion of the Court. Sometimes, parties to the proceedings may make application to the Court for use of VCF. For example, a witness is residing overseas and unable to return to Hong Kong to give evidence in Court personally due to travel restrictions, and the party may want to apply to the Court to receive the witness' s evidence via VCF. In making the case management

decision as to whether the hearing shall be dealt with remotely, the court will take into account the views of the parties, the availability of VCF equipment, the subject-matter and nature of the proceedings and whether the proposed use of VCF is likely to promote the fair and efficient disposal of proceedings (including through the avoidance or reduction of delay) and/or to save costs. B. Telephone hearings Use of telephone is another way to conduct remote hearing for court business. Again, the Court will take initiative to consider which case or hearing might be suitable for disposal by a remote hearing using telephone, and give appropriate directions in advance. In light of its nature, telephone hearings will usually be applicable to short directions hearings and 3-minute list. C. Browser-based VCF hearings From 2 January 2021, the court has launched a 'browser-based' VCF option. It is a low-cost option, since court users will only need a normal computer (not a mobile device) with a camera function to connect to the court for VCF hearings. This new option intends to encourage the use of VCF facilities by litigants-in-person. A. PROCEDURES TO SHORTEN THE LEGAL PROCEEDINGS AT AN EARLY STAGE UNDER ORDER 13A - INTRODUCTION AND OBJECTIVES A. PROCEDURES TO SHORTEN THE LEGAL PROCEEDINGS AT AN EARLY STAGE UNDER ORDER 13A - INTRODUCTION AND OBJECTIVES The Order 13A mechanism is a procedure introduced under the Civil Justice Reform in 2009 in order to encourage the parties to consider settlement at early stages of the legal proceedings (usually after the service of Writ of Summons or Originating Summons but before the filing and service of defence). This mechanism intends to save the time and costs of litigation. 1. APPLICATION 1. APPLICATION The Order 13A mechanism is applicable if the Plaintiff's claim concerns monetary claim only. That means if the Plaintiff's claim is a non-monetary claim, or a mixed claim (comprising both monetary or non-monetary claims), Order 13A mechanism is inapplicable. 2. MAKING AN ADMISSION 2. MAKING AN ADMISSION For liquidated money claim, you can make an admission by filling in, filing and serving the Form 16 as attached in the Writ of Summons (or Originating Summons). In the Form 16, you may indicate whether you admit whole or part of the claim by the Plaintiff, and make payment proposal (including payments by instalment). Please note that the Form 16 is required to be made on oath. For unliquidated money claim, you can make an admission by filling in, filing and serving the Form 16C as attached in the Writ of Summons (or Originating Summons). In the Form 16C, you may indicate whether you admit whole or part of the claim by the Plaintiff, and make payment proposal. Please note that the Form 16C is also required to be made on oath. The Forms of Admission shall be filed and served as soon as possible and in any event before the deadline for filing of Defence or affirmation evidence (as the case may be). 3. PROCEDURES SUBSEQUENT TO AN ADMISSION 3. PROCEDURES SUBSEQUENT TO AN ADMISSION For liquidated claim If the plaintiff accepts the defendant's admission and payment proposal, he can file and serve a Form 16A to request for judgment from the Court. If the plaintiff does not accept the payment proposal, he shall file and serve the Form 16A stating the grounds of rejection and the Court will make a determination on paper. In the situation that the defendant makes partial admission on the amount claimed and the plaintiff does not accept the defendant's amount admitted, he will file and serve a Form 16B to reject it, and in such circumstances the case may be proceeded as if the defendant contests the proceedings. For unliquidated claim If the defendant has admitted liability to pay the whole of plaintiff's claim but has not made any payment proposal, the plaintiff shall the file and serve the Form 16D, and the Court will then enter judgment for an amount to be decided by the Court with costs. If the defendant has admitted liability to pay, and offered an amount and/or made payment proposal, the plaintiff shall file and serve the Form 16E, either accepting the proposal (in which the Court will then enter judgment on the terms proposed by the defendant), or rejecting the offer / proposal (in which the Court will give further directions). 1. AS A DEFENDANT OF A CLAIM FOR A LIQUIDATED SUM OF MONEY, IF I PARTIALLY ADMIT THE LIABILITY OF A PLAINTIFF'S CLAIM, WHAT ARE THE DIFFERENCES BETWEEN (1) ADMITTING THE PARTIAL AMOUNT VIA FORM 16 AT THE PLEADING STAGE (IN PURSUANT OF ORDER 13A), AND (2) OFFERING THAT PARTIAL AMOUNT AS A SANCTIONED PAYMENT TO THE PLAINTIFF VIA FORM 23 (IN PURSUANT OF ORDER 22)? 1. AS A DEFENDANT OF A CLAIM FOR A LIQUIDATED SUM OF MONEY, IF I PARTIALLY ADMIT THE LIABILITY OF A PLAINTIFF'S CLAIM, WHAT ARE THE DIFFERENCES BETWEEN (1) ADMITTING THE PARTIAL AMOUNT VIA FORM 16 AT THE

PLEADING STAGE (IN PURSUANT OF ORDER 13A), AND (2) OFFERING THAT PARTIAL AMOUNT AS A SANCTIONED PAYMENT TO THE PLAINTIFF VIA FORM 23 (IN PURSUANT OF ORDER 22)? Making an admission pursuant to Order 13A usually was made an early stage of the proceedings, i.e. before the service of your defence. Therefore, if the plaintiff accepts the admission under Order 13A, only a fixed amount of legal costs will be awarded by the Court and taxation of costs is unnecessary. Also, when you make the admission under Order 13A, you do not need to make payment into Court, and you will only be required to pay the amount once the Court entered judgment against you. There is also no prescribed deadline for the plaintiff to accept the defendant' s admission under Order 13A. However, if the plaintiff does not respond to the Form 16 filed by the defendant (by filing his Forms 16A or 16B, depending on the case), the legal proceedings will be stayed in the meantime. Conversely, when you make a sanctioned payment under Order 22, you need to make the payment into court upfront. Upon the defendant' s service of the notice of sanctioned payment, the plaintiff generally will have 28 days to accept it, otherwise he will need the Court' s leave. If the plaintiff accepts the sanctioned payment within the prescribed time, he will be entitled to costs of the proceedings up to the date of acceptance, unless the Court otherwise orders. But the Court will not award a fixed amount of costs, and such costs may need to be taxed if not agreed. Finally, in case of the non-acceptance of offer by the plaintiff, the stipulated consequences under Order 22 (i.e. if the defendant' s sanctioned payment is not accepted by the plaintiff, and the Plaintiff fails to obtain a judgment better than the payment, the Plaintiff may have to pay the Defendant' s costs on an indemnity basis and enhanced interest (up to 10% above judgment rate etc.)) will only apply in the sanctioned payment, but not admission under Order 13A. 2. IF A DEFENDANT WOULD LIKE TO MAKE A SANCTIONED PAYMENT TO THE PLAINTIFF AT THE PLEADING STAGE (AFTER RECEIVING THE WRIT AND STATEMENT OF CLAIM), DOES HE STILL NEED TO ADMIT THE OFFERED AMOUNT BY FILLING IN FORM 16 OR 16C? 2. IF A DEFENDANT WOULD LIKE TO MAKE A SANCTIONED PAYMENT TO THE PLAINTIFF AT THE PLEADING STAGE (AFTER RECEIVING THE WRIT AND STATEMENT OF CLAIM), DOES HE STILL NEED TO ADMIT THE OFFERED AMOUNT BY FILLING IN FORM 16 OR 16C? Sanctioned payment and Order 13A admission are two different mechanisms with different stipulated consequences as mentioned above. While they are not mutually exclusive with each other, how to make use of these two mechanisms depends on the facts of your case and litigation strategy. You are advised to carefully consider the consequences under two mechanisms as mentioned before making use of any of them. 1. IF A PARTY BELIEVES THAT SOME OF THE CORE PIECES OF EVIDENCE HELD BY THE OPPOSITE PARTY ARE FALSIFIED (E.G., A FALSE LEASE DOCUMENT IN A TRIAL ON LAND), SHOULD HE RAISE IT OUT BY AN INTERLOCUTORY APPLICATION? 1. IF A PARTY BELIEVES THAT SOME OF THE CORE PIECES OF EVIDENCE HELD BY THE OPPOSITE PARTY ARE FALSIFIED (E.G., A FALSE LEASE DOCUMENT IN A TRIAL ON LAND), SHOULD HE RAISE IT OUT BY AN INTERLOCUTORY APPLICATION? The opposite party shall have included the relevant “suspicious” evidence in his List of Documents (including any evidence that disclosed in any interlocutory application) (otherwise the opposite party could not rely on the same at the trial). If a party has sound reason to believe that a piece of documentary evidence disclosed by the opposite party is falsified, he or she shall within 21 days after inspection of the said document serves on the opposite party a notice stating that he or she does not admit the authenticity of that document and requires it to be proved at the trial, otherwise he or she may be deemed to admit its authenticity at trial. 2. ARE THERE ANY EXAMPLES OF INTERLOCUTORY PROCEEDINGS THAT MIGHT BE REGARDED BY THE COURT AS ABUSE OF PROCESS? WHAT ARE THE CONSEQUENCES OF INITIATING SUCH PROCEEDINGS? 2. ARE THERE ANY EXAMPLES OF INTERLOCUTORY PROCEEDINGS THAT MIGHT BE REGARDED BY THE COURT AS ABUSE OF PROCESS? WHAT ARE THE CONSEQUENCES OF INITIATING SUCH PROCEEDINGS? Depending on the facts of the case, one quick example of abuse of court process may be that a litigant repeatedly took out wholly unmeritorious interlocutory application(s) for the purpose of delaying the court proceedings. Apparently, abuse of court process is unwelcomed by the Court, and the Court may order the litigant who took out such kind of applications to pay costs of his opponent on an indemnity basis to show the Court' s disapproval of such conduct. 3. WHAT DOCUMENTS DO THE PARTIES NEED TO PREPARE FOR THE HEARING OF THE INTERLOCUTORY APPLICATION? 3. WHAT DOCUMENTS DO THE PARTIES NEED TO PREPARE FOR THE HEARING OF THE

INTERLOCUTORY APPLICATION? Unless otherwise directed by the Court, the applicant should serve on the other party / parties and lodge with the Court the hearing bundles and his skeleton argument and list of authorities at least 72 hours before the hearing (excluding Saturdays, Sundays and general holidays). The respondent should serve on the other party and lodge with the Court his skeleton argument and list of authorities at least 48 hours before the hearing (excluding Saturdays, Sundays and general holidays). Hearing bundles for interlocutory applications For any contested interlocutory applications listed for more than 30 minutes, the applicant of such application has the duty to prepare the paginated Hearing Bundles for use in the hearing. The Hearing Bundle shall usually contain the following documents:- Copies of the court documents (pleadings, summons, order for directions, affidavits / affirmations, etc.) relevant to the particular application; Copies of the exhibits relevant to the particular application; and Copies of inter partes correspondences relevant to the particular application or appeal (if any). Skeleton arguments for interlocutory applications Skeleton argument is a concise and succinct document which states all the points which a party intends to take and summarize the argument on each of those points. A point not taken or an argument not advanced in a party's skeleton argument may not be pursued at the hearing of the application without the leave of the Court. According to Practice Directions 5.4 issued by the Judiciary, a skeleton argument should outline: (1) the order sought from the Court; (2) the grounds upon which the order is sought; (3) the authorities to be cited with references to passages relied upon (if any); (4) the evidence/documents relied with cross referenced to the Hearing Bundles; and (5) the points of fact, law and procedure to be taken and the arguments on each of such point. Similar with the Hearing Bundles, unless otherwise directed by the Court, the applicant should serve on the other party / parties and lodge with the Court the hearing bundles at least 72 hours before the hearing (excluding Saturdays, Sundays and general holidays). 3. IF A WITNESS IS UNWILLING TO ATTEND THE COURT TO GIVE EVIDENCE, CAN A PARTY FORCE HIM TO DO SO? 3. IF A WITNESS IS UNWILLING TO ATTEND THE COURT TO GIVE EVIDENCE, CAN A PARTY FORCE HIM TO DO SO? In a civil action, if you consider any witnesses to be helpful to your case, you should try to secure their assistance in advance. In that case, you should have already prepared, filed and exchanged their witness statement(s) with the opposite party well before the trial. However, if a witness is unwilling to attend the court to give evidence and you consider his or her evidence to be helpful to your case, you may apply to the Court to authorize the issuance a writ of subpoena (i.e. a witness summons) to compel the witness to attend the trial to give evidence or produce documents. A deposit will need to be paid to cover the witness' s reasonable expenses. 4. CAN THE PARTY PAY HIS WITNESSES TO ATTEND THE COURT TO GIVE EVIDENCE? 4. CAN THE PARTY PAY HIS WITNESSES TO ATTEND THE COURT TO GIVE EVIDENCE? While it is not prohibited for paying any witnesses to attend court to give evidence, in practice such remuneration is usually paid to the expert witnesses. For example, a doctor will testify your extent of injuries in a Personal Injuries Action. Payment to ordinary factual witnesses to secure their attendance in Court to give evidence may be a potential ground for attack of credibility by the opposite party. 6. WHAT ARE OPENING AND CLOSING SUBMISSIONS (INCLUDING LIST OF AUTHORITIES)? 6. WHAT ARE OPENING AND CLOSING SUBMISSIONS (INCLUDING LIST OF AUTHORITIES)? Opening submissions are documents submitted to the Court by the parties before the commencement of the trial. The Court will usually give directions on timetable of lodging and service of the Opening submissions at the PTR. The purpose of opening submissions is to give the Court an introduction of the whole case before the Judge hears or receives evidence. It shall generally outline: Background of the case; The issue(s) of dispute between the parties that require the Court' s adjudication; The applicable legal principles involved in the case; An introduction of the witnesses and evidence to be produced to the Court at the trial; and Any other special features in the case (if any). By contrast, closing submissions is a document submitted to the Court after the Judge had heard and received all the evidence. So its timing of lodgement and service will be directed by the trial judge at the trial. The purpose of closing submissions is to persuade the Court to rule in your favour. It shall generally contain: The analysis of the evidence produced to the

Court at the trial, including your arguments on why the Court shall believe in your case or rule in your favour on an issue in dispute; Your arguments on how the law shall apply to your case (based on the evidence produced to the Court); and The Order(s) that you invite the Court to make. When you are discussing the legal principles and their applications thereof mentioned in your opening and closing submissions, you may draw reference to the authorities such as case law, ordinance or academic books and articles. In that case, you shall separately make a List setting out all the authorities you had cited and relied on in your submissions, and lodge the List with the Court together with your submissions. The said List is called List of Authorities. 3. CAN THE PARTIES ADDUCE FRESH EVIDENCE IN THE APPEAL? IF SO, HOW? 3. CAN THE PARTIES ADDUCE FRESH EVIDENCE IN THE APPEAL? IF SO, HOW? Generally in Hong Kong, an appeal is not a re-trial which the case goes back to square one and all parties re-argues the case afresh. In our common law system, the appellate court's focus is whether there are palpable errors in the lower court's decision, and it will not hear witnesses' evidence or receive evidence afresh. Therefore, in order to adduce fresh evidence in the appeal, the party must apply for leave from the appellate court and he must fulfil the three conditions laid down in Ladd v Marshall [1954] 1 WLR 1489: the relevant evidence could not have been obtained at the trial with reasonable diligence; the relevant evidence would have a very important effect on the case; and the relevant evidence is presumably to be believed. 3. HOW TO COMMENCE THE TAXATION OF COSTS? 3. HOW TO COMMENCE THE TAXATION OF COSTS? Generally, you shall prepare and file with the Court two documents in commencement of taxation within 3 months of the costs order made by the Court, i.e. (1) Notice of Commencement of Taxation; and (2) Bill of Costs. Samples of the said documents can be found at Appendices D and B to Practice Direction 14.3 respectively. Generally, the contents of a Bill of Costs include: the title of the action; the relevant costs order, setting out the date and by whom it was made; the fee earner 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. the disbursements such as counsel's fees, expert fees and court fees; costs of taxation; and the total amount of all costs claimed. 4. IS THERE A REASONABLE RANGE OF HOURLY LEGAL FEES AND WORK HOURS CHARGED FOR CERTAIN WORK (E.G., PREPARING A WITNESS STATEMENT)? HOW TO MAKE SURE THAT THE FEES DEMANDED FROM THE LAWYER OF THE OTHER PARTY ARE REASONABLE? 4. IS THERE A REASONABLE RANGE OF HOURLY LEGAL FEES AND WORK HOURS CHARGED FOR CERTAIN WORK (E.G., PREPARING A WITNESS STATEMENT)? HOW TO MAKE SURE THAT THE FEES DEMANDED FROM THE LAWYER OF THE OTHER PARTY ARE REASONABLE? Taxation is exactly the gatekeeping process whereby the Court assesses the reasonable amount of costs payable under the costs order. Costs will usually be allowed if they are necessary or proper for the legal steps taken by the winning party. You will also have the chance to file your List of Objections on the items claimed in the Bill of Costs. For example, you may object to the excessive hourly rates charged, the excessive time spent on a particular work or duplication of charges on same works. Moreover, in a normal party and party taxation, the Court will usually make reference to the standard approved Solicitors' Hourly Rates ("SHR"), and the SHR will depend on the post-qualification experience ("PQE") of the solicitor. The higher the PQE of the solicitor, the higher hourly rates for works done will be allowed in a taxation. Also, the SHR for High Court proceedings will also be higher than the District Court proceedings. The receiving party will need to justify to the Court if they claimed the amounts higher than the SHR. 5. AT EARLIER STAGES, WHAT CAN I DO TO EVALUATE THE TENTATIVE COSTS I MIGHT NEED TO PAY FOR THE OTHER PARTY IF I LOSE THE CASE? DO THE PARTIES NEED TO TELL EACH OTHER ABOUT THEIR LEGAL COSTS FROM TIME TO TIME? 5. AT EARLIER STAGES, WHAT CAN I DO TO EVALUATE THE TENTATIVE COSTS I MIGHT NEED TO PAY FOR THE OTHER PARTY IF I LOSE THE CASE? DO THE PARTIES NEED TO TELL EACH OTHER ABOUT THEIR LEGAL COSTS FROM TIME TO TIME? You can try to make enquiry with the opposite party by way of without prejudice letter as to the qualification of his claim of costs in the course of negotiation of settlement. However, unless otherwise directed by the Court in a specific case, there is no obligation for the litigants in a general civil action to disclose their legal costs incurred to the other party. 6. UNDER WHAT CIRCUMSTANCES DOES A TAXING MASTER TAX DOWN THE COST? 6. UNDER WHAT CIRCUMSTANCES DOES A TAXING MASTER TAX DOWN THE

COST? In a taxation, costs will usually be allowed by taxing master if they are necessary or proper for the legal steps taken by the winning party. In a Bill of Costs, if there are excessive hourly rates charged by solicitor, excessive time spent on a particular work, or duplication of charges on same works (e.g. two lawyers attended the same conference with client), the taxing master may tax down the costs claimed. 8. IF THE COURT ORDERS AN INJUNCTION AGAINST THE DEFENDANT BUT THE DEFENDANT FAILS TO COMPLY WITH IT, HOW CAN THE PLAINTIFF ENFORCE THE ORDER? 8. IF THE COURT ORDERS AN INJUNCTION AGAINST THE DEFENDANT BUT THE DEFENDANT FAILS TO COMPLY WITH IT, HOW CAN THE PLAINTIFF ENFORCE THE ORDER? Failure to comply with the court order (including an injunction) may constitute a civil contempt of court. The plaintiff may apply to the Court for an order to commit the defendant for fine and/or imprisonment in light of his breach of court order. If the defendant's conduct goes beyond mere non-compliance with a court order and involves a serious interference with the administration of justice, it could amount to a criminal contempt. 9. CAN I ENFORCE MY JUDGMENT IN CIVIL AND COMMERCIAL MATTERS FROM OTHER JURISDICTIONS IN HONG KONG? 9. CAN I ENFORCE MY JUDGMENT IN CIVIL AND COMMERCIAL MATTERS FROM OTHER JURISDICTIONS IN HONG KONG? (1) Enforcement of foreign judgments (other than Mainland China) In Hong Kong, foreign judgments (other than Mainland China) in civil and commercial matters may be enforced in the Hong Kong SAR via a statutory registration scheme under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) or common law. A judgment creditor, with a judgment from a jurisdiction designated under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) may apply to the Court of First Instance for registration of the judgment within 6 years of the date of the judgment provided that the relevant requirements as set out in Ordinance are met. The registered judgment has the same force and effect as if it had been a judgment originally given in the Hong Kong court for the purpose of execution. After the registration, the judgment debtor may apply to the Court to set aside the registration on the grounds specified under the Ordinance. With respect to foreign judgments that may not be registered under the Ordinance, they may be enforced by common law. The common law permits an action to be brought upon a foreign judgment, i.e. the foreign judgment itself may form the basis of a cause of action since the judgment may be regarded as creating a debt between the parties to it. In a common law action for enforcement of a foreign judgment, the judgment creditor has to prove that the foreign judgment is a final judgment conclusive upon the merits of the claim, must be for a fixed sum and must also come from a "competent" court. (2) Enforcement of PRC judgments Similarly, provided that the conditions stipulated in the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) are satisfied, the judgment creditor of a PRC judgment can apply to the Court of First Instance for registration of the judgment.