

Chapter:	4A	<b>THE RULES OF THE HIGH COURT</b>	Gazette Number	Version Date
		<b>Empowering section</b>	25 of 1998	01/07/1997

(Cap 4, section 54)

[These rules (other than Order 75) } 1 May 1988  
Order 75 } 24 February 1989 3 of 1989 s. 5]

(Originally L.N. 117 of 1988)

**Note:**

**The title of these Rules was amended from “The Rules of the Supreme Court” to “The Rules of the High Court” — see 25 of 1998 s. 2 (adaptation amendments retroactively made).**

Order:	1	<b>CITATION, APPLICATION, INTERPRETATION AND FORMS</b>	5 of 2014	01/04/2015
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PRELIMINARY

**1. Citation** (O. 1, r. 1)

These rules may be cited as the Rules of the High Court.

(25 of 1998 s. 2)

**2. Application** (O. 1, r. 2)

(1) Subject to the following provisions of this rule, these rules shall have effect in relation to all proceedings in the High Court.

(2) These rules shall not have effect in relation to proceedings of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under the enactments specified in the second column of that Table)-

TABLE

Proceedings		Enactments
1.	Bankruptcy proceedings.	Bankruptcy Ordinance (Cap 6), section 113.
2.	Proceeding relating to the winding-up of companies.	Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), section 296. (28 of 2012 ss. 912 & 920)
2A.	Proceedings relating to remedies for unfair prejudice to members' interests.	Companies Ordinance (Cap 622), section 727. (28 of 2012 ss. 912 & 920)
3.	Non-contentious or common form probate proceedings.	Probate and Administration Ordinance (Cap 10), section 72.
4.	Proceedings in the Court when acting as a Prize Court.	Prize Courts Act 1894, section 3.
5.	(Repealed 81 of 1997 s. 59)	
6.	Matrimonial proceedings.	Matrimonial Causes Ordinance (Cap 179), sections 10 and 54; Matrimonial Proceedings and Property Ordinance (Cap 192), section 32. (20 of 2010 s. 5)
(HK)7.	Adoption proceedings.	Adoption Ordinance (Cap 290), section 12.
(HK)8.	Proceedings under the Domestic and Cohabitation	Domestic and Cohabitation Relationships

(3) These rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 53, Order 59, Order 62, Order 70, Order 115, Order 115A, Order 116, Order 117, Order 117A, Order 118 or Order 119 applies. (L.N. 282 of 1989; L.N. 403 of 1992; L.N. 156 of 1995; L.N. 242 of 1996; L.N. 222 of 1997; L.N. 152 of 2008; L.N. 186 of 2009)

(4) In the case of the proceedings mentioned in paragraphs (2) and (3), nothing in those paragraphs shall be taken as affecting any provision of any rules (whether made under the Ordinance or any other Ordinance) by virtue of which the Rules of the High Court (Cap 4 sub. leg. A) or any provisions thereof are applied in relation to any of those proceedings.

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

TABLE

1.	Legislative Council Ordinance (Cap 542), Part 7.	Legislative Council (Election Petition) Rules (Cap 542 sub. leg. F), rule 2.
2.	District Councils Ordinance (Cap 547), Part V.	District Councils (Election Petition) Rules (Cap 547 sub. leg. C), rule 2.
3.	Chief Executive Election Ordinance (Cap 569), Part 6.	Chief Executive Election (Election Petition) Rules (Cap 569 sub. leg. E), section 3.
4.	Rural Representative Election Ordinance (Cap 576), Part 5.	Rural Representative (Election Petition) Rules (Cap 576 sub. leg. B), section 2.

(L.N. 152 of 2008; 5 of 2014 s. 2)  
(25 of 1998 s. 2; E.R. 2 of 2012; E.R. 3 of 2014)

### 3. Application of Interpretation and General Clauses Ordinance (O. 1, r. 3)

The Interpretation and General Clauses Ordinance (Cap 1) shall apply for the interpretation of these rules as it applies to subsidiary legislation made after the commencement of that Ordinance.

### 4. Definitions (O. 1, r. 4)

(1) In these rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely-

"aided person" (受助人) means an aided person within the meaning of the Legal Aid Ordinance (Cap 91); (L.N. 152 of 2008)

"Amendment Rules 2008" (《2008年修訂規則》) means the Rules of the High Court (Amendment) Rules 2008 (L.N. 152 of 2008); (L.N. 152 of 2008)

"an action for personal injuries" (就人身傷害而提出的訴訟) means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, and "personal injuries" (人身傷害) includes any disease and any impairment of a person's physical or mental condition;

(HK) "bailiff" (執達主任) means a bailiff of the Court and any person lawfully authorized to execute the process of the Court;

"cause book" (訟案登記冊) means the book or other record kept in the Registry in which the letter and number of, and other details relating to, a cause or matter are entered; (L.N. 275 of 1998)

(HK) "Full Bench" (合議庭) means a Bench consisting of 2 or more Judges of the Court of First Instance; (25 of 1998 s. 2)

"judgment rate" (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the

Ordinance; (18 of 2003 s. 12)

"master" (聆案官) means a master of the High Court and includes the Registrar of the High Court and a Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the High Court; (L.N. 99 of 1993; 25 of 1998 s. 2; 10 of 2005 s. 165)

(HK) "money lender's action" (放債人訴訟) has the meaning assigned to it by Order 83A;

"notice of intention to defend" (擬抗辯通知書) means an acknowledgment of service containing a statement to the effect that the person by whom or on whose behalf it is signed intends to contest the proceedings to which the acknowledgment relates;

"officer" (人員) means an officer of the High Court; (25 of 1998 s. 2)

"originating summons" (原訴傳票) means every summons other than a summons in a pending cause or matter;

"pleading" (狀書) does not include a petition, summons or preliminary act;

"practice direction" (實務指示) means-

(a) a direction issued by the Chief Justice as to the practice and procedure of the Court; or

(b) a direction issued by a specialist judge for his specialist list; (L.N. 152 of 2008)

"probate action" (遺囑認證訴訟) has the meaning assigned to it by Order 76;

"receiver" (接管人) includes a manager or consignee;

(HK) "Registrar" (司法常務官) means the Registrar of the High Court; and includes a Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the High Court; (25 of 1998 s. 2; 10 of 2005 s. 165)

(HK) "Registry" (登記處) means the Registry of the High Court; (25 of 1998 s. 2)

(HK) "the Ordinance" (本條例) means the High Court Ordinance (Cap 4); (25 of 1998 s. 2)

"vacation" (休庭期) means the interval between sittings of the High Court as prescribed by Order 64; (25 of 1998 s. 2)

"writ" (令狀) means a writ of summons;

(HK) "written law" (成文法律) includes "Ordinance" and "enactment" as defined in section 3 of the Interpretation and General Clauses Ordinance (Cap 1). (L.N. 152 of 2008)

(2) In these rules, unless the context otherwise requires, "the Court" (法院、法庭) means the Court of First Instance or any one or more of the judges thereof whether sitting in court or in chambers or the Registrar or any master but the foregoing provision shall not be taken as affecting any provision of these rules and, in particular, Order 32, rule 11 by virtue of which the authority and jurisdiction of the Registrar is defined and regulated. (25 of 1998 s. 2)

(3) In these rules unless the context otherwise requires, any reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the Registry an acknowledgment of service of that document or, as the case may be, a notice of intention to defend those proceedings.

## **5. Construction of references to Orders, rules, etc. (O. 1, r. 5)**

(1) Unless the context otherwise requires, any reference in these rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or that Appendix to, these rules and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule, or that sub-paragraph of the paragraph, in which the reference occurs.

(2) Any reference in these rules to anything done under a rule of these rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise requires, any reference in these rules to any written law shall be construed as a reference to that written law as amended, extended or applied by or under any other written law.

## **6. Construction of references to action, etc. for possession of land (O. 1, r. 6)**

Except where the context otherwise requires, references in these rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Government for an order declaring that the

plaintiff is entitled as against the Government to the land or to the possession thereof.

(29 of 1998 s. 105)

**(HK)7A. Construction of references to Registrar** (O. 1, r. 7A)

(HK) Wherever the word "Registrar" appears in these rules and forms there may be substituted the word "Master" when and where appropriate.

**9. Forms** (O. 1, r. 9)

(1) The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

**10. Rules not to exclude conduct of business by post** (O. 1, r. 10)

Nothing in these rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

(Enacted 1988)

Order:	1A	<b>OBJECTIVES</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Underlying objectives** (O. 1A, r. 1)

The underlying objectives of these rules are-

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

**2. Application by the Court of underlying objectives** (O. 1A, r. 2)

(1) The Court shall seek to give effect to the underlying objectives of these rules when it-

- (a) exercises any of its powers (whether under its inherent jurisdiction or given to it by these rules or otherwise); or
- (b) interprets any of these rules or a practice direction.

(2) In giving effect to the underlying objectives of these rules, the Court shall always recognize that the primary aim in exercising the powers of the Court is to secure the just resolution of disputes in accordance with the substantive rights of the parties.

**3. Duty of the parties and their legal representatives** (O. 1A, r. 3)

The parties to any proceedings and their legal representatives shall assist the Court to further the underlying objectives of these rules.

**4. Court's duty to manage cases** (O. 1A, r. 4)

- (1) The Court shall further the underlying objectives of these rules by actively managing cases.
- (2) Active case management includes-
  - (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
  - (b) identifying the issues at an early stage;
  - (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
  - (d) deciding the order in which the issues are to be resolved;
  - (e) encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate, and facilitating the use of such a procedure;
  - (f) helping the parties to settle the whole or part of the case;
  - (g) fixing timetables or otherwise controlling the progress of the case;
  - (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
  - (i) dealing with as many aspects of the case as practicable on the same occasion;
  - (j) dealing with the case without the parties needing to attend at court;
  - (k) making use of technology; and
  - (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

(L.N. 152 of 2008)

Order:	1B	<b>CASE MANAGEMENT POWERS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## 1. Court's general powers of management (O. 1B, r. 1)

- (1) The list of powers in this rule is in addition to and not in substitution for any powers given to the Court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.
- (2) Except where these rules provide otherwise, the Court may by order-
  - (a) extend or shorten the time for compliance with any rule, court order or practice direction (even if an application for extension is made after the time for compliance has expired);
  - (b) adjourn or bring forward a hearing;
  - (c) require a party or a party's legal representative to attend the Court;
  - (d) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
  - (e) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
  - (f) consolidate proceedings;
  - (g) try two or more claims on the same occasion;
  - (h) direct a separate trial of any issue;
  - (i) decide the order in which issues are to be tried;
  - (j) exclude an issue from consideration;
  - (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
  - (l) take any other step or make any other order for the purpose of managing the case and furthering the underlying objectives set out in Order 1A.
- (3) When the Court makes an order, it may-
  - (a) make it subject to conditions, including a condition to pay a sum of money into court; and
  - (b) specify the consequences of failure to comply with the order or a condition.
- (4) Where a party pays money into court following an order under paragraph (3), the money is security for any sum payable by that party to any other party in the proceedings.

## 2. Court's power to make order of its own motion (O. 1B, r. 2)

- (1) Except where a rule or some other enactment provides otherwise, the Court may exercise its powers on an application or of its own motion.

- (2) Where the Court proposes to make an order of its own motion-
  - (a) it may give any person likely to be affected by the order an opportunity to make representations; and
  - (b) where it does so, it shall specify the time by and the manner in which the representations must be made.
- (3) Where the Court proposes-
  - (a) to make an order of its own motion; and
  - (b) to hold a hearing to decide whether to make the order,
 it shall give each party likely to be affected by the order at least 3 days' notice of the hearing.
- (4) The Court may make an order of its own motion, without hearing the parties or giving them an opportunity to make representations.
- (5) Where the Court has made an order under paragraph (4)-
  - (a) a party affected by the order may apply to have it set aside, varied or stayed; and
  - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made-
  - (a) within such period as may be specified by the Court; or
  - (b) if the Court does not specify a period, not more than 14 days after the date on which notice of the order was sent to the party making the application.

### **3. Court's power to give procedural directions by way of order nisi**

(O. 1B, r. 3)

(1) Where the Court considers that it is necessary or desirable to give a direction on the procedure of the Court and that the direction is unlikely to be objected to by the parties, it may of its own motion and without hearing the parties, give the direction by way of an order nisi.

(2) The order nisi becomes absolute 14 days after the order is made unless a party has applied to the Court for varying the order.

(L.N. 152 of 2008)

Order:	2	<b>EFFECT OF NON-COMPLIANCE</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### **1. Non-compliance with Rules (O. 2, r. 1)**

(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings ought to have begun by an originating process other than the one employed, but shall instead give directions for the continuation of the proceedings in an appropriate manner. (L.N. 152 of 2008)

### **2. Application to set aside for irregularity (O. 2, r. 2)**

(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or notice of motion and the grounds of objection must be stated in the summons or notice of motion. (L.N. 152 of 2008)

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

(1) The Court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule or court order.

(2) When exercising its power under paragraph (1), the Court shall have regard to-

(a) the amount in dispute; and

(b) the costs which the parties have incurred or which they may incur.

(3) Where a party pays money into court following an order under paragraph (1), the money is security for any sum payable by that party to any other party in the proceedings.

(L.N. 152 of 2008)

**4. Sanctions have effect unless defaulting party obtains relief (O. 2, r. 4)**

Where a party has failed to comply with a rule or court order, any sanction for failure to comply imposed by the rule or court order has effect unless the party in default applies to the Court for and obtains relief from the sanction within 14 days of the failure.

(L.N. 152 of 2008)

**5. Relief from sanctions (O. 2, r. 5)**

(1) On an application for relief from any sanction imposed for a failure to comply with any rule or court order, the Court shall consider all the circumstances including-

(a) the interests of the administration of justice;

(b) whether the application for relief has been made promptly;

(c) whether the failure to comply was intentional;

(d) whether there is a good explanation for the failure to comply;

(e) the extent to which the party in default has complied with other rules and court orders;

(f) whether the failure to comply was caused by the party in default or his legal representative;

(g) in the case where the party in default is not legally represented, whether he was unaware of the rule or court order, or if he was aware of it, whether he was able to comply with it without legal assistance;

(h) whether the trial date or the likely trial date can still be met if relief is granted;

(i) the effect which the failure to comply had on each party; and

(j) the effect which the granting of relief would have on each party.

(2) An application for relief must be supported by evidence.

(L.N. 152 of 2008)

(Enacted 1988)

Order:	3	TIME	35 of 1998	18/09/1998
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**1. "Month" (月) means calendar month (O. 3, r. 1)**

Without prejudice to section 3 of the Interpretation and General Clauses Ordinance (Cap 1) in its application to these rules, the word "month" (月), where it occurs in any judgment, order, direction or other document forming part of any proceedings in the High Court, means a calendar month unless the context otherwise requires.

(25 of 1998 s. 2)

**2. Reckoning periods of time (O. 3, r. 2)**

(1) Any period of time fixed by these rules or by any judgment, order or direction for doing any act shall be

reckoned in accordance with the following provisions of this rule.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.

(4) Where the act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

(5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Sunday or a general holiday, that day shall be excluded.

In this paragraph "general holiday" (公眾假期) means a day which is, or is to be observed as, a general holiday under the General Holidays Ordinance (Cap 149). (35 of 1998 s. 5)

### **3. Summer Vacation excluded from time for service, etc., of pleadings (O. 3, r. 3)**

Unless the Court otherwise directs, the period of the Summer Vacation shall be excluded in reckoning any period prescribed by these rules or by any order or direction for serving, filing or amending any pleading.

### **4. Time expires on Sunday, etc. (O. 3, r. 4)**

Where the time prescribed by these rules, or by any judgment, order or direction, for doing any act at an office of the Court expires on a Sunday or other day on which that office is closed, and by reason thereof that act cannot be done on that day, the act shall be in time if done on the next day on which that office is open.

### **5. Extensions, etc., of time (O. 3, r. 5)**

(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

(4) In this rule references to the Court shall be construed as including references to the Court of Appeal and a single judge of that Court.

### **6. Notice of intention to proceed after year's delay (O. 3, r. 6)**

Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed.

A summons on which no order was made is not a proceeding for the purposes of this rule.

(Enacted 1988)

Order:	4	<b>ASSIGNMENT, TRANSFER AND CONSOLIDATION OF PROCEEDINGS</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## **COMMENCEMENT AND PROGRESS OF PROCEEDINGS**

### **2. Companies (O. 4, r. 2)**

Where an order has been made by the Court for the winding-up of a company, all proceedings in chambers in



any action against that company at the instance or on behalf of debenture holders shall be dealt with by an officer of the Court of First Instance who is a registrar within the meaning of any rules for the time being in force relating to the winding-up of companies.

(25 of 1998 s. 2)

## **9. Consolidation, etc., of causes or matters (O. 4, r. 9)**

- (1) Where two or more causes or matters are pending, then, if it appears to the Court-
  - (a) that some common question of law or fact arises in both or all of them, or
  - (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
  - (c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time, or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

(2) Where the Court makes an order under paragraph (1) that two or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then, a party to one of those causes or matters may be treated as if it were a party to any of those other causes or matters for the purpose of making an order for costs against him or in his favour.

(Enacted 1988)

Order:	5	<b>MODE OF BEGINNING CIVIL PROCEEDINGS IN THE COURT OF FIRST INSTANCE</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **MODE OF BEGINNING CIVIL PROCEEDINGS IN THE COURT OF FIRST INSTANCE**

(25 of 1998 s. 2)

## **1. Mode of beginning civil proceedings (O. 5, r. 1)**

Subject to the provisions of any written law and of these rules, civil proceedings in the Court of First Instance may be begun by writ or originating summons.

(25 of 1998 s. 2; L.N. 152 of 2008)

**2-3.** (Repealed L.N. 152 of 2008)

## **4. Proceedings which may be begun by writ or originating summons (O. 5, r. 4)**

(1) Except in the case of proceedings which under any written law are required or authorized to be begun by a specific form of originating process, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate. (L.N. 152 of 2008)

(2) Proceedings-

- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of any written law or of any instrument made under any written law or of any deed, will, contract or other document, or some other question of law, or
- (b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

## **5. Proceedings to be begun by motion or petition (O. 5, r. 5)**

Proceedings may be begun by originating motion or petition if, but only if, under any written law the proceedings in question are required or authorized to be so begun.

(L.N. 152 of 2008)

**6. Right to sue in person (O. 5, r. 6)**

(1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or personal representative, or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person. (25 of 1998 s. 2)

(2) A body corporate may not begin or carry on any such proceedings in the Court otherwise than by a solicitor except-

(a) as expressly provided by or under any enactment; or

(b) where leave is given under paragraph (3) for it to be represented by one of its directors.

(3) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director. (L.N. 99 of 1993; L.N. 108 of 2002)

(b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.

(4) No appeal shall lie from an order of the Registrar under paragraph (3) giving or refusing leave.

(5) Leave given by a Registrar under paragraph (3) may be revoked by the Court at any time.

(6) No appeal shall lie from an order of the Court revoking leave given by a Registrar.

**7. Transitional provision relating to rule**

**16 of Amendment Rules 2008**

(O. 5, r. 7)

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

(L.N. 152 of 2008)

(Enacted 1988)

**Note:**

**\* Commencement date: 2 April 2009.**

Order:	6	<b>WRITS OF SUMMONS: GENERAL PROVISIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Form of Writ, etc. (O. 6, r. 1)**

Every writ must be in Form No. 1 in Appendix A.

**2. Indorsement of claim (O. 6, r. 2)**

(1) Before a writ is issued it must be indorsed-

(a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;

(b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for acknowledging service, the defendant pays the amount so claimed to the plaintiff, his solicitor or agent; and (L.N. 152 of 2008)

(c) where the only remedy that the plaintiff is seeking is the payment of money, with a statement that the defendant may make an admission in accordance with Order 13A within the period fixed for service of

his defence. (L.N. 152 of 2008)

### **3. Indorsement as to capacity (O. 6, r. 3)**

Before a writ is issued it must be indorsed-

- (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
- (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

### **5. Indorsement as to solicitor and address (O. 6, r. 5)**

(1) Before a writ is issued it must be indorsed-

- (a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction and also (if the solicitor is the agent of another) the name or firm and business address of his principal;
- (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.

(2) The address for service of a plaintiff shall be-

- (a) where he sues by a solicitor, the business address to which may be added a numbered box at a document exchange of the solicitor indorsed on the writ;
- (b) where he sues in person, the address within the jurisdiction indorsed on the writ.

(3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has acknowledged service of the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.

(4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has acknowledged service of the writ, stay all proceedings in the action begun by the writ.

### **6. Concurrent writ (O. 6, r. 6)**

(1) One or more concurrent writs may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.

(2) Without prejudice to the generality of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which is to be served out of the jurisdiction and a writ which is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

### **7. Issue of writ (O. 6, r. 7)**

(1) No writ which is to be served out of the jurisdiction shall be issued without the leave of the Court:

Provided that if every claim made by a writ is one which by virtue of any written law the Court of First Instance has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provision shall not apply to the writ. (25 of 1998 s. 2)

(3) Issue of a writ takes place upon its being sealed by an officer of the Registry.

(4) The officer by whom a concurrent writ is sealed must mark it as a concurrent writ with an official stamp.

(5) No writ shall be sealed unless at the time of the tender thereof for sealing the person tendering it leaves at the office at which it is tendered a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by or on behalf of his solicitor.

### **8. Duration and renewal of writ (O. 6, r. 8)**

(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve

months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

(3) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

(Enacted 1988)

Order:	7	<b>ORIGINATING SUMMONS: GENERAL PROVISIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### **1. Application (O. 7, r. 1)**

The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any written law.

### **2. Form of summons, etc. (O. 7, r. 2)**

(1) Every originating summons (other than an ex parte summons) shall be in Form No. 8 or, if so authorized or required, in Form No. 10 in Appendix A, and every ex parte originating summons shall be in Form No. 11 in Appendix A.

(1A) Form No. 8 in Appendix A is to be used in all cases except where another form is prescribed under a written law or there is no party on whom the summons is to be served. (L.N. 152 of 2008)

(1B) Form No. 10 in Appendix A is to be used if it is prescribed under a written law. (L.N. 152 of 2008)

(1C) Form No. 11 in Appendix A is to be used if there is no party on whom the summons is to be served. (L.N. 152 of 2008)

(2) The party taking out an originating summons (other than an ex parte summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

(3) This rule is subject to Order 53, rule 5(1) and Order 54, rule 2(3). (L.N. 152 of 2008)

### **3. Contents of summons (O. 7, r. 3)**

(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the Court of First Instance or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy. (25 of 1998 s. 2)

(2) Order 6, rules 3 and 5, shall apply in relation to an originating summons as they apply in relation to a writ.

### **4. Concurrent summons (O. 7, r. 4)**

Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

### **5. Issue of summons (O. 7, r. 5)**

(1) An originating summons shall be issued out of the Registry.

(3) Order 6, rule 7 (except paragraph (2)), shall apply in relation to an originating summons as it applies in relation to a writ.

## **6. Duration and renewal of summons (O. 7, r. 6)**

Order 6, rule 8, shall apply in relation to an originating summons as it applies in relation to a writ.

## **7. Ex parte originating summonses (O. 7, r. 7)**

(1) Rules 2(1) and (1C), 3(1), and 5(1) shall, so far as applicable, apply to ex parte originating summonses; but, save as aforesaid, the foregoing rules of this Order shall not apply to ex parte originating summonses. (L.N. 152 of 2008)

(2) Order 6, rule 7(3) and (5), shall, with the necessary modifications, apply in relation to an ex parte originating summons as they apply in relation to a writ.

(Enacted 1988)

Order:	8	<b>ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Application (O. 8, r. 1)**

The provisions of this Order apply to all motions required or authorized under a written law, subject to any provisions relating to any class of motion made by that written law or any other written law.

(L.N. 152 of 2008)

## **2. Notice of motion (O. 8, r. 2)**

(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make an order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

## **3. Form and issue of notice of motion**

(O. 8, r. 3)

(1) The notice of an originating motion must be in Form No. 13 in Appendix A and the notice of any other motion in Form No. 38 in that Appendix.

Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

(2) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.

(3) Order 6, rule 5, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) The notice of an originating motion by which proceedings are begun must be issued out of the Registry.

(6) Issue of the notice of an originating motion takes place upon its being sealed by an officer of the Registry.

## **4. Service of notice of motion with writ, etc. (O. 8, r. 4)**

Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of such writ or summons, whether or not the defendant has acknowledged service in the action.

## **5. Adjournment of hearing (O. 8, r. 5)**

The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

**6. Transitional provision relating to originating and other motions**  
(O. 8, r. 6)

Where, immediately before the commencement\* of the Amendment Rules 2008, an application, request or appeal by motion or originating motion made under a provision amended by Part 5 of the Amendment Rules 2008 is pending, then the application, request or appeal is to be determined as if that provision had not been so amended.

(L.N. 152 of 2008)

(Enacted 1988)

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**Note:**

\* **Commencement day: 2 April 2009.**

Order:	9	<b>PETITIONS: GENERAL PROVISIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Application** (O. 9, r. 1)

The provisions of this Order apply to all petitions required or authorized under a written law, subject to any provisions relating to any class of petition made by that written law or any other written law.

(L.N. 152 of 2008)

**2. Contents of petition** (O. 9, r. 2)

(1) Every petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby.

(2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

(3) Order 6, rule 5, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

**3. Presentation of petition** (O. 9, r. 3)

A petition may be presented by leaving it at the Registry.

**4. Fixing time for hearing petition** (O. 9, r. 4)

(1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than seven days before the day fixed for the hearing of the petition.

**5. Certain applications not to be made by petition** (O. 9, r. 5)

No application in any cause or matter may be made by petition.

**6. Right to defend in person** (O. 9, r. 6)

(1) Subject to paragraph (2) and to Order 80, rule 2, a respondent to proceedings begun by petition may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) defend the proceedings by a solicitor or in person.

(2) Where the respondent to such proceedings is a body corporate, except as expressly provided by or under any enactment or where leave is given under paragraph (3) for such respondent to be represented by one of its

directors, such respondent may not take any step in the proceedings otherwise than by a solicitor.

- (3) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director.
- (b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.
- (4) No appeal shall lie from an order of the Registrar under paragraph (3) giving or refusing leave.
- (5) The Court may at any time revoke the leave given by a Registrar under paragraph (3).
- (6) No appeal shall lie from an order of the Court revoking leave given by a Registrar.

(L.N. 108 of 2002)  
(Enacted 1988)

Order:	10	<b>SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. General provisions (O. 10, r. 1)**

- (1) A writ must be served personally on each defendant by the plaintiff or his agent.
- (2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served-
  - (a) by sending a copy of the writ by registered post to the defendant at his usual or last known address, or
  - (b) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant. (L.N. 404 of 1991)
- (3) Where a writ is served in accordance with paragraph (2)-
  - (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to, or as the case may be, inserted through the letter box for, the address in question;
  - (b) any affidavit proving due service of the writ must contain a statement to the effect that-
    - (i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to, or as the case may be, inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and
    - (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.
- (4) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.
- (5) Subject to Order 12, rule 7, where a writ is not duly served on a defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service.
- (6) Every copy of a writ for service on a defendant shall be sealed with the seal of the High Court and shall be accompanied by a form of acknowledgment of service in Form No. 14 in Appendix A in which the title of the action and its number have been entered. (25 of 1998 s. 2)
- (7) This rule shall have effect subject to the provisions of any Ordinance and these rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.

## **2. Service of writ on agent of overseas principal (O. 10, r. 2)**

- (1) Where the Court is satisfied on an ex parte application that-
  - (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction, and

- (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate, and
- (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

the Court may authorize service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorizing service of a writ on a defendant's agent must limit a time within which the defendant must acknowledge service.

(3) Where an order is made under this rule authorizing service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction.

### **3. Service of writ in pursuance of contract (O. 10, r. 3)**

(1) Where-

- (a) a contract contains a term to the effect that the Court of First Instance shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Court of First Instance has jurisdiction to hear and determine any such action, and (25 of 1998 s. 2)
- (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

then, if an action in respect of the contract is begun in the Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

(2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ out of the jurisdiction has been granted under Order 11, rule 1(1) or service of the writ is permitted without leave under Order 11, rule 1(2).

### **4. Service of writ in certain actions for possession of premises or land (O. 10, r. 4)**

(1) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, the Court may-

- (a) if satisfied on an ex parte application that no person appears to be in possession of the premises or land and that service cannot be otherwise effected on any defendant, authorize service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the premises or land;
- (b) if satisfied on such an application that no person appears to be in possession of the premises or land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the premises or land shall be treated as good service on that defendant.

(HK)(2) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, in addition to, and not in substitution for any other mode of service, a copy of the writ shall be posted in a conspicuous place on or at the entrance to the premises or land recovery or possession of which is claimed.

### **5. Service of originating summons, notice of motion, or petition (O. 10, r. 5)**

(1) The foregoing rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than ex parte originating summons or an originating summons under Order 113) as they apply in relation to a writ, except that an acknowledgment of service of an originating summons shall be in Form No. 15 or 15A in Appendix A, whichever is appropriate. (L.N. 152 of 2008)

(2) Rule 1(1), (2), (3) and (4) shall apply, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.

(Enacted 1988)



Order:	11	<b>SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Principal cases in which service of writ out of jurisdiction is permissible (O. 11, r. 1)**

(1) Provided that the writ is not a writ to which paragraph (2) of this rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ- (L.N. 363 of 1990)

- (a) relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
- (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
- (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
- (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which-
  - (i) was made within the jurisdiction, or
  - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
  - (iii) is by its terms, or by implication, governed by Hong Kong law, or
  - (iv) contains a term to the effect that the Court of First Instance shall have jurisdiction to hear and determine any action in respect of the contract; (25 of 1998 s. 2)
- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
- (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
- (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to Hong Kong law and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;
- (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
- (l) the claim is brought in a probate action within the meaning of Order 76;
- (m) the claim is brought to enforce any judgment or arbitral award;
- (n) the claim is brought under the Carriage by Air Ordinance (Cap 500). (13 of 1997 s. 20)
- (o) (Repealed L.N. 296 of 1996)
- (oa) the claim is made under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525); (87 of 1997 s. 36)
- (ob) the claim is for an order for the costs of and incidental to a dispute under section 52B(2) of the Ordinance; (L.N. 152 of 2008)
- (oc) the claim is for interim relief or appointment of a receiver under section 21M(1) of the Ordinance; (L.N. 152 of 2008)
- (od) the claim is for a costs order under section 52A(2) of the Ordinance against a person who is not a party to the relevant proceedings; (L.N. 152 of 2008)
- (p) the claim is brought for money had and received or for an account or other relief against the defendant

as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction. (L.N. 404 of 1991)

(2) Service of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is-

- (b) a claim which by virtue of any written law the Court of First Instance has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction. (25 of 1998 s. 2)

(3) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall-

- (c) be limited in accordance with the practice adopted under rule 4(4).

(HK)(4) This rule shall not apply to a writ-

- (a) to enforce a claim for damage, loss of life or personal injury arising out of-
  - (i) a collision between ships;
  - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of 2 or more ships; or
  - (iii) non-compliance, on the part of one or more of 2 or more ships, with the regulations made under section 93, 100 or 107 of the Merchant Shipping (Safety) Ordinance (Cap 369);
- (b) for the limitation of liability in a limitation action as defined in Order 75, rule 1(2); or
- (c) to enforce a claim under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 (1971 c. 59 U.K.) or section 4 of the Merchant Shipping Act 1974 (1974 c. 43 U.K.)<sup>®</sup>. (L.N. 363 of 1990)

#### **4. Application for, and grant of, leave to serve writ out of jurisdiction (O. 11, r. 4)**

(1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating-

- (a) the grounds on which the application is made;
- (b) that in the deponent's belief the plaintiff has a good cause of action;
- (c) in what place the defendant is, or probably may be found; and
- (d) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(4) An order granting under rule 1 leave to serve a writ out of the jurisdiction must limit a time within which the defendant to be served must acknowledge service.

#### **5. Service of writ out of jurisdiction: general (O. 11, r. 5)**

(1) Subject to the following provisions of this rule, Order 10, rule 1(1), (4) and (5) and (6) and Order 65, rule 4, shall apply in relation to the service of a writ notwithstanding that the writ is to be served out of the jurisdiction, save that the accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.

(2) Nothing in this rule, rule 5A or any order or direction of the Court made by virtue of it shall authorize or require the doing of anything in a country or place in which service is to be effected which is contrary to the law of that country or place. (L.N. 39 of 1999)

(3) A writ which is to be served out of the jurisdiction-

- (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country or place in which service is effected; and
- (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 5A, rule 6 or rule 7. (L.N. 39 of 1999)

(5) An official certificate stating that a writ as regards which rule 5A or rule 6 has been complied with, has been served on a person personally, or in accordance with the law of the country or place in which service was effected, on a specified date, being a certificate-

- (a) by a British consular authority in that country or place, or

(b) by the government or judicial authorities of that country or place, or  
(c) by any other authority designated in respect of that country or place under the Hague Convention,  
shall be evidence of the facts so stated. (L.N. 39 of 1999)

(6) An official certificate by the Chief Secretary for Administration stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact. (L.N. 362 of 1997)

(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(8) In this rule and rule 6 "the Hague Convention" means the Convention on the service abroad of judicial or extra-judicial documents in civil or commercial matters signed at The Hague on 15 November 1965.

**5A. Service of writ in the Mainland of China through judicial authorities**  
(O. 11, r. 5A)

(1) Where in accordance with these rules, a writ is to be served on a person to be served in the Mainland of China, the writ shall be served through the judicial authorities of the Mainland of China.

(2) A person who wishes to serve a writ under paragraph (1) must lodge in the Registry a request for such service, together with 2 copies of the writ and 2 additional copies thereof for the person to be served.

(3) The request lodged under paragraph (2) must contain-

- (a) the full name and address of the person to be served;
- (b) a description of the nature of proceedings; and
- (c) if a particular method of service by the judicial authorities of the Mainland of China is desired by the person making the request, an indication of that particular method.

(4) Every copy of a writ lodged under paragraph (2) must be in Chinese or accompanied by a Chinese translation.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) Documents duly lodged under paragraph (2) shall be sent by the Registrar to the judicial authorities of the Mainland of China with a request that they arrange for the writ to be served or, where a particular method of service is indicated under paragraph (3)(c), to be served by that method.

(L.N. 39 of 1999)

**6. Service of writ abroad through foreign governments, judicial authorities and British consuls** (O. 11, r. 6)

(1) Save where a writ is to be served pursuant to paragraph (2A) this rule does not apply to service in-

- (HK)(a) The United Kingdom of Great Britain, Northern Ireland, the Channel Islands and the Isle of Man;
- (b) any independent Commonwealth country;
- (HK)(c) any British protectorate;
- (HK)(d) any British colony;
- (e) the Republic of Ireland.

(2) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Court, the writ may be served-

- (a) through the judicial authorities of that country; or
- (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(2A) Where in accordance with these rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served-

- (a) through the authority designated under the Convention in respect of that country; or
- (b) if the law of that country permits-
  - (i) through the judicial authorities of that country, or
  - (ii) through a British consular authority in that country.

(3) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to

which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Court of First Instance, the writ may be served- (25 of 1998 s. 2)

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.

(4) A person who wishes to serve a writ by a method specified in paragraph (2), (2A) or (3) must lodge in the Registry a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

(5) Every copy of a writ lodged under paragraph (4) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(6) Every translation lodged under paragraph (5) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualification for making the translation.

(7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Chief Secretary for Administration with a request that he arrange for the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient. (L.N. 362 of 1997)

## **7. Service of process on a foreign State**

(O. 11, r. 7)

(1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in section 14 of the State Immunity Act 1978 (1978 c. 33 U.K.), wishes to have the writ served on that State, he must lodge in the Registry-

- (a) a request for service to be arranged by the Chief Secretary for Administration; and (L.N. 362 of 1997)
- (b) a copy of the writ; and
- (c) except where the official language of the State is, or the official languages of that party include, English, a translation of the writ in the official language or one of the official languages of the State.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the State or the government in question, as the case may be. (L.N. 362 of 1997)

(4) Where section 12(6) of the State Immunity Act 1978 (1978 c. 33 U.K.) applies and the State has agreed to a method of service other than that provided by the preceding paragraphs, the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

## **7A. Service of writ in certain actions under Carriage**

**by Air Ordinance** (O. 11, r. 7A)

(HK)(1) Where a person to whom leave has been granted under rule 1 to serve a writ on a High Contracting Party or State Party, as may be appropriate, within the meaning of section 2(1) of Carriage by Air Ordinance (Cap 500), being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the writ served on that Party, he must lodge in the Registry- (13 of 1997 s. 20; 22 of 2005 s. 26)

- (a) a request for service to be arranged by the Chief Secretary for Administration; and
- (b) a copy of the writ; and
- (c) except where the official language of the High Contracting Party or State Party, as may be appropriate, is, or the official languages of that Party include, English, a translation of the writ in the official language or one of the official languages of that Party, as may be appropriate. (22 of 2005 s. 26)

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in

relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the High Contracting Party or State Party. (22 of 2005 s. 26)

(L.N. 362 of 1997)

#### **8. Undertaking to pay expenses of service by the Chief Secretary for Administration (O. 11, r. 8)**

Every request lodged under rule 6(4), rule 7 or rule 7A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Chief Secretary for Administration in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.

(L.N. 362 of 1997)

#### **8A. Undertaking to pay expenses of service by the Registrar (O. 11, r. 8A)**

Every request lodged under rule 5A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Registrar in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.

(L.N. 39 of 1999)

#### **9. Service of originating summons, petition, notice of motion, etc. (O. 11, r. 9)**

(1) Subject to Order 73, rule 7, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ.

(4) Subject to Order 73, rule 7, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these rules or under any written law be served out of the jurisdiction without leave.

(5) Rule 4(1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must acknowledge service.

(7) Rules 5, 5A, 6, 8 and 8A shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ. (L.N. 39 of 1999)

(Enacted 1988)

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#### **Note:**

<sup>⊕</sup> Please also see following-

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2 to Cap 508;
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.

Order:	12	<b>ACKNOWLEDGMENT OF SERVICE OF WRIT OR ORIGINATING SUMMONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Mode of acknowledging service (O. 12, r. 1)**

(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and defend the action by a solicitor or in person.

(2) The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorized to act on the defendant's behalf but, except as expressly provided by or under any enactment or where leave is given under paragraph (2A) for such defendant to be represented by one of its directors, such defendant may not take any further step in the action otherwise than by a solicitor.

(2A)(a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director. (L.N. 103 of 1994; L.N. 108 of 2002)

(b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.

(2B) No appeal shall lie from an order of the Registrar under paragraph (2A) giving or refusing leave.

(2C) Leave given by a Registrar under paragraph (2A) may be revoked by the Court at any time.

(2D) No appeal shall lie from an order of the Court revoking leave given by a Registrar.

(3) Service of a writ may be acknowledged by properly completing an acknowledgment of service as defined by rule 3 and handing it in at, or sending it by post to, the Registry.

(4) If two or more defendants to an action acknowledge service by the same solicitor and at the same time, only one acknowledgment of service need be completed and delivered for those defendants.

(5) The date on which service is acknowledged is the date on which the acknowledgment of service is received at the Registry.

### **3. Acknowledgment of service (O. 12, r. 3)**

(1) An acknowledgment of service must be in Form No. 14, 15 or 15A in Appendix A, whichever is appropriate, and except as provided in rule 1(2), must be signed by the solicitor acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant. (L.N. 152 of 2008)

(2) An acknowledgment of service must specify-

(a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and

(b) in the case of a defendant acknowledging service by a solicitor, a business address to which may be added a numbered box at a document exchange of his solicitor within the jurisdiction;

and where the defendant acknowledges service in person the address within the jurisdiction specified under sub-paragraph (a) shall be his address for service, but otherwise his solicitor's business address shall be his address for service.

In relation to a body corporate the references in sub-paragraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered or principal office.

(3) Where the defendant acknowledges service by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the acknowledgment of service must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.

(4) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment for service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgment shall nevertheless have effect for the purpose of Order 10, rule 1(5), and Order 65, rule 9.

### **4. Procedure on receipt of acknowledgment of service (O. 12, r. 4)**

On receiving an acknowledgment of service an officer of the Registry must-

(a) affix to the acknowledgment an official stamp showing the date on which he received it;

(b) enter the acknowledgment in the cause book with a note showing, if it be the case, that the defendant

- has indicated in the acknowledgment an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him in the proceedings;
- (c) make a copy of the acknowledgment, having affixed to it an official stamp showing the date on which he received the acknowledgment, and send by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service.

**5. Time limited for acknowledging service (O. 12, r. 5)**

References in these rules to the time limited for acknowledging service are references-

- (a) in the case of a writ served within the jurisdiction, to fourteen days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these rules, to that time as so extended; and
- (b) in the case of a writ served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3), or Order 11, rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

**6. Late acknowledgment of service (O. 12, r. 6)**

(1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.

(2) Except as provided by paragraph (1) nothing in these rules or any writ or order thereunder shall be construed as precluding a defendant from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he had acknowledged service within that time.

**7. Acknowledgment not to constitute waiver (O. 12, r. 7)**

The acknowledgment by a defendant of service of a writ shall not be treated as a waiver by him of any irregularity in the writ or service thereof or in any order giving leave to serve the writ or extending the validity of the writ for the purpose of service.

**8. Dispute as to jurisdiction (O. 12, r. 8)**

(1) A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 7 or on any other ground shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for-

- (a) an order setting aside the writ or service of the writ on him, or
- (b) an order declaring that the writ has not been duly served on him, or
- (c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction, or
- (d) the discharge of any order extending the validity of the writ for the purpose of service, or
- (e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings, or
- (f) the discharge of any order made to prevent any dealing with any property of the defendant, or
- (g) a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject-matter of the claim or the relief or remedy sought in the action, or
- (ga) an order staying the proceedings, or (L.N. 152 of 2008)
- (h) such other relief as may be appropriate.

(2) A defendant who wishes to argue that the Court should not exercise its jurisdiction in the proceedings on one or more of the grounds specified in paragraph (2A) or on any other ground shall also give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for-

- (a) a declaration that in the circumstances of the case the Court should not exercise any jurisdiction it may have, or
- (b) an order staying the proceedings, or
- (c) such other relief as may be appropriate, including the relief specified in paragraph (1)(e) or (f). (L.N. 152 of 2008)

(2A) The grounds specified for the purposes of paragraph (2) are that-

- (a) considering the best interests and convenience of the parties to the proceedings and the witnesses in the proceedings, the proceedings should be conducted in another court,
- (b) the defendant is entitled to rely on an agreement to which the plaintiff is a party, excluding the jurisdiction of the Court, and
- (c) in respect of the same cause of action to which the proceedings relate, there are other proceedings pending between the defendant and the plaintiff in another court. (L.N. 152 of 2008)

(3) An application under paragraph (1) or (2) must be made by summons and the summons must state the grounds of the application. (L.N. 152 of 2008)

(4) An application under paragraph (1) or (2) must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the summons by which the application is made.

(5) Upon hearing an application under paragraph (1) or (2), the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

(6) A defendant who makes an application under paragraph (1) or (2) shall not be treated as having submitted to the jurisdiction of the court by reason of his having given notice of intention to defend the action; but if the Court makes no order on the application or dismisses it, the notice shall stand unless otherwise directed by the Court and the defendant shall be treated as having given notice of intention to defend the action.

(6A) If the Court makes no order on an application under paragraph (1) or (2) or dismisses it, it may give such directions as may be appropriate for service of a defence and the further conduct of the proceedings. (L.N. 152 of 2008)

(7) Except where the defendant makes an application in accordance with paragraph (1) or (2), the acknowledgment by a defendant of service of a writ shall, unless the acknowledgment is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.

(L.N. 152 of 2008)

#### **8A. Application by defendant where writ not served (O. 12, r. 8A)**

(1) Any person named as a defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring him within a specified period not less than 14 days after service of the notice either to serve the writ on the defendant or to discontinue the action as against him.

(2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified the Court may, on the application of the defendant by summons, order the action to be dismissed or make such other order as it thinks fit.

(3) A summons under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the summons.

(4) Where the plaintiff serves the writ in compliance with a notice under paragraph (1) or with an order under paragraph (2) the defendant must acknowledge service within the time limited for so doing.

#### **9. Acknowledgment of service of originating summons (O. 12, r. 9)**

(1) Each defendant named in and served with an originating summons (other than an ex parte originating summons or an originating summons under Order 113 or an application under Order 121) must acknowledge service of the summons as if it were a writ.

(3) The foregoing rules of this Order shall apply in relation to an originating summons (other than an ex parte originating summons or an originating summons under Order 113 or an application under Order 121) as they apply to a writ except that after the word "extended" wherever it occurs in rule 5(a), there shall be inserted the words "or abridged" and for the reference in rule 5(b) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).

(L.N. 119 of 1998)



**10. Acknowledgment of service to be treated as entry of appearance (O. 12, r. 10)**

For the purpose of any enactment referring expressly or impliedly to the entry of appearance as a procedure provided by rules of court for responding to a writ or other process issuing out of the Court of First Instance, or of any rule of law, the acknowledgment of service of the writ or other process in accordance with these rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.

(25 of 1998 s. 2)

**11. Transitional provision relating to rule 86 of Amendment Rules 2008 (O. 12, r. 11)**

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

(L.N. 152 of 2008)

(Enacted 1988)

**Note:**

\* Commencement day: 2 April 2009.

Order:	13	<b>FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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**Remarks:**

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Claim for liquidated demand (O. 13, r. 1)**

(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any. (See App. A, Form 39)

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest under section 48 of the Ordinance at a rate which is not higher than that payable on judgment debts at the date of the writ.

**2. Claim for unliquidated damages (O. 13, r. 2)**

Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any. (See App. A, Form 40)

**3. Claim for detention of goods (O. 13, r. 3)**

(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time and subject to Order 42, rule 1A-

(a) at his option enter either-

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs; or

(ii) interlocutory judgment for the value of the goods to be assessed and costs; or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any. (See App. A Form 41)

(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

#### **4. Claim for possession of land (O. 13, r. 4)**

(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any. (See App. A Form 42)

(5) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

#### **5. Mixed claims (O. 13, r. 5)**

Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ and proceed with the action against the other defendants, if any.

#### **6. Other claims (O. 13, r. 6)**

(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time and, if that defendant has not acknowledged service, upon filing an affidavit proving due service of the writ on him and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had given notice of intention to defend.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter judgment against that defendant for costs.

(3) (Repealed L.N. 99 of 1993)

#### **6A. Prescribed time (O. 13, r. 6A)**

In the foregoing rules of this Order "the prescribed time" (訂明的時限) in relation to a writ issued against a defendant means the time limited for the defendant to acknowledge service of the writ or, if within that time the defendant has returned to the Registry an acknowledgment of service containing a statement to the effect that he does not intend to contest the proceedings, the date on which the acknowledgment was received at the Registry.

#### **7. Proof of service of writ (O. 13, r. 7)**

(1) Judgment shall not be entered against a defendant under this Order unless-

- (a) the defendant has acknowledged service on him of the writ; or
- (b) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant; or
- (c) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to give notice of intention to defend, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party failed to give such notice.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either-

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served, or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the Registry and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the Registry for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made ex parte by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the Court may-

- (a) set aside the judgment; or
- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served; or
- (c) make such other order and give such other direction as the circumstances may require.

#### **7A. Judgment against a State (O. 13, r. 7A)**

(1) Where the defendant is a State, as defined in section 14 of the State Immunity Act 1978 (1978 c. 33 U.K.) ("the Act"), the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court.

(2) An application for leave to enter judgment shall be supported by an affidavit-

- (a) stating the grounds of the application,
- (b) verifying the facts relied on as excepting the State from the immunity conferred by section 1 of the Act, and
- (c) verifying that the writ has been served by being transmitted to the Chief Secretary for Administration and by him to the Foreign and Commonwealth Office for onward transmission to the State concerned, or in such other manner as may have been agreed to by the State, and that the time for acknowledging service, as extended by section 12(2) of the Act (by two months) where applicable, has expired. (L.N. 362 of 1997)

(3) The application may be made ex parte but the Court hearing the application may direct a summons to be issued and served on that State, for which purpose such a direction shall include leave to serve the summons and a copy of the affidavit out of the jurisdiction.

(4) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction-

- (a) a copy of the judgment, and
- (b) a copy of the affidavit, where not already served.

(5) The procedure for effecting service out of the jurisdiction pursuant to leave granted in accordance with the rule shall be the same as for the service of the writ under Order 11, rule 7(1), except where section 12(6) of the Act applies and an alternative method of service has been agreed,

#### **8. Stay of execution on default judgment (O. 13, r. 8)**

Where judgment for a debt or liquidated demand is entered under this Order against a defendant who has returned to the Registry an acknowledgment of service containing a statement to the effect that, although he does not intend to contest the proceedings, he intends to apply for a stay of execution of the judgment by writ of fieri facias, execution of the judgment by such a writ shall be stayed for a period of 14 days from the acknowledgment of service and, if within that time the defendant issues and serves on the plaintiff a summons for such a stay supported by an affidavit in accordance with Order 47, rule 1, the stay imposed by this rule shall continue until the summons is heard or otherwise disposed of, unless the Court after giving the parties an opportunity of being heard otherwise directs.

#### **9. Setting aside judgment (O. 13, r. 9)**

Without prejudice to rule 7(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

(Enacted 1988)

Order:	13A	<b>ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Interpretation (O. 13A, r. 1)**

(1) In this Order-  
"claim" (申索) means-

- (a) where in an action the plaintiff makes only one claim, that claim; and
  - (b) where in an action the plaintiff makes more than one claim, all the claims in the action.
- (2) For the purposes of rules 6(1)(b) and 7(1)(b), the amount of a claim is treated as unliquidated if the claim consists of a claim for a liquidated amount of money and a claim for an unliquidated amount of money.

## **2. Making an admission (O. 13A, r. 2)**

(1) Where the only remedy that a plaintiff is seeking is the payment of money, the defendant may make an admission in accordance with-

- (a) rule 4 (admission of whole of claim for liquidated amount of money);
- (b) rule 5 (admission of part of claim for liquidated amount of money);
- (c) rule 6 (admission of liability to pay whole of claim for unliquidated amount of money); or
- (d) rule 7 (admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim).

(2) Where the defendant makes an admission as mentioned in paragraph (1), the plaintiff may enter judgment except where-

- (a) the defendant is a person under disability; or
- (b) the plaintiff is a person under disability and the admission is made under rule 5 or 7.

(3) The Court may allow a party to amend or withdraw an admission if the Court considers it just to do so having regard to all the circumstances of the case.

(4) In this rule, "person under disability" (無行為能力の人) has the meaning assigned to it in Order 80, rule 1.

## **3. Period for making admission (O. 13A, r. 3)**

(1) The period for filing and serving an admission under rule 4, 5, 6 or 7 is-

- (a) where the defendant is served with a writ, the period fixed by or under these rules for service of his defence;
- (b) where the defendant is served with an originating summons, the period fixed by or under these rules for filing of his affidavit evidence; and
- (c) in any other case, 14 days after service of the originating process.

(2) A defendant may file an admission under rule 4, 5, 6 or 7-

- (a) after the expiry of the period for filing it specified in paragraph (1)(a) if the plaintiff has not obtained a default judgment under Order 13 or 19; and
- (b) after the expiry of the period for filing it specified in paragraph (1)(b) if the admission is filed and served before the date or the period fixed under Order 28, rule 2 for the hearing of the originating summons.

(3) If the defendant files an admission under paragraph (2), this Order applies as if he had made the admission specified in paragraph (1)(a) or (b), as the case may be.

## **4. Admission of whole of claim for liquidated amount of money (O. 13A, r. 4)**

(1) This rule applies where-

- (a) the only remedy that the plaintiff is seeking is the payment of a liquidated amount of money; and
  - (b) the defendant admits the whole of the claim.
- (2) The defendant may admit the claim by-
  - (a) filing in the Registry an admission in Form No. 16 in Appendix A; and
  - (b) serving a copy of the admission on the plaintiff.
- (3) The plaintiff may obtain judgment by filing in the Registry a request in Form No. 16A in Appendix A and, if he does so-
  - (a) where the defendant has not requested time to pay, paragraphs (5), (6) and (7) apply;
  - (b) where the defendant has requested time to pay, rule 9 applies.
- (4) If the plaintiff does not file a request for judgment within 14 days after the copy of the admission is served on him, the claim is stayed until he files the request.
- (5) The plaintiff may specify in his request for judgment-
  - (a) the date by which the whole of the judgment debt is to be paid; or
  - (b) the times and rate at which it is to be paid by instalments.
- (6) Upon receipt of the request for judgment, the Court shall enter judgment.
- (7) Judgment shall be for the amount of the claim (less any payments made) and costs to be paid-
  - (a) by the date or at the times and rate specified in the request for judgment; or
  - (b) if none is specified, immediately.

**5. Admission of part of claim for liquidated amount of money**

(O. 13A, r. 5)

- (1) This rule applies where-
  - (a) the only remedy that the plaintiff is seeking is the payment of a liquidated amount of money; and
  - (b) the defendant admits part of the claim in satisfaction of the whole claim.
- (2) The defendant may admit part of the claim by-
  - (a) filing in the Registry an admission in Form No. 16 in Appendix A; and
  - (b) serving a copy of the admission on the plaintiff.
- (3) Within 14 days after the copy of the admission is served on him, the plaintiff shall-
  - (a) file in the Registry a notice in Form No. 16B in Appendix A, stating that-
    - (i) he accepts the amount admitted in satisfaction of the whole claim;
    - (ii) he does not accept the amount admitted by the defendant and wishes the proceedings to continue; or
    - (iii) if the defendant has requested time to pay, he accepts the amount admitted in satisfaction of the whole claim, but not the defendant's proposals as to payment; and
  - (b) serve a copy of the notice on the defendant.
- (4) If the plaintiff does not file the notice in accordance with paragraph (3), the whole claim is stayed until he files the notice.
- (5) If the plaintiff accepts the amount admitted in satisfaction of the whole claim, he may obtain judgment by filing in the Registry a request in Form No. 16B in Appendix A and, if he does so-
  - (a) where the defendant has not requested time to pay, paragraphs (6), (7) and (8) apply;
  - (b) where the defendant has requested time to pay, rule 9 applies.
- (6) The plaintiff may specify in his request for judgment-
  - (a) the date by which the whole of the judgment debt is to be paid; or
  - (b) the times and rate at which it is to be paid by instalments.
- (7) Upon receipt of the request for judgment, the Court shall enter judgment.
- (8) Judgment shall be for the amount admitted (less any payments made) and costs to be paid-
  - (a) by the date or at the times and rate specified in the request for judgment; or
  - (b) if none is specified, immediately.

**6. Admission of liability to pay whole of claim for unliquidated amount of money (O. 13A, r. 6)**

- (1) This rule applies where-
  - (a) the only remedy that the plaintiff is seeking is the payment of money;
  - (b) the amount of the claim is unliquidated; and
  - (c) the defendant admits liability but does not offer to pay a liquidated amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by-
  - (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
  - (b) serving a copy of the admission on the plaintiff.
- (3) The plaintiff may obtain judgment by filing in the Registry a request in Form No. 16D in Appendix A.
- (4) If the plaintiff does not file a request for judgment within 14 days after the copy of the admission is served on him, the claim is stayed until he files the request.
- (5) Upon receipt of the request for judgment, the Court shall enter judgment.
- (6) Judgment shall be for an amount to be decided by the Court and costs.

**7. Admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim**  
(O. 13A, r. 7)

- (1) This rule applies where-
  - (a) the only remedy that the plaintiff is seeking is the payment of money;
  - (b) the amount of the claim is unliquidated; and
  - (c) the defendant-
    - (i) admits liability; and
    - (ii) offers to pay a liquidated amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by-
  - (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
  - (b) serving a copy of the admission on the plaintiff.
- (3) Within 14 days after the copy of the admission is served on him, the plaintiff shall-
  - (a) file in the Registry a notice in Form No. 16E in Appendix A, stating whether or not he accepts the amount in satisfaction of the claim; and
  - (b) serve a copy of the notice on the defendant.
- (4) If the plaintiff does not file the notice in accordance with paragraph (3), the claim is stayed until he files the notice.
- (5) If the plaintiff accepts the offer he may obtain judgment by filing in the Registry a request in Form No. 16E in Appendix A and if he does so-
  - (a) where the defendant has not requested time to pay, paragraphs (6), (7) and (8) apply;
  - (b) where the defendant has requested time to pay, rule 9 applies.
- (6) The plaintiff may specify in his request for judgment-
  - (a) the date by which the whole of the judgment debt is to be paid; or
  - (b) the times and rate at which it is to be paid by instalments.
- (7) Upon receipt of the request for judgment, the Court shall enter judgment.
- (8) Judgment shall be for the amount offered by the defendant (less any payments made) and costs to be paid-
  - (a) by the date or at the times and rate specified in the request for judgment; or
  - (b) if none is specified, immediately.
- (9) If the plaintiff does not accept the amount offered by the defendant, he may obtain judgment by filing in the Registry a request in Form No. 16E in Appendix A.
- (10) Judgment under paragraph (9) shall be for an amount to be decided by the Court and costs.

**8. Power of Court to give directions**  
(O. 13A, r. 8)

Where the Court enters judgment under rule 6 or 7 for an amount to be decided by the Court, it may give such directions as it considers appropriate.

## **9. Request for time to pay**

(O. 13A, r. 9)

- (1) A defendant who makes an admission under rule 4, 5 or 7 may make a request for time to pay.
- (2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.
- (3) The defendant's request for time to pay must be filed with his admission.
- (4) If the plaintiff accepts the defendant's request for time to pay, he may obtain judgment by filing in the Registry a request for judgment in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.
- (5) Upon receipt of the request for judgment, the Court shall enter judgment.
- (6) Judgment shall be-
  - (a) where rule 4 applies, for the amount of the claim (less any payments made) and costs;
  - (b) where rule 5 applies, for the amount admitted (less any payments made) and costs; or
  - (c) where rule 7 applies, for the amount offered by the defendant (less any payments made) and costs,and (in all cases) shall be for payment by the date or at the times and rate specified in the defendant's request for time to pay.
- (7) Where judgment is for payment by instalments at the times and rate specified in the defendant's request for time to pay, then unless the Court otherwise orders and subject to paragraph (8), execution of the judgment is stayed pending payment.
- (8) If the defendant fails to pay an instalment or part of an instalment in accordance with the judgment, the stay of execution pursuant to paragraph (7) immediately ceases and the plaintiff may enforce the payment of the whole amount adjudged to be paid or the whole of any unpaid balance.

## **10. Determination of rate of payment by Court** (O. 13A, r. 10)

- (1) This rule applies where the defendant makes a request for time to pay under rule 9.
- (2) If the plaintiff does not accept the defendant's proposal for payment, he shall file in the Registry a notice in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.
- (3) When the Court receives the plaintiff's notice, it shall enter judgment for the amount admitted (less any payments made) to be paid by the date or at the times and rate of payment determined by the Court.
- (4) Where the Court is to determine the date or the times and rate of payment, it-
  - (a) may do so without a hearing; but
  - (b) shall consider-
    - (i) the information set out in the defendant's admission filed in the Registry;
    - (ii) the reasons why the plaintiff does not accept the defendant's proposal for payment; and
    - (iii) all other relevant matters.
- (5) If there is to be a hearing to determine the date or the times and rate of payment, the Court shall give each party at least 7 days' notice of the hearing.

## **11. Right of re-determination** (O. 13A, r. 11)

- (1) Where the Court has determined the date or the times and rate of payment under rule 10(4) without a hearing, either party may apply for the decision to be re-determined by the Court.
- (2) An application for re-determination must be made within 14 days after the applicant is served with notice of the determination.

## **12. Interest** (O. 13A, r. 12)

- (1) Judgment under rule 4, 5 or 7 must include the amount of interest claimed to the date of judgment if-
  - (a) the plaintiff is seeking interest and he has stated in the endorsement of the writ or the statement of claim or the originating summons that he is doing so-
    - (i) under the terms of a contract;

- (ii) under a specified enactment; or
- (iii) on some other specified basis;
- (b) where interest is claimed under section 48 of the Ordinance, the rate is no higher than the rate of interest payable on judgment debts at the date when the writ or the originating summons was issued; and
- (c) the plaintiff's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the statement of claim or the originating summons to the date of the request for judgment.

(2) In any case where judgment is entered under rule 4, 5 or 7 and the conditions specified in paragraph (1) are not satisfied, judgment shall be for an amount of interest to be decided by the Court.

**13. Form for admission to be served with writ or originating summons**  
(O. 13A, r. 13)

(1) This rule applies where the only remedy that the plaintiff is seeking is the payment of money, whether or not the amount is liquidated.

(2) Where a writ of summons, an originating summons or any other originating process is served on a defendant, it must be accompanied by-

- (a) if the amount of money which the plaintiff is seeking is liquidated, a copy of Form No. 16 in Appendix A for admitting the claim; and
- (b) if the amount of money which the plaintiff is seeking is unliquidated, a copy of Form No. 16C in Appendix A for admitting the claim.

**14. Application**  
(O. 13A, r. 14)

(1) This Order (other than rule 13) applies in relation to a writ of summons, an originating summons or any other originating process served before the commencement\* of this Order if-

- (a) in the case of a writ of summons, the plaintiff has not obtained a default judgment under Order 13 or 19;
- (b) in the case of an originating summons, the admission is filed and served before the date or the period fixed under Order 28, rule 2; and
- (c) in the case of any other originating process, the period specified in rule 3(1)(c) for filing and serving an admission under rule 4, 5, 6 or 7 has not expired.

(2) This Order applies in relation to a counterclaim with the necessary modifications as if-

- (a) a reference to a claim or statement of claim were a reference to a counterclaim;
- (b) a reference to a plaintiff were a reference to the party making the counterclaim; and
- (c) a reference to a defendant were a reference to the defendant to the counterclaim.

(3) Where a defendant has made a claim against a person not already a party to the action under Order 16, rule 1 or 8, this Order applies in relation to that claim and any other claim made under Order 16, rule 9 with the necessary modifications as if-

- (a) a reference to a plaintiff were a reference to the person who makes the claim; and
- (b) a reference to a defendant were a reference to the person against whom the claim is made.

(L.N. 152 of 2008)

**Note:**

\* **Commencement day: 2 April 2009.**

Order:	14	<b>SUMMARY JUDGMENT</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Application by plaintiff for summary judgment** (O. 14, r. 1)



(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3) this rule applies to every action begun by writ other than-

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment or seduction,
- (b) an action which includes a claim by the plaintiff based on an allegation of fraud, or
- (c) an Admiralty action in rem.

(3) This Order shall not apply to an action to which Order 86 or Order 88 applies.

## **2. Manner in which application under rule 1 must be made (O. 14, r. 2)**

(1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

## **3. Judgment for plaintiff (O. 14, r. 3)**

(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed. (See App. A Form 44)

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

## **4. Leave to defend (O. 14, r. 4)**

(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) Rule 2(2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity-

- (a) to produce any document;
- (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

## **5. Application for summary judgment on counterclaim (O. 14, r. 5)**

(1) Where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3), the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim,

or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say-

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3 (2) "any counterclaim made or raised by the defendant in" shall be omitted; and
- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

## **6. Directions (O. 14, r. 6)**

(1) Where the Court-

- (a) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim, or
- (b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court shall give directions as to the further conduct of the action, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 of this Order or rule 5 thereof, as the case may be, on which the order was made were a case management summons. (L.N. 152 of 2008)

(2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by a master under the provisions of these rules relating to the trial of causes or matters or questions or issues by masters.

## **7. Costs (O. 14, r. 7)**

(1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62 and in particular to rule 4(1) thereof, the Court may dismiss the application with costs and may require the costs to be paid by him forthwith.

(2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

## **8. Right to proceed with residue of action or counterclaim (O. 14, r. 8)**

(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

## **9. Judgment for delivery up of chattel (O. 14, r. 9)**

Where the claim to which an application under rule 1 or rule 5 relates is for the delivery up of a specific chattel and the Court gives judgment under this Order for the applicant, it shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

## **10. Relief against forfeiture (O. 14, r. 10)**

A tenant shall have the same right to apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

## 11. Setting aside judgment (O. 14, r. 11)

Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court on such terms as it thinks just.

(Enacted 1988)

Order:	14A	<b>DISPOSAL OF CASE ON POINT OF LAW</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### 1. Determination of questions of law or construction (O. 14A, r. 1)

(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that-

- (a) such question is suitable for determination without a full trial of the action; and
- (b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have either-

- (a) had an opportunity of being heard on the question; or
- (b) consented to an order or judgment on such determination.

(4) The jurisdiction of the Court under this Order may be exercised by a master.

(5) Nothing in this Order shall limit the powers of the Court under Order 18, rule 19 or any other provision of these rules.

### 2. Manner in which application under rule 1 may be made (O. 14A, r. 2)

An application under rule 1 may be made by summons or (notwithstanding Order 32, rule 1) may be made orally in the course of any interlocutory application to the Court.

(L.N. 165 of 1992; L.N. 152 of 2008)

Order:	15	<b>CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

### 1. Joinder of causes of action (O. 15, r. 1)

(1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action-

- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
- (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
- (c) with the leave of the Court.

(2) An application for leave under this rule must be made ex parte by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

## **2. Counterclaim against plaintiff (O. 15, r. 2)**

(1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

## **3. Counterclaim against additional parties (O. 15, r. 3)**

(1) Where a defendant to an action who makes a counter-claim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counter-claim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim and, in the case of a person who is not already a party to the action, the defendant must issue the counterclaim out of the Registry and serve on the person concerned a sealed copy of the counterclaim together with a form of acknowledgment of service in Form No. 14 in Appendix A (with such modifications as the circumstances may require) and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) The appropriate office for issuing and acknowledging service of a counterclaim against a person who is not already a party to the action is the Registry.

(5) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these rules, namely, Order 6, rule 7(3) and (5), Order 10, Order 11, Orders 12 and 13 and Order 75, rule 4, shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if-

- (a) the counterclaim were a writ and the proceedings arising from it in an action; and
- (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(5A) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on any person other than the plaintiff, who before service is already a party to the action, the provisions of Order 14, rule 5 shall apply in relation to the counterclaim and the proceedings arising therefrom, as if the party against whom the counterclaim is made were the plaintiff in the action. (L.N. 363 of 1990)

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 17 in Appendix A, addressed to that person.

(L.N. 404 of 1991)

## **4. Joinder of parties (O. 15, r. 4)**

(1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where-

- (a) if separate actions were brought by or against each of them, as the case may be, some common

question of law or fact would arise in all the actions, and

- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any written law and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate action.

(HK)(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

## **5. Court may order separate trials, etc. (O. 15, r. 5)**

(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

## **6. Misjoinder and nonjoinder of parties (O. 15, r. 6)**

(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter. (L.N. 167 of 1994)

(2) Subject to the provision of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely-
  - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
  - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

(4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

(5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either-

- (a) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted; or
- (b) the relevant period arises under the provisions of section 27 or 28 of the Limitation Ordinance (Cap 347) and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph "any relevant period of limitation" (任何有關的時效期) means a time limit under the Limitation Ordinance (Cap 347).

(6) The addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5)(a) if, and only if, the Court is satisfied that-

- (a) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined, or
- (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally, or
- (c) the new party is the Secretary for Justice and the proceedings should have been brought by relator proceedings in his name, or (L.N. 362 of 1997)
- (d) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company, or
- (e) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.

#### **6A. Proceedings by and against estates (O. 15, r. 6A)**

(1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced by or against a person shall be treated, if he was dead at its commencement and the cause of action survives, as having been commenced by his estate or against it in accordance with paragraph (1) as the case may be, whether or not a grant of probate or administration was made before its commencement. (L.N. 363 of 1990)

(4) In any such action as is referred to in paragraph (1) or (3)-

- (a) the plaintiff shall, and the defendant, the personal representatives of the deceased or any person interested in the deceased's estate may, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party of the proceedings, and in either case for an order that the proceedings be carried on by or against the person so appointed or, as the case may be, by or against the personal representative, as if he had been substituted for the estate; (L.N. 363 of 1990)
- (b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in sub-paragraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(5A) Where an order is made under paragraph (4) at the instance of a plaintiff appointing the Official Solicitor to represent the deceased's estate, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the Court, with the consent of the Official Solicitor, directs that the appointment shall extend to taking further steps in the proceedings. (L.N. 363 of 1990; L.N. 375 of 1991)

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings. (L.N. 363 of 1990)

#### **7. Change of parties by reason of death, etc.**

(O. 15, r. 7)

(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not

abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made ex parte.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but-

- (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and
- (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun and of all other pleadings served in the proceedings and a form of acknowledgment of service in Form No. 14 or 15 in Appendix A, whichever is appropriate. (L.N. 404 of 1991)

(5) Any application to the Court by a person served with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

## **8. Provisions consequential on making of order under rule 6 or 7 (O. 15, r. 8)**

(1) Where an order is made under rule 6 the writ by which the action in question was begun must be amended accordingly and must be indorsed with-

- (a) a reference to the order in pursuance of which the amendment is made, and
- (b) the date on which the amendment is made;

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

(2A) Together with the writ of summons served under paragraph (2) shall be served a copy of all other pleadings served in the action. (L.N. 404 of 1991)

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to acknowledgment of service shall apply accordingly to acknowledgment of service by him subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for acknowledging service shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until-

- (a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or
- (b) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the cause book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old except that acknowledgment of service by the old party shall not dispense with acknowledgment of service by the new.

(5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

## **9. Failure to proceed after death of party**

(O. 15, r. 9)

(1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(2) Where in any action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

#### **10. Actions for possession of land (O. 15, r. 10)**

(1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

The affidavit shall specify the applicant's address for service and Order 12, rule 3(2), (3) and (4), shall apply as if the affidavit were an acknowledgment of service.

(3) A person added as a defendant by an order under this rule must serve on the plaintiff a copy of the order giving the added defendant's address for service specified in accordance with paragraph (2).

#### **10A. (Repealed L.N. 127 of 1995)**

#### **11. Relator actions (O. 15, r. 11)**

Before the name of any person is used in any action as relator, that person must give a written authorization so to use his name to his solicitor and the authorization must be filed in the Registry.

#### **12. Representative proceedings (O. 15, r. 12)**

(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.



**13. Representation of interested persons who cannot be ascertained, etc. (O. 15, r. 13)**

(1) In any proceedings concerning-

- (a) the estate of a deceased person, or
- (b) property subject to a trust, or
- (c) the construction of a written instrument, including an Ordinance or any other written law,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows-

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but-

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

**13A. Notice of action to non-parties**

(O. 15, r. 13A)

(1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.

(2) An application under this rule may be made ex parte and shall be supported by an affidavit stating the grounds of the application.

(3) Every notice of an action under this rule shall be in Form No. 52 in Appendix A and the copy to be served shall be a sealed copy and accompanied by a copy of the originating summons or writ and of all other pleadings served in the action, and by a form of acknowledgment of service in Form No. 14 or 15 in Appendix A with such modifications as may be appropriate.

(4) A person may, within 14 days of service on him of a notice under this rule, acknowledge service of the writ or originating summons and shall thereupon become a party to the action, but in default of such acknowledgment and subject to paragraph (5) he shall be bound by any judgment given in the action as if he was a party thereto.

(5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is issued and served upon him under this rule.

(6) This rule applies to any action relating to-

- (a) the estate of a deceased person; or
- (b) property subject to a trust.

(7) Order 6, rule 7(3) and (5) shall apply in relation to a notice of an action under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.

(L.N. 404 of 1991)

**14. Representation of beneficiaries  
by trustees, etc. (O. 15, r. 14)**

(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

**15. Representation of deceased person interested  
in proceedings (O. 15, r. 15)**

(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

**16. Declaratory judgment (O. 15, r. 16)**

No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

**17. Conduct of proceedings (O. 15, r. 17)**

The Court may give the conduct of any action, inquiry or other proceedings to such person as it thinks fit.

(Enacted 1988)

Order:	16	<b>THIRD PARTY AND SIMILAR PROCEEDINGS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Third party notice (O. 16, r. 1)**

(1) Where in any action a defendant who has given notice of intention to defend-

- (a) claims against a person not already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action;

then, subject to paragraph (2), the defendant may issue a notice in Form No. 20 or 21 in Appendix A, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or

issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

## **2. Application for leave to issue third party notice (O. 16, r. 2)**

(1) Application for leave to issue a third party notice may be made ex parte but the Court may direct a summons for leave to be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating-

- (a) the nature of the claim made by the plaintiff in the action;
- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

## **3. Issue, service and acknowledgment of service, of third party notice (O. 16, r. 3)**

(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action and a form of acknowledgment of service in Form No. 14 in Appendix A with such modifications as may be appropriate.

(3) The appropriate office for acknowledging service of a third party notice is the Registry.

(4) Subject to the foregoing provisions of this rule, the following provisions of these rules, namely, Order 6, rule 7(3) and (5), Order 10, Order 11, Order 12 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if-

- (a) the third party notice were a writ and the proceedings begun thereby an action; and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action:

Provided that in the application of Order 11, rule 1(1)(c) leave may be granted to serve a third party notice outside the jurisdiction on any necessary or proper party to the proceedings brought against the defendant.

## **4. Third party directions (O. 16, r. 4)**

(1) If the third party gives notice of intention to defend, the defendant who issued the third party notice must, by summons to be served on all the other parties to the action, apply to the Court for directions.

(2) If no summons is served on the third party under paragraph (1), the third party may, not earlier than 7 days after giving notice of intention to defend, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may-

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice;

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take

such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

#### **5. Default of third party, etc. (O. 16, r. 5)**

(1) If a third party does not give notice of intention to defend or, having been ordered to serve a defence, fails to do so-

- (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and
- (b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

#### **6. Setting aside third party proceedings (O. 16, r. 6)**

Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

#### **7. Judgment between defendant and third party (O. 16, r. 7)**

(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant. (L.N. 152 of 2008)

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the Court until that liability has been discharged.

(3) For the purpose of paragraph (2)-

"liability" (法律責任) includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 3(4) of the Civil Liability (Contribution) Ordinance (Cap 377) applies.

#### **8. Claims and issues between a defendant and some other party (O. 16, r. 8)**

(1) Where in any action a defendant who has given notice of intention to defend-

- (a) claims against a person who is already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action;

then, subject to paragraph (2), the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.

(2) Where a defendant makes such a claim as is mentioned in paragraph (1) and that claim could be made by

him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No acknowledgment of service of such a notice shall be necessary if the person on whom it is served has acknowledged service of the writ or originating summons in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has given notice of intention to defend the action or is a plaintiff) had given notice of intention to defend the claim, question or issue.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words "7 days after giving notice of intention to defend" there were substituted the words "14 days after service of the notice on him".

## **9. Claims by third and subsequent parties**

(O. 16, r. 9)

(1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this Order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1 (2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless the action in question was begun by writ and he issues the notice before the expiration of 14 days after the time limited for acknowledging service of the notice issued against him.

## **10. Offer of contribution (O. 16, r. 10)**

(1) If, at any time after he has acknowledged service, a party to an action who stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then subject to paragraph (2) and, notwithstanding that he reserves the right to bring the offer to the action of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

(2) Where the question of the costs of the issue of liability falls to be decided, that issue having been tried and an issue or question concerning the amount of the debt or damages remaining to be tried separately, any party may bring to the attention of the judge the fact that a written offer under paragraph (1) has or has not been made and the date (but not the amount) of such offer or of the first such offer if more than one.

## **11. Counterclaim by defendant (O. 16, r. 11)**

Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject-matter of the counterclaim were the original subject-matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(Enacted 1988)

Order:	17	<b>INTERPLEADER</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Entitlement to relief by way of interpleader (O. 17, r. 1)**

(1) Where-

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, or

(b) claim is made to any money, goods or chattels taken or intended to be taken by a bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued, the person under liability as mentioned in sub-paragraph (a), or (subject to rule 2) the bailiff, may apply to the Court for relief by way of interpleader.

(2) References in this Order to a bailiff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the Court of First Instance.

(25 of 1998 s. 2)

## **2. Claim to goods, etc., taken in execution**

(O. 17, r. 2)

(1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the bailiff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule the bailiff must forthwith give notice thereof to the execution creditor and the execution creditor must, within 7 days after receiving the notice, give notice to the bailiff informing him whether he admits or disputes the claim.

An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the bailiff for any fees and expenses incurred by the bailiff before receipt of that notice.

(3) Where-

(a) the bailiff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice, and

(b) the claim made under this rule is not withdrawn,

the bailiff may apply to the Court for relief under this Order.

(4) A bailiff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

## **3. Mode of application (O. 17, r. 3)**

(1) An application for relief under this Order may be made by originating summons unless made in a pending action, in which case it must be made by summons in the action. (L.N. 152 of 2008)

(2) Where the applicant is a bailiff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4), the summons must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.

(4) Subject to paragraph (5), a summons under this rule must be supported by evidence that the applicant-

(a) claims no interest in the subject-matter in dispute other than for charges or costs,

(b) does not collude with any of the claimants to that subject-matter, and

(c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

(5) Where the applicant is a bailiff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court to do so.

(6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall within 14 days serve on the execution creditor and the bailiff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) Where the applicant is a bailiff a summons under this rule must give notice of the requirement in paragraph (6).

## **5. Powers of Court hearing summons (O. 17, r. 5)**

(1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the

subject-matter in dispute (hereafter in this Order referred to as "the claimants") appear, the Court may order-

- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or
- (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where-

- (a) the applicant on a summons under this Order is a bailiff, or
- (b) all the claimants consent or any of them so requests, or
- (c) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

#### **6. Power to order sale of goods taken in execution (O. 17, r. 6)**

Where an application for relief under this Order is made by a bailiff who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

#### **7. Power to stay proceedings (O. 17, r. 7)**

Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

#### **8. Other powers (O. 17, r. 8)**

Subject to the foregoing rules of this Order, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

#### **9. One order in several causes or matters (O. 17, r. 9)**

Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters pending before the Court, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

#### **10. Discovery (O. 17, r. 10)**

Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

#### **11. Trial of interpleader issue (O. 17, r. 11)**

(1) Order 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

(Enacted 1988)

Order:	18	<b>PLEADINGS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### **1. Service of statement of claim (O. 18, r. 1)**

Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

### **2. Service of defence (O. 18, r. 2)**

(1) Subject to paragraphs (2) and (3), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby 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 him, whichever is the later. (L.N. 383 of 1996)

(2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 28 days after the making of the order or within such other period as may be specified therein.

(3) Where an application is made by a defendant under Order 12, rule 8(1) or (2), paragraph (1) shall not have effect in relation to him unless the application is dismissed or no order is made on the application and, in that case, shall have effect as if it required him to serve his defence within 28 days after the final determination of the application or within such other period as may be specified by the Court. (L.N. 383 of 1996)

(L.N. 152 of 2008)

### **3. Service of reply and defence to counterclaim (O. 18, r. 3)**

(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8; and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 28 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 28 days after the service on him of the counterclaim to which it relates. (L.N. 152 of 2008)

### **4. Pleadings subsequent to reply (O. 18, r. 4)**

No pleading subsequent to a reply or a defence to counter-claim shall be served except with the leave of the Court.

### **5. Service of pleadings in Summer Vacation (O. 18, r. 5)**

Pleadings or amended pleadings shall not be served during the Summer Vacation, except with the leave of the Court or with the consent of all the parties to the action.

### **(HK)5A. Filing of pleadings and originating process (O. 18, r. 5A)**

(1) Subject to Order 3, rule 5(3) and subject to the provisions of this rule, every pleading and originating process shall be filed in the Registry within the time during which that pleading or originating process may be served



by him on any other party.

(2) A party may apply to the court for further time to file a pleading or originating process on a summons stating the further time required.

(3) If a party fails to file a pleading or originating process within the time allowed under paragraph (1) or further time allowed under paragraph (2), he shall not be at liberty to file that pleading or originating process without the leave of the Court.

## **6. Pleadings: formal requirements (O. 18, r. 6)**

(1) Every pleading in an action must bear on its face-

- (a) the year in which the writ in the action was issued and the number of the action,
- (b) the title of the action,
- (d) the description of the pleading, and
- (e) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading must be indorsed-

- (a) where the party sues or defends in person, with his name and address;
- (b) in any other case, with the name or firm and business address of the solicitor by whom it was served, and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

(5) Every pleading must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

## **7. Facts, not evidence, to be pleaded (O. 18, r. 7)**

(1) Subject to the provisions of this rule and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation must not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

### **7A. Conviction, etc. to be adduced in evidence: matter to be pleaded (O. 18, r. 7A)**

(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 62 of the Evidence Ordinance (Cap 8) (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in Hong Kong, he must include in his pleading a statement of his intention with particulars of-

- (a) the conviction and the date thereof,
- (b) the court which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 63 of the Evidence Ordinance (Cap 8) (findings of adultery as evidence in civil proceedings) to adduce evidence that a person was found guilty of adultery in matrimonial proceedings, he must include in his pleading a statement of his intention with particulars of-

- (a) the finding and the date thereof,
- (b) the court which made the finding and the proceedings in which it was made, and

(c) the issue in the proceedings to which the finding is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party-

(a) denies the conviction or finding of adultery to which the statement relates, or

(b) alleges that the conviction or finding was erroneous, or

(c) denies that the conviction or finding is relevant to any issue in the proceedings,  
he must make the denial or allegation in his pleading.

#### **8. Matters which must be specifically pleaded (O. 18, r. 8)**

(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality-

(a) which he alleges makes any claim or defence of the opposite party not maintainable; or

(b) which, if not specifically pleaded, might take the opposite party by surprise; or

(c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to paragraph (1), a defendant to an action for recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages or for provisional damages must be specifically pleaded together with the facts on which the party pleading relies.

(4) A party must plead specifically any claim for interest under section 48 of the Ordinance or otherwise.

#### **9. Matter may be pleaded whenever arising**

(O. 18, r. 9)

Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

#### **10. Departure (O. 18, r. 10)**

(1) A party shall not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

#### **11. Points of law may be pleaded (O. 18, r. 11)**

A party may by his pleading raise any point of law.

#### **12. Particulars of pleading (O. 18, r. 12)**

(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing-

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies;

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies; and (L.N. 404 of 1991)

(c) where a claim for damages is made against a party pleading, particulars of any facts on which the party relies in mitigation of, or otherwise in relation to, the amount of damages. (L.N. 404 of 1991)

(1A) Subject to paragraph (1B), a plaintiff in an action for personal injuries shall serve with his statement of claim-

(a) a medical report; and

(b) a statement of the special damages claimed. (L.N. 404 of 1991)

(1B) Where the documents to which paragraph (1A) applies are not served with the statement of claim, the Court

may-

- (a) specify the period of time within which they are to be provided; or
- (b) make such other order as it thinks fit (including an order dispensing with the requirement of paragraph (1A) or staying the proceedings.) (L.N. 404 of 1991)

(1C) For the purposes of this rule-

"medical report" (醫學報告) means a report substantiating all the personal injuries alleged in the statement of claim which the plaintiff proposes to adduce in evidence as part of his case at the trial;

"a statement of the special damages claimed" (關於所申索的專項損害賠償的陳述書) means a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings and of pension rights). (L.N. 404 of 1991)

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served, and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(3A) The Court may make an order under paragraph (3) upon the application of a party or of its own motion. (L.N. 152 of 2008)

(3B) No order shall be made under paragraph (3) unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs. (L.N. 152 of 2008)

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party-

- (a) where he alleges knowledge, particulars of the facts on which he relies, and
- (b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

## **12A. Pleading with inconsistent alternatives (O. 18, r. 12A)**

A party may in any pleading make an allegation of fact which is inconsistent with another allegation of fact in the same pleading if-

- (a) the party has reasonable grounds for so doing; and
- (b) the allegations are made in the alternative.

(L.N. 152 of 2008)

## **13. Admissions and denials (O. 18, r. 13)**

(1) Subject to paragraph (6), an allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a non-admission of it. (L.N. 403 of 1992; L.N. 152 of 2008)

(2) Subject to paragraph (5), a traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication. (L.N. 152 of 2008)

(3) Every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them. (L.N. 403 of 1992)

- (4) (Repealed L.N. 403 of 1992)
- (5) Where an allegation made in a statement of claim or counterclaim is traversed by a denial, the party who denies the allegation shall in his defence or defence to counterclaim-
  - (a) state his reasons for doing so; and
  - (b) if he intends to put forward a different version of events from that given by the claimant, state his own version. (L.N. 152 of 2008)
- (6) A party who-
  - (a) fails to deal with an allegation; but
  - (b) has set out in his defence or defence to counterclaim the nature of his case in relation to the issue to which that allegation is relevant,
 is to be taken to require that allegation to be proved. (L.N. 152 of 2008)

**14. Non-admission by joinder of issue (O. 18, r. 14)**

(L.N. 152 of 2008)

- (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.
- (2) Subject to paragraph (3)-
  - (a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and
  - (b) a party may in his pleading expressly join issue on the next preceding pleading.
- (3) There can be no joinder of issue, implied or expressed, on a statement of claim or counterclaim.
- (4) A joinder of issue operates as a non-admission of every material allegation of fact made in the pleading on which there is an implied or expressed joinder of issue unless, in the case of an expressed joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the expressed joinder of issue operates as a non-admission of every other such allegation. (L.N. 152 of 2008)

**15. Statement of claim (O. 18, r. 15)**

- (1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.
- (2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the endorsement of the writ without amending the endorsement.
- (3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

**16. Defence of tender (O. 18, r. 16)**

Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

**17. Defence of set-off (O. 18, r. 17)**

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

**18. Counterclaim and defence to counterclaim (O. 18, r. 18)**

Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically-

- (a) rules 12(1A), (1B) and (1C) and 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff; (L.N. 404 of 1991)

- (b) rules 8(2), 16 and 17 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

#### **19. Striking out pleadings and indorsements (O. 18, r. 19)**

(1) The Court may, either of its own motion or on application, at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that- (L.N. 152 of 2008)

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

#### **20. Close of pleadings (O. 18, r. 20)**

(1) The pleadings in an action are deemed to be closed-

- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 28 days after service of the defence. (L.N. 152 of 2008)

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

#### **20A. Pleading, etc. to be verified by statement of truth (O. 18, r. 20A)**

(1) A pleading and the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are particulars given by a party to any other party, whether voluntarily or pursuant to-

- (a) a request made by that other party; or
- (b) an order of the Court made under rule 12(3) or (4).

(L.N. 152 of 2008)

#### **21. Trial without pleadings (O. 18, r. 21)**

(1) Where in an action to which this rule applies any defendant has given notice of intention to defend in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 2 to 7 shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application under this rule were a case management summons. (L.N. 152 of 2008)

(4) This rule applies to every action begun by writ other than one which includes-

- (a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or (L.N. 363 of

- 1990)  
 (b) a claim by the plaintiff based on an allegation of fraud.

**22. Saving for defence under Merchant Shipping Acts etc. (O. 18, r. 22)**

Nothing in Order 75, rules 37 to 40, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant Shipping Acts 1894 to 1979<sup>#</sup> in their application to Hong Kong or the Merchant Shipping (Local Vessels) Ordinance (Cap 548), the Merchant Shipping (Seafarers) Ordinance (Cap 478) or the Merchant Shipping (Safety) Ordinance (Cap 369), which limits the amount of his liability in connection with a ship or other property.

(L.N. 356 of 1988; 44 of 1995 s. 143; 24 of 2005 s. 55)

**23. Transitional provision relating to rule 93 of Amendment Rules 2008 (O. 18, r. 23)**

Where a statement of claim has been served on a defendant before the commencement\* of the Amendment Rules 2008, then rule 93 of the Amendment Rules 2008 does not apply to the defence to the claim and if a counterclaim has been served on the plaintiff, to the defence to the counterclaim, and rule 13 as in force immediately before the commencement continues to apply as if rule 93 of the Amendment Rules 2008 had not been made.

(L.N. 152 of 2008)

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

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

- (a) in relation to the service of the defence and the reply to that defence; and
- (b) if a counterclaim has been served on the plaintiff, in relation to the service of the defence to the counterclaim,

and rules 2 and 3 as in force immediately before the commencement continue to apply as if rules 96 and 97 of the Amendment Rules 2008 had not been made.

(L.N. 152 of 2008)

**Note:**

<sup>#</sup> Please also see following-

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2 to Cap 508;
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.

\* Commencement day: 2 April 2009.

Order:	19	<b>DEFAULT OF PLEADINGS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Default in service of statement of claim (O. 19, r. 1)**

Where the plaintiff is required by these rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

**2. Default of defence: claim for liquidated demand (O. 19, r. 2)**

(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any. (See App. A, Form 39)

(2) Order 13, rule 1(2) shall apply for the purpose of this rule as it applies for the purposes of that rule.

**3. Default of defence: claim for unliquidated damages (O. 19, r. 3)**

Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any. (See App. A, Form 40)

**4. Default of defence: claim in detinue (O. 19, r. 4)**

(1) Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for the service of the defence and subject to Order 42, rule 1A,-

(a) at his option enter either-

(i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or

(ii) interlocutory judgment for the value of the goods to be assessed and costs, or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any. (See App. A, Form 41)

(2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

**5. Default of defence: claim for possession of land (O. 19, r. 5)**

(1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any. (See App. A, Form 42)

(5) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

**6. Default of defence: mixed claims (O. 19, r. 6)**

Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

**7. Default of defence: other claims (O. 19, r. 7)**

(1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may-

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or
- (b) set down the action for judgment against the defendant at the time when the action is set down for trial, or is set down for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons.

(L.N. 152 of 2008)

## **8. Default of defence to counterclaim (O. 19, r. 8)**

A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counter-claim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

## **(HK)8A. Notice of intention to enter judgment**

(O. 19, r. 8A)

(1) No party shall enter judgment under the provisions of this Order against a party who has filed an acknowledgment of service giving notice of intention to defend, or on a counterclaim, unless-

- (a) after such acknowledgment of service or counterclaim has been filed, and not less than 2 clear days before entering judgment, the party intending to enter judgment has served notice in writing of his intention to do so on the party against whom judgment is sought or, if that party is legally represented, on his solicitor;
- (b) evidence of such service by way of affidavit has been filed in the Court.

(2) This rule shall not apply where-

- (a) the Court has made an order prescribing or extending the time for service of defence or defence to counterclaim; or
- (b) the party against whom it is sought to enter judgment does not have a solicitor of record in the proceedings and has failed to state an address within the jurisdiction in the proceedings at which he can be served.

(L.N. 223 of 1995)

## **9. Setting aside judgment (O. 19, r. 9)**

The Court may, on such terms as it thinks just, set a side or vary any judgment entered in pursuance of this Order.

(Enacted 1988)

Order:	20	AMENDMENT	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Amendment of writ without leave (O. 20, r. 1)**



(1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.

(3) This rule shall not apply in relation to an amendment which consists of-

(a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or

(b) the addition or substitution of a new cause of action, or

(c) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ, unless the amendment is made before service of the writ on any party to the action.

## **2. Amendment of acknowledgment of service (O. 20, r. 2)**

(1) Subject to paragraph (2), a party may not amend his acknowledgment of service without leave of the Court.

(2) A party whose acknowledgment of service contains a statement to the effect that-

(a) he does, or

(b) he does not

intend to contest the proceedings to which the acknowledgement relates may, without the leave of the Court, amend the acknowledgment by substituting for that statement a statement to the opposite effect, provided that in a case falling under sub-paragraph (b) the amendment is made before judgment has been obtained in the proceedings.

(3) Where an acknowledgment of service is authorized to be amended under this rule, a fresh acknowledgment, amended as so authorized, must be handed in at or sent by post to the Registry, and Order 12, rule 4, shall apply.

## **3. Amendment of pleadings without leave (O. 20, r. 3)**

(1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

(2) Where an amended statement of claim is served on a defendant-

(a) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and

(b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant-

(a) the plaintiff, if he has already served a reply on that defendant, may amend his reply, and

(b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.

(4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counter-claim respectively.

(5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to reply on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

## **4. Application for disallowance of amendment made without leave (O. 20, r. 4)**

(1) Within 14 days after the service on a party of a writ amended under rule 1 (1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or

rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

#### **5. Amendment of writ or pleading with leave (O. 20, r. 5)**

(1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleadings, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

#### **7. Amendment of other originating process (O. 20, r. 7)**

Rule 5 shall have effect in relation to an originating summons, a petition and an originating notice or motion as it has effect in relation to a writ.

#### **8. Amendment of pleading and certain other documents (O. 20, r. 8)**

(L.N. 152 of 2008)

(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order a pleading or any other document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct. (L.N. 152 of 2008)

(1A) The Court shall not under paragraph (1) order a pleading to be amended unless it is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs. (L.N. 152 of 2008)

(2) This rule shall not have effect in relation to a judgment or order.

#### **9. Failure to amend after order (O. 20, r. 9)**

(1) Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period. (L.N. 152 of 2008)

(2) Paragraph (1) is subject to any directions given by the Court. (L.N. 152 of 2008)

#### **10. Mode of amendment of writ, etc. (O. 20, r. 10)**

(1) Where the amendments authorized under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorized, must be

prepared and, in the case of a writ or originating summons, re-issued, but, except as aforesaid and subject to any direction given under rule 5, or 8, the amendments so authorized may be effected by making in writing the necessary alterations of the document and in the case of a writ or originating summons, causing it to be resealed and filing a copy.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the Judge, master or Registrar by whom the order (if any) authorizing the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

#### **11. Amendment of judgment and orders (O. 20, r. 11)**

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on summons without an appeal.

(L.N. 152 of 2008)

#### **12. Amendment of pleadings by agreement (O. 20, r. 12)**

(1) Notwithstanding the foregoing provisions of this Order any pleading in any cause or matter may, by written agreement between the parties, be amended at any stage of the proceedings.

(2) This rule shall not have effect in relation to an amendment which consists of the addition, omission or substitution of a party.

#### **13. Amendment of pleadings or particulars of pleadings to be verified by statement of truth (O. 20, r. 13)**

(1) An amendment to a pleading or to the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are the particulars given by a party to any other party, whether voluntarily or pursuant to-

- (a) a request made by that other party; or
- (b) an order of the Court made under Order 18, rule 12(3) or (4).

(L.N. 152 of 2008)  
(Enacted 1988)

Order:	21	<b>WITHDRAWAL AND DISCONTINUANCE</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Withdrawal of acknowledgment of service (O. 21, r. 1)**

A party who has acknowledged service in an action may withdraw the acknowledgment at any time with the leave of the Court.

#### **2. Discontinuance of action, etc., without leave (O. 21, r. 2)**

(1) Subject to paragraph (2A) the plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

(2) Subject to paragraph (2A) a defendant to an action begun by writ may, without the leave of the Court-

- (a) withdraw his defence or any part of it at any time,
- (b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a

defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served, by serving a notice to that effect on the plaintiff or other party concerned.

(2A) A party in whose favour an interim payment has been ordered, in accordance with Order 29, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.

(3) Where there are two or more defendants to an action begun by writ not all of whom serve a defence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action begun by writ with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

(3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(2) or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(3B) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his affidavit evidence expires after the latest date on which any other defendant serves his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties.

### **3. Discontinuance of action, etc., with leave (O. 21, r. 3)**

(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counter-claim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this rule may be made by summons or by notice under Order 25, rule 7. (L.N. 152 of 2008)

### **4. Effect of discontinuance (O. 21, r. 4)**

Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.

### **5. Stay of subsequent action until costs paid (O. 21, r. 5)**

(1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then, if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

(2) An application for an order under this rule may be made by summons or by notice under Order 25, rule 7. (L.N. 152 of 2008)

### **6. Withdrawal of summons (O. 21, r. 6)**

A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.  
(Enacted 1988)

Order:	22	<b>OFFERS TO SETTLE AND PAYMENTS INTO COURT</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## I. PRELIMINARY

### 1. Interpretation (O. 22, r. 1)

(1) In this Order-

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

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

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

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

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

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

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

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

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

(2) Where in an action the plaintiff makes more than one claim, a reference in this Order to-

(a) the whole claim is to be construed as a reference to all the claims in their entirety;

(b) a part of a claim is to be construed as a reference to any one or more of the claims or a part of any one or more of the claims; and

(c) an issue arising from a claim is to be construed as a reference to an issue arising from one or more of the claims.

### 2. Offer to settle with specified consequences (O. 22, r. 2)

(1) A party to an action containing a money claim or a non-money claim or both arising from any cause or causes of action may make an offer to settle the whole claim, a part of it or any issue arising from it in accordance with this Order.

(2) An offer made under paragraph (1) may take into account any counterclaim or set-off in the action.

(3) An offer made under paragraph (1) has the consequences specified in rules 20, 21, 22, 23 and 24 (as may be applicable).

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

## II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

### 3. Defendant's offer to settle (O. 22, r. 3)

(1) An offer by a defendant to settle the whole or part of a claim or an issue arising from the claim does not have the consequences specified in this Order unless it is made by way of a sanctioned offer or a sanctioned payment or both.

(2) Where an offer by a defendant involves a payment of money to the plaintiff, the offer must be made by way of a sanctioned payment.

(3) A sanctioned payment may only be made after the proceedings have commenced.

#### **4. Plaintiff's offer to settle**

(O. 22, r. 4)

An offer by a plaintiff to settle the whole or part of a claim or an issue arising from the claim does not have the consequences specified in this Order unless it is made by way of a sanctioned offer.

#### **5. Form and content of sanctioned offer (O. 22, r. 5)**

(1) A sanctioned offer must be in writing.

(2) A sanctioned offer may relate to the whole claim or to part of it or to any issue arising from it.

(3) A sanctioned offer must-

(a) state whether it relates to the whole claim or to part of it or to an issue arising from it and if so to which part or issue;

(b) state whether it takes into account any counterclaim or set-off; and

(c) if it is expressed not to be inclusive of interest, give the details relating to interest set out in rule 26(2).

(4) A defendant may make a sanctioned offer limited to accepting liability up to a specified proportion.

(5) A sanctioned offer may be made by reference to an interim payment.

(6) A sanctioned offer may be made at any time after the commencement of the proceedings but may not be made before such commencement.

(7) A sanctioned offer made not less than 28 days before the commencement of the trial must provide that after the expiry of 28 days from the date the sanctioned offer is made, the offeree may only accept it if-

(a) the parties agree on the liability for costs; or

(b) the Court grants leave to accept it.

(8) A sanctioned offer made less than 28 days before the commencement of the trial must provide that the offeree may only accept it if-

(a) the parties agree on the liability for costs; or

(b) the Court grants leave to accept it.

#### **6. Service of sanctioned offer**

(O. 22, r. 6)

An offeror shall serve the sanctioned offer-

(a) on the offeree; and

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

#### **7. Withdrawal or diminution of sanctioned offer (O. 22, r. 7)**

(1) A sanctioned offer made not less than 28 days before the commencement of the trial may not be withdrawn or diminished before the expiry of 28 days from the date the sanctioned offer is made unless the Court grants leave to withdraw or diminish it.

(2) A sanctioned offer made less than 28 days before the commencement of the trial may be withdrawn or diminished if the Court grants leave to withdraw or diminish it.

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

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

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

## **8. Notice of sanctioned payment**

(O. 22, r. 8)

(1) A sanctioned payment may relate to the whole claim or to part of it or to an issue arising from it.

(2) A defendant who makes a sanctioned payment shall file with the Court a notice in Form No. 23 in Appendix A, that-

- (a) states the amount of the payment;
- (b) states whether the payment relates to the whole claim or to part of it or to an issue arising from it and if so to which part or issue it relates;
- (c) states whether it takes into account any counterclaim or set-off;
- (d) if an interim payment has been made, states that the interim payment has been taken into account;
- (e) if it is expressed not to be inclusive of interest, gives the details relating to interest set out in rule 26(2); and
- (f) if a sum of money has been paid into court (other than as security for costs), states whether the sanctioned payment has taken into account that sum of money.

## **9. Service of sanctioned payment**

(O. 22, r. 9)

A defendant who makes a sanctioned payment shall-

- (a) serve the sanctioned payment notice-
  - (i) on the plaintiff; and
  - (ii) where the plaintiff is an aided person, on the Director of Legal Aid; and
- (b) file with the Court a certificate of service of the notice.

## **10. Withdrawal or diminution of sanctioned payment**

(O. 22, r. 10)

(1) A sanctioned payment may not be withdrawn or diminished before the expiry of 28 days from the date the sanctioned payment is made unless the Court grants leave to withdraw or diminish it.

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

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

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

## **11. Offer to settle claim for provisional damages** (O. 22, r. 11)

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

(2) Where the defendant makes a sanctioned payment under paragraph (1), the sanctioned payment notice must specify whether or not the defendant is offering to agree to the making of an award of provisional damages.

(3) Where the defendant is offering to agree to the making of an award of provisional damages, the sanctioned payment notice must also state-

- (a) that the sum paid into court is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the notice;
  - (b) that the offer is subject to the condition that the plaintiff shall make any claim for further damages within a limited period; and
  - (c) what that period is.
- (4) Where a sanctioned payment is-
- (a) made in accordance with paragraph (3); and
  - (b) accepted within the relevant period specified in rule 15,

the sanctioned payment has the consequences specified in rule 20, unless the Court orders otherwise.

(5) If the plaintiff accepts the sanctioned payment he must, within 7 days of doing so, apply to the Court for an order for an award of provisional damages under Order 37, rule 8.

(6) The money in court may not be paid out unless the Court has disposed of the application made under paragraph (5).

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

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

- (1) A sanctioned offer is made when it is served on the offeree.
- (2) A sanctioned payment is made when a sanctioned payment notice is served on the offeree.
- (3) An amendment to a sanctioned offer is effective when its details are served on the offeree.
- (4) An amendment to a sanctioned payment is effective when notice of the amendment is served on the offeree.
- (5) A sanctioned offer or a sanctioned payment is accepted when notice of its acceptance is served on the offeror.

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

(1) Where there is more than one defendant, a defendant who serves on the plaintiff a notice of acceptance of the plaintiff's sanctioned offer shall at the same time serve a copy of the notice on the other defendant or defendants.

(2) A defendant on whom a copy of the notice has been served may within 14 days after the service apply to the Court for-

- (a) a direction as to any question of costs between him and the defendant who has accepted the plaintiff's sanctioned offer; and
- (b) any other direction relating to the acceptance of the plaintiff's sanctioned offer.

(3) No application may be made under paragraph (2) after the expiry of the 14-day period referred to in that paragraph.

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

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

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

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

(4) Where a cause of action under the Fatal Accidents Ordinance (Cap 22) and a cause of action under Part IV or IVA of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) are joined in an action, with or without any other cause of action, the plaintiff is not entitled under paragraph (1) to request the defendant to make an apportionment of the sanctioned payment between the causes of action under those Ordinances.

**III. ACCEPTANCE OF SANCTIONED OFFER  
OR SANCTIONED PAYMENT**

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



(1) Subject to rules 7(3) and 10(2), a plaintiff may accept a sanctioned offer or a sanctioned payment made not less than 28 days before the commencement of the trial without requiring the leave of the Court if he files with the Court and serves on the defendant a written notice of acceptance not later than 28 days after the offer or payment was made.

(2) If-

- (a) a defendant's sanctioned offer or sanctioned payment is made less than 28 days before the commencement of the trial; or
- (b) the plaintiff does not accept it within the period specified in paragraph (1),

then the plaintiff may-

- (i) if the parties agree on the liability for costs, accept the offer or payment without the leave of the Court; and
- (ii) if the parties do not agree on the liability for costs, only accept the offer or payment with the leave of the Court.

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

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

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

(1) Subject to rule 7(3), a defendant may accept a sanctioned offer made not less than 28 days before the commencement of the trial without requiring the leave of the Court if he files with the Court and serves on the plaintiff a written notice of acceptance not later than 28 days after the offer was made.

(2) If-

- (a) a plaintiff's sanctioned offer is made less than 28 days before the commencement of the trial; or
- (b) the defendant does not accept it within the period specified in paragraph (1),

then the defendant may-

- (i) if the parties agree on the liability for costs, accept the offer without the leave of the Court; and
- (ii) if the parties do not agree on the liability for costs, only accept the offer with the leave of the Court.

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

#### **17. Payment out of a sum in court on acceptance of sanctioned payment (O. 22, r. 17)**

Subject to rules 18(4) and 19 and Order 22A, rule 2, where a sanctioned payment is accepted, the plaintiff may obtain payment out of the sum in court by making a request for payment in Form No. 25 in Appendix A.

#### **18. Acceptance of sanctioned offer or sanctioned payment made by one or more, but not all, defendants (O. 22, r. 18)**

(1) This rule applies where the plaintiff wishes to accept a sanctioned offer or a sanctioned payment made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the plaintiff may accept the offer or payment without requiring the leave of the Court in accordance with rule 15(1) if-

- (a) he discontinues his claim against those defendants who have not made the offer or payment; and
- (b) those defendants give written consent to the acceptance of the offer or payment.

(3) If the plaintiff alleges that the defendants have a several liability to him, the plaintiff may-

- (a) accept the offer or payment in accordance with rule 15(1); and
- (b) continue with his claims against the other defendants.

(4) In all other cases the plaintiff shall apply to the Court for-

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

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

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

- (a) the offer or payment may be accepted only with the leave of the Court; and
- (b) the money in court may not be paid out except in pursuance of an order of the Court.

(2) Where the Court grants leave to a plaintiff to accept a sanctioned offer or a sanctioned payment after the trial has commenced-

- (a) the money in court may not be paid out except in pursuance of an order of the Court; and
- (b) the Court shall, in the order, deal with the whole costs of the proceedings.

(3) Where a plaintiff accepts a sanctioned payment after a defence of tender before action has been put forward by the defendant, the money in court may not be paid out except in pursuance of an order of the Court.

(4) Where a plaintiff accepts a sanctioned payment made in satisfaction of-

- (a) a cause of action under the Fatal Accidents Ordinance (Cap 22) and a cause of action under Part IV or IVA of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23); or
- (b) a cause of action under the Fatal Accidents Ordinance (Cap 22) where more than one person is entitled to the money,

the money in court may not be paid out except in pursuance of an order of the Court.

#### IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

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

(1) Where a defendant's sanctioned offer or sanctioned payment to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the Court otherwise orders.

(2) Where-

- (a) a sanctioned offer or a sanctioned payment relating to a part of the claim or an issue arising from the claim is accepted; and
- (b) at the time of serving notice of acceptance the plaintiff abandons the other parts of the claim or other issues arising from the claim,

the plaintiff is entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the Court otherwise orders.

(3) The plaintiff's costs include any costs attributable to the defendant's counterclaim or set-off if the sanctioned offer or the sanctioned payment notice states that it takes into account the counterclaim or set-off.

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

(1) Where a plaintiff's sanctioned offer to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is entitled to his costs of the proceedings up to the date upon which the defendant serves notice of acceptance, unless the Court otherwise orders.

(2) The plaintiff's costs include any costs attributable to the defendant's counterclaim or set-off if the sanctioned offer states that it takes into account the counterclaim or set-off.

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

- (1) If a sanctioned offer or a sanctioned payment relates to the whole claim and is accepted, the claim is stayed.
- (2) In the case of acceptance of a sanctioned offer which relates to the whole claim-
  - (a) the stay is upon the terms of the offer; and
  - (b) either party may apply to enforce those terms without the need to commence new proceedings.
- (3) If a sanctioned offer or a sanctioned payment which relates only to a part of the claim or an issue arising from the claim is accepted-
  - (a) the claim is stayed as to that part or issue, and in the case of the sanctioned offer, the stay is upon the terms of the offer;
  - (b) either party may apply to enforce those terms without the need to commence new proceedings; and
  - (c) unless the parties have agreed on costs, the liability for costs shall be decided by the Court.
- (4) If the approval of the Court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of a sanctioned offer or a sanctioned payment takes effect only when that approval has been given.
- (5) Any stay arising under this rule does not affect the power of the Court-
  - (a) to enforce the terms of a sanctioned offer;
  - (b) to deal with any question of costs (including interest on costs) relating to the proceedings; or
  - (c) to order payment out of court of any sum paid into court.
- (6) Where-
  - (a) a sanctioned offer has been accepted; and
  - (b) a party alleges that-
    - (i) the other party has not honoured the terms of the offer; and
    - (ii) he is therefore entitled to a remedy for breach of contract,the party may claim the remedy by applying to the Court without the need to commence new proceedings unless the Court otherwise orders.

**23. Costs consequences where plaintiff fails to do better than sanctioned offer or sanctioned payment (O. 22, r. 23)**

- (1) This rule applies where a plaintiff-
  - (a) fails to obtain a judgment better than the sanctioned payment; or
  - (b) fails to obtain a judgment that is more advantageous than a defendant's sanctioned offer.
- (2) The Court may by order disallow all or part of any interest otherwise payable under section 48 of the Ordinance on the whole or part of any sum of money awarded to the plaintiff for some or all of the period after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.
- (3) The Court may order the plaintiff to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.
- (4) The Court may also order that the defendant is entitled to-
  - (a) his costs on the indemnity basis after the latest date on which the plaintiff could have accepted the payment or offer without requiring the leave of the Court; and
  - (b) interest on the costs referred to in paragraph (3) or sub-paragraph (a) at a rate not exceeding 10% above judgment rate.
- (5) Where this rule applies, the Court shall make the orders referred to in paragraphs (2), (3) and (4) unless it considers it unjust to do so.
- (6) In considering whether it would be unjust to make the orders referred to in paragraphs (2), (3) and (4), the Court shall take into account all the circumstances of the case including-
  - (a) the terms of any sanctioned payment or sanctioned offer;
  - (b) the stage in the proceedings at which any sanctioned payment or sanctioned offer was made;
  - (c) the information available to the parties at the time when the sanctioned payment or sanctioned offer was made; and

- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the payment or offer to be made or evaluated.
- (7) The power of the Court under this rule is in addition to any other power it may have to award or disallow interest.

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

- (1) This rule applies where-
  - (a) a defendant is held liable for more than the proposals contained in a plaintiff's sanctioned offer; or
  - (b) the judgment against a defendant is more advantageous to the plaintiff than the proposals contained in a plaintiff's sanctioned offer.
- (2) The Court may order interest on the whole or part of any sum of money (excluding interest) awarded to the plaintiff at a rate not exceeding 10% above judgment rate for some or all of the period after the latest date on which the defendant could have accepted the offer without requiring the leave of the Court.
- (3) The Court may also order that the plaintiff is entitled to-
  - (a) his costs on the indemnity basis after the latest date on which the defendant could have accepted the offer without requiring the leave of the Court; and
  - (b) interest on those costs at a rate not exceeding 10% above judgment rate.
- (4) Where this rule applies, the Court shall make the orders referred to in paragraphs (2) and (3) unless it considers it unjust to do so.
- (5) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3), the Court shall take into account all the circumstances of the case including-
  - (a) the terms of any sanctioned offer;
  - (b) the stage in the proceedings at which any sanctioned offer was made;
  - (c) the information available to the parties at the time when the sanctioned offer was made; and
  - (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.
- (6) The power of the Court under this rule is in addition to any other power it may have to award interest.

**V. MISCELLANEOUS**

**25. Restriction on disclosure of sanctioned offer or sanctioned payment (O. 22, r. 25)**

- (1) A sanctioned offer is treated as "without prejudice save as to costs".
- (2) The fact that a sanctioned payment has been made must not be communicated to the trial judge or the master hearing or determining the action or counterclaim or any question or issue as to the debt or damages until all questions of liability and the amount of money to be awarded have been decided.
- (3) Paragraph (2) does not apply-
  - (a) where the defence of tender before action has been raised;
  - (b) where the proceedings have been stayed under rule 22 following acceptance of a sanctioned offer or a sanctioned payment; or
  - (c) where-
    - (i) the issue of liability has been determined before any assessment of the money claimed; and
    - (ii) the fact that there has or has not been a sanctioned payment may be relevant to the question of the costs of the issue of liability.

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

- (1) Unless-
  - (a) a plaintiff's sanctioned offer which offers to accept a sum of money; or

(b) a sanctioned payment notice, indicates to the contrary, any such offer or payment is to be treated as inclusive of all interest until the last date on which it could be accepted without requiring the leave of the Court.

(2) Where a plaintiff's sanctioned offer or a sanctioned payment notice is expressed not to be inclusive of interest, the offer or notice must state-

(a) whether interest is offered; and

(b) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered.

## **27. Money paid into court under order**

(O. 22, r. 27)

(1) On making any payment into court under an order of the Court or a certificate of a master, the party making the payment shall give notice of the payment in Form No. 25A in Appendix A to every other party to the proceedings.

(2) Unless the Court otherwise orders, a defendant who has paid money into court in pursuance of an order made under Order 14 may-

(a) by notice served on the plaintiff, appropriate the whole or any part of the money and any additional payment, if necessary, in satisfaction of any particular claim made by the plaintiff and specified in the notice; or

(b) if he pleads a tender, by his pleading served on the plaintiff, appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered.

(3) Any money appropriated in accordance with paragraph (2) is deemed to be-

(a) in the case of paragraph (2)(a), a sanctioned payment when the notice is served on the plaintiff; and

(b) in the case of paragraph (2)(b), money paid into court with a plea of tender when the pleading is served on the plaintiff,

and this Order applies accordingly.

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

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

(O. 22, r. 28)

Where-

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

(b) the disposal of the payment is pending immediately before the commencement\* of the repealing rule, then nothing in Division 1 of Part 9 of the Amendment Rules 2008 applies in relation to that payment, and the repealed Order and all the other provisions amended or repealed by that Division, as in force immediately before the commencement, continue to apply in relation to that payment as if that Division had not been made.

(L.N. 152 of 2008)

### **Note:**

\* **Commencement day: 2 April 2009.**

Order:	22A	<b>MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Money remaining in court**

(O. 22A, r. 1)

(1) Subject to Order 22, rule 17, any money paid into court in an action (whether or not in accordance with Order 22) may not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action.

(2) Where an order under paragraph (1) is made before the trial or hearing and the money in court is a

sanctioned payment made in accordance with Order 22, the money may not be paid out except-

- (a) in satisfaction of the cause or causes of action in respect of which it was paid in; or
- (b) to the extent to which the sanctioned payment may be withdrawn or diminished pursuant to Order 22.

## **2. Person to whom payment to be made (O. 22A, r. 2)**

(1) Where the party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under the Legal Aid Ordinance (Cap 91), payment shall be made only to the Director of Legal Aid without the need for any authority from the party.

(2) Subject to paragraph (1), payment shall be made to the party entitled or to his solicitor.

(3) This rule applies whether the money in court has been paid into court under Order 22 or under an order of the Court or a certificate of the Registrar.

## **3. Payment out: small intestate estates (O. 22A, r. 3)**

Where-

- (a) a person entitled to a fund in court, or a share of such fund, dies intestate;
- (b) the Court is satisfied that no grant of administration of his estate has been made; and
- (c) the assets of his estate, including the fund or share, do not exceed \$150000 in value,

it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

## **4. Investment of money in court (O. 22A, r. 4)**

Cash under the control of or subject to the order of the Court may be invested in any manner specified in the High Court Suits' Funds Rules (Cap 4 sub. leg. B) and the Trustee Ordinance (Cap 29).

(L.N. 152 of 2008)

Order:	23	SECURITY FOR COSTS	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## **1. Security for costs of action, etc. (O. 23, r. 1)**

(1) Where, on the application of a defendant to an action or other proceeding in the Court of First Instance, it appears to the Court- (25 of 1998 s. 2)

- (a) that the plaintiff is ordinarily resident out of the jurisdiction, or
- (b) that 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 that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or
- (c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein, or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to

the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

## **2. Manner of giving security (O. 23, r. 2)**

Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any) as the Court may direct.

## **3. Saving for enactments (O. 23, r. 3)**

This Order is without prejudice to the provisions of any written law which empowers the Court to require security to be given for the costs of any proceedings.

(Enacted 1988)

Order:	24	<b>DISCOVERY AND INSPECTION OF DOCUMENTS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Mutual discovery of documents (O. 24, r. 1)**

(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

## **2. Discovery by parties without order (O. 24, r. 2)**

(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action. (L.N. 157 of 2003 and L.N. 199 of 2003)

Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(2) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any written law to make discovery of any documents.

(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (2) to the plaintiff, of a reference to the party making the counterclaim.

(5) On the application of any party required by this rule to make discovery of documents, the Court may-

- (a) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or
- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time before the case management summons in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1), and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served. (L.N. 152 of 2008)

### **3. Order for discovery (O. 24, r. 3)**

(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

### **4. Order for determination of issue, etc., before discovery (O. 24, r. 4)**

(1) Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a case management summons. (L.N. 152 of 2008)

### **5. Form of list and affidavit (O. 24, r. 5)**

(1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 26 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 27 in Appendix A.

### **6. Defendant entitled to copy of co-defendant's list (O. 24, r. 6)**

(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.



(4) In this rule "list of documents" (文件清單) includes an affidavit verifying a list of documents.

**7. Order for discovery of particular documents (O. 24, r. 7)**

(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

**7A. Application under section 41 or 42(1) of the Ordinance (O. 24, r. 7A)**

(1) An application for an order under section 41 of the Ordinance for the disclosure of documents before the commencement of proceedings shall be made by originating summons (in Form No. 10 in Appendix A) and the person against whom the order is sought shall be made defendant to the summons. (L.N. 404 of 1991)

(2) An application after the commencement of proceedings for an order under section 42(1) of the Ordinance for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must-

- (a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the Court of First Instance; (25 of 1998 s. 2)
- (b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power. (L.N. 152 of 2008)

(3A) In the case of a summons under paragraph (1), paragraph (3)(b) shall be construed as if for the word "relevant", there were substituted the words "directly relevant (within the meaning of section 41 of the Ordinance)". (L.N. 152 of 2008)

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under section 41 or 42(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce-

- (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun; or
- (b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

(7) (Repealed L.N. 152 of 2008)

(8) For the purposes of rules 10 and 11 an application for an order under section 41 or 42(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

**8. Discovery to be ordered only if necessary (O. 24, r. 8)**

(1) On the hearing of an application for an order under rule 3 or 7 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs. (L.N. 152 of 2008)

(2) No order for the disclosure of documents shall be made under section 41 or 42 of the Ordinance, unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs. (L.N. 152 of 2008)

**9. Inspection of documents referred to in list (O. 24, r. 9)**

A party who has served a list of documents on any other party, whether in compliance with rule 2 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

**10. Inspection of documents referred to in pleadings and affidavits (O. 24, r. 10)**

(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings, affidavits or witness statements served under Order 38, rule 2A, or experts' reports, reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof. (L.N. 223 of 1995; L.N. 383 of 1996)

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

**11. Order for production for inspection (O. 24, r. 11)**

(1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1)-

- (a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2), or
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 13(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

**11A. Provision of copies of documents (O. 24, r. 11A)**

(1) Any party who is entitled to inspect any documents under any provision of this Order or any order made thereunder may at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served must within 7 days after receipt thereof supply the copy requested together with an account of the reasonable charges.

(3) Where a party fails to supply to another party a copy of any document under paragraph (2), the Court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

**11B.** (Added L.N. 157 of 2003 and repealed L.N. 199 of 2003)

**12. Order for production to Court** (O. 24, r. 12)

(1) At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) (Added L.N. 157 of 2003 and repealed L.N. 199 of 2003)

**13. Production to be ordered only if necessary, etc.** (O. 24, r. 13)

(1) No order for the production of any documents for inspection or to the Court or for the supply of a copy of any document shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of any document privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

**14. Production of business books** (O. 24, r. 14)

(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy or any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

**14A. Use of documents** (O. 24, r. 14A)

Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in open court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs.

**15. Document disclosure of which would be injurious to public interest: saving** (O. 24, r. 15)

The foregoing provisions of this Order shall be without prejudice to any rule of law which authorizes or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

**15A. Order for limiting discovery**  
(O. 24, r. 15A)

For the purpose of managing the case in question and furthering any of the objectives specified in Order 1A, the Court may make any one or more of the following orders-

- (a) an order limiting the discovery of documents which the parties to the case would otherwise be required to make to each other under rule 1(1);
- (b) an order directing that the discovery of documents required to be made under this Order to any party to

the case shall, notwithstanding anything in this Order, be made in the manner specified in the order; and

- (c) an order directing that documents which may be inspected under this Order shall, notwithstanding anything in rule 9 or 10, be inspected at a time or times specified in the order.

(L.N. 152 of 2008)

**16. Failure to comply with requirement for discovery, etc. (O. 24, r. 16)**

(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

**17. Revocation and variation of orders (O. 24, r. 17)**

Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

(Enacted 1988)

Order:	25	<b>CASE MANAGEMENT SUMMONS AND CONFERENCE*</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Case management summons and conference (O. 25, r. 1)**

(L.N. 152 of 2008)

(1) For the purpose of facilitating the giving of directions for the management of a case, each party shall, within 28 days after the pleadings in an action to which this rule applies are deemed to be closed-

- (a) complete a questionnaire prescribed in a practice direction issued for that purpose by providing the information requested in the manner specified in the questionnaire; and
- (b) serve it on all other parties and file it with the Court in the manner specified in the practice direction. (L.N. 152 of 2008)

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

- (a) the directions relating to the management of the case that they wish the Court to make; or
- (b) a timetable for the steps to be taken between the date of the giving of those directions and the date of the trial,

they shall procure an order to that effect by way of a consent summons. (L.N. 152 of 2008)

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

- (a) each party shall in the questionnaire make a proposal on the matter; and
- (b) the plaintiff shall, within the time specified in the practice direction, take out a summons (in these rules referred to as a case management summons) returnable in not less than 14 days, so that the Court may give directions relating to the management of the case. (L.N. 152 of 2008)

(2) This rule applies to all actions begun by writ except-

- (a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff has applied for judgment under Order 86, and directions have been given under the relevant Order;
- (b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;
- (c) actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;
- (d) actions in which directions have been given under Order 29, rule 7;
- (e) actions in which an order for the taking of an account has been made under Order 43, rule 1;
- (f) actions in which an application for transfer to the commercial list is pending;
- (h) actions for the infringement of a patent; and
- (j) actions for personal injuries for which automatic directions are provided by rule 8.
- (k) (Repealed L.N. 152 of 2008)
- (3) (Repealed L.N. 152 of 2008)
- (4) If the plaintiff does not file the questionnaire in accordance with paragraph (1)(b) or take out a case management summons in accordance with paragraph (1B)(b), the defendant or any defendant may-
  - (a) take out a case management summons; or
  - (b) apply for an order to dismiss the action. (L.N. 152 of 2008)
- (5) On an application by a defendant to dismiss the action under paragraph (4) the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a case management summons.
- (6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule and rule 1A(1)(c) to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.
- (7) Notwithstanding anything in paragraph (1B), any party to an action to which this rule applies may take out a case management summons at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice.

(L.N. 152 of 2008)

## **1A. Case management timetable**

(O. 25, r. 1A)

- (1) Subject to paragraph (4), as soon as practicable after the completed questionnaire has been filed with the Court, the Court shall, having regard to the questionnaire and the needs of the case-
  - (a) give directions relating to the management of the case and fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the trial;
  - (b) fix a case management conference if the Court is of the opinion that it is desirable to do so; or
  - (c) direct the plaintiff to take out a case management summons if he has not already done so under rule 1(1B)(b).
- (2) Where the Court has fixed a case management conference, it shall-
  - (a) give directions relating to the management of the case and fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the case management conference; and
  - (b) at the case management conference, fix a timetable for the steps to be taken between the date of the conference and the date of the trial, and the timetable must include-
    - (i) a date for a pre-trial review; or
    - (ii) the trial date or the period in which the trial is to take place.
- (3) Where the Court has not fixed a case management conference, any timetable fixed under paragraph (1)(a) must include-
  - (a) a date for a pre-trial review; or
  - (b) the trial date or the period in which the trial is to take place.
- (4) The Court may, without a hearing of the case management summons and having regard to the completed questionnaire, by an order nisi, give directions relating to the management of the case and fix the timetable for the steps to be taken between the date of the giving of those directions and the date of the trial.
- (5) The order nisi becomes absolute 14 days after the order is made unless a party has applied to the Court for varying the order.
- (6) The Court shall, on an application made under paragraph (5), hear the case management summons.

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

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

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

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

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

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

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

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

(8) In this rule-

"milestone date" (進度指標日期) means-

(a) a date which the Court has fixed for-

(i) a case management conference;

(ii) a pre-trial review; or

(iii) the trial; or

(b) a period fixed by the Court in which a trial is to take place;

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

**1C. Failure to appear at case management conference or pre-trial review (O. 25, r. 1C)**

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

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

(3) Where the Court has provisionally struck out a claim or counterclaim under paragraph (1) or (2), the plaintiff or the defendant may, before the expiry of 3 months from the date of the case management conference or pre-trial review, as the case may be, apply to the Court for restoration of the claim or counterclaim.

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

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

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

(a) the plaintiff's claim or the defendant's counterclaim stands dismissed upon the expiry of 3 months from the date of the case management conference or pre-trial review, as the case may be; and

(b) (i) in the case of the plaintiff's claim, the defendant is entitled to his costs of the claim; and

(ii) in the case of the defendant's counterclaim, the plaintiff is entitled to his costs of the counterclaim.

**2. Duty to consider all matters (O. 25, r. 2)**

(1) When the case management summons first comes to be determined, the Court shall consider whether- (L.N. 152 of 2008)

- (a) it is possible to deal then with all the matters which, by the rules of this Order, are required to be considered at the case management summons; or
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If when the case management summons first comes to be determined the Court considers that it is possible to deal then with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the case management summons first comes to be determined, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the rules of this Order, are required to be considered at the case management summons, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at such time as the Court may specify.

(4) Subject to paragraph (5), and except where the parties agree to the making of an order under Order 33 as to the place or mode of trial before all the matters which, by the rules of this Order, are required to be considered at the case management summons have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, at the determination of the case management summons, an action is ordered to be transferred to the District Court or some other court, paragraph (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order at the case management summons.

(7) If the determination of the case management summons is adjourned without a day being fixed for its resumption, any party may restore the summons to the list on 2 days' notice to the other parties.

(L.N. 152 of 2008)

### **3. Particular matters for consideration (O. 25, r. 3)**

At the determination of the case management summons, the Court shall in particular consider, if necessary of its own motion, whether any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say- (L.N. 152 of 2008)

- (a) any provision of Part IV and Part V of the Evidence Ordinance (Cap 8) (hearsay evidence of fact or opinion in civil proceedings) or of Part III and Part IV of Order 38;
- (b) Order 20, rule 5 and Order 38, rules 2 to 7;
- (c) section 43 of the District Court Ordinance (Cap 336). (L.N. 152 of 2008)

### **4. Admissions and agreements to be made (O. 25, r. 4)**

At the determination of the case management summons, the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

(L.N. 152 of 2008)

### **5. Limitation of right of appeal (O. 25, r. 5)**

Nothing in rule 4 shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the case management summons may record any such agreement.

(L.N. 152 of 2008)

### **6. Duty to give all information at determination of case management summons (O. 25, r. 6)**

(1) Subject to paragraph (2), no affidavit shall be used at the determination of the case management summons except by the leave or directions of the Court, but, subject to paragraph (4), it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

The Court may, if it appears proper so to do in the circumstances, authorize any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under this paragraph shall be given or produced to all the parties as well as to the Court. (L.N. 152 of 2008)

(2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party at the determination of the case management summons in connection with any application thereat for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit. (L.N. 152 of 2008)

(3) If the Court at the determination of the case management summons requires a party to the action or his solicitor or counsel to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may- (L.N. 152 of 2008)

- (a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial, or
- (b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.

#### **7. Duty to make all interlocutory applications at case management summons (O. 25, r. 7)**

(L.N. 152 of 2008)

(1) Any party to whom the case management summons is addressed must so far as practicable apply at the time fixed for determination of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than 7 days before the time fixed for determination of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the determination of the case management summons is adjourned and any party to the proceedings desires to apply for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the resumption of the determination of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

(3) Any application subsequent to the case management summons and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

(L.N. 152 of 2008)

#### **8. Automatic directions in personal injury actions (O. 25, r. 8)**

(1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically-

- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter, save that where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;
- (b)-(c) (Repealed L.N. 152 of 2008)
- (d) photographs, a sketch plan and the contents of any police accident report shall be receivable in



evidence at the trial and shall be agreed if possible;

(HK)(dd) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal;

(f)-(g) (Repealed L.N. 99 of 1993)

(2) (Repealed L.N. 152 of 2008)

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate or prevent the making of an order for the transfer of the proceedings to the District Court. (L.N. 152 of 2008)

(4) For the purpose of this rule-

"a road accident" (道路意外) means an accident on land due to a collision or apprehended collision involving a vehicle; and

"documents relating to special damages" (關於專項損害賠償的文件) include-

(a) documents relating to any industrial injury, industrial disablement or sickness benefit rights, and

(b) where the claim is made under the Fatal Accidents Ordinance (Cap 22), documents relating to any claim for dependency on the deceased.

(5) This rule applies to any action for personal injuries except-

(a) any Admiralty action; and

(b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

9. (Repealed L.N. 152 of 2008)

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

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

(L.N. 152 of 2008)

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

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

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

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

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

(L.N. 152 of 2008)

(Enacted 1988)

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#### Note:

\* (Amended L.N. 152 of 2008)

# Commencement day: 2 April 2009.

Order:	26	INTERROGATORIES	25 of 1998	01/07/1997
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#### Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## **1. Discovery by interrogatories (O. 26, r. 1)**

(1) A party to any cause or matter may in accordance with the following provisions of this Order serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either-

- (a) for disposing fairly of the cause or matter; or
- (b) for saving costs.

(2) Without prejudice to the provisions of paragraph (1), a party may apply to the Court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness.

(4) In this Order-

"interrogatories without order" (在無命令下發出的質詢書) means interrogatories served under paragraph (1);

"ordered interrogatories" (根據命令發出的質詢書) means interrogatories served under paragraph (2) or interrogatories which are required to be answered pursuant to an order made on an application under rule 3(2) and, where such an order is made, the interrogatories shall not, unless the Court orders otherwise, be treated as interrogatories without order for the purposes of rule 3(1).

(5) Unless the context otherwise requires, the provisions of this Order apply to both interrogatories without order and ordered interrogatories.

(L.N. 404 of 1991)

## **2. Form and nature of interrogatories (O. 26, r. 2)**

(1) Where interrogatories are served, a note at the end of the interrogatories shall specify-

- (a) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered;
- (b) where the party to be interrogated is a body corporate or unincorporate which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served; and
- (c) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

(2) Subject to rule 5(1), a party on whom interrogatories are served shall, unless the Court orders otherwise on an application under rule 3(2), be required to give within the period specified under paragraph (1)(a) answers, which shall (unless the Court directs otherwise) be on affidavit.

(L.N. 404 of 1991)

## **3. Interrogatories without order (O. 26, r. 3)**

(1) Interrogatories without order may be served on a party not more than twice.

(2) A party on whom interrogatories without order are served may, within 14 days of the service of the interrogatories, apply to the Court for the interrogatories to be varied or withdrawn and, on any such application, the Court may make such order as it thinks fit (including an order that the party who served the interrogatories shall not serve further interrogatories without order).

(3) Interrogatories without order shall not be served on the Crown.

(L.N. 404 of 1991)

## **4. Ordered interrogatories (O. 26, r. 4)**

(1) Where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons or the notice under Order 25, rule 7, by which the application is made.

(2) In deciding whether to give leave to serve interrogatories, the Court shall take into account any offer made

by the party to be interrogated to give particulars, make admissions or produce documents relating to any matter in question and whether or not interrogatories without order have been administered.

(L.N. 404 of 1991)

## **5. Objections and insufficient answers (O. 26, r. 5)**

(1) Without prejudice to rule 3(2), where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.

(2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, either by affidavit or on oral examination as the Court may direct.

(3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given and any such request shall not be treated as service of further interrogatories for the purposes of rule 3(1).

(L.N. 404 of 1991)

## **6. Failure to comply with order (O. 26, r. 6)**

(1) If a party fails to answer interrogatories or to comply with an order made under rule 5(2) or a request made under rule 5(3), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) Without prejudice to paragraph (1), where a party fails to answer ordered interrogatories or to comply with an order made under rule 5(2), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

(L.N. 404 of 1991)

## **7. Use of answers to interrogatories at trial (O. 26, r. 7)**

A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

## **8. Revocation and variation of orders (O. 26, r. 8)**

Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

(Enacted 1988)

Order:	27	<b>ADMISSIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Admission of case of other party (O. 27, r. 1)**

Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

## **2. Notice to admit (O. 27, r. 2)**

(1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, such facts or such part of his case as may be specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

### **3. Judgment on admissions (O. 27, r. 3)**

Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

An application for an order under this rule may be made by summons.

(L.N. 152 of 2008)

### **4. Admission and production of documents specified in list of documents (O. 27, r. 4)**

(1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit-

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been, and

(b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Order 24, rule 7, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

### **5. Notices to admit or produce documents (O. 27, r. 5)**

(1) Except where rule 4(1) applies, a party to a cause or matter may within 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within 21 days after service of the notice, serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

(Enacted 1988)

Order:	28	<b>ORIGINATING SUMMONS PROCEDURE</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Application (O. 28, r. 1)**

The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any written law; and subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as they apply in relation to other summonses.

### **1A. Affidavit evidence (O. 28, r. 1A)**

(1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are two or more defendants, at least one of them has acknowledged service, file with the Court the affidavit evidence on which he intends to rely.

(2) In the case of an ex parte summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in the Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence in the Court and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file in the Court further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.

## **2. Fixing time for attendance of parties before Court (O. 28, r. 2)**

(1) In the case of an originating summons which is in Form No. 8 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A, obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 12 in Appendix A) sealed with the seal of the Court.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 10 in Appendix A, or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before the day so fixed, and the time limits for lodging affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has acknowledged service of the originating summons.

## **3. Notice of hearing (O. 28, r. 3)**

(1) Not less than 14 days before the day fixed under rule 2 for the attendance of the parties before the Court for

the hearing of an originating summons which is in Form No. 8 in Appendix A, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party. (L.N. 404 of 1991)

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons which is in Form No. 10 in Appendix A, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for the hearing.

(3) Where notice in Form No. 12 in Appendix A is served in accordance with paragraph (1), such notice shall specify what orders of directions the party serving the notice intends to seek at the hearing; and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek. (L.N. 404 of 1991)

(4) If the hearing of an originating summons which is in Form No. 8 or 10 in Appendix A is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, he must, not less than 7 days before the resumed hearing of the summons, serve on every other party a notice specifying those orders and directions. (L.N. 404 of 1991)

(5) Where a party is required by any provision of this rule or rule 5(2) to serve a notice or a copy of a notice on "every other party" he must-

- (a) where he is the plaintiff, serve it on every defendant who has acknowledged service of the originating summons; and
- (b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby. (L.N. 404 of 1991)

### **3A. Originating summons to be heard in open court (O. 28, r. 3A)**

An originating summons must be heard in open court unless the Court otherwise directs.

(L.N. 152 of 2008)

### **4. Directions, etc., by Court (O. 28, r. 4)**

(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) In any case where the Court does not dispose of any originating summons altogether at a hearing or order the cause or matter begun by it to be transferred to a District Court or some other court or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a case management summons under that Order. (L.N. 152 of 2008)

(5) The Court may at any stage of the proceedings order that any affidavit, or any particulars of any claim, defence or other matters stated in any affidavit, shall stand as pleadings or that points of claim, defence or reply be delivered and stand as pleadings. (L.N. 404 of 1991)

### **5. Adjournment of summons (O. 28, r. 5)**

(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party and rule 3(4) shall apply in relation to any such adjourned hearing. (L.N. 404 of 1991)

**6. Applications affecting party who has failed to acknowledge service (O. 28, r. 6)**

Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to acknowledge service of the summons, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party has so failed.

**7. Counterclaim by defendant (O. 28, r. 7)**

(1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or rule 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

**8. Continuation of proceedings as if cause or matter begun by writ (O. 28, r. 8)**

(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a case management summons in the proceedings and that order were one of the orders to be made thereon. (L.N. 152 of 2008)

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

**9. Order for hearing or trial (O. 28, r. 9)**

(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be transferred to a District Court or some other court or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make such order as to the hearing of the cause or matter as may be appropriate.

(3) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2) and Order 34, rules 1 to 8, shall apply in relation to a cause or matter begun by originating summons and to an order made therein under this rule as they apply in relation to an action begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with any necessary modifications and with the further modification that for references therein to the case management summons there shall be substituted references to the first or any resumed hearing of the originating summons by the Court. (L.N. 152 of 2008)

**10. Failure to prosecute proceedings with despatch** (O. 28, r. 10)

(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

**11. Abatement, etc., of action** (O. 28, r. 11)

Order 34, rule 9, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

(Enacted 1988)

Order:	29	<b>INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.**

**1. Application for injunction** (O. 29, r. 1)

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by summons. (L.N. 152 of 2008)

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

**2. Detention, preservation etc., of subject-matter of cause or matter** (O. 29, r. 2)

(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons or by notice under Order 25, rule 7.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun.

**3. Power to order samples to be taken, etc.** (O. 29, r. 3)



(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorize or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

#### **4. Sale of perishable property, etc. (O. 29, r. 4)**

(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph "land" (土地) includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

#### **5. Order for early trial (O. 29, r. 5)**

Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the mode of the trial.

#### **6. Recovery of personal property subject to lien, etc. (O. 29, r. 6)**

Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

#### **7. Directions (O. 29, r. 7)**

(1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

(2) If, in an action begun by writ, not being any such action as is mentioned in sub-paragraphs (a) to (c) and (e) to (h) of Order 25, rule 1 (2), the Court thinks fit to give directions under this rule before the case management summons, rules 2 to 7 of that Order shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a case management summons. (L.N. 152 of 2008)

#### **7A. Inspection, etc. of property under sections 42 and 44(1) of the Ordinance (O. 29, r. 7A)**

(1) An application for an order under section 44(1) of the Ordinance in respect of property which may become

the subject-matter of subsequent proceedings in the Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 42(2) of the Ordinance in respect of property which is not the property of or in the possession of any party to the proceedings shall be made by summons, which must be served on the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order made under section 42(2) or 44(1) may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just.

(6) No such order shall be made if it appears to the Court-

- (a) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings; and
- (b) that the application would have been refused on that ground if-
  - (i) in the case of a summons under paragraph (1), the subsequent proceedings had already been begun; or
  - (ii) in the case of a summons under paragraph (2), the person against whom the order is sought were a party to the proceedings.

## **8. Allowance of income of property pendente lite (O. 29, r. 8)**

Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

## **8A. Application for interim relief under section 21M(1) of the Ordinance (O. 29, r. 8A)**

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

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

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

(L.N. 152 of 2008)

## **II. INTERIM PAYMENTS**

## **9. Interpretation of Part II (O. 29, r. 9)**

In this Part of this Order-

"interim payment" (中期付款), in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; and any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant. (L.N. 99 of 1993)

## **10. Application for interim payment (O. 29, r. 10)**

(1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring that defendant to make an interim payment.

(2) An application under this rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.

(3) An application under this rule shall be supported by an affidavit which shall-

- (a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;
- (b) exhibit any documentary evidence relied on by the plaintiff in support of the application; and
- (c) if the plaintiff's claim is made under the Fatal Accidents Ordinance (Cap 22), contain the particulars mentioned in section 5(4) that Ordinance.

(4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

## **11. Order for interim payment in respect of damages (O. 29, r. 11)**

(1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied-

- (a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's damages; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

(2) No order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely-

- (a) a person who is insured in respect of the plaintiff's claim or whose liability in respect of the plaintiff's claim will be met by the following person-
  - (i) an insurer under section 10 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap 272); or
  - (ii) an insurer who is a party to an agreement with the Motor Insurers' Bureau of Hong Kong; or
  - (iii) the Motor Insurers' Bureau of Hong Kong; (L.N. 108 of 2002)
- (b) a public authority; or
- (c) a person whose means and resources are such as to enable him to make the interim payment.

(3) In paragraph (2)(a)(ii), "agreement" (協議) means the domestic agreement between the Motor Insurers' Bureau of Hong Kong and the insurance companies and Lloyd's underwriters authorized to carry on motor vehicle insurance business in Hong Kong, made on 1 February 1981, as amended from time to time. (L.N. 108 of 2002)

## **12. Order for interim payment in respect of sums other than damages (O. 29, r. 12)**

If, on the hearing of an application under rule 10, the Court is satisfied-

- (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or
- (b) that the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a

substantial sum of money apart from any damages or costs, the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

### **13. Manner of payment (O. 29, r. 13)**

(1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(2) An application under paragraph (1) for money in court to be paid out may be made ex parte, but the Court hearing the application may direct a summons to be issued.

(3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

### **14. Directions on application under rule 10 (O. 29, r. 14)**

Where an application is made under rule 10, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a case management summons, and, in particular, the Court may order an early trial of the action.

(L.N. 152 of 2008)

### **15. Non-disclosure of interim payment (O. 29, r. 15)**

The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

### **16. Payment into court in satisfaction (O. 29, r. 16)**

Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into court under Order 22, the notice of payment must state that the defendant has taken into account the interim payment.

(L.N. 152 of 2008)

### **17. Adjustment on final judgment or order or on discontinuance (O. 29, r. 17)**

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make such order with respect to the interim payment as may be just, and in particular-

- (a) an order for the repayment by the plaintiff of all or part of the interim payment; or
- (b) an order for the payment to be varied or discharged; or
- (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

### **18. Counterclaims and other proceedings (O. 29, r. 18)**

The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.

(Enacted 1988)

Order:	30	<b>RECEIVERS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### **1. Application for receiver and injunction (O. 30, r. 1)**

(1) An application for the appointment of a receiver may be made by summons. (L.N. 152 of 2008)

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

### **2. Giving of security by receiver (O. 30, r. 2)**

(1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be a receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

(4) The guarantee must be filed in the Registry, and it shall be kept as of record until duly vacated.

### **3. Remuneration of receiver (O. 30, r. 3)**

A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorized by the Court and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

### **4. Service of order and notice (O. 30, r. 4)**

A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause or matter in which the receiver has been appointed.

### **5. Receiver's accounts (O. 30, r. 5)**

(1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to the accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court and a copy of such notice shall be lodged in the Registry.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by the Registrar and an order may thereupon be made as to the incidence of any costs or expenses incurred.

**6. Payment into court by receiver (O. 30, r. 6)**

The Court may fix the amounts and frequency of payments into court to be made by a receiver.

**7. Default by receiver (O. 30, r. 7)**

(1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into court, charge him with interest at the rate currently payable in respect of judgment debts in the Court of First Instance on that sum while in his possession as receiver. (25 of 1998 s. 2)

**8. Directions to receivers (O. 30, r. 8)**

A receiver may at any time request the Court to give him directions and such a request shall state in writing the matters with regard to which directions are required.

**9. Application for appointment of receiver under section 21M(1) of the Ordinance (O. 30, r. 9)**

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

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

(L.N. 152 of 2008)  
(Enacted 1988)

Order:	31	<b>SALES, ETC. OF LAND BY ORDER OF COURT</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Power to order sale of land (O. 31, r. 1)**

Where in any cause or matter relating to any land it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

In this Order "land" (土地) includes any interest in, or right over, land.

**2. Manner of carrying out sale (O. 31, r. 2)**

(1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or subsequently direct for the best price that

can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions-

- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
- (c) fixing reserve or minimum price;
- (d) requiring payment of the purchase money into court or to trustees or other persons;
- (e) for settling the particulars and conditions of sale;
- (f) for obtaining evidence of the value of the property;
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him;
- (h) requiring an abstract of the title to be referred to counsel for his opinion thereon and to settle the particulars and conditions of sale.

### **3. Certifying result of sale (O. 31, r. 3)**

(1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified-

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
- (b) in any other case, by the solicitor of the party or person having the conduct of the sale;

and the Court may require the certificate to be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale must file the certificate and any affidavit in the Registry.

### **4. Mortgage, exchange or partition under order of the Court (O. 31, r. 4)**

Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the mortgage, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

(Enacted 1988)

Order:	32	<b>APPLICATIONS AND PROCEEDINGS IN CHAMBERS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **I. GENERAL**

### **1. Mode of making application (O. 32, r. 1)**

Except as provided by Order 25, rule 7, every application in chambers not made ex parte must be made by summons, and where, under the provisions of these rules, such summons must be supported by affidavit, such affidavit shall be filed at the same time as the summons.

(L.N. 127 of 1995)

### **2. Issue of summons (O. 32, r. 2)**

(1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed with the Seal of the Court.

(2) A summons may not be amended after issue without the leave of the Court.

### **3. Services of summons (O. 32, r. 3)**

A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

**4. Adjournment of hearing (O. 32, r. 4)**

(1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

**5. Proceeding in absence of party failing to attend (O. 32, r. 5)**

(1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

**6. Order made ex parte may be set aside (O. 32, r. 6)**

The Court may set aside an order made ex parte.

**7. Subpoena for attendance of witness (O. 32, r. 7)**

(1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the Registry, if the party who desires the attendance of the witness produces a note from a judge or from the Registrar or a master, as the case may be, authorizing the issue of the writ.

(2) The Registrar or any master may give such a note or may direct the application for it be made to the judge before whom the proceedings are to be heard.

**8. Registrar, etc., may administer oaths, etc. (O. 32, r. 8)**

(1) The Registrar or any master shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Court.

**9. Applications under the Mental Health Ordinance (O. 32, r. 9)**

(1) The jurisdiction of the Court to grant leave under section 69 of the Mental Health Ordinance (Cap 136) to bring proceedings against a person may be exercised in chambers by a judge.

(2) An originating summons by which an application for leave under the said section 69 is made shall be in Form No. 10 in Appendix A.

(3) The application must be supported by an affidavit setting out the grounds on which such leave is sought and any facts necessary to substantiate those grounds.

**9A. Application for a direction under the Limitation Ordinance (O. 32, r. 9A)**



The jurisdiction to direct, under section 30 of the Limitation Ordinance (Cap 347), that section 27 or 28 of that Ordinance should not apply to an action or to any specified cause of action to which the action relates shall be exercisable by the Court.

**10. Application to make order of Court of Final Appeal  
order of Court of First Instance (O. 32, r. 10)**

(HK) An application to make an order of the Court of Final Appeal an order of the Court of First Instance may be made ex parte by affidavit to a master.

(79 of 1995 s. 50; 25 of 1998 s. 2)

**II. POWERS OF THE REGISTRAR, JUDGES AND THE COURT**

**11. Jurisdiction of the Registrar and masters (O. 32, r. 11)**

(1) The Registrar and any master shall have power to transact all such business and exercise all such authority and jurisdiction as under any Ordinance or by these rules may be transacted and exercised by a judge in chambers except in respect of the following matters and proceedings, that is to say-

- (a) matters relating to criminal proceedings, other than matters relating to the conditions of admission to bail and an application under Order 70 relating to criminal proceedings; (L.N. 403 of 1992; L.N. 152 of 2008)
- (b) matters relating to the liberty of the subject other than orders for arrest and imprisonment to enforce, secure or pursue civil claims for the payment of money and orders prohibiting persons from leaving Hong Kong;
- (d) subject to paragraph (2), proceedings for the grant of an injunction or other order under Part I of Order 29;
- (da) applications under section 27A of the Ordinance (leave to institute or continue proceedings) for leave to institute or continue legal proceedings; (L.N. 152 of 2008)
- (f) any other matter or proceeding which by any of these rules is required to be heard only by a judge.

(2) The Registrar and any master shall have power to grant an injunction, or to make an order for the detention, custody or preservation of any property, in the terms agreed by the parties to the proceedings in which the injunction or order is sought.

**11A. Interlocutory applications**  
(O. 32, r. 11A)

- (1) A master may-
  - (a) determine an interlocutory application without an oral hearing; or
  - (b) adjourn the application to be heard before him or another master or a judge in chambers.
- (2) The master may fix a date on which he may-
  - (a) in the case of paragraph (1)(a), hand down his determination of the application; and
  - (b) in the case of paragraph (1)(b), make an order that the application be heard before him or another master or a judge in chambers on a date specified in the order.
- (3) The master may give such directions as he thinks necessary or desirable for the purpose of determining the application, including directions for-
  - (a) the setting of a timetable for the steps to be taken between the date of the giving of those directions and the date of the determination of the application;
  - (b) the filing of evidence and arguments;
  - (c) the filing of a statement of costs in respect of the application; and
  - (d) the filing of a statement of grounds in opposition to the statement of costs referred to in sub-paragraph (c).
- (4) Where the determination of the application is adjourned for the hearing of the summons, no further evidence may be adduced unless it appears to the Court that there are exceptional circumstances making it desirable that further evidence should be adduced.

- (5) Paragraph (4) is subject to a direction given under paragraph (3).
- (6) This rule does not apply to-
  - (a) an application under Order 2, rule 4 for relief from any sanction imposed by a court order; and
  - (b) an application to extend or shorten the time for compliance with a court order.

(L.N. 152 of 2008)

**11B. Court's power to specify consequences of failure to comply with court order on interlocutory application**  
(O. 32, r. 11B)

- (1) Where the Court makes an order on an interlocutory application before-
  - (a) a case management summons in the action is taken out under Order 25; or
  - (b) it gives directions relating to the management of the case under Order 25, rule 1A(1)(a), (2)(a) or (4),
 it may, if it thinks appropriate to do so, specify the consequences of failing to comply with the order.
- (2) Where the Court makes an order on an interlocutory application after-
  - (a) a case management summons in the action taken out under Order 25 has been dealt with by the Court; or
  - (b) it has given directions relating to the management of the case under Order 25, rule 1A(1)(a), (2)(a) or (4),
 it shall, unless there are special circumstances which render it inexpedient to do so, specify the consequences of failing to comply with the Order.
- (3) The consequences specified under paragraph (1) or (2) must be appropriate and proportionate in relation to the non-compliance.

(L.N. 152 of 2008)

**12. Reference of matter to judge** (O. 32, r. 12)

The Registrar and any master may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the Registrar or to any master, with such directions as he thinks fit.

**13. Power to direct hearing in court** (O. 32, r. 13)

- (1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.
- (2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

**16. Obtaining assistance of experts** (O. 32, r. 16)

If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

**17. Notice of filing, etc. of affidavit** (O. 32, r. 17)

Any party-

- (a) filing an affidavit intended to be used by him in any proceedings in chambers, or
  - (b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,
- must give notice to every other party of the filing or, as the case may be, of his intention to do so.

**18. Adjournment into or from court** (O. 32, r. 18)

The hearing of any summons or other application in chambers may be adjourned from chambers into court and subsequently from court into chambers.

**19. Disposal of matters in chambers (O. 32, r. 19)**

The judge may by any judgment or order made in court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in chambers.

**21. Papers for use of Court, etc. (O. 32, r. 21)**

The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

**22. Notes of proceedings in chambers (O. 32, r. 22)**

(HK) A note shall be kept of all proceedings in the judge's, registrar's or master's chamber with the dates thereof so that all such proceedings in any cause or matter are noted in chronological order with a short statement of the matters decided at each hearing.

(Enacted 1988)

Order:	32A	<b>VEXATIOUS LITIGANTS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Application under section 27(1) of the Ordinance (O. 32A, r. 1)**

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

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

**2. Application for leave for institution or continuance of proceedings, etc. (O. 32A, r. 2)**

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

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

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

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

**3. Hearing and determination of application for leave (O. 32A, r. 3)**

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

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

(3) Directions for the hearing of the application given under paragraph (2) may include an order that the notice

of application be served by the applicant on the Secretary for Justice and on any person against whom the applicant wishes to institute or continue the proceedings for which leave is being sought.

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

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

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

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

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

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

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

#### **5. Setting aside grant of leave**

(O. 32A, r. 5)

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

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

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

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

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

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

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

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

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

(L.N. 152 of 2008)

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#### **Note:**

\* **Commencement day: 2 April 2009.**

Order:	33	<b>PLACE AND MODE OF TRIAL</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## TRIAL

### 1. Place of trial (O. 33, r. 1)

Subject to the provisions of these rules, the place of trial of a cause or matter, or of any question or issue arising therein, shall be determined by the Court and shall be either the High Court Building or such other place or places as may be authorized by the Chief Justice.

(25 of 1998 s. 2)

### 2. Mode of trial (O. 33, r. 2)

Subject to the provisions of these rules, a cause or matter, or any question or issue arising therein, may be tried before-

- (a) a judge alone, or
- (b) a judge with a jury, or
- (c) a judge with the assistance of assessors, or
- (e) a master.

### 3. Time, etc. of trial of questions or issues (O. 33, r. 3)

The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

### 4. Determining the place and mode of trial (O. 33, r. 4)

(1) In every action begun by writ, the Court shall by order determine the place and mode of the trial. (L.N. 152 of 2008)

(2) In any such action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

(2A) In an action for personal injuries, the Court may at any stage of the proceedings and of its own motion make an order for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded and-

- (a) notwithstanding the provisions of Order 42, rule 5(5), an order so made in the absence of the parties shall be drawn up by an officer of the Court who shall serve a copy of the order on every party; and
- (b) where a party applies within 14 days after service of the order upon him, the Court may confirm or vary the order or set in aside. (L.N. 404 of 1991)

(4) Nothing in this rule affects the provisions of Order 103, rule 26, as to actions for the infringement of a patent.

#### 4A. Split trial: offer on liability (O. 33, r. 4A)

(1) This rule applies where an order is made under rule 4(2) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before.

### 5. Trial with jury (O. 33, r. 5)

(1) The provisions of rule 4(2) are, as respects any action and as respects any question of fact arising in such an action, subject to the provisions of section 33A of the Ordinance, but an application for trial with a jury under that section (the time for making which is, under that section, to be limited by rules of court) must be made before the place and mode of trial is fixed under rule 4. (L.N. 152 of 2008)

(2) The powers conferred by the said section 33A on a judge may be exercised by a master.

#### **6. Trial with assistance of assessors (O. 33, r. 6)**

A trial of a cause or matter with the assistance of assessors under section 53 of the Ordinance shall take place in such manner and on such terms as the Court may direct.

#### **7. Dismissal of action, etc., after decision of preliminary issue (O. 33, r. 7)**

If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just. (See App. A, Form 48)

(Enacted 1988)

Order:	34	<b>SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Application and interpretation (O. 34, r. 1)**

(1) This Order applies to actions begun by writ and, accordingly, references in this Order to an action shall be construed as references to an action so begun.

#### **2. Time for setting down action (O. 34, r. 2)**

(1) Unless the Court has fixed a trial date or a period in which the trial is to take place under Order 25, rule 1A(2)(b) or (3)(b), every order made in an action which provides for trial before a judge shall, whether the trial is to be with or without a jury, fix a period within which the plaintiff is to set down the action for trial. (L.N. 152 of 2008)

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may set the action down for trial or may apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(3) Every order made in an action which provides for trial before a judge (otherwise than in the commercial list or in any list which may be specified for the purposes of this paragraph by directions under rule 4) shall contain an estimate of the length of the trial and, shall, subject to any such directions, specify the list in which the action is to be put.

#### **3. Lodging documents when setting down (O. 34, r. 3)**

(1) In order to set down for trial an action which is to be tried before a Judge, the party setting it down must deliver to the Registrar, by post or otherwise, a request that the action may be set down for trial, together with a bundle (for the use of the judge) consisting of one copy each of the following documents that is to say-

- (a) the writ,
- (b) the pleadings (including any affidavits ordered to stand as pleadings) any request or order for particulars and the particulars given,
- (c) all orders made-
  - (i) pursuant to the questionnaire completed in accordance with Order 25, rule 1(1)(a);
  - (ii) pursuant to a case management summons; and

- (iii) at a case management conference or pre-trial review, (L.N. 152 of 2008)
- (d) the requisite legal aid documents, if any, and (L.N. 223 of 1995)
- (e) all witness statements served under the provisions of Order 38, rule 2A. (L.N. 223 of 1995)

(2) The said bundle must be bound up in the proper chronological order, save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7) applies shall be placed immediately after the pleading to which they relate.

(3) In this rule "the requisite legal aid documents" (必需的法律援助文件) means any documents which are required to be filed in the Registry under the Legal Aid Ordinance (Cap 91) or the regulations made thereunder. (L.N. 165 of 1992)

#### **4. Directions relating to lists (O. 34, r. 4)**

Nothing in this Order shall prejudice any powers of the Chief Justice to give directions-

- (a) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists;
- (b) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and
- (c) as to the making of applications (whether to the Court or an officer of the Court) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

#### **8. Notification of setting down (O. 34, r. 8)**

(1) A party to an action who sets it down for trial must, within 24 hours after doing so, notify the other parties to the action that he has done so.

(2) It shall be the duty of all parties to an action entered in any list to furnish without delay to the officer who keeps the list all available information as to the action being or being likely to be settled, or affecting the estimated length of the trial, and, if the action is settled or withdrawn, to notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

(3) In performance of the duty imposed by paragraph (2), a plaintiff who gives notice of acceptance of a sanctioned payment or a sanctioned offer in accordance with Order 22, shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph. (L.N. 152 of 2008)

#### **9. Abatement, etc., of action (O. 34, r. 9)**

(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the officer who keeps the list, and that officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

(Enacted 1988)

Order:	35	<b>PROCEDURE AT TRIAL</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Failure to appear by both parties or one of them (O. 35, r. 1)**

(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of

the action or any counterclaim in the absence of that party.

**2. Judgment, etc., given in absence of party  
may be set aside (O. 35, r. 2)**

(1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

**3. Adjournment of trial (O. 35, r. 3)**

The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

**3A. Time, etc. limits at trial  
(O. 35, r. 3A)**

(1) At any time before or during a trial, the Court may by direction-

- (a) limit the time to be taken in examining, cross-examining or re-examining a witness;
- (b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;
- (c) limit the time to be taken in making any oral submission;
- (d) limit the time to be taken by a party in presenting its case;
- (e) limit the time to be taken by the trial; and
- (f) vary a direction made under this rule.

(2) In deciding whether to make any such direction, the Court shall have regard to the following matters in addition to any other matters that may be relevant-

- (a) the time limited for a trial must be reasonable;
- (b) any such direction must not detract from the principle that each party is entitled to a fair trial;
- (c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;
- (d) the complexity or simplicity of the case;
- (e) the number of witnesses to be called by the parties;
- (f) the volume and character of the evidence to be led;
- (g) the state of the Court lists;
- (h) the time expected to be taken for the trial; and
- (i) the importance of the issues and the case as a whole.

(L.N. 152 of 2008)

**7. Order of speeches (O. 35, r. 7)**

(1) The judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6), the plaintiff shall begin by opening his case.

(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are 2 or more defendants who appear separately or are separately represented, then-

- (a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;
- (b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case



shall be made in that order after the evidence on behalf of all the defendants has been given;

- (c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

## **8. Inspection by judge or jury (O. 35, r. 8)**

(1) The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.

(2) Where a cause or matter is tried with a jury and the judge inspects any place or thing under paragraph (1), he may authorize the jury to inspect it also.

## **9. Death of party before giving of judgment (O. 35, r. 9)**

Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 7(2), before giving judgment.

## **10. Certificate of judicial clerk (O. 35, r. 10)**

At the conclusion of the trial of any action, the judicial clerk or other officer in attendance at the trial shall make a certificate in which he shall certify-

- (a) the time actually occupied by the trial,
- (b) any order made by the judge under Order 38, rule 5 or 6,
- (c) every finding of fact by the jury, where the trial was with a jury,
- (d) the judgment given by the judge, and
- (e) any order made by the judge as to costs.

## **11. List of exhibits (O. 35, r. 11)**

(1) The judicial clerk or other officer in attendance at the trial shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series.

In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The judicial clerk or other officer in attendance at the trial shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall form part of the record of the action. (L.N. 103 of 1994)

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

## **12. Exhibits retained by Registrar pending appeal (O. 35, r. 12)**

(HK)(1) Unless the Court otherwise directs, the Registrar shall retain in his custody all exhibits duly marked and labelled until-

- (a) the expiration of the time limited by these rules for appealing to the Court of Appeal, or such extended

- period therefor as may be allowed; and thereafter
- (b) in the event of an appeal to the Court of Appeal, the final disposal of such appeal; and thereafter
- (c) the expiration of the time limited by Order in Council for applying to the Court of Appeal for leave to appeal to the Court of Final Appeal, or such extended period therefor as may be allowed; and thereafter
- (d) in the event of the Court of Appeal or the Court of Final Appeal giving leave to appeal to the Court of Final Appeal, the non-fulfilment of any condition for such leave to appeal or the final disposal of such appeal.

(2) Unless the Court otherwise directs, upon the expiration of the time limited for retention of exhibits fixed under paragraph (1) it shall be the duty of every party to an action who has put in any exhibits, and where represented, of his solicitor on the record, to apply to the Registrar for the return of the exhibits and to collect the same.

(25 of 1998 s. 2)

### **13. Impounded documents (O. 35, r. 13)**

(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by summons: Provided that where the Secretary for Justice makes a written request in that behalf, documents so impounded shall be delivered into his custody. (L.N. 362 of 1997; L.N. 152 of 2008)

(2) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorized to do so by an order signed by a judge.

(Enacted 1988)

Order:	36	<b>TRIALS BEFORE, AND INQUIRIES BY, MASTER</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

### **1. Trial before, and inquiry by, master (O. 36, r. 1)**

(HK) In any cause or matter other than a criminal proceeding by the Crown, the Court may, with the consent of the parties, order that the cause or matter, or any question or issue of fact arising therein, be tried before a master or that the master do inquire and report thereon and, in the case of inquiry and report, giving consequential directions.

### **4. Power of master (O. 36, r. 4)**

(1) Subject to any directions contained in the order made pursuant to rule 1-

- (a) the master shall for the purposes of the trial or inquiry (including any interlocutory application therein) have the same jurisdiction, powers and duties (including the power of committal and discretion as to costs) as a judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit, in the like cases, in the like manner and subject to the like limitations; and
- (b) every trial and all other proceedings before a master shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.

(2) Without prejudice to the generality of paragraph (1) but subject to any such directions as are mentioned therein the master before whom any cause or matter is tried shall have the like powers as the Court with respect to claims relating to or connected with the original subject-matter of the cause or matter by any party thereto against any other person and Order 15, rule 5(2) and Order 16 shall with any necessary modifications apply in relation to any such claim accordingly.

### **9. Report on reference (O. 36, r. 9)**

(1) The report made by a master in pursuance of a reference under rule 1 shall be made to the Court and notice thereof served on the parties to the reference.

(2) The master may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

- (3) On receipt of the master's report the Court may-
- (a) adopt the report in whole or in part;
  - (b) vary the report;
  - (c) require an explanation from him;
  - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other master; or
  - (e) decide the question originally referred to him on the evidence taken before him either with or without additional evidence.

(4) When the report of the master has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court of further consideration of the cause or matter, after giving not less than 4 days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(Enacted 1988)

Order:	37	<b>DAMAGES: ASSESSMENT AFTER JUDGMENT AND ORDERS FOR PROVISIONAL DAMAGES</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## I. ASSESSMENT OF DAMAGES AFTER JUDGMENT

### 1. Assessment of damages by a master (O. 37, r. 1)

(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by a master, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from a master and, at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(HK)(1A) Upon judgment being given for damages to be assessed, the following directions shall, unless the Court directs otherwise, take effect automatically- (L.N. 383 of 1996)

- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter in accordance with Order 24, rule 9;
- (ab) each party shall serve on the other parties, within 6 weeks, written statements under Order 38, rule 2A of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial; (L.N. 152 of 2008)
- (b)-(d) (Repealed L.N. 152 of 2008)
- (e) photographs, plans and the contents of any police investigation report shall be receivable in evidence at the hearing and shall be agreed if possible;
- (f) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal;
- (g) at the time of making of the application for an appointment the master shall be notified of the estimated length of the assessment and any other matter which may affect the setting down of the assessment. (L.N. 363 of 1990)

(2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) The attendance of witnesses and the production of documents before a master in proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

### (HK)1A. Assessment of costs as damages (O. 37, r. 1A)

Where damages to be assessed pursuant to a judgment to which this Order applies consist solely of costs claimed on an indemnity basis, such assessment shall proceed as for a taxation of costs under Order 62 and the provisions of that Order shall apply as if an order for taxation of costs on the indemnity basis had been made.

(L.N. 404 of 1991)

## **2. Certificate of amount of damages (O. 37, r. 2)**

Where in pursuance of this Order or otherwise damages are assessed by a master, he shall certify the amount of the damages and the certificate shall, when judgment is entered, be filed in the Registry.

## **3. Default judgment against some but not all defendants (O. 37, r. 3)**

Where any such judgment as is mentioned in rule 1 is given on failure to give notice of intention to defend or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

## **4. Power to order assessment at trial (O. 37, r. 4)**

(1) Where judgment is given for damages to be assessed, the Court may-

(d) order that the action shall proceed to trial before a judge (with or without a jury) as respects the damages.

(3) Where the Court orders that the action shall proceed to trial, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application to the Court in pursuance of which the Court makes the order, were a case management summons under Order 25. (L.N. 152 of 2008)

## **5. Assessment of value (O. 37, r. 5)**

The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

## **6. Assessment of damages to time of assessment (O. 37, r. 6)**

Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

# **II. ORDERS FOR PROVISIONAL DAMAGES FOR PERSONAL INJURES**

## **7. Application and interpretation (O. 37, r. 7)**

(1) This Part of this Order applies to actions to which section 56A of the Ordinance (in this Part of this Order referred to as "section 56A") applies.

(2) In this Part of this Order "award of provisional damages" (暫定損害賠償裁決) means an award of damages for personal injuries under which-

- (a) damages are assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 56A; and
- (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

## **8. Order for provisional damages (O. 37, r. 8)**

(1) The Court may on such terms as it thinks just and subject to the provisions of this rule make an award of provisional damages if-

- (a) the plaintiff has pleaded a claim for provisional damages, and
- (b) the Court is satisfied that the action is one to which section 56A applies.

(2) An order for an award of provisional damages shall specify the disease or type of deterioration in respect of

which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within which such application may be made.

(3) The Court may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so, and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one disease or type of deterioration and may in respect of each disease or deterioration specify a different period within which an application may be made at a future date.

(5) Orders 13 and 19 shall not apply in relation to an action in which the plaintiff claims provisional damages.

## **9. Offer to submit to an award (O. 37, r. 9)**

(1) Where an application is made for an award of provisional damages, any defendant may at any time (whether or not he makes a payment into court) make a written offer to the plaintiff-

(a) to tender a sum of money (which may include an amount, to be specified, in respect of interest) in satisfaction of the plaintiff's claim for damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 56A and identifying the disease or deterioration in question; and (L.N. 404 of 1991)

(b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the Court until after the Court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (1), the plaintiff may, within 28 days after the offer was made, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the Court for an order in accordance with the provisions of rule 8(2). (L.N. 152 of 2008)

## **10. Application for award of further damages (O. 37, r. 10)**

(1) This rule applies where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 8(2), or of such period as extended under rule 8(3).

(3) The plaintiff shall give not less than three months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiff's knowledge insured in respect of the plaintiff's claim, to the insurers.

(4) The plaintiff must take out a case management summons as to the future conduct of the action within 21 days after the expiry of the period of notice referred to in paragraph (3). (L.N. 152 of 2008)

(5) At the determination of the case management summons, the Court shall give such directions as may be appropriate for the future conduct of the action, including, but not limited to, the disclosure of medical reports and the place, mode and date of the hearing of the application for further damages. (L.N. 152 of 2008)

(6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.

(7) The provisions of Order 29 with regard to the making of interim payments shall, with the necessary modifications, apply where an application is made under this rule.

(8) The Court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff's intention to apply for further damages and the date of the award.

(Enacted 1988)

Order:	38	Evidence	E.R. 1 of 2015	29/01/2015
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## **I. General Rules**

### **1. General rule: witnesses to be examined orally (O. 38, r. 1)**

Subject to the provisions of these rules and of the Evidence Ordinance (Cap 8) and any other written law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

## **2. Evidence by affidavit (O. 38, r. 2)**

- (1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.
- (2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.
- (3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

### **2A. Exchange of witness statements (O. 38, r. 2A)**

- (1) The powers of the Court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including (but not limited to)-
  - (a) the extent to which the facts are in dispute or have been admitted;
  - (b) the extent to which the issues of fact are defined by the pleadings;
  - (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.
- (2) At the determination of a case management summons, in an action commenced by writ the Court shall direct every party to serve on the other parties, within such period as the Court may specify and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial. (L.N. 152 of 2008)  
The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.  
Order 3, rule 5(3) shall not apply to any period specified by the Court under this paragraph.
- (3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.
- (4) Statements served under this rule shall-
  - (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and must be verified by a statement of truth in accordance with Order 41A; (L.N. 152 of 2008)
  - (b) sufficiently identify any documents referred to therein; and
  - (c) where they are to be served by more than one party, be exchanged simultaneously.
- (5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.
- (6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.
- (7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial-
  - (a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;
  - (b) the witness may with the leave of the Court-
    - (i) amplify his witness statement; and
    - (ii) give evidence in relation to new matters which have arisen since the witness statement was served on the other party; (L.N. 152 of 2008)
  - (c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness,

any party may put the statement or any part of it in cross-examination of that witness.

- (7A) The Court may grant leave under paragraph (7)(b) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement. (L.N. 152 of 2008)
- (8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.
- (9) Where any statement served is one to which the Evidence Ordinance (Cap 8) applies, paragraphs (6) and (7) shall take effect subject to the provisions of that Ordinance and Parts III and IV of this Order.  
The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under that Ordinance; and where a statement or any part thereof would be admissible in evidence by virtue only of that Ordinance, the appropriate notice under Part III or IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. (L.N. 152 of 2008)
- (10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.
- (11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served-  
(a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or  
(b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).
- (12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct the Clerk of Court to certify as open to inspection any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a).  
A request under this paragraph may be made orally or in writing.
- (13) The judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available-  
(a) in the interests of justice or national security;  
(b) because of the nature of any expert medical evidence in the statement; or  
(c) for any other sufficient reason.
- (14) Where the Clerk of Court is directed under paragraph (12) to certify a witness statement as open to inspection he shall-  
(a) prepare a certificate which shall be attached to a copy (*the certified copy*) of that witness statement; and  
(b) make the certified copy available for inspection.
- (15) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the certificate is given until the end of 7 days after the conclusion of the trial.
- (16) In this rule-  
(a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;  
(b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.
- (17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.

(L.N. 223 of 1995)

### **3. Evidence of particular facts (O. 38, r. 3)**

- (1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.
- (2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial-  
(a) by statement on oath of information or belief, or  
(b) by the production of documents or entries in books, or  
(c) by copies of documents or entries in books, or

- (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

#### **4. Limitation of expert evidence (O. 38, r. 4)**

The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

#### **4A. Evidence by single joint expert (O. 38, r. 4A)**

- (1) In any action in which any question for an expert witness arises, the Court may, at or before the trial of the action, order 2 or more parties to the action to appoint a single joint expert witness to give evidence on that question.
- (2) Where the parties cannot agree on who should be the joint expert witness, the Court may-
  - (a) select the expert witness from a list prepared or identified by the parties; or
  - (b) direct that the expert witness be selected in such manner as the Court may direct.
- (3) Where an order is made under paragraph (1), the Court may give such directions as it thinks fit with respect to the terms and conditions of the appointment of the joint expert witness, including but not limited to the scope of instructions to be given to the expert witness and the payment of the expert witness's fees and expenses.
- (4) Notwithstanding that a party to the action disagrees with the appointment of a single joint expert witness to give evidence, the Court may, subject to paragraph (6), make an order under paragraph (1) if it is satisfied that it is in the interests of justice to do so after taking into account all the circumstances of the case.
- (5) The circumstances that the Court may take into account include but are not limited to-
  - (a) whether the issues requiring expert evidence can readily be identified in advance;
  - (b) the nature of those issues and the likely degree of controversy attaching to the expert evidence in question;
  - (c) the value of the claim and the importance of the issue on which expert evidence is sought, as compared with the cost of employing separate expert witnesses to give evidence;
  - (d) whether any party has already incurred expenses for instructing an expert who may be asked to give evidence as an expert witness in the case; and
  - (e) whether any significant difficulties are likely to arise in relation to-
    - (i) the choosing of the joint expert witness;
    - (ii) the drawing up of his instructions; or
    - (iii) the provision to him of the information and other facilities needed to perform his duties.
- (6) Where a party to the action disagrees with the appointment of a single joint expert witness to give evidence, the Court shall not make an order under paragraph (1) unless the party has been given a reasonable opportunity to appear before the Court and to show cause why the order should not be made.
- (7) Where the Court is satisfied that an order made under paragraph (1) is inappropriate, it may set aside the order and allow the parties concerned to appoint their own expert witnesses to give evidence.

(L.N. 152 of 2008)

#### **5. Limitation of plans, etc., in evidence (O. 38, r. 5)**

Unless, at or before the trial, the Court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

#### **6. Revocation or variation of orders under rules 2 to 5 (O. 38, r. 6)**

Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

#### **7. Evidence of finding on foreign law (O. 38, r. 7)**



- (1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 59 of the Evidence Ordinance (Cap 8) shall-
  - (a) in the case of an action to which Order 25, rule 1, applies within 28 days after the pleadings in the action are deemed to be closed, and (L.N. 152 of 2008)
  - (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained, or in either case, within such other period as the Court may specify, serve notice of his intention on every other party to the proceedings.
- (2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.
- (3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

**8. Application to trials of issues, references, etc. (O. 38, r. 8)**

The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

**9. Depositions: when receivable in evidence at trial (O. 38, r. 9)**

- (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless-
  - (a) the deposition was taken in pursuance of an order under Order 39, rule 1, and
  - (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.
- (2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.
- (3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

**9A. Notarial instruments receivable in evidence in civil proceedings (O. 38, r. 9A)**

- (1) A notarial instrument may be received in evidence in civil proceedings, without further proof, as duly authenticated unless the contrary is proved.
- (2) A reference in paragraph (1) to a notarial instrument is a reference to a document-
  - (a) evidencing and showing any notarial act of a notary public; and
  - (b) bearing the signature and the seal of the notary public.
- (3) In this rule-

**notarial act** (公證行為)-

- (a) means the exercise of any of the powers referred to in section 40B of the Legal Practitioners Ordinance (Cap 159) by a notary public; but
- (b) does not include any notarial act done before a diplomatic or consular officer of the People's Republic of China outside the People's Republic of China as referred to in section 10 of the Oaths and Declarations Ordinance (Cap 11);

**notary public** (公證人) means a person who, at the material time, is qualified to practise as a notary public under section 40D of the Legal Practitioners Ordinance (Cap 159).

(18 of 2014 s. 45)

**10. High Court documents admissible or receivable in evidence (O. 38, r. 10)**

- (1) Office copies of writs, records, pleadings and documents filed in the High Court shall be admissible in

evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

- (2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of any office or department of the High Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, that office or department shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

(25 of 1998 s. 2)

#### **11. Evidence of consent of new trustee to act (O. 38, r. 11)**

A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

#### **12. Evidence at trial may be used in subsequent proceedings (O. 38, r. 12)**

Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

#### **13. Order to produce document at proceeding other than trial (O. 38, r. 13)**

- (1) At any stage in a cause or matter the Court may order any person to attend any proceeding in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding.
- (2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

### **II. Writs of Subpoena**

#### **14. Form and issue of writ of subpoena (O. 38, r. 14)**

- (1) A writ of subpoena must be in Form No. 28 or 29 in Appendix A, whichever is appropriate.
- (2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the Court.
- (3) Where a writ of subpoena is to be issued in a cause or matter in the Court, the appropriate office for the issue of the writ is the Registry.
- (HK)(5) Before a writ of subpoena is issued a praecipe for the issue of the writ must be filed in the Registry together with a note from a judge or master authorizing the issue of such writ and the sum of \$500 shall be deposited in the Registry, in addition to any fee payable in respect of such issue, as a deposit in respect of the witness' reasonable expenses; and the praecipe must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that party's solicitor and also (if the solicitor is the agent of another) the name or firm and business address of his principal.
- (HK)(6) In any proceedings, whether in chambers or in court, the Court may order the reimbursement by one or more of the parties to a witness who has been served with a writ of subpoena in respect of any expenses reasonably and properly incurred by that witness.
- (HK)(7) Any expenses so ordered by the Court to be paid shall be assessed by the Court making the order or, if no such assessment is made by the Court, shall be taxed (if not agreed) and paid by the party ordered to make such payment.
- (HK)(8) A witness whose expenses have been ordered to be paid may, if the party ordered to make such payment is the party who made the deposit on issue of the writ of subpoena, recover such expenses, after assessment, agreement or taxation, from the said deposit and look to the party liable to make such payment for the balance, if any.
- (HK)(9) The deposit (or such part of it as shall remain after payment to the witness under rule 14(8)) shall be refunded to the party that paid the deposit if-
  - (a) that party was not ordered to pay the costs of the witness; or
  - (b) that party was ordered to pay the costs of the witness and has effected payment of such costs after

assessment, agreement or taxation.

**15. More than one name may be included in one writ of subpoena (O. 38, r. 15)**

The names of two or more persons may be included in one writ of subpoena ad testificandum.

**16. Amendment of writ of subpoena (O. 38, r. 16)**

Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ re-sealed in correct form by filing a second praecipe under rule 14(5) endorsed with the words "Amended and re-sealed".

**17. Service of writ of subpoena (O. 38, r. 17)**

A writ of subpoena must be served personally and, subject to rule 19, the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than four days, or such other period as the Court may fix, before the day on which attendance before the Court is required.

**18. Duration of writ of subpoena (O. 38, r. 18)**

Subject to rule 19, a writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

**19. Writ of subpoena in aid of inferior court or tribunal (O. 38, r. 19)**

- (1) The office of the Court out of which a writ of subpoena ad testificandum or a writ of subpoena duces tecum in aid of an inferior court or tribunal may be issued is the Registry, and no order of the Court for the issue of such a writ is necessary.
- (2) A writ of subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceedings before that court or tribunal at which the attendance of the witness is required.
- (3) A writ of subpoena issued in aid of an inferior court or tribunal must be served personally.
- (4) Unless a writ of subpoena issued in aid of an inferior court or tribunal is duly served on the person to whom it is directed not less than 4 days, or such other period as the Court may fix, before the day on which the attendance of that person before the court or tribunal is required by the writ, that person shall not be liable to any penalty or process for failing to obey the writ.
- (5) An application to set aside a writ of subpoena issued in aid of an inferior court or tribunal may be heard by a master.

### **III. Hearsay Evidence**

**20. Application and interpretation (O. 38, r. 20)**

- (1) In this Part of this Order *the Ordinance* (條例) means the Evidence Ordinance (Cap 8) and any expressions used in this Part and in Part IV of the Ordinance have the same meanings in this Part as they have in the said Part IV.
- (2) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.
- (3) In this Part-  
*hearsay evidence* (傳聞證據) means evidence consisting of hearsay within the meaning of section 46 of the Ordinance.

(2 of 1999 s. 6)

**21. Power to call witness for cross-examination on hearsay evidence and to call additional evidence to attack**

**or support hearsay evidence** (O. 38, r. 21)

- (1) Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the Court may, on application-
  - (a) allow another party to call and cross-examine the person who made the statement on its contents;
  - (b) allow any party to call-
    - (i) additional evidence to attack or support the reliability of the statement;
    - (ii) additional evidence to attack or support that first-mentioned additional evidence.
- (2) Where the Court allows another party to call and cross-examine the person who made the statement, it may give such directions as it thinks fit to secure the attendance of that person and as to the procedure to be followed.

(2 of 1999 s. 6)

**22. Powers exercisable in chambers** (O. 38, r. 22)

The jurisdiction of the Court under rules 20 and 21 may be exercised in chambers.

(2 of 1999 s. 6)

**23-34.** (Repealed 2 of 1999 s. 6)

**IV. Expert Evidence**

**35. Interpretation** (O. 38, r. 35)

- (1) Expressions used in this Part of this Order which are used in the Evidence Ordinance (Cap 8) have the same meanings in this Part of this Order as in that Ordinance. (L.N. 152 of 2008)
- (2) A reference to an expert witness in this Part or Appendix D is a reference to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court. (L.N. 152 of 2008)

**35A. Expert witness's overriding duty to Court** (O. 38, r. 35A)

- (1) It is the duty of an expert witness to help the Court on the matters within his expertise.
- (2) The duty under paragraph (1) overrides any obligation to the person from whom the expert witness has received instructions or by whom he is paid.

(L.N. 152 of 2008)

**36. Restrictions on adducing expert evidence** (O. 38, r. 36)

- (1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence-
  - (a) has applied to the Court to determine whether a direction should be given under rule 37 or 41 (whichever is appropriate) and has complied with any direction given on the application. (L.N. 152 of 2008)
  - (b)-(c) (Repealed L.N. 152 of 2008)
- (2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these rules (except of Order 45, rule 5) of a direction given under this Part of this Order.

(L.N. 363 of 1990)

**37. Direction that expert report be disclosed** (O. 38, r. 37)

- (1) Subject to paragraph (2), where in any cause or matter an application is made under rule 36(1) in respect of oral expert evidence, then, unless the Court considers that there are special reasons for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify. (L.N. 404 of 1991)

- (2) Nothing in paragraph (1) shall require a party to disclose a further medical report if he proposes to rely at the trial only on the report provided pursuant to Order 18, rule 12(1A) or (1B) but, where a party claiming damages for personal injuries discloses a further report, that report shall be accompanied by a statement of the special damages claimed and, in this paragraph, *a statement of the special damages claimed* (關於所申索的專項損害賠償的陳述書) has the same meaning as in Order 18, rule 12(1C). (L.N. 404 of 1991)

**37A. Expert report to be verified by statement of truth (O. 38, r. 37A)**

An expert report disclosed under these rules must be verified by a statement of truth in accordance with Order 41A.

(L.N. 152 of 2008)

**37B. Duty to provide expert witness with copy of code of conduct (O. 38, r. 37B)**

- (1) A party who instructs an expert witness shall as soon as practicable provide the expert witness with a copy of the code of conduct set out in Appendix D.
- (2) Where the Court has under rule 4A(1) ordered that 2 or more parties shall appoint a single joint expert witness, paragraph (1) applies to each of the parties.
- (3) If the instruction is in writing, it must be accompanied by a copy of the code of conduct set out in Appendix D.

(L.N. 152 of 2008)

**37C. Expert witness's declaration of duty to Court (O. 38, r. 37C)**

- (1) An expert report disclosed under these rules is not admissible in evidence unless the report contains a declaration by the expert witness that-
  - (a) he has read the code of conduct set out in Appendix D and agrees to be bound by it;
  - (b) he understands his duty to the Court; and
  - (c) he has complied with and will continue to comply with that duty.
- (2) Oral expert evidence is not admissible unless the expert witness has declared, whether orally or in writing or otherwise, that-
  - (a) he has read the code of conduct set out in Appendix D and agrees to be bound by it;
  - (b) he understands his duty to the Court; and
  - (c) he has complied with and will continue to comply with that duty.
- (3) Paragraph (1) does not apply to a report that was disclosed under rule 37 before the commencement\* of this rule.

(L.N. 152 of 2008)

**38. Meeting of experts (O. 38, r. 38)**

In any cause or matter the Court may, if it thinks fit, direct that there be a meeting "without prejudice" of such experts within such periods before or after the disclosure of their reports as the Court may specify, for the purpose of identifying those parts of their evidence which are in issue. Where such a meeting takes place the experts may prepare a joint statement indicating those parts of their evidence on which they are, and those on which they are not, in agreement.

**39. Disclosure of part of expert evidence (O. 38, r. 39)**

Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

**41. Expert evidence contained in statement (O. 38, r. 41)**

Where an application is made under rule 36 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement cannot or should not be called as a witness, the Court may direct that the provisions of rules 20 to 22 inclusive shall apply with such modifications as the Court thinks fit.  
(L.N. 152 of 2008)

**42. Putting in evidence expert report disclosed by another party (O. 38, r. 42)**

A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this Part of this Order.

**43. Time for putting expert report in evidence (O. 38, r. 43)**

Where a party to any cause or matter calls as a witness the maker of an expert report which has been disclosed under these rules, the report may be put in evidence at the commencement of the examination in chief of its maker or at such other time as the Court may direct.

(L.N. 152 of 2008)

**44. Revocation and variation of directions (O. 38, r. 44)**

Any direction given under this Part of this Order may on sufficient cause being shown be revoked or varied by a subsequent direction given at or before the trial of the cause or matter.

(Format changes—E.R. 1 of 2015)  
(Enacted 1988)

**Note:**

\* **Commencement day: 2 April 2009.**

Order:	39	<b>EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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**Remarks:**

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Power to order depositions to be taken (O. 39, r. 1)**

(1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order (in Form No. 32 in Appendix A) for the examination on oath before a judge, an officer or examiner of the Court or some other person, at any place, of any person. (See also App. A, Form 31)

(2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit and may contain an order for the production of any document which appears to the Court to be necessary for the purposes of the examination.

**2. Where person to be examined is out of the jurisdiction (O. 39, r. 2)**

(1) Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made-

- (a) for an order (in Form No. 34 in Appendix A) under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person, or (See also App. A, Form 33)
- (b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order (in Form No. 37 in Appendix A) under that rule appointing a special examiner to take the evidence of that person in that country. (See also App. A, Form 36)

(2) An application may be made for the appointment as special examiner of a British consul in the country in which the evidence is to be taken or his deputy-

- (a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the Court, or
- (b) with the consent of the Chief Secretary for Administration. (L.N. 362 of 1997)

### **3. Order for issue of letter of request (O. 39, r. 3)**

(1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.

(2) The party obtaining the order must prepare the letter of request and lodge it in the Registry, and the letter must be in Form No. 35 in Appendix A, with such variations as the order may require.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of the country in which the examination is to be taken or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken unless-

- (a) the Registrar has given a general direction in relation to that country that no translation need be provided, or
- (b) the official language or one of the official languages of that country is English.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) The party obtaining the order must, when he lodges in the Registry the documents mentioned in paragraphs (2) to (5), also file in that office an undertaking signed by him or his solicitor to be responsible personally for all expenses incurred by the Chief Secretary for Administration in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar. (L.N. 362 of 1997)

### **3A. Examination otherwise than on oath (O. 39, r. 3A)**

Notwithstanding the provisions of rule 1, where the person to be examined is out of the jurisdiction that person may be examined on oath or affirmation or otherwise in accordance with the procedure of the country in which the examination is to take place.

### **4. Enforcing attendance of witness at examination (O. 39, r. 4)**

Where an order has been made under rule 1-

- (a) for the examination of any person before an officer of the Court or some other person (in this rule and rules 5 to 14 referred to as "the examiner"), or
- (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

### **5. Refusal of witness to attend, be sworn, etc. (O. 39, r. 5)**

(1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the Registry, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn, or to answer any question or produce any document, as the

case may be.

(2) An application for an order under this rule may be made ex parte.

(3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

**6. Appointment of time and place for examination (O. 39, r. 6)**

(1) The examiner must give the party on whose application the order for examination was made by a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

(2) The party to whom a notice under paragraph (1) is given must, on receiving it, forthwith give notice of the appointment to all the other parties.

**7. Examiner to have certain documents (O. 39, r. 7)**

The party on whose application the order for examination before the examiner was made must furnish the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions at issue in the cause or matter.

**8. Conduct of examination (O. 39, r. 8)**

(1) Subject to any directions contained in the order for examination-

- (a) any person ordered to be examined before the examiner may be cross-examined and re-examined, and
- (b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.

(2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) The examiner may, if necessary, adjourn the examination from time to time.

**9. Examination of additional witnesses (O. 39, r. 9)**

The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any person in addition to those named or provided for in the order for examination, and must annex such consent to the original deposition of that person.

**10. Objection to questions (O. 39, r. 10)**

(1) If any person being examined before the examiner objects to answer any question put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.

(2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon, and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.

(3) If the Court decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

**11. Taking of depositions (O. 39, r. 11)**

(1) The deposition of any person examined before the examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and rule 10(1), the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the



person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.

(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision. If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before them it was taken, must be sent by the examiner to the Registry and shall be filed therein.

**12. Time taken by examination to be indorsed on depositions (O. 39, r. 12)**

Before sending any deposition to the Registry under rule 11(4) the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect thereof.

**13. Special report by examiner (O. 39, r. 13)**

The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

**14. Order for payment of examiner's fees (O. 39, r. 14)**

(1) If the fees and expenses due to an examiner are not paid he may report that fact to the Court, and the Court may direct the Law Officer (Civil Law) to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to him in respect of the examination. (L.N. 362 of 1997)

(2) An order under this rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

**15. Perpetuation of testimony (O. 39, r. 15)**

(1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

(Enacted 1988)

Order:	40	COURT EXPERT	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Appointment of expert to report on certain questions (O. 40, r. 1)**

(1) In any cause or matter which is to be tried without a jury and in which any question for an expert witness arises the Court may at any time, on the application of any party, appoint an independent expert or, if more than one such question arises, 2 or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.

An expert appointed under this paragraph is referred to in this Order as a "court expert".

(2) Any court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.

(3) The question to be submitted to the court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.

(4) In this rule "expert" (專家), in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

## **2. Report of court expert (O. 40, r. 2)**

(1) The court expert must send his report to the Court, together with such number of copies thereof as the Court may direct, and the Registrar must send copies of the report to the parties or their solicitors.

(2) The Court may direct the court expert to make a further or supplemental report.

(3) Any part of a court expert's report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

## **3. Experiments and tests (O. 40, r. 3)**

If the court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report he shall inform the parties or their solicitors and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

## **4. Cross-examination of court expert (O. 40, r. 4)**

Any party may, within 14 days after receiving a copy of the court expert's report, apply to the Court for leave to cross-examine the expert on his report, and on that application the Court shall make an order for the cross-examination of the expert by all the parties either- (L.N. 126 of 1995)

(a) at the trial, or

(b) before an examiner at such time and place as may be specified in the order.

## **5. Remuneration of court expert (O. 40, r. 5)**

(1) The remuneration of the court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in court or before an examiner.

(2) Without prejudice to any order providing for payment of the court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration, but where the appointment of a court expert is opposed the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

## **6. Calling of expert witnesses (O. 40, r. 6)**

Where a court expert is appointed in a cause or matter, any party may, on giving to the other parties a reasonable time before the trial notice of his intention to do so, call one expert witness to give evidence on the question reported on by the court expert but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers the circumstances of the case to be exceptional.

(Enacted 1988)

Order:	41	<b>AFFIDAVITS</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## **1. Form of affidavit (O. 41, r. 1)**

(1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or

matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and, unless the Court otherwise directs, must state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact. In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent's place of residence, state the address at which he works, the position he holds and the name of his firm or employer, if any.

(5) Whether or not both sides of the paper are used, the printed, written or typed sides of the paper of every affidavit must be numbered consecutively.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

(HK)(9) Where any affidavit has been interpreted to the deponent before being sworn it shall contain a statement to that effect, state the name and address of the person who interpreted it, and be signed by him.

## **2. Affidavit by 2 or more deponents (O. 41, r. 2)**

Where an affidavit is made by 2 or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents.

## **3. Affidavit by illiterate or blind person (O. 41, r. 3)**

Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that-

- (a) the affidavit was read in his presence to the deponent,
- (b) the deponent seemed perfectly to understand it, and
- (c) the deponent made his signature or mark in his presence;

and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

## **4. Use of defective affidavit (O. 41, r. 4)**

An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

## **5. Contents of affidavit (O. 41, r. 5)**

(1) Subject to Order 14, rules 2(2) and 4(2), to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

## **6. Scandalous, etc., matter in affidavit (O. 41, r. 6)**

The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

**7. Alterations in affidavits (O. 41, r. 7)**

(1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at the Registry, the Seal of the Court may be substituted for the signature or initials required by this rule.

**8. Affidavit not to be sworn before solicitor of party, etc. (O. 41, r. 8)**

No affidavit shall be sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that solicitor.

**9. Filing of affidavits (O. 41, r. 9)**

(4) Every affidavit used in a cause or matter proceeding in the Court must be filed in the Registry.

(5) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

**10. Use of original affidavit or office copy (O. 41, r. 10)**

(1) Subject to paragraph (2), an original affidavit may be used without the leave of the Court, notwithstanding that it has not been filed in accordance with rule 9.

(2) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the judicial clerk in court or chambers, as the case may be, who shall send it to be filed.

(3) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

**11. Document to be used in conjunction with affidavit to be exhibited to it (O. 41, r. 11)**

(1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

The certificate must be entitled in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

**12. Affidavit taken in Commonwealth or foreign country admissible without proof of seal, etc. (O. 41, r. 12)**

(1) Any affidavit sworn in any part of the Commonwealth outside Hong Kong before any judge, officer or other person duly authorized, or before any commissioner authorized by the Court, to take affidavits therein, may be used in the Court in all cases where affidavits are admissible.

(2) Any affidavit sworn in any foreign parts out of Her Majesty's dominions before a judge or magistrate, being authenticated by the official seal of the foreign court to which he is attached or of such magistrate, or before a notary public or a British consular officer, may be used in the Court in all cases where affidavits are admissible.

(3) The fact that an affidavit purports to have been sworn in the manner prescribed by paragraph (1) or (2) of this rule shall be prima facie evidence of the seal or signature, as the case may be, of any such court, judge, magistrate, commissioner or other officer or person therein mentioned, appended or subscribed to such affidavit, and of the authority of such court, judge, magistrate, commissioner or other officer or person to administer oaths.

(Enacted 1988)

Order:	41A	<b>STATEMENTS OF TRUTH</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### 1. Interpretation (O. 41A, r. 1)

In this Order, unless the context otherwise requires-

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

"pleading" (狀書) includes-

- (a) particulars of a pleading given by a party to any other party, whether voluntarily or pursuant to-
  - (i) a request made by that other party; or
  - (ii) an order of the Court made under Order 18, rule 12(3) or (4); and
- (b) an amendment to a pleading or any of the particulars referred to in paragraph (a);

"witness statement" (證人陳述書) means a statement served under Order 38, rule 2A.

### 2. Documents to be verified by statement of truth (O. 41A, r. 2)

(1) The following documents must be verified by a statement of truth in accordance with this Order-

- (a) a pleading;
- (b) a witness statement;
- (c) an expert report; and
- (d) any other document verification of which in accordance with this Order is required by any other provision of these rules or by a practice direction.

(2) A pleading must be verified by a statement of truth in accordance with this Order notwithstanding that the party has in the pleading made an allegation of fact in accordance with Order 18, rule 12A, which is inconsistent with another allegation of fact in the same pleading.

(3) If the Court considers that it is just to do so in a particular case, it may direct that all or any of the documents specified in paragraph (1) need not be verified by a statement of truth.

(4) All or any of the documents specified in paragraph (1) need not be verified by a statement of truth if it is so provided by a practice direction.

(5) A practice direction may only provide that all or any of the documents specified in paragraph (1) need not be verified by a statement of truth if the documents or document relate to a matter that is to be heard in a specialist list.

### 3. Signing of statement of truth (O. 41A, r. 3)

(1) Subject to paragraphs (6), (7), (8) and (9), a statement of truth must be signed by-

- (a) in the case of a witness statement or expert report, the maker of the statement or report;
- (b) in any other case-
  - (i) the party putting forward the verified document or where appropriate, his next friend or guardian ad litem; or
  - (ii) the legal representative of the party or next friend or guardian ad litem.

(2) Subject to paragraphs (6), (7), (8) and (9), where a party is a body of persons, corporate or unincorporate, the statement of truth must be signed by a person holding a senior position in the body.

(3) Subject to paragraph (7), where the party is a public officer, the statement of truth must be signed by the public officer or a person holding a senior position in the public body or public authority to which the proceedings relate.

(4) Each of the following persons is a person holding a senior position-

- (a) in respect of a corporation that is neither a public body nor a public authority, any director, manager, secretary or other similar officer of the corporation;
- (b) in respect of an unincorporated association that is neither a public body nor a public authority, any corresponding person appropriate to that unincorporated association; and

(c) in respect of a public body or public authority, a person duly authorized by the public body or public authority for the purposes of this sub-paragraph.

(5) Where a statement of truth is signed by a person holding a senior position, that person shall state in the statement of truth the office or position he holds.

(6) Subject to paragraphs (7), (8) and (9), where the party is a partnership, the statement of truth must be signed by-

(a) one of the partners; or

(b) a person having the control or management of the partnership business.

(7) A statement of truth in or in relation to a pleading may be signed by-

(a) a person who is not a party; or

(b) two or more parties jointly,

if this is permitted by a practice direction.

(8) An insurer or the Motor Insurers' Bureau of Hong Kong may sign a statement of truth in or in relation to a pleading on behalf of a party where the insurer or the Motor Insurers' Bureau of Hong Kong has a financial interest in the result of proceedings brought wholly or partially by or against that party.

(9) If more than one insurer is conducting proceedings on behalf of a plaintiff or defendant, a statement of truth in or in relation to a pleading may be signed by an officer of the insurer responsible for the case as the lead insurer, but-

(a) the person signing shall specify the capacity in which he signs;

(b) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and

(c) the Court may order that the statement of truth also be signed by one or more of the parties.

(10) Where a legal representative signs a statement of truth, he shall sign in his own name, and shall not sign only in the name of the firm to which he belongs.

#### **4. Effect of statement of truth**

(O. 41A, r. 4)

(1) Subject to paragraph (2), a statement of truth is a statement that-

(a) the party putting forward the document believes that the facts stated in the document are true; or

(b) in the case of a witness statement or expert report, the maker of the witness statement or expert report believes that the facts stated in the document are true and (if applicable) the opinion expressed in it is honestly held.

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

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

(a) the party on whose behalf he has signed had authorized him to do so;

(b) before signing he had explained to the party that in signing the statement of truth he would be confirming the party's belief that the facts stated in the document were true; and

(c) before signing he had informed the party of the possible consequences to the party if it should subsequently appear that the party did not have an honest belief in the truth of those facts.

#### **5. Form of statement of truth**

(O. 41A, r. 5)

(1) The form of the statement of truth verifying a document other than a witness statement or expert report is as follows-

"[I believe] [the (plaintiff or as may be) believes] that the facts stated in this [name document being verified ] are true."

(2) The form of the statement of truth verifying a witness statement or expert report is as follows-

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

(3) Where the statement of truth is not contained in the document that it verifies-

- (a) the document containing the statement of truth must be headed with the title of the proceedings and the action number; and
- (b) the document being verified must be identified in the statement of truth as follows-
  - (i) pleading: "the [statement of claim or as may be] served on the [name of party] on [date]";
  - (ii) particulars of pleading: "the particulars of pleading issued on [date]";
  - (iii) amendment to a pleading or particulars of pleading: "the amendment to [name document being verified ], made on [date]";
  - (iv) witness statement: "the witness statement filed on [date] or served on [party] on [date]";
  - (v) expert report: "the expert report disclosed to [party] on [date]".

#### **6. Failure to verify pleading**

(O. 41A, r. 6)

- (1) The Court may by order strike out a pleading that is not verified by a statement of truth.
- (2) Any party may apply for an order under paragraph (1).

#### **7. Failure to verify witness statement or expert report (O. 41A, r. 7)**

If the maker of a witness statement or expert report fails to verify the witness statement or expert report by a statement of truth, the witness statement or expert report is not admissible in evidence unless otherwise ordered by the Court.

#### **8. Power of Court to require document to be verified (O. 41A, r. 8)**

- (1) The Court may order a person who has failed to verify a document in accordance with this Order to verify the document.
- (2) Any party may apply for an order under paragraph (1).

#### **9. False statements (O. 41A, r. 9)**

- (1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
- (2) Proceedings under this rule may be brought only-
  - (a) by the Secretary for Justice or a person aggrieved by the false statement; and
  - (b) with the leave of the Court.
- (3) The Court shall not grant the leave under paragraph (2) unless it is satisfied that the punishment for contempt of court is proportionate and appropriate in relation to the false statement.
- (4) Proceedings under this rule are subject to the law relating to contempt of court and this rule is without prejudice to such law.

#### **10. Transitional (O. 41A, r. 10)**

This Order does not apply in relation to a document in any action if that document was filed, served or exchanged before the commencement\* of this Order.

(L.N. 152 of 2008)

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#### **Note:**

\* **Commencement day: 2 April 2009.**

Order:	42	<b>JUDGMENTS AND ORDERS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## JUDGMENTS, ORDERS, ACCOUNTS AND INQUIRIES

### 1. **Form of judgment and interest thereon, etc.** (O. 42, r. 1)

(1) If, in the case of any judgment, a form thereof is prescribed by Appendix A the judgment must be in that form. (See App. A, Forms 39-46, 48, 49)

(2) The party entering any judgment shall be entitled to have recited therein a statement of the manner in which, and the place at which, the writ or other originating process by which the cause or matter in question was begun was served.

(3) An order other than a consent order to which rule 5A applies must be marked with the name of the judge or master by whom it was made and must be sealed.

#### 1A. **Judgment in favour of reversioner for detention of goods** (O. 42, r. 1A)

(1) Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall be for the payment of damages only.

In this paragraph "partial owner" (部分擁有人) means one of two or more persons having interest in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

### 2. **Judgment, etc. requiring act to be done: time for doing it** (O. 42, r. 2)

(1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

### 3. **Date from which judgment or order takes effect** (O. 42, r. 3)

(1) A judgment or order of the Court takes effect from the day of its date.

(2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.

(3) A judgment or order shall take effect for the purposes of this rule notwithstanding that the reasons therefor may not be given until a later date.

### 4. **Orders required to be drawn up** (O. 42, r. 4)

(1) Subject to paragraph (2), every order of the Court shall be drawn up unless the Court otherwise directs.

(2) An order-

(a) which-

(i) extends the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act, or

(ii) grants leave for the doing of any of the acts mentioned in paragraph (3), and

(b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,



need not be drawn up unless the Court otherwise directs.

- (3) The acts referred to in paragraph (2)(a)(ii) are-
  - (a) the issue of any writ, other than a writ of summons for service out of the jurisdiction;
  - (b) the amendment of a writ of summons or other originating process or a pleading;
  - (c) the filing of any document;
  - (d) any act to be done by an officer of the Court other than a solicitor;
- (HK)(e) the extension of the validity of a writ;
- (HK)(f) the abridgement of time for service of a summons;
- (HK)(g) the adjournment of the hearing of a summons;
- (HK)(h) the adjournment of the trial of an action;
- (HK)(i) an order made by a Judge ordering that an application or summons shall be heard by a master or a similar order made by a master that an application or summons shall be heard by a Judge;
- (HK)(j) leave to inspect and take copies of documents filed in the Registry;
- (HK)(k) the transfer of an action from one list to another;
- (HK)(l) the vacation or variation of the dates upon which an action has been set down to be heard; and
- (HK)(m) the admission of a person as a solicitor or a barrister of the High Court under the Legal practitioners Ordinance (Cap 159), and any order made under rule 13 of the Admission and Registration Rules (Cap 159 sub. leg. B). (25 of 1998 s. 2)

## **5. Drawing up and entry of judgments and orders (O. 42, r. 5)**

(1) Where a judgment given in a cause or matter is presented for entry in accordance with this rule at the Registry, it shall be entered in the book kept for the purpose by the Registrar.

(2) The party seeking to have such a judgment entered must draw up the judgment and present it to the Registrar for entry.

(3) A party presenting a judgment for entry must produce any certificate, order or other document needed to satisfy the Registrar that he is entitled to have the judgment entered.

(4) On entering any such judgment the Registrar shall file the judgment.

(5) Every order made and required to be drawn up must be drawn up by the party initiating the application upon which the order was made and if that party fails to draw up the order within 7 days after it is made any other party affected by the order may draw it up. (L.N. 103 of 1994)

(6) The order referred to in paragraph (5) must, when drawn up, be produced at the Registry, together with a copy thereof, and when passed by the Registrar the order, after it has been sealed, shall be returned to the party producing it and the copy shall be lodged in the Registry.

### **5A. Consent judgment and orders (O. 42, r. 5A)**

(1) Subject to paragraphs (2), (3), (4) and (5), where all the parties to a cause or matter are agreed upon the terms in which a judgment should be given, or an order should be made, a judgment or order in such terms may be given effect as a judgment or order of the Court by the procedure provided in rule 5.

(2) This rule applies to any judgment or order which consists of one or more of the following-

- (a) any judgment or order for-
  - (i) the payment of a liquidated sum, or damages to be assessed, or the value of goods to be assessed;
  - (ii) the delivery up of goods, with or without the option of paying the value of the goods to be assessed, or the agreed value;
  - (iii) the possession of land where the claim does not relate to a dwelling-house;
- (b) any order for-
  - (i) the dismissal, discontinuance or withdrawal of any proceedings, wholly or in part;
  - (ii) the stay of proceedings, either unconditionally or upon conditions as to the payment of money;
  - (iii) the stay of proceedings upon terms which are scheduled to the order but which are not otherwise part of it (a "Tomlin order");
  - (iv) the stay of enforcement of a judgment, either unconditionally or upon condition that the money due under judgment is paid by instalments specified in the order;
  - (v) the setting aside of a judgment in default;

- (vi) the transfer of any proceedings to the District Court or the Lands Tribunal; (L.N. 152 of 2008)
- (vii) the payment out of money in court;
- (viii) the discharge from liability of any party;
- (ix) the payment, taxation or waiver of costs, or such other provision for costs as may be agreed;
- (c) any order, to be included in a judgment or order to which the preceding sub-paragraphs apply, for-
  - (i) the extension of the period required for the service or filing of any pleading or other document;
  - (ii) the withdrawal of the record;
  - (iii) liberty to apply, or to restore.

(3) Before any judgment, or order to which this rule applies may be entered, or sealed, it must be drawn up in the terms agreed and expressed as "By Consent" and it must be indorsed by solicitors acting for each of the parties.

(4) This rule shall not apply to any judgment or order in proceedings which are pending in the Admiralty jurisdiction or in the Commercial List.

(5) This rule shall not apply to any judgment or order in proceedings in which any of the parties is a litigant in person or a person under a disability.

## **5B. Reasons for judgment or order (O. 42, r. 5B)**

(HK)(1) A Court shall give the reasons for any decision either at the time the judgment or order is pronounced or, where it is at that time announced that the reasons will be given at a later date, at such later date as may be fixed.

(2) Where the judgment or order is not pronounced on the day on which the hearing is concluded or where a decision is pronounced but it is announced in accordance with paragraph (1) that reasons therefor will be given at a later date, the Court may state that the judgment or order or the judgment or order and the reasons therefor, as the case may be, will be recorded in writing.

(3) Where a date has been fixed for delivery of a written decision or of written reasons notice shall be given to the parties, but it shall not be necessary for them to appear by counsel or in person.

(4) Where it has been announced that a judgment or order and reasons therefor or the reasons for a judgment or order previously pronounced will be recorded in writing, the Court may on the date fixed, instead of reading in full the judgment or order and reasons therefor or the reasons, as the case may be, supply copies thereof in accordance with paragraph (5). Thereupon any judgment or order contained in the writing shall be deemed to have been pronounced for the purposes of rule 3.

(5) Where the judgment or order and reasons therefor or the reasons are given at a later date and, being recorded in writing, are not read in full, the Court shall-

- (a) hand down a copy thereof for each of the parties and endorse the record accordingly;
- (b) lodge a copy thereof in the High Court Library; and (25 of 1998 s. 2)
- (c) make a copy thereof available for public inspection in the Registry.

(6) Where a written decision is given pursuant to this rule the Court may make therein an order nisi as to costs and, unless an application has been made to vary that order, that order shall become absolute 14 days after the decision is pronounced.

(7) Where a court consisting of more than one judge sits to deliver pursuant to this rule a decision and reasons for a decision previously pronounced, it shall be sufficient if at least one of the judges who conducted the hearing is present.

(8) Nothing in this rule shall affect the provisions of Order 63 rule 4.

(Enacted 1988)

Order:	43	<b>ACCOUNTS AND INQUIRIES</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## **1. Summary order for account (O. 43, r. 1)**

(1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has acknowledged service of the writ or after the time limited for acknowledging service, apply for an order under this rule.

(1A)A defendant to an action begun by writ who has served a counterclaim, which includes a claim for an

account or a claim which necessarily involves taking an account, on-

- (a) the plaintiff, or
- (b) any other party, or
- (c) any person who becomes a party by virtue of such service,

may apply for an order under this rule.

(2) An application under this rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.

(3) On the hearing of the application, the Court may, unless satisfied that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

## **2. Court may direct taking of accounts, etc. (O. 43, r. 2)**

(1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

## **3. Directions as to manner of taking account or making inquiry (O. 43, r. 3)**

(1) Where the Court orders an account to be taken or inquiry to be made it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched or the inquiry is to be made.

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

## **4. Account to be made, verified, etc. (O. 43, r. 4)**

(1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account with the Court and must at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

## **5. Notice to be given of alleged omissions, etc. in account (O. 43, r. 5)**

Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect must give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

## **6. Allowances (O. 43, r. 6)**

In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

## **7. Delay in prosecution of accounts, etc. (O. 43, r. 7)**

(1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting

them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party or the Official Solicitor to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule and may make such order as it thinks fit as to the payment of the Official Solicitor's costs. (L.N. 375 of 1991)

**8. Distribution of fund before all persons entitled are ascertained (O. 43, r. 8)**

Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

**9. Guardian's accounts (O. 43, r. 9)**

The accounts of a person appointed guardian of a minor's estate must be verified and passed in such a manner as the Court may direct.

(Enacted 1988)

Order:	44	<b>PROCEEDINGS UNDER JUDGMENTS AND ORDERS</b>	L.N. 129 of 2000	05/05/2000
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**1. Application to orders (O. 44, r. 1)**

In this Order references to a judgment include references to an order.

**2. Service of notice of judgment on person not a party (O. 44, r. 2)**

- (1) Where in an action for-
- (a) the administration of the estate of a deceased person, or
  - (b) the execution of a trust, or
  - (c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the action.

(2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.

(2A) Order 6, rule 7(3) and (5) shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff. (L.N. 404 of 1991)

(3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 52 in Appendix A and accompanied by a form of acknowledgment of service in Form No. 15 in Appendix A with such modifications as may be appropriate and the copy of the notice to be served shall be a sealed copy.

(4) A person served with notice of a judgment may, within one month after service of the notice on him, and after acknowledging service, apply to the Court to discharge, vary or add to the judgment.

(5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.

(6) Order 12, rules 1 to 4, shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

(L.N. 404 of 1991)

**3. Directions by the Court (O. 44, r. 3)**

- (1) Where a judgment given in a cause or matter contains directions which make it necessary to proceed in

chambers under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to-

- (a) the manner in which any account or inquiry is to be prosecuted,
- (b) the evidence to be adduced in support thereof,
- (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft,
- (d) without prejudice to Order 15, rule 17, the parties required to attend all or any part of the proceedings,
- (e) the representation by the same solicitors of parties who constitute a class and by different solicitors of parties who ought to be separately represented, and
- (f) the time within which each proceeding is to be taken,

and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under the rule.

#### **4. Application of rules 5 to 8 (O. 44, r. 4)**

Rules 5 to 8 apply-

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made, and
- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

#### **5. Advertisements for creditors and other claimants (O. 44, r. 5)**

The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

#### **6. Examination of claims (O. 44, r. 6)**

(1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must-

- (a) examine the claims of persons claiming to be creditors of the estate,
- (b) determine, so far as he is able, to which of such claims the estate is liable, and
- (c) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must-

- (a) examine the claims,
- (b) determine, so far as he is able, which of them are valid, and
- (c) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.

(3) If the personal representative or trustee concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

#### **7. Adjudication on claims (O. 44, r. 7)**

For the purpose of adjudicating on claims the Court may-

- (a) direct any claim to be investigated in such manner as it thinks fit,

- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it, or
- (c) allow any claim after or without proof thereof.

#### **8. Notice of adjudication (O. 44, r. 8)**

The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

#### **9. Interest on debts (O. 44, r. 9)**

(1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed-

- (a) on any such debt as carries interest, at the rate it carries, and
- (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this rule "debt" (債項) includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

#### **10. Interest on legacies (O. 44, r. 10)**

Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of 8 per cent per annum beginning at the expiration of one year after the testator's death.

#### **11. Master's order (O. 44, r. 11)**

(1) Subject to Order 37, rule 2, the result of proceedings before a master under a judgment shall be stated in the form of an order. (L.N. 363 of 1990)

(2) Subject to any direction of the master under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the cause or matter in which it is made.

(3) An order under this rule shall contain such directions as the master thinks fit as to the further consideration, either in court or in chambers, of the cause or matter in which it is made.

(4) Every order made under this rule shall have immediate binding effect on the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the master may direct.

#### **12. Appeal against master's order (O. 44, r. 12)**

(1) Subject to paragraph (2), Order 58, rule 1 shall apply to an order made under rule 11 as it applies to any judgment, order or decision of a master, save that the hearing shall be in open court unless the Court directs otherwise. (L.N. 129 of 2000)

(1A) The following provisions shall have effect in the application of Order 58, rule 1 to an order made under rule 11-

- (a) the notice referred to in Order 58, rule 1(2) shall state the grounds of the appeal;
- (b) no fresh evidence (other than evidence as to matters which occurred after the date of the master's order) shall be admitted except on special grounds;
- (c) the judge hearing the appeal shall have the same power to draw inferences of fact as has the Court of Appeal under Order 59, rule 10(3). (L.N. 129 of 2000)

(2) If the order is to be acted on by the Judiciary Accountant or is an order passing a receiver's account, notice of appeal must be issued not later than two clear days after the making of the order and, where the order is to be acted on by the Judiciary Accountant, a duplicate of it must be served on the Judiciary Accountant as soon as practicable after it is made.

Order:	44A	<b>(HK) PROHIBITION ORDER BEFORE OR AFTER JUDGMENT AND ATTACHMENT OF PROPERTY BEFORE JUDGMENT</b>	25 of 1998	01/07/1997
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## Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## PROVISIONAL REMEDIES

## (HK) ORDER 44A

## (HK) PROHIBITION ORDER BEFORE OR AFTER JUDGMENT AND ATTACHMENT OF PROPERTY BEFORE JUDGMENT

**Prohibition order against debtor****1. Application of the Order to an intended action (O. 44A, r. 1)**

(1) Subject to paragraph (2), on the hearing of an application by a plaintiff, the Judge may, if he thinks fit, order that the relief provided by this Order shall be available to the plaintiff notwithstanding that the plaintiff has not commenced his action.

(2) An order shall not be made under paragraph (1) unless the plaintiff, at the hearing of his application for such order-

- (a) produces at the hearing of the application, a draft writ; and
- (b) undertakes to the Judge to issue the writ on the next day on which an office of the Court is open.

(3) In paragraph (1), "plaintiff" (原告人) means a person who intends to commence an action and elsewhere in this Order, where the Judge has made an order under paragraph (1), "plaintiff" (原告人) includes a person who intends to commence an action and "defendant" (被告人) or "debtor" (債務人) includes a person against whom a plaintiff intends to commence an action.

**2. Application for an order prohibiting a debtor from leaving Hong Kong (O. 44A, r. 2)**

A plaintiff or judgment creditor may apply ex parte to the Court for an order prohibiting a debtor from leaving Hong Kong.

**3. Making of prohibition order (O. 44A, r. 3)**

(1) Subject to the provisions of section 21B of the Ordinance the Court may make an order prohibiting the debtor from leaving Hong Kong.

(2) The order prohibiting a debtor from leaving Hong Kong shall be in Form No. 106 in Appendix A.

**4. Application to discharge order (O. 44A, r. 4)**

(1) Where a debtor is prohibited from leaving Hong Kong, he may, on 2 days clear notice to the plaintiff or judgment creditor and upon being present in person in Court, apply for the order to be discharged.

(2) In an application under paragraph (1) by a debtor under a judgment for money, the Court shall, after the assessment of the amount due to the judgment creditor if appropriate-

- (a) discharge the order; and
- (b) proceed as if the judgment debtor appears under arrest for examination under Order 49B.

(3) Where, in an application under paragraph (1), a debtor for money, other than a judgment debtor-

- (a) consents to judgment being entered against him; or
  - (b) satisfies the Court that he has a substantial defence to the plaintiff's claim; or
  - (c) consents to judgment being entered against him in respect of part of the plaintiff's claim and, as to the remainder of that claim, satisfies the Court that he has a substantial defence to the plaintiff's claim,
- (L.N. 126 of 1995)

the Court shall-

- (i) discharge the order; and
- (ii) where the defendant consents to judgment being entered against him in respect of the whole or any part of the plaintiff's claim, give judgment in accordance with that consent and thereafter proceed as if the defendant appears under arrest for examination under Order 49B.

(4) Where, in an application under paragraph (1), a debtor, other than a debtor for money or a debtor under a judgment for money, satisfies the Court that he has a substantial defence to the plaintiff's claim, the Court shall discharge the order.

(5) In an application under paragraph (1), the Court may either for the purposes of the application or to achieve a speedy determination of any issue in dispute, give such directions as it thinks fit as to the filing of statements of claim, defences and counter-claims, the filing of affidavits, the assessment of the amount due or otherwise.

(6) Paragraphs (2), (3) and (4) shall not prevent the Court from discharging the order, either absolutely or subject to conditions, in any circumstances in which it thinks fit to do so.

## **5. Power to award compensation (O. 44A, r. 5)**

(1) Where it appears to the Court that the order prohibiting a debtor from leaving Hong Kong-

- (a) was applied for on insufficient grounds; or
- (b) was not caused to lapse by the plaintiff or judgment creditor as soon as reasonably possible after it was no longer required,

the Court may, on the application of the debtor, award against the plaintiff or judgment creditor reasonable compensation to the debtor for any injury or loss sustained by the debtor by reason of sub-paragraph (a) or (b):

Provided that the Court shall not award a larger sum by way of compensation under this rule than is competent to the Court to award in an action for damages.

(2) An award of compensation under this rule shall bar any action for damages in respect of the prohibition order.

## **Interim attachment of property of defendant**

## **7. Application for taking security from defendant or for attachment of his property in certain cases (O. 44A, r. 7)**

(1) If in any action the defendant, with intent to obstruct or delay the execution of any judgment that may be given against him in the action, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court, the plaintiff may, either at the institution of the action or at any time thereafter until final judgment, apply to the Court to call upon the defendant to furnish sufficient security to produce and place at the disposal of the Court, when required, his property, or the value of the same, or such portion thereof as may be sufficient to answer any judgment that may be given against him in the action, and, in the event of his failing to furnish such security, to direct that any property, movable or immovable, belonging to the defendant shall be attached until the further order of the Court.

(2) The application shall contain a specification of the property required to be attached, and the estimated value thereof, so far as the plaintiff can reasonably ascertain the same.

(3) There shall be filed with the application an affidavit to the effect that the defendant is about to dispose of or remove his property or some part thereof, with such intent as aforesaid.

## **8. Issue of warrant requiring defendant to furnish security or to appear and show cause, and attaching his property (O. 44A, r. 8)**



(1) If the Court, after making such investigation as it may consider necessary, is of opinion that there is probable cause for believing that the defendant is about to dispose of or remove his property or some part thereof, with such intent as aforesaid, it shall be lawful for the Court to issue a warrant to the bailiff commanding him to call upon the defendant, within a time to be fixed by the Court, either to furnish security, in such sum as may be specified in the order to produce and place at the disposal of the Court, when required, the said property, or the value of the same, or such portion thereof as may be sufficient to answer any judgment that may be given against him in the action, or to appear before the Court and show cause why he should not furnish such security. (See App. C, Form 5)

(2) The Court may also in the warrant direct the attachment until further order of the whole or any portion of the property of the defendant within the Colony.

(3) The attachment shall be made, according to the nature of the property to be attached, in the manner prescribed for the attachment of property in execution of a judgment for money.

#### **9. Showing cause, and procedure thereon (O. 44A, r. 9)**

(1) If the defendant shows such cause or furnishes the required security within the time fixed by the Court, and the property specified in the application, or any portion thereof, has been attached, the Court shall order the attachment to be withdrawn.

(2) If the defendant fails to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as may be sufficient to answer any judgment that may be given against the defendant in the action, shall be attached until the further order of the Court.

(3) The attachment shall be made, according to the nature of the property to be attached, in the manner prescribed for the attachment of property in execution of a judgment for money.

#### **10. Saving of rights of other persons under attachment (O. 44A, r. 10)**

(1) The attachment shall not affect the rights of any persons not being parties to the action, and in the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner prescribed for the investigation of claims to property attached in execution of a judgment.

(2) Where the property consists of movable property to which the judgment debtor is entitled subject to a lien or right of some other person to the immediate possession thereof, the attachment shall be made by a written order prohibiting the person in possession from giving over the property to the judgment debtor or to any other person.

#### **11. Removal of attachment on furnishing of security (O. 44A, r. 11)**

In any case of attachment before judgment the Court shall at any time remove the same on the defendant furnishing the required security together with security for the costs of the attachment.

#### **12. Power to award compensation to defendant for unjustifiable attachment (O. 44A, r. 12)**

(1) If it appears to the Court that the attachment was applied for on insufficient grounds, or if the action is dismissed or judgment is given against the plaintiff by default or otherwise and it appears to the Court that there was no probable ground for instituting the action, the Court may, on the application of the defendant, made either before or at the time of the pronouncing of the judgment, award against the plaintiff such amount, as it may deem a reasonable compensation to the defendant for any injury or loss which he may have sustained by reason of the attachment: Provided that the Court shall not award a larger sum by way of compensation under this rule than it is competent to the Court to award in an action for damages.

(2) An award of compensation under this rule shall bar any action for damages in respect of the attachment.

(Enacted 1988)

Order:	45	<b>ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL</b>	25 of 1998	01/07/1997
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Expanded Cross Reference:  
46, 47, 48, 49, 49B, 50, 51

Remarks:  
Adaptation amendments retroactively made - see 25 of 1998 s. 2

## ENFORCEMENT OF JUDGMENTS AND ORDERS

### **1. Enforcement of judgment, etc., for payment of money (O. 45, r. 1)**

(1) Subject to the provisions of these rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means, that is to say-

- (a) writ of fieri facias;
- (b) garnishee proceedings;
- (c) a charging order;
- (d) the appointment of a receiver;
- (e) in a case in which rule 5 applies, an order of committal;
- (f) in such a case, writ of sequestration;
- (HK)(g) an order of imprisonment made under Order 49B.

(2) Subject to the provisions of these rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means, that is to say-

- (a) the appointment of a receiver;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to any written law relating to bankruptcy or the winding up of companies.

(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

### **3. Enforcement of judgment for possession of land (O. 45, r. 3)**

(1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say-

- (a) writ of possession;
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

### **4. Enforcement of judgment for delivery of goods (O. 45, r. 4)**

(1) Subject to the provisions of these rules, a judgment or order for the delivery of any goods which does not

give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say-

- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a "writ of specific delivery");
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) Subject to the provisions of these rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say-

- (a) writ of delivery to recover the goods or their assessed value;
- (b) by order of the Court, writ of specific delivery;
- (c) in a case in which rule 5 applies, writ of sequestration.

An application for an order under sub-paragraph (b) shall be made by summons, which must, notwithstanding Order 65, rule 9, be served on the defendant against whom the judgment or order sought to be enforced was given or made.

(3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

## **5. Enforcement of judgment to do or abstain from doing any act (O. 45, r. 5)**

(1) Where-

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 5, or
- (b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say-

- (i) with the leave of the Court, a writ of sequestration against the property of that person;
- (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
- (iii) an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

## **6. Judgment, etc. requiring act to be done: order fixing time for doing it (O. 45, r. 6)**

(1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding Order 42, rule 2(1), or by reason of Order 42, rule 2(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must,

notwithstanding anything in Order 65, rule 9, be served on the person required to do the act in question.

**7. Service of copy of judgment, etc., prerequisite to enforcement under r. 5 (O. 45, r. 7)**

- (1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to Order 24, rule 16(3), Order 26, rule 6(3) and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless- (L.N. 103 of 1994)
  - (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and
  - (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(ii) or (iii) unless-
  - (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought, and
  - (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.
- (4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served-
  - (a) in the case of service under paragraph (2) that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of execution to compel him to obey it, and
  - (b) in the case of service under paragraph (3) that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 5, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either-
  - (a) by being present when the order was made, or
  - (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

**8. Court may order act to be done at expense of disobedient party (O. 45, r. 8)**

If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

**9. Execution by or against person not being a party (O. 45, r. 9)**

- (1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.
- (2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may

be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

**10. Conditional judgment: waiver (O. 45, r. 10)**

A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

**11. Matters occurring after judgment: stay of execution, etc. (O. 45, r. 11)**

Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

**12. Forms of writs (O. 45, r. 12)**

- (1) A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in Appendix A as is appropriate in the particular case.
- (2) A writ of delivery must be in Form No. 64 or 65 in Appendix A, whichever is appropriate.
- (3) A writ of possession must be in Form No. 66 or 66A in Appendix A.
- (4) A writ of sequestration must be in Form No. 67 in Appendix A.

**13. Enforcement of judgments and orders for recovery of money, etc. (O. 45, r. 13)**

(1) Rule 1(1) of this Order, with the omission of sub-paragraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money. <\* Note - Exp. X-Ref.: Orders 46, 47, 48, 49, 49B, 50, 51 \*>

(2) Rule 3 of this Order, with the omission of paragraph (1)(b) and (c) thereof, and Order 47, rule 3(2), shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 4 of this Order, with the omission of paragraphs (1)(b) and (c) and (2)(c) thereof, and Order 47, rule 3(2), shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

**14. Power of the Court to order immediate execution (O. 45, r. 14)**

(HK)(1) The Court may at the time of giving judgment, on the oral application of the party in whose favour the judgment is given, order immediate execution thereof without the issue of a writ of execution, except as to so much as relates to the costs, and that the judgment shall be executed as to the costs as soon as the amount thereof has been ascertained by taxation.

(2) The order for immediate execution shall be in writing and shall be sufficient authority to the bailiff to proceed at once to execution of the judgment against the property of the party against whom judgment is given: Provided that the party obtaining the order shall as soon thereafter as practicable comply with the requirements of Order 46, rule 6: Provided further that, if the party against whom the order has been made satisfies the Court that he has sufficient means and intends to satisfy the judgment, the Court may discharge the order for immediate execution.

**15. Judgment for money against representatives of deceased persons (O. 45, r. 15)**

(HK) If the judgment is against a party as the representative of a deceased person and such judgment is for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property or, if no such property can be found and the defendant fails to satisfy the Court that he has duly applied such property of the deceased person as may be proved to have come into his possession, the judgment may be executed against the defendant to the extent of the property not duly applied by him, in the same manner as if the judgment had been against him personally.

**16. Execution in case of cross-judgments for money (O. 45, r. 16)**

(HK) If there are cross-judgments between the same parties for the payment of money execution shall be taken out by that party only who has obtained a judgment for the larger sum and for so much only as may remain after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the judgment for the larger sum as well as satisfaction on the judgment for the smaller sum, and if both sums are equal satisfaction shall be entered on both judgments.

**17. Application for leave to issue execution by one of several persons entitled (O. 45, r. 17)**

(HK)(1) If a judgment has been given jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply to the Court for leave to issue execution on the whole judgment for the benefit of them all or, where any of them has died, for the benefit of the survivors and of the representative in interest of the deceased person.

(2) If the Court grants such leave it shall make such order as it may think fit for protecting the interests of the persons who have not joined in the application.

(Enacted 1988)

Order:	46	<b>WRITS OF EXECUTION: GENERAL</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Definition (O. 46, r. 1)**

In this Order, unless the context otherwise requires, "writ of execution" (執行令狀) includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs. (See App. A, Form 69)

**2. When leave to issue any writ of execution is necessary (O. 46, r. 2)**

(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say-

- (a) where 6 years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
- (d) where under the judgment or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to any written law or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the

enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

**3. Leave required for issue of writ in aid of other writ (O. 46, r. 3)**

A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

**4. Application for leave to issue writ (O. 46, r. 4)**

(1) An application for leave to issue a writ of execution may be made ex parte unless the Court directs it to be made by summons.

(2) Such an application must be supported by an affidavit-

- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
- (b) stating, where the case falls within rule 2(1)(a), the reasons for the delay in enforcing the judgment or order;
- (c) stating where the case falls within rule 2(1)(b), the change which has taken place in the parties entitled or liable to execution since the date of the judgement or order;
- (d) stating, where the case falls within rule 2(1)(c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
- (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

**5. Application for leave to issue writ of sequestration (O. 46, r. 5)**

(1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a judge by summons.

(2) Subject to paragraph (3), the summons, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service under this rule if it thinks it just to do so.

(4) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6, but, except in such a case, the application shall be heard in open court.

(L.N. 152 of 2008)

**6. Issue of writ of execution (O. 46, r. 6)**

(1) Issue of a writ of execution takes place on its being sealed by the Registrar.

(2) Before such a writ is issued a praecipe for its issue must be filed.

(3) The praecipe must be signed by or on behalf of the solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing-

- (a) the person tendering it produces-

- (i) the judgment or order on which the writ is to issue, or an office copy thereof,
  - (ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it; and
  - (b) the Registrar is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.
- (5) Every writ of execution shall bear the date of the day on which it is issued.

## **8. Duration and renewal of writ of execution (O. 46, r. 8)**

(1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which has been extended under paragraph (2) is executed either the writ must be sealed with the Seal of the Court showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in Appendix A), sealed as aforesaid, on the bailiff to whom the writ is directed informing him of the making of the order and the date thereof. (L.N. 363 of 1990)

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the bailiff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3), purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2). (L.N. 363 of 1990)

(6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings. (L.N. 404 of 1991)

## **9. Return to writ of execution (O. 46, r. 9)**

(1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the bailiff to whom the writ was directed requiring him, within such time as may be specified in the notice, to endorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement. (L.N. 363 of 1990)

(2) If a bailiff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the bailiff to comply with the notice.

(3) (Repealed L.N. 404 of 1991)

(Enacted 1988)

Order:	47	<b>WRITS OF FIERI FACIAS</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## **1. Power to stay execution by writ of fieri facias (O. 47, r. 1)**

(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution-

- (a) that there are special circumstances which render it inexpedient to enforce the judgment or order, or
- (b) that the applicant is unable from any cause to pay the money,

then, notwithstanding anything in rule 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made



by summons and may be so made notwithstanding that the party liable to execution did not acknowledge service of the writ or originating summons in the action or did not state in his acknowledgment of service that he intended to apply for a stay of execution under this rule pursuant to Order 13, rule 8.

(3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) The summons and a copy of the supporting affidavit must, not less than 4 clear days before the return day, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

### **3. Separate writs to enforce payment of costs, etc. (O. 47, r. 3)**

(1) Where only the payment of money, together with costs to be taxed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been taxed, the party entitled to enforce that judgment or order may issue a writ of fieri facias to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the taxed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by that judgment or order.

### **6. Order for sale in execution of judgment (O. 47, r. 6)**

(HK)(1) Every sale in execution of a judgment shall be made under the direction of the Registrar and shall be conducted according to such orders, if any, as the Court may make on application of the person at whose instance the writ of execution under which the sale is to be made was issued, of the person against whom that writ was issued or of the bailiff to whom it was issued. In the absence of any such application the sale shall be made by public auction.

(2) Such an application must be made by summons and the summons must contain a short statement of the grounds of the application.

(3) Where the applicant for an order under this rule is not a bailiff, the bailiff must, on the demand of the applicant, send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the bailiff (in this rule referred to as "the bailiff's list"); and where the bailiff is the applicant, he must prepare such a list.

(4) Not less than 4 clear days before the return day the applicant must serve the summons on each of the other persons by whom the application might have been made and on every person named in the bailiff's list.

(HK)(5) Where any goods of a debtor are taken in execution, and the bailiff has notice of another execution or other executions, the Court shall not consider an application for sale otherwise than by auction until service of the summons on the person or persons named in the bailiff's list has been effected.

(6) The applicant must produce the bailiff's list to the Court on the hearing of the application.

(7) Every person on whom the summons was served may attend and be heard on the hearing of the application.

### **(HK)7. Special rules as to the sale of immovable property (O. 47, r. 7)**

(1) At any time within 10 days from the date of sale of any immovable property in execution of a judgment, application may be made to the Court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no such sale shall be set aside on the ground of such irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

(2) (a) If no such application is made the sale shall be deemed absolute.

(b) If such application is made and the objection is disallowed, the Court shall make an order confirming the sale.

(c) If such application is made and the objection is allowed, the Court shall make an order setting aside the sale for irregularity.

(3) Whenever a sale of immovable property is set aside for irregularity the purchaser shall be entitled to receive back any money deposited or paid by him on account of such sale, with or without interest, to be paid by such parties and in such manner as it may appear to the Court proper to direct.

- (4) (a) After a sale of immovable property has become absolute in manner aforesaid the Court shall grant a certificate to the person who has been declared the purchaser at such sale to the effect that he has purchased the right, title and interest of the judgment debtor in the property sold.
- (b) Such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped as aforesaid, shall be taken and deemed to be a valid transfer of such right, title and interest and may be registered in the Land Registry under the Land Registration Ordinance (Cap 128). (8 of 1993 s. 30)
- (5) (a) Where the property sold consists of immovable property in the occupancy of the judgment debtor, or of some person on his behalf, or of some person claiming under a title created by the judgment debtor subsequently to the attachment of the property, the Court shall, on the application of the purchaser, order delivery of the property to be made by putting the party to whom the property has been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof and, if necessary, by removing any person who may refuse to vacate the same.
- (b) Where the property sold consists of immovable property in the occupancy of any other person entitled to occupy the same the Court shall, on the application of the purchaser, order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property or at the court house.
- (6) (a) If the purchaser of any immovable property sold in execution of a judgment is, notwithstanding the order of the Court, resisted or obstructed in obtaining possession of the property, the provisions of this Order relating to resistance or obstruction to the execution of the judgment for immovable property shall be applicable in the case of such resistance or obstruction.
- (b) If it appears that the resistance or obstruction to the delivery of possession was occasioned by any person other than the judgment debtor claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid is dispossessed, the Court, on the complaint of the purchaser or of such person claiming as aforesaid, if made within one month from the date of such resistance or obstruction or of such dispossession, as the case may be, shall inquire into the matter of the complaint and make such order as may be proper in the circumstances of the case.
- (c) The person against whom any such order is made shall be at liberty to bring an action to establish his right at any time within three months from the date of the order.

**(HK)8. Special rules as to the sale of movable property (O. 47, r. 8)**

- (1) (a) Where the property sold consists of movable property in the possession of the judgment debtor, or to the immediate possession of which the judgment debtor is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.
- (b) Where the property sold consists of movable property to which the judgment debtor is entitled subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall as far as practicable be made by the bailiff giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.
- (2) Where the property sold consists of debts, not being negotiable instruments, or of shares in any public company or corporation, the Court shall, on the application of the purchaser, make an order prohibiting the judgment debtor from receiving the debts and his debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the shares are standing from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the manager, secretary or other proper officer of the company or corporation from permitting any such transfer or making any such payment to any person except the purchaser.
- (3) Where the property sold consists of a negotiable instrument of which actual seizure has been made the same shall be delivered to the purchaser.
- (4) (a) If the execution of a transfer by any person in whose name any share in a public company or corporation is standing, or the indorsement by any person of any negotiable instrument, or the

execution by any person of any deed or other instrument relating to immovable property or any interest therein, is lawfully required to give effect to any sale in execution of a judgment, the Registrar, with the sanction of the Court, may-

- (i) execute such transfer; or
- (ii) endorse such negotiable instrument; or
- (iii) execute such deed or other instrument.
- (b) The execution of such transfer, the endorsement of such negotiable instrument and the execution of such deed or other instrument by the Registrar shall have the same effect as the execution and the endorsement by the person whose execution or endorsement is so required as aforesaid.
- (c) Until the execution of such transfer or the endorsement of such negotiable instrument the Court may, by order, appoint some person to receive any dividend or interest due in respect of any such share or negotiable instrument.

(Enacted 1988)

Order:	48	<b>EXAMINATION OF JUDGMENT DEBTOR, ETC.</b>	L.N. 108 of 2002	28/06/2002
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### **1. Order for examination of judgment debtor (O. 48, r. 1)**

(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as "the judgment debtor") of money, the Court may, on an application made ex parte by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar or such officer as the Court may appoint and be orally examined on the questions-

- (a) whether any and, if so, what debts are owing to the judgment debtor, and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

(2) An order under this rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

(3) Any difficulty arising in the course of an examination under this rule before the Registrar or officer, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to a judge and he may determine it or give such directions for determining it as he thinks fit.

### **2. Examination of party liable to satisfy other judgment (O. 48, r. 2)**

Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

### **3. Record of judgment debtor's evidence given at examination (O. 48, r. 3)**

The Registrar or officer conducting the examination shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor or other person at the examination.

(L.N. 108 of 2002)  
(Enacted 1988)

Order:	49	<b>GARNISHEE PROCEEDINGS</b>	L.N. 26 of 2005	01/05/2005
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### **1. Attachment of debt due to judgment debtor (O. 49, r. 1)**

(1) Where a person (in this Order referred to as "the judgment creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "the judgment debtor") of a sum of money amounting in value to at least \$1000, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings. (See App. A, Forms 72-74)

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

## **2. Application for order (O. 49, r. 2)**

An application for an order under rule 1 must be made ex parte supported by an affidavit-

- (a) stating the name and the last known address of the judgment debtor,
- (b) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application,
- (ba) if the amount remaining unpaid under the judgment or order is arrears of maintenance, stating-
  - (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap 192), as the case may be; and
  - (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap 192), as the case may be; (18 of 2003 s. 13)
- (c) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief, and
- (d) 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 is not known to the deponent.

## **3. Service and effect of order to show cause (O. 49, r. 3)**

(1) Unless the Court otherwise directs, an order under rule 1 to show cause must be served-

- (a) on the garnishee personally, at least 15 days before the day appointed thereby for the further consideration of the matter, and
- (b) 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.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

## **4. No appearance or dispute of liability by garnishee (O. 49, r. 4)**

(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 against the garnishee. (See App. A, Forms 73, 74)

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

## **5. Dispute of liability by garnishee (O. 49, r. 5)**

Where on the 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 summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried, without if it orders trial before a master the need for any consent by the parties.

## **6. Claims of third persons (O. 49, r. 6)**

(1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of his claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

## **8. Discharge of garnishee (O. 49, r. 8)**

Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

## **9. Money in court (O. 49, r. 9)**

(1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) The money to which the application relates shall not be paid out of court until after the determination of the application.

(3) Unless the Court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing of it.

(4) Subject to Order 75, rule 24, the Court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

## **10. Costs (O. 49, r. 10)**

The costs of any application for an order under rule 1 or 9, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

(Enacted 1988)

Order:	49B	<b>(HK) EXECUTION AND ENFORCEMENT OF JUDGMENT FOR MONEY BY IMPRISONMENT</b>	L.N. 94 of 2014	28/11/2014
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## **1. Securing attendance at examination (O. 49B, r. 1)**

(1) Where a judgment for the payment of a specified sum of money is, wholly or partly, unsatisfied, the Court, on an ex parte application of the judgment creditor, may order that the judgment debtor be examined under rule 1A and shall, for the purpose of securing the attendance of the judgment debtor at an examination under rule 1A either-

- (a) order the judgment debtor, by an order which shall be served personally upon him, to appear before the Court at a time appointed by the Court, with such documents or records as the Court may specify; or

- (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including the conduct of the judgment debtor, to believe that an order under paragraph (a) may be ineffective to secure the attendance of the judgment debtor for examination, order that he be arrested and brought before the Court before the expiry of the day after the day of arrest.

(2) On an application under paragraph (1), the Court may make an order prohibiting the judgment debtor from leaving Hong Kong.

(3) Where a judgment debtor fails to appear as ordered under paragraph (1)(a), the Court may order that he be arrested and brought before the Court for examination before the expiry of the day after the day of arrest.

(4) Section 71 of the Interpretation and General Clauses Ordinance (Cap 1) shall not apply to this rule.

(5) The order for arrest shall be in Form No. 102 in Appendix A.

#### **1A. Examination of debtor (O. 49B, r. 1A)**

(1) Upon appearance of the judgment debtor for examination, he shall give evidence and he may be examined on oath by the judgment creditor and the Court; and the Court may receive such other evidence as it thinks fit.

(2) The judgment debtor shall, at his examination, make a full disclosure of all his assets, liabilities, income and expenditure and of the disposal of any assets or income and shall, subject to the directions of the Court, answer all questions put to him.

(3) Where the examination is adjourned, the Court shall order that the judgment debtor appear at the resumption of the examination and may-

- (a) order that he be prohibited from leaving Hong Kong; or

- (b) where it appears to the Court that there is reasonable cause, from all the circumstances of the case, including any evidence heard by the Court and the conduct of the judgment debtor, to believe that he may not appear at the resumption of the examination, order that he be imprisoned until that resumption.

(4) The order under paragraph (3)(b) shall be in Form No. 103 in Appendix A.

#### **1AA. Record of judgment debtor's evidence given at examination**

(O. 49B, r. 1AA)

The Court shall cause to be recorded, by means of shorthand notes or mechanical, electronic or optical device or otherwise, the evidence given by the judgment debtor at the examination conducted under rule 1A.

(L.N. 108 of 2002)

#### **1B. Power of the Court following examination (O. 49B, r. 1B)**

(1) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, that the judgment debtor-

- (a) is able to satisfy the judgment, wholly or partly; or

- (b) 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

- (c) has wilfully failed to make a full disclosure as required under rule 1A(2) or at the examination under Order 48 or to answer any question as provided under that rule or Order,

it may, in its discretion, order the imprisonment of the judgment debtor for a period not exceeding 3 months.

(2) (a) Where the Court is satisfied, following the examination conducted under rule 1A or following an examination conducted under Order 48, 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.

(b) The Court may, on application, discharge, vary or suspend an order made under sub-paragraph (a), either absolutely or subject to such conditions as it thinks fit.

(3) (a) Where the judgment debtor fails to comply with an order made under paragraph (2), the judgment creditor 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 and the Court may, unless the judgment debtor

shows good cause, order the imprisonment of the judgment debtor for a period not exceeding 3 months.

- (b) Notwithstanding rule 7, the Court may order the imprisonment of the judgment debtor on each occasion of a failure to comply with an order under paragraph (2) or more than once in respect of a continuing failure to comply with an order under that paragraph.

(4) The order for imprisonment shall be in Form No. 104 in Appendix A.

(5) The application under paragraph (3)(a) shall be in Form No. 105 in Appendix A.

(6) An order under paragraph (1), (2) or (3) shall not prevent execution of the judgment by other means unless the Court so directs.

(7) An order for imprisonment of a judgment debtor shall be made in open court.

### **1C. Imprisonment not to satisfy debt (O. 49B, r. 1C)**

An order for imprisonment under this Order shall not satisfy or extinguish any judgment debt.

### **2. Support and maintenance allowance to prisoner for debt (O. 49B, r. 2)**

When a judgment debtor is committed to prison in execution of the judgment the Court shall fix whatever monthly allowance it may think sufficient for his support and maintenance, not exceeding \$725 per diem, which shall be paid by the person at whose instance the judgment has been executed to the Commissioner of Correctional Services by monthly payments in advance, the second and subsequent such payments to be made not less than 7 days before the last preceding such payment is exhausted.

(L.N. 74 of 1989; L.N. 403 of 1992; L.N. 167 of 1994; L.N. 419 of 1995; L.N. 94 of 2014)

### **3. Removal to hospital of prisoner for debt in case of serious illness (O. 49B, r. 3)**

(1) In case of the serious illness of any person imprisoned in execution of a judgment it shall be lawful for the Court, on the certificate of the medical officer of the prison in which he is confined or of the Director of Health of the Government, to make an order for the removal of the judgment debtor to a hospital and for his treatment there under custody until further order. (L.N. 76 of 1989)

(2) In any such case the period of the judgment debtor's stay in hospital shall be counted as part of his term of imprisonment and his support and maintenance money shall be paid as if no such order had been made.

### **4. Release of prisoner for debt (O. 49B, r. 4)**

Every person arrested or imprisoned in execution of a judgment shall be released at any time on the judgment being fully satisfied, or at the request of the person at whose instance the judgment has been executed, or on such person omitting to pay his support and maintenance money.

### **5. Recovery of amount of support and maintenance money (O. 49B, r. 5)**

All sums paid by a plaintiff for the support and maintenance of a person imprisoned in execution of a judgment shall be added to the costs of the judgment and shall be recoverable by the attachment and sale of the property of the judgment debtor; but the judgment debtor shall not be detained in custody or arrested on account of any sum so paid.

### **6. Recovery of costs of execution (O. 49B, r. 6)**

The costs of obtaining and executing the order and warrant of arrest or imprisonment shall be added to the costs of the judgment and shall be recoverable accordingly.

### **7. Effect of discharge of prisoner for debt (O. 49B, r. 7)**

Subject to rule 1B(3)(b), when any person imprisoned in execution of a judgment has been once discharged he shall not again be imprisoned on account of the same judgment, but his property shall continue liable, under the ordinary rules, to attachment and sale until the judgment is fully satisfied.

## **8. Meaning of "judgment creditor" (O. 49B, r. 8)**

In this Order, "judgment creditor" (判定債權人) includes any person entitled to enforce the judgment.

(Enacted 1988)

Order:	50	<b>CHARGING ORDERS, STOP ORDERS, ETC.</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Order imposing a charge on a beneficial interest (O. 50, r. 1)**

(2) An application by a judgment creditor for a charging order in respect of a judgment debtor's beneficial interest may be made ex parte, and any order made on such an application shall in the first instance be an order, made in Form No. 75 in Appendix A, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time. (See also App. A, Form 76)

(3) The application shall be supported by an affidavit-

- (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
- (b) stating the name of the judgment debtor and of any creditor of his whom the applicant can identify;
- (ba) if the amount unpaid under the judgment or order is arrears of maintenance, stating-
  - (i) the interest payable in respect of the arrears of maintenance that the judgment creditor is entitled to under section 20A(2) of the Guardianship of Minors Ordinance (Cap 13), section 9B(2) of the Separation and Maintenance Orders Ordinance (Cap 16), section 53A(2) of the Matrimonial Causes Ordinance (Cap 179) or section 28AA(2) of the Matrimonial Proceedings and Property Ordinance (Cap 192), as the case may be; and
  - (ii) the surcharge payable in respect of the arrears of maintenance under section 20B(1) of the Guardianship of Minors Ordinance (Cap 13), section 9C(1) of the Separation and Maintenance Orders Ordinance (Cap 16), section 53B(1) of the Matrimonial Causes Ordinance (Cap 179) or section 28AB(1) of the Matrimonial Proceedings and Property Ordinance (Cap 192), as the case may be; (18 of 2005 s. 14)
- (c) giving full particulars of the subject-matter of the intended charge, including, in the case of securities other than securities in court, the full title of the securities, their amount and the name in which they stand and, in the case of funds in court, the number of the account; and
- (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.

(4) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(5) An application may be made for a single charging order in respect or more than one judgment or order against the debtor.

## **2. Service of notice of order to show cause (O. 50, r. 2)**

(1) On the making of an order to show cause, notice of the order shall, unless the Court otherwise directs, be served as follows-

- (a) a copy of the order, together with a copy of the affidavit in support, shall be served on the judgment debtor;
- (b) where the order relates to securities other than securities in court, copies of the order shall also be served-
  - (iii) in the case of stock of any body incorporated within Hong Kong, on that body;
  - (iv) in the case of stock of any body incorporated outside Hong Kong, being stock registered in a



- register kept in Hong Kong, on the keeper of the register;
- (v) 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;
- (c) where the order relates to a fund in court, a copy of the order shall be served on the Registrar at the Registry, and
- (d) where the order relates to an interest under a trust, copies of the order shall be served on such of the trustees as the Court may direct.

(2) Without prejudice to the provisions of paragraph (1) the Court may, on making the order to show cause, direct the service of copies of the order, and of the affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

(3) Documents to be served under this rule must be served at least seven days before the time appointed for the further consideration of the matter.

### **3. Order made on further consideration (O. 50, r. 3)**

(1) On the further consideration of the matter the Court shall either make the order absolute, with or without modifications, or discharge it.

(2) Where the order is made absolute, it shall be in Form 76 in Appendix A, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

### **4. Order imposing a charge on an interest held by a trustee (O. 50, r. 4)**

(1) Save as provided by this rule, the provisions of rules 1, 2 and 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.

(2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the affidavit required by rule 1(3) shall state the ground on which the application is based and shall verify the material facts.

(3) On making the order to show cause, the Court shall give directions for copies of the order, and of the affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.

(4) Rules 5, 6 and 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under subsection (ii) or (iii) of section 20A(1)(b) of the Ordinance references in those rules to "the judgment debtor" shall be references to the trustee.

(5) Forms No. 75 and 76 in Appendix A shall be modified so as to indicate that the interest to be charged is held by the debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the debtor beneficially.

### **5. Effect of order in relation to securities out of court (O. 50, r. 5)**

(1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute, the person or body served in accordance with rule 2(1)(b) shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the Court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

(3) If the Court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 76 in Appendix A, shall be served on the person or body specified in rule 2(1)(b) as may be appropriate and, save as provided in rule 7(5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.

(4) This rule does not apply to orders in respect of securities in court.

### **6. Effect of order in relation to funds in court (O. 50, r. 6)**

(1) Where an order to show cause has been made in relation to funds in court (including securities in court) and a copy thereof has been served on the Registrar in accordance with rule 2, no disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.

(2) If the Court makes the order absolute, a copy of the order shall be served on the Registrar at the Registry.

## **7. Discharge, etc., of charging order (O. 50, r. 7)**

(1) Subject to paragraph (2) on the application of the judgment debtor or any other person interested in the subject-matter of the charge, the Court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks just.

(2) Where an application is made for the discharge of a charging order in respect of the judgment debtor's land on the ground that the judgment debt has been satisfied, the applicant shall state in his application, and the Court shall specify in its order the lot number of the land and the memorial number of any relevant charge registered against the land.

(3) Notice of an application for the discharge or variation of the order shall be served on such interested parties as the Court may direct.

(4) Where an order is made for the discharge or variation of a charging order in respect of funds in court, a copy thereof shall be served on the Registrar at the Registry.

(5) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in court, a copy thereof shall be served on the person or body specified in rule 2(1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary, any stop notice in respect of such securities which may be in force pursuant to the original order.

## **9. Jurisdiction of master to grant injunction (O. 50, r. 9)**

A master shall have power to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1, 3 or 4 and an application for an injunction under this rule may be joined with the application for the order under rule 1, 3 or 4 to which it relates.

### **9A. Enforcement of charging order by sale (O. 50, r. 9A)**

(1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by originating summons.

(2) The provisions of Order 88 shall apply to all such proceedings.

## **10. Funds in court: stop order (O. 50, r. 10)**

(1) The Court, on the application of any person-

- (a) who has a mortgage or charge on the interest of any person in funds in court, or
- (b) to whom that interest has been assigned, or
- (c) who is a judgment creditor of the person entitled to that interest,

may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant. (See App. A, Form 79)

(2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.

(3) The summons must be served on every person whose interest may be affected by the order applied for but shall not be served on any other person.

(HK)(4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds occasioned by the application.

## **11. Securities not in court: stop notice (O. 50, r. 11)**

(1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 20A(2)(b) of the Ordinance, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in the Registry-

(a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises, and

(b) a notice in Form No. 80 in Appendix A (a stop notice), signed by the deponent to the affidavit, and annexed to it, addressed to the body or unit trust concerned,

and must serve an office copy of the affidavit, and a copy of the notice sealed with the Seal of the Court on that person or body as provided in rule 2(1)(b).

(3) There must be endorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the person or body concerned, a notice to that effect, and as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

## **12. Effect of stop notice (O. 50, r. 12)**

Where a stop notice has been served in accordance with rule 11, then, so long as the stop notice is in force, the person or body on which it is served shall not register a transfer of the securities or take any other steps restrained by the stop notice until 14 days after sending notice thereof, by ordinary pre-paid post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

## **13. Amendment of stop notice (O. 50, r. 13)**

If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

## **14. Withdrawal, etc. of stop notice (O. 50, r. 14)**

(1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the person or body on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 11 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by originating summons, and the summons must be served on the person on whose behalf a stop notice was filed.

The summons shall be in Form No. 10 in Appendix A.

## **15. Order prohibiting transfer, etc. of securities (O. 50, r. 15)**

(1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 20A(2)(b) of the Ordinance may by order prohibit the person or body concerned from registering any transfer of the securities or taking any other step to which section 55C(4) of the Ordinance applies. (See App. A, Form 81) (L.N. 356 of 1988)

The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which may not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.

(2) An application for an order under this rule must be made by summons. (L.N. 152 of 2008)

An originating summons under this rule shall be in Form No. 10 in Appendix A.

(3) The Court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

(Enacted 1988)

Order:	51	<b>RECEIVERS: EQUITABLE EXECUTION</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Appointment of receiver by way of equitable execution (O. 51, r. 1)**

(1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment. (See App. A, Form 84)

**2. Masters may appoint receiver etc. (O. 51, r. 2)**

A master shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such order.

**3. Application of rules as to appointment of receiver, etc. (O. 51, r. 3)**

An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1, and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose. (See App. A, Forms 82, 83)

(Enacted 1988)

Order:	52	<b>COMMITTAL</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Committal for contempt of court (O. 52, r. 1)**

The power of the Court or of the Court of Appeal to punish for contempt of court may be exercised by an order of committal made by a single Judge or by a single justice of appeal. (See App. A, Form 85)

**(HK)2. Grant of leave to apply for committal (O. 52, r. 2)**

(HK)(1) No application for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made ex parte to a judge, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Registrar and must at the same time lodge with the Registrar copies of the statement and affidavit.

(HK)(4) The judge may determine the application for leave without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court; and in any case the Registrar shall serve a copy of the judge's order on the applicant.

(HK)(5) Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal within 10 days after such order.

(HK)(6) Without prejudice to the powers conferred by Order 20, rule 8, the judge hearing an application for leave may allow the applicant's statement to be amended on such terms, if any, as the judge thinks fit.

(HK)(7) If the judge grants leave he may impose such terms as to costs and as to giving of security as he thinks fit.

### **3. Application for order after leave to apply granted (O. 52, r. 3)**

(1) When leave has been granted to make an application for an order of committal, the application shall be made by originating summons to a judge and unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the originating summons and the day named therein for the hearing. (L.N. 125 of 1991)

(1A) The originating summons shall state the grounds in respect of which leave for making an application for an order of committal has been granted. (L.N. 108 of 2002)

(2) Unless within 14 days after such leave was granted the originating summons is entered for hearing the leave shall lapse.

(3) The originating summons, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court under Order 65, rule 4, the Court may dispense with service of the originating summons under this rule if it thinks it just to do so.

(L.N. 152 of 2008)

### **5. Saving for power to commit without application for purpose (O. 52, r. 5)**

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court of First Instance or the Court of Appeal to make an order of committal of its own motion against a person guilty of contempt of court.

(25 of 1998 s. 2)

### **6. Provisions as to hearing (O. 52, r. 6)**

(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say-

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Ordinance (Cap 136);
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons affecting the security of Hong Kong the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state-

- (a) the name of that person,
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made, and
- (c) the length of the period for which he is being committed.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds as stated in the originating summons under rule 3(1A). (L.N. 108 of 2002; L.N. 152 of 2008)

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

**7. Power to suspend execution of committal order (O. 52, r. 7)**

(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

**8. Discharge of person committed (O. 52, r. 8)**

(1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

**9. Saving for other powers (O. 52, r. 9)**

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any written law in like manner as if he had been guilty of contempt of the Court of First Instance, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

(25 of 1998 s. 2)  
(Enacted 1988)

Order:	53	<b>APPLICATIONS FOR JUDICIAL REVIEW</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1A. Interpretation (O. 53, r. 1A)**

In this Order-

"application for judicial review" (司法覆核申請) includes an application in accordance with this Order for a review of the lawfulness of-

- (a) an enactment; or
- (b) a decision, action or failure to act in relation to the exercise of a public function;

"interested party" (有利害關係的一方、有利害關係的各方), in relation to an application for judicial review, means any person (other than the applicant and respondent) who is directly affected by the application.

(L.N. 152 of 2008)

**1. Cases appropriate for application for judicial review (O. 53, r. 1)**

(1) An application for judicial review must be made if the applicant is seeking-

- (a) an order for mandamus, prohibition or certiorari; or
- (b) an injunction under section 21J of the Ordinance restraining a person from acting in any office in

which he is not entitled to act.

- (2) An application for judicial review may be made if the applicant is seeking-
  - (a) a declaration; or
  - (b) an injunction (not being an injunction mentioned in paragraph (1)(b)).
- (3) An application for judicial review may include an application for an award of damages, restitution or the recovery of a sum due but may not seek such a remedy alone.

(L.N. 152 of 2008)

## **2. Joinder of claims for relief (O. 53, r. 2)**

On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

## **3. Grant of leave to apply for judicial review (O. 53, r. 3)**

(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave must be made ex parte by filing in the Registry-

- (a) a notice in Form No. 86 in Appendix A containing a statement of-
  - (i) the name and description of the applicant;
  - (ii) the name and description of the respondent;
  - (iii) the relief sought and the grounds on which it is sought;
  - (iv) the name and description of all interested parties (if any) known to the applicant;
  - (v) the name and address of the applicant's solicitors (if any); and
  - (vi) if no solicitor acts for the applicant, the applicant's address for service; and (L.N. 152 of 2008)
- (b) an affidavit verifying the facts relied on.

(3) The judge may determine the application for leave without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court; and in any case the Registrar shall serve a copy of the judge's order on the applicant. (L.N. 152 of 2008)

(HK)(4) Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal within 14 days after such order. (L.N. 152 of 2008)

(6) Without prejudice to its powers conferred by Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as the Court thinks fit.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then-

- (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
- (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

## **4. Delay in applying for relief (O. 53, r. 4)**

(1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made. (L.N. 356 of 1988)

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order,

conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

#### **4A. Service of order granting leave**

(O. 53, r. 4A)

(1) Where leave to make an application for judicial review is granted, the Court may also give directions as to the management of the case.

(2) The applicant for judicial review shall, within 14 days after the leave was granted, serve the order granting leave and any directions given under paragraph (1) on-

- (a) the respondent; and
- (b) such interested parties as may be directed by the Court.

(L.N. 152 of 2008)

#### **5. Mode of applying for judicial review (O. 53, r. 5)**

(1) When leave has been granted to make an application for judicial review, the application must be made by originating summons in Form No. 86A in Appendix A to a judge sitting in open court or, if the judge granting leave has so ordered, to a judge in chambers. (L.N. 152 of 2008)

(3) The originating summons must be served on all persons directly affected and, where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the originating summons must also be served on the clerk or registrar of the court and, where any objection to the conduct of the judge is to be made, on that judge.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between the service of the originating summons and the day named therein for the hearing.

(5) An originating summons must be issued for hearing within 14 days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the originating summons must be filed within 7 days of such service and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the originating summons.

(7) If on the hearing of the originating summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the originating summons may be served on that person.

(L.N. 152 of 2008)

#### **5A. Affidavit evidence (O. 53, r. 5A)**

At the hearing of the application for judicial review, no affidavit may be relied on unless-

- (a) rule 6(3), (4) or (5), as the case may be, has been complied with as regards the use of affidavits;
- (b) the affidavit has been served in accordance with any direction of the Court; or
- (c) the Court grants leave.

(L.N. 152 of 2008)

#### **5B. Court's powers to hear any person**

(O. 53, r. 5B)

(1) Any person may apply for leave to-

- (a) file evidence; or
- (b) make representations at the hearing of the application for judicial review.

(2) An application under paragraph (1) must be made promptly.

(3) The Court shall not grant leave under paragraph (1) unless the applicant appears to the Court to be a proper person to be heard at the hearing of the application for judicial review.

(L.N. 152 of 2008)



## **6. Statements and affidavits (O. 53, r. 6)**

(1) Copies of the statement in support of an application for leave under rule 3 must be served with the originating summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement. (L.N. 152 of 2008)

(2) The Court may on the hearing of the originating summons allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used by him. (L.N. 223 of 1995; L.N. 152 of 2008)

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry as soon as practicable and in any event, unless the Court otherwise directs, within 56 days after service upon him of the documents required to be served by paragraph (1). (L.N. 404 of 1991)

(5) Each party to the application must supply to every other party copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

(6) A reference to a party in paragraphs (3) and (5) includes a reference to an interested party on whom the applicant is required under rule 4A(2) to serve the order granting leave for judicial review. (L.N. 152 of 2008)

## **7. Claim for damages (O. 53, r. 7)**

(1) On an application for judicial review the judge may, subject to paragraph (2), award damages to the applicant if-

- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, it could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

## **8. Application for discovery, interrogatories, cross-examination, etc. (O. 53, r. 8)**

(1) Unless the judge otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge in chambers or a master.

(2) In this paragraph "interlocutory application" (非正審申請) includes an application for an order under Order 24 or 26 or Order 38, rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

## **9. Hearing of application for judicial review (O. 53, r. 9)**

(1) On the hearing of any originating summons under rule 5, any person who desires to be heard in opposition to or in support of the originating summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the originating summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the originating summons he has lodged with the Registrar a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the originating summons.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Court of First Instance. (25 of 1998 s. 2)

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court,

tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply.

(L.N. 152 of 2008)

**10. Saving for person acting in obedience to mandamus (O. 53, r. 10)**

No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

**12. Consolidation of applications (O. 53, r. 12)**

Where there is more than one application pending under section 21K of the Ordinance against several persons in respect of the same office, and on the same grounds, the Court may order the applications to be consolidated.

**13. Order made by judge may be set aside, etc. (O. 53, r. 13)**

(HK) An appeal shall lie, from an order of a judge granting or refusing an application for judicial review, to the Court of Appeal, which may set aside or confirm any such order or substitute such order as ought to have been made.

**14. Meaning of "Court" (O. 53, r. 14)**

In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this Order to "the Court" (法庭) shall, unless the context otherwise requires, be construed as a reference to the judge.

**15. Transitional provisions relating to Part 24 of Amendment Rules 2008 (O. 53, r. 15)**

(1) Where, immediately before the commencement\* of the Amendment Rules 2008, an application for leave to apply for judicial review is pending, then nothing in Part 24 of the Amendment Rules applies in relation to the application and (if leave is granted) the subsequent application for judicial review, and this Order as in force immediately before the commencement continues to apply as if that Part had not been made.

(2) Where, immediately before the commencement of the Amendment Rules 2008, an application for judicial review is pending, then nothing in Part 24 of the Amendment Rules 2008 applies in relation to the application, and this Order as in force immediately before the commencement continues to apply as if that Part had not been made.

(L.N. 152 of 2008)

(Enacted 1988)

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**Note:**

\* **Commencement day: 2 April 2009.**

Order:	54	<b>APPLICATIONS FOR WRIT OF HABEAS CORPUS</b>	26 of 2012	27/07/2012
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**1. Application for writ of habeas corpus ad subjiciendum (O. 54, r. 1)**

(1) An application for a writ of habeas corpus ad subjiciendum shall be made to a single judge in court, except that-

- (b) at any time when no judge is sitting in court, it may be made to a judge otherwise than in court; and
- (c) any application on behalf of a minor must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made *ex parte* and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

## **2. Power of Court to whom *ex parte* application made (O. 54, r. 2)**

(1) The judge to whom an application under rule 1 is made *ex parte* may make an order forthwith for the writ to issue, or may- (See App. A, Forms 87, 88)

- (a) where the application is made otherwise than in court, direct that an originating summons for the writ be issued, or that an application therefor be made by originating summons to a judge in court;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given, or direct that an application be made by originating summons.

(2) The summons must be served on the person against whom the issue of the writ is sought and on such other persons as the judge may direct, and, unless the judge otherwise directs, there must be at least 8 clear days between the service of the summons and the date named therein for the hearing of the application. (26 of 2012 s. 67)

- (3) An originating summons under this rule must be in Form No. 87 in Appendix A. (L.N. 152 of 2008)  
(L.N. 152 of 2008)

## **3. Copies of affidavits to be supplied (O. 54, r. 3)**

Every party to an application under rule 1 must supply to every other party on demand copies of the affidavits which he proposes to use at the hearing of the application.

## **4. Power to order release of person restrained (O. 54, r. 4)**

Without prejudice to rule 2(1), the judge hearing an application for a writ of habeas corpus ad subjiciendum may in his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any superintendent of a prison, constable or other person for the release of the person under restraint.

## **5. Directions as to return to writ (O. 54, r. 5)**

Where a writ of habeas corpus ad subjiciendum is ordered to issue, the judge by whom the order is made shall give directions as to the judge before whom, and the date on which, the writ is returnable.

## **6. Service of writ and notice (O. 54, r. 6)**

(1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to a superintendent of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 90 in Appendix A) stating the judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

**7. Return to the writ (O. 54, r. 7)**

(1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the judge before whom the writ is returnable.

**8. Procedure at hearing of writ (O. 54, r. 8)**

When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then counsel for the Crown, and then one counsel for the person restrained in reply.

**9. Bringing up prisoner to give evidence, etc. (O. 54, r. 9)**

(1) An application for a writ of habeas corpus ad testificandum or of habeas corpus ad respondendum must be made on affidavit to a judge in chambers.

**10. Form of writ (O. 54, r. 10)**

A writ of habeas corpus must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.

(Enacted 1988)

Order:	55	<b>APPEALS TO THE HIGH COURT FROM COURT, TRIBUNAL OR PERSON: GENERAL</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Application (O. 55, r. 1)**

(1) Subject to paragraphs (2), (3) and (4), this Order shall apply to every appeal which by or under any enactment lies to the Court of First Instance from any court, tribunal or person. (25 of 1998 s. 2)

(2) This Order shall not apply to-

(a) an appeal by case stated,

(HK)(b) an appeal under the Magistrates Ordinance (Cap 227), or

(HK)(c) any appeal to which Order 73 applies. (L.N. 363 of 1990)

(4) The following rules of this Order shall, in relation to an appeal to which this Order applies, have effect subject to any provision made in relation to that appeal by any other provision of these rules or by or under any enactment.

(5) In this Order references to a Tribunal shall be construed as references to any Tribunal constituted by or under any enactment other than any of the ordinary courts of law.

**(HK)2. Court to hear appeal (O. 55, r. 2)**

Except where it is otherwise provided by these rules or under any enactment, an appeal to which this Order applies shall be heard and determined by a single judge.

(L.N. 363 of 1990)

**3. Bringing of appeal (O. 55, r. 3)**

(1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.

(2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if

the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.

(3) The bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought unless the Court by which the appeal is to be heard or the court, tribunal or person by which or by whom the decision was given so orders.

#### **4. Service of notice of motion and entry of appeal (O. 55, r. 4)**

(1) The persons to be served with notice of the motion by which an appeal to which this Order applies is brought are the following-

- (a) if the appeal is against a judgment, order or other decision of a court, the registrar or clerk of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;
- (b) if the appeal is against an order, determination, award or other decision of a tribunal, government department or other person, the chairman of the tribunal, government department or person, as the case may be, and every party to the proceedings (other than the appellant) in which the decision appealed against was given.

(2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

(3) In the case of an appeal against a judgment, order or decision of a court, the period specified in paragraph (2) shall be calculated from the date of the judgment or order or the date on which the decision was given.

(4) In the case of an appeal against an order, determination, award or other decision of a tribunal, government department or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision was given to the appellant by the person who made the decision or by a person authorized in that behalf to do so.

#### **5. Date of hearing of appeal (O. 55, r. 5)**

Unless the Court having jurisdiction to determine the appeal otherwise directs, an appeal to which this Order applies shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.

#### **6. Amendment of grounds of appeal, etc. (O. 55, r. 6)**

(1) The notice of the motion by which an appeal to which this Order applies is brought may be amended by the appellant, without leave, by supplementary notice served not less than 7 days before the day appointed for the hearing of the appeal, on each of the persons on whom the notice to be amended was served.

(2) Within 2 days after service of a supplementary notice under paragraph (1) the appellant must lodge two copies of the notice in the office in which the appeal is entered.

(3) Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but that Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(4) The foregoing provisions of this rule are without prejudice to the powers of the Court under Order 20.

#### **6A. Interlocutory applications (O. 55, r. 6A)**

(1) Unless the Court otherwise directs, any interlocutory application in proceedings to which this Order applies may be made to any judge or a master.

In this paragraph "interlocutory application" (非正審申請) includes an application for the extension of time for the service of a notice of motion or the entry of the appeal or for the amendment of the notice of motion.

(2) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

(L.N. 404 of 1991)

## **7. Powers of court hearing appeal (O. 55, r. 7)**

(1) In addition to the power conferred by rule 6(3), the Court hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this rule.

(2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in some other manner.

(3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.

(4) It shall be the duty of the appellant to apply to the judge or other person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the Court; and in default of production of such a note, or, if such note is incomplete, in addition to such note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.

Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

(5) The Court may give any judgment or decision or make any order which ought to have been given or made by the court, tribunal or person and make such further or other order as the case may require or may remit the matter with the opinion of the Court for rehearing and determination by it or him.

(6) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

(7) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned.

## **8. Right of government department to appear and be heard (O. 55, r. 8)**

Where an appeal to which this Order applies is against any order, determination or other decision of a government department, the department shall be entitled to appear and be heard in the proceedings on the appeal.

(Enacted 1988)

Order:	58	<b>APPEALS FROM MASTERS</b>	L.N. 99 of 2014	01/12/2014
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### **1. Appeals from certain decisions of masters to a judge in chambers (O. 58, r. 1)**

(1) Except as provided by rule 2, Order 5, rule 6, and Order 12, rule 1, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master, irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing. (L.N. 152 of 2008)

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice or as on such other day as may be directed.

(3) Unless the Court otherwise orders, the notice must be issued within 14 days after the judgment, order or decision appealed against was given or made and must be served within 5 days after issue and an appeal to which this rule applies shall not be heard sooner than 2 clear days after such service. (L.N. 404 of 1991; L.N. 129 of 2000)

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

(5) No further evidence (other than evidence as to matters which have occurred after the date on which the judgment, order or decision was given or made) may be received on the hearing of an appeal under this rule except on special grounds. (L.N. 152 of 2008)

### **2. Appeals from certain decisions of masters to Court of Appeal (O. 58, r. 2)**

An appeal shall lie to the Court of Appeal from any judgment, order or decision (other than an interlocutory judgment, order or decision) of a master, given or made-

- (HK)(a) on the hearing or determination of any cause, matter, question or issue tried before him under Order 14, rule 6(2) and Order 36, rule 1;
- (b) on an assessment of damages under Order 37 or otherwise; or
- (HK)(c) on the hearing or determination of an application under Order 84A, rule 3; or (L.N. 127 of 1995)
- (HK)(d) on the hearing or determination of an application under Order 49B; or
- (HK)(e) on the hearing of a petition for winding-up or bankruptcy; or (L.N. 404 of 1991; L.N. 99 of 2014)
- (f) on the trial of an issue under Order 17, rule 11(2). (L.N. 99 of 2014)

## **7. Appeal from judgment, etc. of judge in interpleader proceedings (O. 58, r. 7)**

(1) Any judgment, order or decision of a judge given or made in summarily determining under Order 17, rule 5(2)(b) or (c), any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.

(2) Where an interpleader issue is tried by a judge (with or without a jury), an appeal shall lie to the Court of Appeal, without the leave of the judge or that Court, from any judgment, order or decision given or made by the judge on the trial.

(3) (Repealed L.N. 152 of 2008)

(Enacted 1988)

Order:	59	<b>APPEALS TO THE COURT OF APPEAL</b>	L.N. 38 of 2011	01/06/2011
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## **1. Application of Order to appeals (O. 59, r. 1)**

(1) This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from a master or other officer of the High Court or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules and references to "the court below" apply to any Court, tribunal or person from which such appeal lies. (25 of 1998 s. 2; L.N. 152 of 2008)

(2) For the avoidance of doubt and without prejudice to the generality of paragraph (1), this Order, unless the context otherwise requires, applies in relation to an appeal to the Court of Appeal from the District Court. (L.N. 152 of 2008)

## **2. Application of Order to applications for new trial (O. 59, r. 2)**

This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11 (1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

### **GENERAL PROVISIONS AS TO APPEALS**

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

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

- (a) the reasons why leave should be granted; and
  - (b) if the time for appealing has expired, the reasons why the application was not made within that time.
- (2) An application under paragraph (1) must be made inter partes if the proceedings in the court below are inter

partes.

(3) An application under paragraph (1) must include, where necessary, an application to extend the time for appealing.

(4) A party who intends to resist an application under paragraph (1) made inter partes shall, within 14 days after the application is served on him, file in the Court of Appeal and serve on the applicant a statement as to why the application should not be granted.

(5) The Court of Appeal may-

(a) determine the application without a hearing on the basis of written submissions only; or

(b) direct that the application be heard at an oral hearing,

and in both cases, the Court of Appeal may give such directions as it thinks fit in relation to the application.

(6) Where the Court of Appeal grants the application, it may impose such terms as it thinks fit.

(7) Subject to paragraph (8), if the application is determined on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after he has been given notice of the determination, request the Court of Appeal to reconsider the determination at an oral hearing inter partes.

(8) Where the Court of Appeal determines the application on the basis of written submissions only, it may, if it considers that the application is totally without merit, make an order that no party may under paragraph (7) request the determination to be reconsidered at an oral hearing inter partes.

(9) An oral hearing held pursuant to a request under paragraph (7) may be before the Court of Appeal consisting of-

(a) the Justice of Appeal; or

(b) one or more of the Justices of Appeal,

who have determined the application on the basis of written submissions only.

(L.N. 152 of 2008)

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

(O. 59, r. 2B)

(1) Subject to paragraph (4) and any other enactment, an application for leave to appeal against-

(a) an interlocutory judgment or order of the Court;

(b) a judgment or order of the Court specified in section 14(3)(e) or (f) of the Ordinance; or

(c) any other judgment or order of the Court against which an appeal may be made with leave of the Court or the Court of Appeal,

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

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

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

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

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

(L.N. 152 of 2008)

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

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

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

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



### **3. Notice of appeal (O. 59, r. 3)**

(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as "notice of appeal".

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal or a single judge, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal. (L.N. 404 of 1991)

(5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.

(6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

### **4. Time for appealing (O. 59, r. 4)**

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

- (a) in the case where leave to appeal to the Court of Appeal is required under section 14AA (not being a case to which sub-paragraph (b) applies) or section 14(3)(e) or (f) of the Ordinance, 7 days after the date on which leave to appeal is granted;
- (b) in the case of an appeal from a judgment, order or decision given or made in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days from the date of the judgment, order or decision; and
- (c) in any other case, 28 days from the date of the judgment, order or decision concerned. (L.N. 152 of 2008)

(2) In the case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap 484), the following period of time shall be disregarded in determining the period referred to in paragraph (1)-

- (a) where an application has been made under section 27C of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined; or
- (b) where an application has been made under section 27D of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined. (11 of 2002 s. 7)

(3) (Repealed L.N. 152 of 2008)

(4) In relation to an appeal from the District Court, a notice of appeal must be served under rule 3(5) within-

- (a) in the case where leave to appeal to the Court of Appeal is required under section 63(1) or (1B) of the District Court Ordinance (Cap 336), 7 days after the date on which leave to appeal is granted; and
- (b) in the case of an appeal from an order specified in section 63(3) of the District Court Ordinance (Cap 336) or an order for imprisonment given or made under Order 49B of the Rules of the District Court (Cap 336 sub. leg. H), 28 days after the date on which the order is made. (L.N. 152 of 2008)

### **5. Setting down appeal (O. 59, r. 5)**

(1) Within 7 days after the date on which service of the notice of appeal was effected, the appellant must lodge with the Registrar- (L.N. 152 of 2008)

- (a) a copy of the sealed judgment or order and a copy of the reasoned decision (if any); and
- (b) two copies of the notice of appeal, one of which shall be indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the notice.

(2) Upon the said documents being left, the Registrar shall file one copy of the notice of appeal and cause the appeal to be set down in the list of appeals; and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a judge of that Court otherwise orders.

(3) Within 4 days after an appeal has been set down, the appellant must give notice to that effect to all parties on whom the notice of appeal was served.

**6. Respondent's notice (O. 59, r. 6)**

(1) A respondent who, having been served with a notice of appeal, desires-

- (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
- (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
- (c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

must give notice to that effect, specifying the grounds of his contention and, in a case to which sub-paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make.

(2) Except with the leave of the Court of Appeal or a single judge, a respondent shall not be entitled on the hearing of the appeal to apply for any relief not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relied upon by the court below. (L.N. 404 of 1991)

(HK)(3) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served-

- (a) where the notice of appeal related to an interlocutory order, within 14 days, and
- (b) in any other case, within 21 days,

after the service of the notice of appeal on the respondent.

(4) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish 2 copies of the notice to the Registrar.

**7. Amendment of notice of appeal and respondent's notice (O. 59, r. 7)**

(1) A notice of appeal or respondent's notice may be amended-

- (a) by or with the leave of the Court of Appeal or a single judge at any time; (L.N. 404 of 1991)
- (b) without such leave, by supplementary notice served not less than three weeks before the date fixed for the hearing of the appeal.

(2) A party by whom a supplementary notice is served under this rule must, within 2 days after service of the notice, furnish two copies of the notice to the Registrar.

**8. Directions of the Court as to service (O. 59, r. 8)**

(1) The Court of Appeal or a single judge may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings. (L.N. 404 of 1991)

(2) Where a direction is given under paragraph (1) the hearing of the appeal may be postponed or adjourned for such period and on such terms as may be just and such judgment may be given and such order made on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

**9. Documents to be lodged by appellant (O. 59, r. 9)**

(1) Not less than 14 days before the date on which the appeal is listed for hearing the appellant must cause to be lodged with the Registrar the number of copies for which paragraph (2) provides of each of the following documents, namely- (L.N. 152 of 2008)

- (a) the notice of appeal;
- (b) the respondent's notice;
- (c) any supplementary notice served under rule 7;
- (d) the judgment or order of the court below;
- (e) the originating process by which the proceedings in the court below were begun, any interlocutory or other related process which is the subject of the appeal, the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any;

- (f) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the judge's note of his reasons for giving the judgment or making the order;
- (g) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question;
- (h) any list of exhibits made under Order 35, rule 11, or the schedule of evidence, as the case may be;
- (HK)(i) such documents, affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.

(2) Unless otherwise directed the number of copies to be lodged in accordance with paragraph (1) is three copies except-

- (a) where the appeal is to be heard by two judges in which case it is two copies; or
- (b) in the case of an appeal in an Admiralty cause or matter, in which case it is four copies or, if the Court of Appeal is to hear the appeal with assessors, six copies.

(2A) When the transcripts, if any, referred to in items (f) and (g) of paragraph (1) have been bespoken by the appellant and paid for, the number of such transcripts required in accordance with paragraph (2) shall be sent by the appellant direct to the Registrar. (L.N. 152 of 2008)

(3) At any time after an appeal has been set down in accordance with rule 5 the Registrar may give such directions in relation to the documents to be produced at the appeal, and the manner in which they are to be presented, and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.

(4) The directions referred to in paragraph (3) may be given without a hearing provided always that the Registrar may at any time issue a summons requiring the parties to an appeal to attend before him and any party to an appeal may apply at any time for an appointment before the Registrar.

## **10. General powers of the Court (O. 59, r. 10)**

(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance. (25 of 1998 s. 2)

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds. (L.N. 152 of 2008)

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court:

Provided that where a Law Officer or the Director of Public Prosecutions makes a written request in that behalf, documents so impounded shall be delivered into his custody. (L.N. 362 of 1997)

(8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorized to do so by an order of that Court.

(9) In any proceedings incidental to any cause or matter pending before the Court of Appeal, the powers conferred by this rule on the Court may be exercised by a single judge: (L.N. 404 of 1991)

Provided that the said powers of the Court of Appeal shall be exercisable only by that Court or a single judge in relation to-

- (a) the grant, variation, discharge or enforcement of an injunction, or an undertaking given in lieu of an

- injunction; and
- (b) the grant or lifting of a stay of execution or proceedings.

#### **11. Powers of the Court as to new trials (O. 59, r. 11)**

(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial-

- (a) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;
- (b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

(5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

#### **12. Evidence on appeal (O. 59, r. 12)**

Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal or a single judge, be brought before that Court as follows-

- (a) in the case of evidence taken by affidavit, by the production of a true copy of such affidavit;
- (b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal or a single judge, may direct.

(L.N. 404 of 1991)

#### **12A. Non-disclosure of payment into court (O. 59, r. 12A)**

(1) Where-

- (a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof, and
- (b) money was paid into court under Order 22, in the proceedings in the court below before judgment,

neither the fact of the payment nor the amount thereof nor the terms of any relevant offer made in accordance with Order 22 shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided. This rule shall not apply in the case of an appeal as to costs only or an appeal in an action to which a defence of tender before action was pleaded. (L.N. 152 of 2008)

(2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him under rule 9(d) and (f) every part thereof which states that money was paid into court in the proceedings in that court before judgment.

#### **13. Stay of execution, etc. (O. 59, r. 13)**

- (1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct-
  - (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
  - (b) no intermediate act or proceeding shall be invalidated by an appeal.
- (2) On an appeal from the court below, interest for such time as execution has been delayed by the appeal shall be allowed unless the court below otherwise orders. (L.N. 152 of 2008)

(25 of 1998 s. 2)

#### **14. Applications to the Court of Appeal (O. 59, r. 14)**

(1) Unless otherwise directed, every application to the Court of Appeal or a single judge which is not made ex parte must be made by summons and such summons must be served on the party or parties affected at least 2 clear days before the day on which it is heard or, in the case of an application which is made after the expiration of the time for appealing, at least 7 days before the day on which the summons is heard. (L.N. 404 of 1991)

(1A) In support of any application (whether made ex parte or inter partes) the applicant shall lodge with the Registrar such documents as the Court of Appeal or a single judge may direct, and rule 9(3) and (4) shall apply, with any necessary modifications, to applications as they apply to appeals. (L.N. 404 of 1991)

(2) (Repealed L.N. 152 of 2008)

(2A)-(2B) (Repealed L.N. 152 of 2008)

(3) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of the refusal.

(3A) Where an application made to the Court of Appeal ex parte under paragraph (3) is granted, notice of the order granting the application must be served on the party or parties affected. (L.N. 152 of 2008)

(3B) A party on whom a notice has been served is entitled, within 7 days after service of the notice, to apply to the Court of Appeal to have the order granting the application reconsidered inter partes in open court. (L.N. 152 of 2008)

(4) Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.

(5)-(6) (Repealed 17 of 2010 s. 112)

(6A) (Repealed 17 of 2010 s. 112)

(7) An application which may be heard by a single judge, shall, unless otherwise directed, be heard in chambers. (L.N. 152 of 2008)

(8)-(9) (Repealed L.N. 404 of 1991)

(10) A single judge may refer to the Court of Appeal any matter which he thinks should properly be decided by that Court, and, following such reference, that Court may either dispose of the matter or refer it back to a single judge or the Registrar, with such directions as that Court thinks fit.

(11) (Repealed L.N. 404 of 1991)

(12) An appeal shall lie to the Court of Appeal from any determination by a single judge and shall be brought by way of fresh application made within 10 days of the determination appealed against. (L.N. 152 of 2008)

(13) This rule does not apply in relation to an application for leave to appeal. (L.N. 152 of 2008)

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

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

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

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

(L.N. 152 of 2008)

#### **15. Extension of time (O. 59, r. 15)**

Without prejudice to the power of the Court of Appeal or a single judge under Order 3, rule 5, to extend or abridge the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or making application ex parte under rule 14(3) may be extended or abridged by the court below on application made before the expiration of that period.

(L.N. 404 of 1991)

## SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

### **16. Appeal against decree nisi (O. 59, r. 16)**

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of marriage.

(1A) An appeal lies as of right to the Court of Appeal from a decree nisi granted by the Court. (L.N. 152 of 2008)

(2) The period of 28 days specified in rule 4 shall be calculated from the date on which the decree was pronounced and rule 15 shall not apply in relation to that period. (10 of 2008 s. 30)

(3) The appellant must, within the period mentioned in paragraph (2) produce to the Registrar a sealed copy of the decree appealed against and leave with him a copy of that decree and two copies of the notice of appeal (one of which shall be indorsed with the amount of the fee paid and the other indorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with. (L.N. 404 of 1991)

(4) For the purposes of rule 5 the leaving of the said copies shall be sufficient for the setting down of the appeal and rule 5(1) shall not apply.

(5) A party who intends to apply ex parte to the Court of Appeal to extend the period referred to in paragraphs (2) and (3) must give notice of his intention to the appropriate Registrar before the application is made; and where any order is made by the Court of Appeal extending the said period, it shall be the duty of the Registrar forthwith to give notice of the making of the order and of the terms thereof to the appropriate Registrar.

(6) In this rule "the appropriate Registrar" (適當的司法常務官) means- (28 of 2000 s. 47)

(a) in relation to a cause pending in a district court, the registrar of that court.

### **19. Appeal from District Court (O. 59, r. 19)**

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a District Court other than an appeal against a decree nisi of divorce or nullity of marriage.

(2) The notice of appeal must be served on the registrar of the District Court as well as on the party or parties required to be served under rule 3.

(3) (Repealed L.N. 152 of 2008)

(4) Except where the Court of Appeal or a single judge otherwise directs, an affidavit or note by a person present in the District Court shall not be used in evidence before the Court of Appeal unless it was previously submitted to the judge for his comments. (L.N. 404 of 1991; L.N. 152 of 2008)

(4A) Rule 12A shall apply in any case where money was paid into court by the defendant before judgment in district court proceedings in satisfaction of the plaintiff's cause of action or of one or more causes joined in one action or on account of a sum admitted by the defendant to be due to the plaintiff.

(4B) Rule 12A(1) applies as if a reference to Order 22 were a reference to Order 22 of the Rules of the District Court (Cap 336 sub. leg. H). (L.N. 152 of 2008)

(5) Rule 13(1)(a) shall apply subject to the provisions of section 66 of the District Court Ordinance (Cap 336).

### **20. Appeals in cases of contempt of court (O. 59, r. 20)**

(1) In the case of an appeal to the Court of Appeal against an order of committal or other punishment for contempt of Court made by a judge of the Court of First Instance, the notice of appeal must be served on the Registrar as well as on the party or parties required to be served under rule 3. (See App. A, Form 99)

This paragraph shall not apply in relation to an appeal to which rule 19 applies. (25 of 1998 s. 2)

(2) Where, in the case of such an appeal as is mentioned in paragraph (1), the appellant is in custody, the Court

of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as that Court may fix) for his appearance within 10 days after the judgment of the Court of Appeal on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(3) An application for the release of a person under paragraph (2) pending an appeal to the Court of Appeal must be made by motion, and the notice of the motion must, at least 24 hours before the day named therein for the hearing, be served on the Registrar and on all parties to the proceedings who are directly affected by the appeal.

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

(L.N. 152 of 2008)

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

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

- (a) a judgment or order determining in a summary way the substantive rights of a party to an action;
- (b) an order made under section 52A(4) of the Ordinance;
- (c) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);
- (d) an order for the imprisonment of a judgment debtor under Order 49B;
- (e) an order of committal for contempt of court under Order 52, rule 1;
- (f) an order granting any relief made at the hearing of an application for judicial review;
- (g) an order under Order 53, rule 3 refusing to grant leave to apply for judicial review;
- (h) an order granting an application for a writ of habeas corpus ad subjiciendum;
- (i) an order under Order 73 (other than an order against which leave to appeal is required under the Arbitration Ordinance (Cap 609)); (17 of 2010 s. 112)
- (j) a judgment given inter partes under Order 83A, rule 4, or Order 84A, rule 3 or in a mortgage action within the meaning of Order 88, rule 1;
- (k) an order under Order 121; and
- (l) a decree nisi of divorce or nullity of marriage.

(2) Without affecting the generality of paragraph (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party-

- (a) a summary judgment under Order 14 or Order 86;
- (b) an order striking out an action or other proceedings or a pleading or any part of a pleading under Order 18, rule 19 or under the inherent jurisdiction of the Court;
- (c) a judgment or order determining any question of law or the construction of any document under Order 14A, rule 1(1);
- (d) a judgment or order made under Order 14A, rule 1(2) dismissing any cause or matter upon determination of a question of law or construction of any document;
- (e) a judgment on any question or issue tried pursuant to an order under Order 33, rule 3;
- (f) an order dismissing or striking out an action or other proceedings for want of prosecution;
- (g) a judgment obtained pursuant to an "unless" order;
- (h) an order refusing to set aside a judgment in default;
- (i) an order refusing to allow an amendment of a pleading to introduce a new claim or defence or any other new issue; and
- (j) a judgment or order on admissions under Order 27, rule 3.

(3) A direction as to whether a judgment or order is one that is referred to in paragraph (1)(a) may be sought from the judge who made or will make the judgment or order.

(4) A reference to an order specified in paragraph (1)(b), (c), (d), (e), (f), (h), (i), (k) and (l) includes an order refusing, varying or discharging the order.

(L.N. 152 of 2008)  
(Enacted 1988)

Order:	60A	<b>(HK) APPEALS FROM TRIBUNALS TO COURT OF APPEAL ON A QUESTION OF LAW OTHER THAN BY WAY OF CASE STATED</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### 1. Application of Order (O. 60A, r. 1)

This Order applies to appeals that lie from any tribunal to the Court of Appeal on a question of law other than by way of case stated.

### 2. Notice of appeal from tribunal (O. 60A, r. 2)

(1) An appeal to which the Order applies must be brought by motion, notice of which is referred to in this Order as "notice of appeal".

(2) A notice of appeal must specify the grounds of the appeal, together with the question of law to be decided by the Court of Appeal.

### 3. Time for appealing (O. 60A, r. 3)

Subject to the provisions of any Ordinance, a notice of appeal must be served on all parties to the proceedings before the tribunal, and on the tribunal, within 28 days of the date on which the judgment or order of the tribunal was given.

(L.N. 152 of 2008)

### 4. Setting down appeal (O. 60A, r. 4)

(1) The appellant must, within 7 days after service of the notice of appeal, or within such further time as may be allowed by the Registrar, produce to the Registrar-

(a) a copy of the sealed judgment or order of the tribunal and a copy of its reasoned decision (if any); (L.N. 152 of 2008)

(b) 2 copies of the notice of appeal, one of which shall be endorsed with the amount of the fee paid, and the other endorsed with a certificate of the date of service of the notice.

(2) Upon the said documents being left, the Registrar shall file one copy of the notice of appeal and cause the appeal to be set down in the list of appeals; and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a single judge or the Registrar otherwise orders.

### 5. Application of Order 59 (O. 60A, r. 5)

Order 59, rules 9 and 10 shall, so far as applicable, apply to an appeal to which this Order applies.

### 6. Duty of Registrar to notify tribunal of result (O. 60A, r. 6)

The Registrar shall notify the tribunal of the decision of the Court of Appeal on the appeal and of any direction given by the Court therein.

(Enacted 1988)

Order:	61	<b>APPEALS FROM TRIBUNALS TO COURT OF APPEAL BY WAY OF CASE STATED</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### 2. Statement of case by tribunals (O. 61, r. 2)

(1) Where any tribunal is empowered or may be required to state a case on a question of law for determination by the Court of Appeal, any party to the proceedings who is aggrieved by the tribunal's refusal to state a case may apply to the Court of Appeal or a single judge of that Court for an order requiring the tribunal to state a case.



(2) An application under this rule must be made by motion and the notice of the motion, stating in general terms the grounds of the application, together with the question of law on which it is desired that a case shall be stated and any reasons given by the tribunal for its refusal, must within 28 days after the refusal, be served on the clerk or registrar of the tribunal and on every other party to the proceedings before the tribunal. (L.N. 152 of 2008)

(3) Within 2 days after service of the notice of motion, the applicant must lodge two copies of the notice with the Registrar who shall enter the motion in the list of appeals.

(4) Where a tribunal is ordered under this rule to state a case, the tribunal must, within such period as may be specified in the order, state a case stating the facts on which the decision of the tribunal was based and the decision, sign it and cause it to be sent by post to the applicant.

(4A) Where the decision of the tribunal in respect of which a case is stated states all the relevant facts found by the tribunal and indicates the questions of law to be decided by the Court of Appeal, a copy of the decision signed by the person who presided at the hearing shall be annexed to the case, and the facts so found and the question of law to be decided shall be sufficiently stated in the case by referring to the statement thereof in the decision.

### **3. Proceedings on case stated (O. 61, r. 3)**

(1) The party at whose instance a case has been stated by any tribunal to which this Order applies must, within 28 days after receiving the case- (L.N. 152 of 2008)

(a) serve on every other party to the proceedings before the tribunal a copy of the case, together with a notice setting out his contentions on the question of law, and

(b) serve a copy of the notice on the clerk or registrar of the tribunal.

(2) Within 2 days after service of the notice, the said party must lodge the case and two copies of the notice with the Registrar who shall enter the case in the list of appeals, and the case shall not be heard until after the expiration of 28 days from the date of entry. (L.N. 152 of 2008)

(3) Where any enactment under which the case is stated provides that a government department shall have a right to be heard in the proceedings on the case, a copy of the case and of the notice served under paragraph (1) must be served on that department and on the Secretary for Justice. (L.N. 362 of 1997)

(4) On the hearing of the case, the Court of Appeal may amend the case or order it to be sent back to the tribunal for amendment.

(5) Order 59, rule 10, shall, so far as applicable, apply in relation to a case stated by a tribunal to which this Order applies.

(6) The Registrar shall notify the clerk or registrar of the tribunal of the decision of the Court of Appeal on the case and of any directions given by that Court thereon.

(Enacted 1988)

Order:	62	<b>COSTS</b>	L.N. 38 of 2011	01/06/2011
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## **COSTS**

### **PRELIMINARY**

#### **1. Interpretation (O. 62, r. 1)**

(1) In this Order-

"certificate" (證明書) includes allocatur;

(HK) "contentious business" (爭議事務) means business done, whether as a barrister, solicitor or advocate, in or for the purpose of proceedings begun before the Court or before an arbitrator, umpire or arbitral tribunal under the Arbitration Ordinance (Cap 609) not being common form probate business; (10 of 2005 s. 166; 17 of 2010 s. 112)

"costs" (訟費) include fees, charges, disbursements, expenses and remuneration;

"the Court" (法院、法庭) means the High Court or any one or more judges thereof, whether sitting in Court or in chambers, the Registrar or assistant registrar or master; (25 of 1998 s. 2)

(HK) "District Court" (區域法院) means the District Court established under the provisions of the District Court Ordinance (Cap 336), and any judge of that court; (L.N. 152 of 2008)

"legal representative" (法律代表), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party; (L.N. 152 of 2008)

(HK) "mentally disordered person" (精神紊亂的人) means a person who is so far disabled in mind or who is so mentally ill or subnormal due to arrested or incomplete development of mind as to render it either necessary or expedient that he, either for his own sake or in the public interest, should be placed and kept under control;

(HK) "non-contentious business" (非爭議事務) means any business done by and as a solicitor which is not contentious business;

"party entitled to be heard on taxation" (有權在訟費評定中獲聆聽的一方) means-

- (a) a party entitled to payment of costs;
- (b) a party who has acknowledged service or taken any part in the proceedings which gave rise to the taxation proceedings, and who is directly liable under a costs order made against him;
- (c) a person who has given the party entitled to payment of costs and the Registrar written notice that he has a financial interest in the outcome of the taxation; or
- (d) a person in respect of whom a direction has been given under rule 21(3); (L.N. 152 of 2008)

"taxed costs" (經評定的訟費) means costs taxed in accordance with this Order;

(HK) "taxing master" (訟費評定官) means the Registrar as taxing master; (L.N. 152 of 2008)

"wasted costs order" (虛耗訟費命令) means an order made under section 52A(4) of the Ordinance. (L.N. 152 of 2008)

(2) In this Order, references to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property whether immovable or personal held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

## **2. Application (O. 62, r. 2)**

(HK)(1) This Order shall apply to all proceedings in the Court, except non-contentious or common form probate proceedings and proceedings in matters of prize.

(2) Where by virtue of any Ordinance the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Ordinance, not being proceedings in the High Court, are taxable in the Court of First Instance, the following provisions of this Order, that is to say, rule 7(4), rule 8D (except paragraph (4)), rule 8E, rule 9D(1) and (4), rules 13 and 13A, rules 14 to 16, rule 17(1), rules 17A and 17B, rule 18, rules 21 (except paragraph (4)), 21A, 21B, 21C and 21D, rules 22 to 26, rule 28A (except paragraphs (4) and (7)), rules 32A and 32B and rules 33 to 35, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of proceedings in the High Court. (L.N. 152 of 2008)

(2A) Where rule 22 has effect under paragraph (2), a reference to the Court of First Instance in rule 22(9)(a) is to be construed as a reference to the arbitrator, umpire, tribunal or other body, as the case may be. (L.N. 152 of 2008)

(3) This Order shall have effect subject to the provisions of the District Court Ordinance (Cap 336) and to any rules made thereunder and to any other enactment.

(4) The powers and discretion of the Court as to costs under sections 52A and 52B of the Ordinance and under the enactments relating to the costs of criminal proceedings to which this Order applies shall be exercised subject to and in accordance with this Order. (L.N. 152 of 2008)

(25 of 1998 s. 2)

## **ENTITLEMENT TO COSTS**

### **3. Order as to entitlement to costs (O. 62, r. 3)**

(L.N. 152 of 2008)

(1) Subject to the provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any

proceedings (other than interlocutory proceedings), the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs. (L.N. 152 of 2008)

(2A) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any interlocutory proceedings, it may, subject to this Order, order the costs to follow the event or make such other order as it sees fit. (L.N. 152 of 2008)

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these rules, or any direction or order thereunder, for serving or filing any document or the doing of any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(6) If a party-

(a) on whom a list of documents is served in pursuance of any provision of Order 24, or

(b) on whom a notice to admit documents is served under Order 27, rule 5,

gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2) as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(8) (Repealed L.N. 152 of 2008)

(9) Where any person claiming to be a creditor-

(a) seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, or

(b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in Order 102, rule 13,

he shall, if his claim succeeds, be entitled to his costs incurred in establishing it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation, and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor) having established a claim to be entitled under a judgment or order in accordance with Order 44 has been served with notice of the judgment or order pursuant to rule 3 or 15 of that Order, he shall, if he acknowledges service of the notice be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(12) Where an application is made in accordance with Order 24, rule 7A or Order 29, rule 7A, for an order under section 41, 42 or 44 of the Ordinance, the person against whom the order is sought shall be entitled, unless the Court otherwise directs, to his costs of and incidental to the application and of complying with any order made thereon and he may, after giving the applicant 7 days' notice of his intention to do so, tax such costs and, if they are not paid within 4 days after taxation, sign judgment for them.

#### **4. Stage of proceedings at which costs to be dealt with (O. 62, r. 4)**

(1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, and the person against whom the order is made is not an assisted person, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the Court of First Instance from any other court or tribunal, the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court or tribunal ordering the transfer or removal) be dealt with by the Court to which the proceedings are transferred or removed. (25

of 1998 s. 2)

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court or tribunal, rules 28, 31 and 32 shall not apply in relation to those costs, but, except in relation to costs of proceedings transferred or removed from the District Court or the Lands Tribunal, the order- (L.N. 152 of 2008)

- (a) shall specify the amount of the costs to be allowed, or
- (b) shall direct that the costs shall be assessed by the court or tribunal before which the proceedings took place or taxed by an officer of that court or tribunal, or
- (c) if the order is made on appeal from the District Court or the Lands Tribunal in relation to proceedings in that court or tribunal, may direct that the costs shall be taxed by the taxing master.

(L.N. 152 of 2008)

## **5. Special matters to be taken into account in exercising discretion (O. 62, r. 5)**

(1) The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account- (L.N. 152 of 2008)

- (aa) the underlying objectives set out in Order 1A, rule 1; (L.N. 152 of 2008)
- (a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;
- (b) any payment of money into court and the amount of such payment;
- (c) any written offer made under Order 33, rule 4A(2); (L.N. 152 of 2008)
- (d) any written offer which is expressed to be "without prejudice save as to costs" and which relates to any issue in the proceedings, but the Court may not take the offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a sanctioned payment or a sanctioned offer under Order 22; (L.N. 152 of 2008)
- (e) the conduct of all the parties; (L.N. 152 of 2008)
- (f) whether a party has succeeded on part of his case, even if he has not been wholly successful; and (L.N. 152 of 2008)
- (g) any admissible offer to settle made by a party, which is drawn to the Court's attention. (L.N. 152 of 2008)

(2) For the purpose of paragraph (1)(e), the conduct of the parties includes-

- (a) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
- (b) the manner in which a party has pursued or defended his case or a particular allegation or issue;
- (c) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and
- (d) conduct before, as well as during, the proceedings. (L.N. 152 of 2008)

## **6. Restriction of discretion to order costs (O. 62, r. 6)**

(1) Notwithstanding anything in this Order or in section 52A of the Ordinance-

- (c) unless the Court is of opinion that there was no reasonable ground for opposing the will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

### **6A. Costs orders in favour of or against non-parties** (O. 62, r. 6A)

- (1) Where the Court is considering whether to exercise its power under section 52A or 52B of the Ordinance to make a costs order in favour of or against a person who is not a party to the relevant proceedings-
  - (a) that person must be joined as a party to the proceedings for the purposes of costs only; and
  - (b) that person must be given a reasonable opportunity to attend a hearing at which the Court shall consider the matter further.
- (2) This rule does not apply where the Court is considering whether to make-
  - (a) a wasted costs order; or
  - (b) an order under section 41 or 42 of the Ordinance.

(L.N. 152 of 2008)

## **7. Costs arising from misconduct or neglect (O. 62, r. 7)**

- (1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.
- (2) Without prejudice to the generality of paragraph (1), the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say-
  - (aa) the underlying objectives set out in Order 1A, rule 1; (L.N. 152 of 2008)
  - (a) the omission to do any thing the doing of which would have been calculated to save costs;
  - (b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;
  - (c) any unnecessary delay in the proceedings.
- (3) The Court may, instead of giving a direction under paragraph (1) in relation to any thing done or omission made, direct the taxing master to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.
- (4) The taxing master shall, in relation to any thing done or omission made in the course of taxation, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party. (L.N. 152 of 2008)
- (5) (Repealed L.N. 152 of 2008)

## **8. Personal liability of legal representative for costs-wasted costs order**

(O. 62, r. 8)

- (1) The Court may make a wasted costs order against a legal representative, only if-
  - (a) the legal representative, whether personally or through his employee or agent, has caused a party to incur wasted costs as defined in section 52A(6) of the Ordinance; and
  - (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.
- (2) A wasted costs order may-
  - (a) disallow the costs as between the legal representative and his client; and
  - (b) direct the legal representative to-
    - (i) repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or
    - (ii) indemnify other parties against costs incurred by them.
- (3) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make the order.
- (4) When the Court makes a wasted costs order, it shall-
  - (a) specify the amount to be disallowed or paid; or
  - (b) direct a master to decide the amount of costs to be disallowed or paid.
- (5) The Court may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit.
- (6) The Court may direct that notice must be given to the legal representative's client, in such manner as the Court may direct-
  - (a) of any proceedings under this rule; or

(b) of any order made under this rule against his legal representative.

(7) Before making a wasted costs order, the Court may direct a master to inquire into the matter and report to the Court.

(8) The Court may refer the question of wasted costs to a master, instead of making a wasted costs order.

(9) The Court may, if it thinks fit, direct or authorize the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

(L.N. 152 of 2008)

**8A. Court may make wasted costs order on its own motion or on application (O. 62, r. 8A)**

(1) The Court may make a wasted costs order against a legal representative on its own motion.

(2) A party may apply for a wasted costs order-

(a) orally in the course of a hearing; or

(b) by making an interlocutory application by summons.

(3) Where a party applies for a wasted costs order by making an interlocutory application by summons, the party shall serve the summons on-

(a) the legal representative concerned;

(b) any party represented by that legal representative; and

(c) any other person as may be directed by the Court,

not less than 2 clear days before the day specified in the summons for its hearing.

(4) An application for a wasted costs order shall not be made or dealt with until the conclusion of the proceedings to which the order relates, unless the Court is satisfied that there is reasonable cause for the application to be made or dealt with before the conclusion of the proceedings.

(5) Unless there are exceptional circumstances making it inappropriate to do so, an application for a wasted costs order shall be heard by the judge or master who conducted the proceedings to which the order relates.

(L.N. 152 of 2008)

**8B. Stages of considering whether to make a wasted costs order (O. 62, r. 8B)**

(1) The Court shall consider whether to make a wasted costs order in 2 stages-

(a) in the first stage, the Court must be satisfied that-

(i) it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and

(ii) the wasted costs proceedings are justified notwithstanding the likely costs involved; and

(b) in the second stage (even if the Court is satisfied under sub-paragraph (a)), the Court shall consider, after giving the legal representative an opportunity to give reasons why the Court should not make a wasted costs order, whether it is appropriate to make the order in accordance with rule 8.

(2) On an application for a wasted costs order, the Court may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the Court should not make a wasted costs order. In other cases the Court shall adjourn the hearing before proceeding to the second stage.

(3) On an application for a wasted costs order, any evidence in support must identify-

(a) what the legal representative is alleged to have done or failed to do; and

(b) the costs that he may be ordered to pay or which are sought against him.

(L.N. 152 of 2008)

**8C. Application for wasted costs order not to be used as means of intimidation (O. 62, r. 8C)**

(1) A party shall not by himself or by another person on his behalf threaten another party or any of that party's legal representatives with an application for a wasted costs order with a view to coercing or intimidating either of them to do or refrain from doing anything.

(2) A party shall not indicate to another party or any of that party's legal representatives that he intends to apply for a wasted costs order unless he is satisfied that he is able to-

- (a) particularize the behaviour of the legal representative from which the wasted costs concerned are alleged to result; and
- (b) identify the evidence or other materials on which he relies in support of the allegation.

(L.N. 152 of 2008)

#### **8D. Personal liability of legal representative for costs-supplementary provisions**

(O. 62, r. 8D)

(1) Where in any proceedings before a taxing master, the legal representative representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the taxing master may direct the legal representative personally to pay costs to any of the parties to those proceedings.

(2) Where any legal representative fails to file a bill of costs (with the documents required by this Order) for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the taxing master otherwise directs, the legal representative shall not be allowed the fees to which he would otherwise be entitled for drawing the bill of costs and for attending the taxation.

(3) If, on the taxation of costs to be paid out of a fund other than funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap 91), one-sixth or more of the amount of the bill for those costs is taxed off, the legal representative whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(4) In any proceedings in which the party by whom the fees prescribed by any enactment relating to court fees are payable is represented by a legal representative, if the fees or any part of the fees payable under that enactment are not paid as prescribed, the Court may, on the application of the Official Solicitor by summons, order the legal representative personally to-

- (a) pay that amount in the manner so prescribed; and
- (b) pay the costs of the Official Solicitor of the application.

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

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

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

- (a) shall specify the amount to be paid; and
- (b) may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit.

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

(L.N. 152 of 2008)

#### **8E. Stages of considering whether to make direction under rule**

**8D(1)** (O. 62, r. 8E)

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

- (a) in the first stage, the taxing master must be satisfied that-
  - (i) he has before him evidence or other material which, if unanswered, would be likely to lead to a direction under rule 8D(1) being made; and
  - (ii) the direction is justified notwithstanding the likely costs involved; and
- (b) in the second stage (even if the taxing master is satisfied under sub-paragraph (a)), the taxing master shall consider, after giving the legal representative an opportunity to give reasons why the taxing

master should not make the direction, whether it is appropriate to make the direction.

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

(3) On an application for a direction under rule 8D(1), any evidence in support must identify-

- (a) what the legal representative is alleged to have done or failed to do; and
- (b) the costs that he may be directed to pay or which are sought against him.

(L.N. 152 of 2008)

**9. Taxed costs, fractional taxed costs or costs summarily assessed for non-interlocutory applications (O. 62, r. 9)**

(L.N. 152 of 2008)

(1) Subject to this order, where by or under these rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court-

(a) are to be paid to a receiver appointed by the Court of First Instance under section 21L of the Ordinance in respect of his remuneration, disbursements or expenses; or (25 of 1998 s. 2)

(b) are to be assessed or settled by a taxing master,

but rules 28, 28A, 31 and 32 shall apply in relation to the assessment or settlement by a taxing master of costs which are to be assessed or settled as aforesaid as they apply in relation to the taxation of costs by a taxing master.

(3) Where a writ in an action is endorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs, but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled-

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

(b) to a sum of money summarily assessed in lieu of taxed costs. (L.N. 152 of 2008)

(5) This rule does not apply to costs of an interlocutory application. (L.N. 152 of 2008)

**9A. Summary assessment of costs of interlocutory application (O. 62, r. 9A)**

(1) Where the Court has determined an interlocutory application at any stage of proceedings and orders a party to pay costs in respect of the interlocutory application to any other party, it may, if it considers it appropriate to do so but subject to rule 9C-

(a) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs;

(b) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs but subject to the right of either party to have the costs taxed pursuant to paragraph (2); or

(c) order that the costs be taxed in accordance with this Order.

(2) Where the Court has made an order under paragraph (1)(b), either party to the interlocutory application is entitled to have the costs in respect of the interlocutory application taxed in accordance with this Order.

(3) Upon taxation pursuant to paragraph (2)-

(a) if the amount of the taxed costs in respect of the interlocutory application equals the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall direct that no further amount is payable in respect of the taxed costs;

(b) if the amount of the taxed costs in respect of the interlocutory application exceeds the amount paid



pursuant to an order made under paragraph (1)(b), the taxing master may-

- (i) direct the party against whom the order was made to pay the shortfall; or
  - (ii) set off the shortfall against any other costs to which the party against whom the order was made is entitled and direct payment of any balance; and
- (c) if the amount paid pursuant to an order made under paragraph (1)(b) exceeds the amount of the taxed costs in respect of the interlocutory application, the taxing master may-
- (i) direct the party in whose favour the order was made to pay the difference; or
  - (ii) set off the difference against any other costs to which the party in whose favour the order was made is entitled and direct payment of any balance.
- (4) Where-
- (a) the amount paid pursuant to an order made under paragraph (1)(b) equals or exceeds the amount of the taxed costs in respect of the interlocutory application; or
  - (b) the taxed costs in respect of the interlocutory application do not materially exceed the amount paid pursuant to an order made under paragraph (1)(b),

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

(5) In determining whether the taxed costs materially exceed the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall, in addition to any other matter that he may consider relevant, have regard to-

- (a) the amount by which the taxed costs exceed the amount paid pursuant to the order made under paragraph (1)(b); and
- (b) whether the exceeded amount is disproportionate to the costs of the taxation.

(L.N. 152 of 2008)

#### **9B. Time for complying with direction or order for summary assessment**

(O. 62, r. 9B)

(1) A party shall comply with a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) for payment of a sum of money-

- (a) within 14 days of the date of the direction or order; or
- (b) by such date as the Court may specify.

(2) Paragraph (1) does not apply if the party is an aided person.

(L.N. 152 of 2008)

#### **9C. When summary assessment not allowed**

(O. 62, r. 9C)

(1) No direction or order may be made under rule 9(4)(b) or 9A(1)(a) or (b) for the payment of a sum of money if-

- (a) the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily;
- (b) the receiving party is an aided person, and the legal representative acting for the receiving party has not waived the right to any further sum of money in respect of the costs of the interlocutory application; or
- (c) the receiving party is a person under disability as defined in Order 80, rule 1, and the legal representative (or the next friend or guardian ad litem) acting for the person under disability has not waived the right to any further sum of money in respect of the costs of the interlocutory application.

(2) In this rule-

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

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

(L.N. 152 of 2008)

#### **9D. When to tax costs**

(O. 62, r. 9D)

(1) Subject to paragraphs (2) and (4), the costs of any proceedings shall not be taxed until the conclusion of the action.

(2) If it appears to the Court when making a costs order that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the costs order is made is an aided person.

(4) Where it appears to a taxing master that there is no likelihood of any further order being made in a cause or matter, he may order the person entitled to payment of the costs of any interlocutory proceedings which have taken place to commence taxation proceedings in accordance with rule 21.

(L.N. 152 of 2008)

**10. When a party may sign judgment for costs without an order (O. 62, r. 10)**

(1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made or question raised by him therein as against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case may be, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them. (See App. A, Form 50)

(2)-(4) (Repealed L.N. 152 of 2008)

(5) In the circumstances mentioned in this rule, Order 22, rules 20 and 21 and Order 25, rule 1C(6) an order for costs shall be deemed to have been made to the effect described and, for the purposes of section 49 of the Ordinance, the order shall be deemed to have been entered up on the date on which the event which gave rise to the entitlement to costs occurred. (L.N. 403 of 1992; L.N. 152 of 2008)

**11. When order for taxation of costs not required (O. 62, r. 11)**

(1) Where an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside with costs any proceeding on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

**11A. Commencement of costs-only proceedings (O. 62, r. 11A)**

(1) Proceedings under section 52B(2) of the Ordinance may be commenced by originating summons in Form No. 10 in Appendix A.

(2) The originating summons must be accompanied by-

- (a) an affidavit exhibiting the agreement referred to in section 52B(1) of the Ordinance; and
- (b) the plaintiff's bill of costs or statement of costs.

(3) An acknowledgment of service of the originating summons must be in Form No. 15A in Appendix A.

(4) A master may make a summary assessment of or an order for taxation of the costs that are the subject matter of the proceedings commenced in accordance with paragraph (1).

(5) Orders 13A, 22 and 27 and Order 28, rules 1A, 4(3) to (5) and 7 to 9 do not apply in relation to the proceedings commenced in accordance with paragraph (1) unless otherwise directed by the Court.

(L.N. 152 of 2008)

**POWERS OF TAXING OFFICERS**

**12. Powers of taxing masters to tax costs (O. 62, r. 12)**

- (1) A taxing master shall have power to tax-
  - (a) the costs of or incidental to any proceedings in the High Court; (25 of 1998 s. 2; L.N. 152 of 2008)
  - (aa) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1); (L.N. 152 of 2008)
  - (b) the costs directed by an award made in an arbitration under any enactment or pursuant to an arbitration agreement to be paid; and (17 of 2010 s. 112)
  - (c) any other costs the taxation of which is directed by an order of the Court.

**13. Powers of certain judicial clerks  
to tax costs (O. 62, r. 13)**

(HK)(1) A Chief Judicial Clerk shall have power to transact all such business and exercise all such authority as under rule 21B of this Order may be transacted and exercised by the taxing master and to issue a certificate for any costs taxed by him.

(1A) Paragraph (1) only applies if the amount of the bill of costs does not exceed the sum of \$200000. (L.N. 152 of 2008)

(2) Paragraph (1) shall not be taken as empowering a Chief Judicial Clerk to tax any costs the taxation of which is set down for hearing under rule 21B(4) or 21C(1).

(3) In exercising the powers conferred on him by this Order, a Chief Judicial Clerk shall comply with any directions given to him by a taxing master.

(L.N. 343 of 1989; L.N. 152 of 2008)

**13A. Taxing master may give directions  
(O. 62, r. 13A)**

- (1) A taxing master may give directions-
  - (a) for the just and expeditious disposal of the taxation of a bill of costs; and
  - (b) for saving the costs of taxation.
- (2) Without limiting the generality of paragraph (1), a taxing master may give directions as to-
  - (a) the form and contents of a bill of costs;
  - (b) the filing of papers and vouchers;
  - (c) the manner in which-
    - (i) any objections to a bill of costs may be raised; and
    - (ii) any reply to those objections may be made; and
  - (d) the steps to be taken or things to be done at any stage of the taxation proceedings.

(L.N. 152 of 2008)

**14. Supplementary powers of taxing masters (O. 62, r. 14)**

A taxing master may, in the discharge of his functions with respect to the taxation of costs-

- (a) take an account of any dealing in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings;
- (e) correct any clerical mistake in any certificate or order, or any error arising therein from any accidental slip or omission.

**15. Disposal of business by one taxing  
master for another (O. 62, r. 15)**

(1) If, apart from this paragraph, a taxing master has power to tax any costs, the taxation of which has been assigned to some other taxing master, he may tax those costs and if, apart from this paragraph, he has power to issue a certificate for the taxed costs he shall issue a certificate for them.

(2) Any taxing master may assist any other taxing master in the taxation of any costs the taxation of which has been assigned to that other officer.

(3) On an application in that behalf made by a party to any cause or matter, a taxing master may, and if the circumstances require it shall, hear and dispose of any application in the cause or matter on behalf of the taxing master by whom the application would otherwise be heard.

#### **16. Extension etc., of time (O. 62, r. 16)**

(1) A taxing master may-

- (a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before that master;
- (b) extend the period provided by rule 33(2) beyond the signing of the taxing officer's certificate by setting the certificate aside;
- (c) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing master, then unless the Court otherwise directs, the taxing master may from time to time extend the period so specified on such terms (if any) as he thinks just.

(3) A taxing master may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

#### **17. Interim certificates (O. 62, r. 17)**

(1) A taxing master may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of a solicitor's bill to his own client, it appears to the taxing master that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.

(3) On the filing of a certificate issued under paragraph (2), the Court may order the amount specified therein to be paid forthwith to the client or into court.

#### **17A. Final certificate (O. 62, r. 17A)**

(1) A taxing master shall, after the conclusion of taxation proceedings before him, issue a final certificate specifying the amount of taxed costs and the amount of money payable under rule 32B.

(2) A taxing master shall not issue a final certificate unless the period within which an application for review of his decision may be made under rule 33(2) has expired.

(3) A taxing master may set aside a final certificate for good reasons and on such terms as he thinks fit.

(L.N. 152 of 2008)

#### **17B. Taxing master may set aside his own decision (O. 62, r. 17B)**

If a party entitled to be heard on taxation fails to raise any objection to a bill of costs or to appear at a hearing set down under rule 21B(4) or 21C(1), a decision of a taxing master made against that party may be set aside or varied by the taxing master for good reasons and on such terms as he thinks fit.

(L.N. 152 of 2008)

#### **18. Power of taxing master where party liable to be paid and to pay costs (O. 62, r. 18)**

Where a party entitled to be paid costs is also liable to pay costs, the taxing master may-

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the

amount he is liable to pay.

**19. Taxation of bill of costs comprised in account** (O. 62, r. 19)

(1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct a taxing master to tax those costs and the taxing master shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) A taxing master taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

**PROCEDURE ON TAXATION**

**21. Mode of commencing proceedings for taxation** (O. 62, r. 21)

(1) A party entitled to payment of the costs of any action to be taxed may commence proceedings for the taxation of those costs by filing in the Court-

- (a) a notice of commencement of taxation; and
- (b) his bill of costs.

(2) The party shall serve a copy of the notice of commencement of taxation and of the bill of costs on every other party entitled to be heard on taxation within 7 days after the notice and the bill of costs were filed in the Court.

(3) The Court may give directions as to the service of a copy of the notice of commencement of taxation and of the bill of costs on any other person who may have a financial interest in the outcome of the taxation.

(4) It is not necessary for a copy of the notice of commencement of taxation or of the bill of costs to be served on any party who has not acknowledged service in the proceedings which gave rise to the taxation, except where-

- (a) an order for the taxation of the bill of costs of a solicitor is made under section 67 of the Legal Practitioners Ordinance (Cap 159) at the instance of the solicitor; or
- (b) the Court otherwise orders.

(5) A party shall, when he files a notice of commencement of taxation, pay to the Court a prescribed taxing fee.

(6) A person who has been served with a copy of the notice of commencement of taxation and of the bill of costs pursuant to paragraph (3) shall, within 7 days of the service, give notice in writing to the taxing master and all other parties entitled to be heard on taxation, stating-

- (a) his financial interest in the outcome of the taxation; and
- (b) whether he intends to take part in the taxation proceedings.

(7) A person who fails to comply with paragraph (6) is not entitled to-

- (a) receive from the Registrar or from any other party entitled to be heard on taxation any notice, application or other document relating to the taxation; and
- (b) take part in the taxation proceedings.

(L.N. 152 of 2008)

**21A. Application for taxation to be set down** (O. 62, r. 21A)

(1) Upon compliance with the directions given by a taxing master under rule 13A relating to the steps to be taken or things to be done before the taxation is set down, the party who has commenced taxation proceedings under rule 21 may apply to the taxing master for setting down the taxation.

(2) The party shall, within 7 days after making an application under paragraph (1), serve a copy of the application on every other party entitled to be heard on taxation.

(3) A taxing master may refuse to proceed with taxation if he is of the opinion that any direction referred to in paragraph (1) has not been complied with.

(L.N. 152 of 2008)

**21B. Provisional taxation** (O. 62, r. 21B)

- (1) Unless the taxation is set down for hearing under rule 21C(1), the taxing master may-
  - (a) tax the bill of costs without a hearing; and
  - (b) make an order nisi as to-
    - (i) the amount which he allows in respect of the whole or part of the bill of costs; and
    - (ii) the costs of the taxation.

(2) Where the taxing master has taxed the bill of costs without a hearing and made an order nisi under paragraph (1), the party who has applied for setting down the taxation under rule 21A(1) shall serve a copy of the order nisi on every other party entitled to be heard on taxation.

(3) The order nisi becomes absolute 14 days after it is made unless a party entitled to be heard on taxation applies to the taxing master within the 14-day period for a hearing.

(4) The taxing master shall set down the taxation for hearing upon application made by a party under paragraph (3) and that party shall serve a notice of the hearing on every other party entitled to be heard on taxation.

(5) The taxing master may order that party to pay any costs of the hearing if the taxed costs do not materially exceed the amount allowed under paragraph (1)(b)(i).

(6) In determining whether the taxed costs materially exceed the amount allowed under paragraph (1)(b)(i), the taxing master shall, in addition to any other matter that he may consider relevant, have regard to-

- (a) the amount by which the costs taxed at the hearing exceed the amount allowed under paragraph (1)(b)(i); and
- (b) whether the exceeded amount is disproportionate to the costs of the hearing.

(L.N. 152 of 2008)

## **21C. Taxation with a hearing**

(O. 62, r. 21C)

(1) Where the taxing master is satisfied that there is a good reason to do so, he may, either of his own motion or on application by a party entitled to be heard on taxation, set down for hearing the taxation of the whole or part of the bill of costs.

(2) Upon notification by the taxing master of the date of hearing, the party who applied for setting down shall serve a notice of the hearing on every other party entitled to be heard on taxation within 7 days after the notification.

(L.N. 152 of 2008)

## **21D. Withdrawal of bill of costs**

(O. 62, r. 21D)

(1) A party who has filed a bill of costs shall pay the prescribed fee to the Court if he withdraws the bill of costs within 7 days after his application to the taxing master for setting down the taxation under rule 21A(1) is made.

(2) The Court shall deduct the fee payable under paragraph (1) from the amount paid under rule 21(5) and refund the balance to the party.

- (3) The party is not entitled to any refund of the balance of the amount paid under rule 21(5) except-
  - (a) under paragraph (2); or
  - (b) where the Court otherwise directs.

(L.N. 152 of 2008)

## **22. Delay in service of notice of commencement of taxation or in proceeding with taxation (O. 62, r. 22)**

- (1) If, within 3 months after the completion date, the person entitled to payment of costs has neither-

- (a) agreed the amount of those costs with the person liable to pay them; nor
  - (b) served upon such person a copy of a notice of commencement of taxation in accordance with rule 21(2),

the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(2) If, after the proceedings for the taxation of a bill of costs have commenced in accordance with rule 21(1), the person entitled to payment of costs has neither-

- (a) agreed the amount of those costs with the person liable to pay them; nor
- (b) proceeded with the taxation,

the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(3) The taxing master-

- (a) may order that the person entitled to payment of the costs must commence taxation proceedings in accordance with rule 21 or proceed with the taxation, within such period as may be specified in the order; and
- (b) may further order that that person shall not be entitled to commence those taxation proceedings or proceed with the taxation unless the person does commence those taxation proceedings or proceed with the taxation within the specified period or such extended period as may be allowed by the taxing master.

(4) The taxing master may make an order under paragraph (3) subject to such conditions as he thinks fit, including a condition that the person liable to pay the costs to be taxed shall pay a sum of money into court.

(5) On the taxation of a bill of costs, whether or not an order has been made under paragraph (3), the taxing master, if he is satisfied that there has been undue delay in commencing taxation proceedings or in proceeding with the taxation-

- (a) may make such order as he thinks fit as to the costs of any application or as to the costs of the taxation;
- (b) may disallow any part of the costs to be taxed pursuant to the costs order; and
- (c) may, in relation to the taxed costs or any part of those costs, disallow interest or reduce the period for which interest is payable or the rate at which interest is payable.

(6) Where a party entitled to payment of costs fails to proceed with taxation after filing the notice of commencement of taxation under rule 21(1), the taxing master in order to prevent any other parties being prejudiced by that failure, may-

- (a) allow the party so entitled a nominal or other sum for costs; or
- (b) certify the failure and the costs of the other parties.

(7) A party is not entitled to commence taxation proceedings under rule 21-

- (a) after the expiry of 2 years from the completion date; or
- (b) where the Court has extended the period specified in sub-paragraph (a), after the expiry of the period as extended,

whichever is the later.

(8) Where the completion date is before the commencement\* of this rule, paragraph (7)(a) has effect as if for the words "completion date", there were substituted the words "commencement of this rule".

(9) In this rule, "completion date" (完結日期) means-

(a) in relation to a costs order made by the Court of First Instance-

- (i) the date of the judgment or order of the Court of First Instance which disposes of the action;
- (ii) the date on which the Court of First Instance makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
- (iii) the date on which the taxing master orders under rule 9D(4) the person entitled to payment of the costs of any interlocutory proceedings in the Court of First Instance to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court of First Instance directing the taxation of them, the date on which he becomes entitled to tax those costs,

whichever is the later; and

(b) in relation to a costs order made by the Court of Appeal-

- (i) the date of the judgment or order of the Court of Appeal which disposes of the appeal;
- (ii) the date on which the Court of Appeal makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
- (iii) the date on which the taxing master orders under rule 9D(4) the person entitled to payment of the costs of any interlocutory proceedings in the Court of Appeal to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the

Court of Appeal directing the taxation of them, the date on which he becomes entitled to tax those costs,  
whichever is the later.

(L.N. 152 of 2008)

**23.** (Repealed L.N. 152 of 2008)

**24. Taxation** (O. 62, r. 24)

(1) The taxing master may proceed to taxation of a bill of costs under rule 21B(1) notwithstanding that a party entitled to be heard on taxation has failed to comply with any direction given by him relating to the steps to be taken or things to be done before the taxation proceeds under rule 21B, if the taxing master is satisfied that a copy of the notice of commencement of taxation and of the bill of costs were duly served in accordance with rule 21(2) on the party.

(2) If, at the date and time of a hearing under rule 21B(4) or 21C(2), a party entitled to be heard on taxation does not appear before the taxing master in person or by his representative, the taxing master may proceed to taxation of the bill of costs in the absence of the party or of his representative, if the taxing master is satisfied that the party has been served with a notice of the hearing in accordance with rule 21B(4) or 21C(2), or has been otherwise informed of the hearing.

(3) If the taxing master is not so satisfied, he-

- (a) must adjourn the hearing for such period as he may consider necessary to enable service of the notice of the adjourned hearing or of the bill of costs or both to be effected on the party; and
- (b) may make such order as he may consider appropriate in relation to costs thrown away by the adjournment.

(L.N. 152 of 2008)

**25.** (Repealed L.N. 152 of 2008)

**26. Power to adjourn** (O. 62, r. 26)

(1) The taxing master by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time. (L.N. 152 of 2008)

(2) If the taxation proceedings are adjourned because a party has failed to comply with any directions given under rule 13A, the taxing master may make such order as he may consider appropriate in relation to costs thrown away by the adjournment. (L.N. 152 of 2008)

**27. Powers of taxing master taxing costs payable out of fund** (O. 62, r. 27)

(1) Where any costs are to be paid out of a fund the taxing master may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund the taxing master by whom the bill is being taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say- (L.N. 126 of 1995)

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to a taxing master for taxation;
- (b) the name of the taxing master and the address of the office at which the taxation is proceeding;
- (c) the time appointed by the taxing master at which the taxation will be continued; and
- (d) such other information, if any, as the taxing master may direct.

#### BASES AND SCALES FOR TAXATION AND ASSESSMENT OF COSTS

(L.N. 152 of 2008)



**28. Costs payable to one party by another  
or out of a fund (O. 62, r. 28)**

(1) This rule applies to costs which by or under these rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis or on the indemnity basis. (L.N. 125 of 1991)

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(4A) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing master may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term "the indemnity basis" (彌償基準) in relation to the taxation of costs shall be construed accordingly. (L.N. 125 of 1991)

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if-

(a) the costs are to be paid out of a fund, or

(b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 31(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

(6) The foregoing provisions of this rule shall be without prejudice to the powers of the Court under section 44A of the District Court Ordinance (Cap 336). (L.N. 152 of 2008)

**28A. Costs of a litigant in person (O. 62, r. 28A)**

(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the taxing master thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing master would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the taxing master the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than \$200 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or rule 32(4) of this Order or the Second Schedule to this Order shall, unless otherwise specified therein, apply to the costs of a litigant in person. (L.N. 152 of 2008)

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor but includes a company or other corporation which is acting without a legal representative. (L.N. 152 of 2008)

(7) This rule applies, with the necessary modifications, to a summary assessment under rules 9(4)(b), 9A(1)(a) and (b) and 11A(4), as it applies to the taxation of the costs of a litigant in person, if the party entitled to the sum is a litigant in person. (L.N. 152 of 2008)

**29. Costs payable to a solicitor by  
his own client (O. 62, r. 29)**

(1) On the taxation of a solicitor's bill to his own client (except a bill to be paid out of funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap 91), or a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purposes of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 28(2) applies, shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3), the references to the client shall be construed-

- (a) if the client was at the material time a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) and represented by a person acting as guardian ad litem or next friend, as references to that person acting, where necessary, with the authority of the Court;
- (b) if the client was at the material time a minor and represented by a person acting as guardian ad litem or next friend, as references to that person.

### **30. Costs payable to solicitor where money recovered by or on behalf of infant, etc. (O. 62, r. 30)**

(1) This rule applies to-

- (a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) or in which money paid into court is accepted by or on behalf of such a person; and
- (b) any proceedings under the Fatal Accidents Ordinance (Cap 22), in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Ordinance or in which money paid into court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is a minor; and
- (c) any proceedings in the Court of Appeal on an application or appeal made in connection with any such proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.

(2) Unless the Court otherwise directs the costs payable to his solicitor by any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be taxed under rule 29; and no costs shall be payable to the solicitor of any plaintiff in respect of those proceedings, except such amount of costs as may be certified in accordance with this rule on the taxation under rule 29 of the solicitor's bill to that plaintiff.

(3) On the taxation under rule 29 of a solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b) who is his own client, the taxing master shall also tax any costs payable to that plaintiff in those proceedings and shall certify-

- (a) the amount allowed on the taxation under rule 29, the amount allowed on that taxation of any costs payable to the plaintiff in those proceedings and the amount (if any), by which the first-mentioned amount exceeds the other, and
- (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) or the widow of the man whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) Where in any proceedings to which this rule applies directions given by the Court under Order 80, rule 12

provide for the transfer or payment of money to or into a District Court and for the payment to the solicitor of any plaintiff in the proceedings of an amount in respect of costs out of the money so transferred or paid, the taxing master by whom those costs are taxed shall send a copy of his certificate to the registrar of the District Court.

(7) The foregoing provisions of this rule shall apply in relation to-

- (a) a counterclaim by or on behalf of a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) and a counterclaim consisting of or including a claim under the Fatal Accidents Ordinance (Cap 22) by or on behalf of the widow of the man whose death gave rise to the claim; and
- (b) a claim made by or on behalf of a person who is a minor or a mentally disordered person as aforesaid in an action by any other person for relief under section 504 of the Merchant Shipping Act, 1894 (1894 c. 60 U.K.)<sup>#</sup>, and a claim consisting of or including a claim under the Fatal Accidents Ordinance (Cap 22) made by or on behalf of that widow in such an action,

as if for references to a plaintiff there were substituted references to a defendant.

### **31. Costs payable to a trustee out of the trust funds, etc. (O. 62, r. 31)**

- (1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.
- (2) On any taxation to which this rule applies, no costs shall be disallowed except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

### **32. Scales of costs (O. 62, r. 32)**

(1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in the First Schedule of this Order, together with the notes and general provisions contained in that Schedule, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.

(2) On a taxation in relation to which rule 29 or rule 31(2) has effect and in other special cases costs may at the discretion of the taxing master be allowed-

- (a) in relation to items not mentioned in the said scale; or
- (b) of an amount higher than that prescribed by the said scale.

(3) Where the amount of a solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any rules for the time being in force under the Legal Practitioners Ordinance (Cap 159), the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the First Schedule. (L.N. 152 of 2008)

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which the Second Schedule to this Order applies in accordance with the provisions of that Schedule.

### **32A. Liability for costs of taxation** (O. 62, r. 32A)

- (1) A party entitled to payment of any costs to be taxed is also entitled to his costs of the taxation except where-
  - (a) any Ordinance, any of these rules or any relevant practice direction provides otherwise; or
  - (b) the Court makes some other order in relation to all or part of the costs of the taxation.

(2) In deciding whether to make some other order, the Court shall have regard to the underlying objectives set out in Order 1A, rule 1 and all the circumstances, including-

- (a) the conduct of all the parties in relation to the taxation;
- (b) the amount, if any, by which the bill of costs has been reduced; and
- (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

(L.N. 152 of 2008)

### **32B. Reimbursement for taxing fees**

(O. 62, r. 32B)

Upon the issue of a final certificate under rule 17A, the party liable to pay costs shall pay to the party entitled to payment of the costs an amount of money equivalent to the prescribed taxing fee calculated on the basis of the amount of costs allowed.

(L.N. 152 of 2008)

### **32C. Court's powers in relation to misconduct (O. 62, r. 32C)**

- (1) The Court may make an order under this rule where-
  - (a) a party or his legal representative, in connection with a summary assessment or taxation of costs, fails to comply with a rule, practice direction or an order of the Court; or
  - (b) it appears to the Court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the summary assessment or taxation, was unreasonable or improper.
- (2) For the purpose of paragraph (1), the conduct of a party or his legal representative does not include any conduct before the commencement of the action.
- (3) Where paragraph (1) applies, the Court may-
  - (a) by order disallow all or part of the costs being summarily assessed or taxed; or
  - (b) order the party at fault or his legal representative, to pay costs that he has caused any other party to incur.
- (4) Where-
  - (a) the Court makes an order under paragraph (3) against a legally represented party; and
  - (b) the party is not present when the order is made,

the party's solicitor shall notify his client in writing of the order not later than 7 days after the solicitor receives notice of the order and shall inform the Court in writing that he has done so.

(5) In this rule, "client" (當事人) includes a person on whose behalf the solicitor acts and any other person who has instructed the solicitor to act or who is liable to pay the solicitor's costs.

(L.N. 152 of 2008)

## **REVIEW**

### **33. Application to taxing master for review (O. 62, r. 33)**

(1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing master, or with the amount allowed by a taxing master in respect of any item- (L.N. 152 of 2008)

- (a) may apply to the taxing master to review his decision in respect of that item; and
- (b) may not apply to a judge for an order to review the decision until after its review by the taxing master. (L.N. 152 of 2008)

(2) An application under this rule for review of a taxing master's decision may be made at any time within 14 days after the conclusion of the taxation in which that decision was made or such shorter period as may be fixed by the taxing master:

Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the taxing master's final certificate dealing with that item. (L.N. 152 of 2008)

(3A) If an applicant fails to comply with paragraph (3), the taxing master may dismiss the application. (L.N. 152 of 2008)

(3) Every applicant for review under this rule must at the time of making his application deliver to the taxing master objections in writing specifying by a list the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to each other party (if any) who attended on the taxation of those items or to whom the taxing master directs that a copy of the objections shall be delivered.

(4) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the taxing master, deliver to the taxing master answers in

writing to the objections stating concisely the grounds on which he will oppose the objections, and shall at the same time deliver a copy of the answers to the party applying for review and to each other party (if any) to whom a copy of the objections has been delivered or to whom the taxing master directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the taxing master's decision in respect of any item shall not prejudice the power of the taxing master under rule 17 to issue an interim certificate in respect of items his decision as to which is not objected to.

#### **34. Review by taxing master (O. 62, r. 34)**

(HK)(1) A review under rule 33 shall be carried out by the taxing master to whom the taxation was originally assigned.

(2) On reviewing any decision in respect of any item, a taxing master may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 33 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(4) A taxing master who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it. A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the taxing master.

#### **35. Review of taxing master's certificate by a judge (O. 62, r. 35)**

(1) Any party who is dissatisfied with the decision of a taxing master to allow or to disallow any item in whole or in part on review under rule 34, or with the amount allowed in respect of any item by a taxing master on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item if, but only if, one of the parties to the proceedings before the taxing master requested that officer in accordance with rule 34(4) to state the reasons for his decision in respect of that item or part on the review. (L.N. 152 of 2008)

(2) An application under this rule for review of a taxing master's decision in respect of any item may be made at any time within 14 days after the taxing master's certificate in respect of that item is signed, or such longer time as the taxing master at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the taxing master but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the taxing master in relation to the subject-matter of the application.

(5) If the judge thinks fit to exercise in relation to an application under this rule the power of the Court to appoint assessors under section 53 of the Ordinance, the judge shall appoint not less than 2 assessors, of whom one shall be a taxing master.

(6) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the taxing master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing master for taxation.

(7) In this rule "Judge" (法官) means a judge in person.

TRANSITIONAL

(L.N. 152 of 2008)

#### **36. Transitional provision relating to Part 16 of Amendment Rules 2008 (O. 62, r. 36)**

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

(L.N. 152 of 2008)

**37. Transitional provisions relating to  
Part 23 of Amendment Rules  
2008 (O. 62, r. 37)**

(1) Where a party entitled to require any costs to be taxed has filed his bill of costs before the commencement\* of the Amendment Rules 2008, nothing in Part 23 of the Amendment Rules 2008 applies in relation to the taxation, and Order 62 as in force immediately before the commencement applies in relation to the taxation as if it had not been amended by that Part.

(2) Where-

- (a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of the Amendment Rules 2008; but
- (b) any item of work to which the costs or charges specified in the First Schedule or Part III of the Second Schedule of this Order relate was undertaken before the commencement,

then the First Schedule or Part III of the Second Schedule of this Order as in force immediately before the commencement applies in relation to that item of work as if it had not been amended by Part 23 of the Amendment Rules 2008.

(3) Where-

- (a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of the Amendment Rules 2008; but
- (b) the writ of summons was issued before the commencement,

then Part I and Part II of the Second Schedule of this Order as in force immediately before the commencement applies in relation to the writ of summons issued before the commencement as if they had not been amended by Part 23 of the Amendment Rules 2008.

(4) No costs for work undertaken before the commencement of the Amendment Rules 2008 are to be disallowed if those costs would have been allowed under this Order as in force immediately before the commencement.

(L.N. 152 of 2008)

**FIRST SCHEDULE**

[rule 32]

**PART I**

**SCALE OF COSTS**

Item	Particulars	Charges
1.	Preparation of a bundle of copies of documents, including the costs of copying and collating the documents and compiling (including indexing and pagination) the bundle, per page of whatever size (L.N. 152 of 2008).....	\$4 per page in respect of the first bundle, and \$1 per page in respect of each subsequent bundle
1A.	Copying of documents, per page of whatever size (L.N. 152 of 2008).....	\$1
2.	Attendance suitable for unqualified staff, such as for filing of documents, delivery or collection of pages and to make appointments, whether such attendance are made by qualified or unqualified persons, for each attendance (L.N. 152 of 2008)	\$110
3.	Attendance for necessary search and inquires-such fee as the Registrar thinks proper	

but not less than \$50 for each attendance. (L.N. 152 of 2008)

4. Service of any documents-such fee as the Registrar thinks proper but not less than \$50 in each case.
5. The Registrar may allow such fee as he thinks proper in respect of every other matter or thing not hereinbefore specially mentioned.

Note to item 5: This item is intended to cover-

- (a) the doing of any work not otherwise provided for and which was properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including-
  - (i) The client: taking instructions to sue, defend, counter-claim, appeal or oppose etc.; attending upon and corresponding with client;
  - (ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;
  - (iii) Expert evidence: obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging their attendance at Court, including issue of subpoena;
  - (iv) Inspections: inspecting any property or place material to the proceedings;
  - (v) Searches and Inquiries: making searches in Government Registries and elsewhere for relevant documents;
  - (vi) Special damages: obtaining details of special damages and making or obtaining any relevant calculations;
  - (vii) Other parties: attending upon and corresponding with other parties or their solicitors;
  - (viii) Discovery: perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court or by virtue of Order 24;
  - (ix) Documents: drafting, perusing, considering and collating any relevant documents (including pleadings, affidavits, cases and instructions to and advice from counsel, orders and judgments) and any law involved;
  - (x) Negotiations: work done in connection with negotiations with a view to settlement;
  - (xi) Attendances: attendances at Court (whether in Court or chambers) for the hearing of any summons or other application, on examination of any witness, on the trial or hearing of a cause or matter, on any appeal and on delivery of any judgment; attendances on counsel in conference, and any other necessary attendances;
  - (xii) Interest: where relevant the calculation of interest on damages; and
  - (xiii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court; and
- (b) the general care and conduct of the proceedings.

## PART II

### GENERAL

#### Discretionary costs

1. (1) (Repealed L.N. 152 of 2008)
- (2) In exercising his discretion under this paragraph or under rule 32(2) in relation to any item, the taxing master shall have regard to all relevant circumstances, and in particular to-
  - (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

- (b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

### **Fees to counsel**

2. (1) Except in the case of taxation under the Legal Aid Ordinance (Cap 91) and taxations of fees payable by the Crown, no fee to counsel shall be allowed unless-

- (a) before taxation its amount has been agreed by the solicitor instructing counsel; and
- (b) before the taxing master issues his certificate a receipt for the fees signed by counsel is produced to him.

(2) No retaining fee to counsel shall be allowed on any taxation of costs in relation to which rule 28(2) has effect.

(3) No costs shall be allowed in respect of counsel appearing before a master in chambers, or of more counsel than one appearing before a master in open court or a judge or the Court of Appeal, unless the master or judge or the Court of Appeal, as the case may be, has certified the attendance as being proper in the circumstances of the case. (L.N. 152 of 2008)

(4) A refresher fee, the amount of which shall be in the discretion of the taxing master, shall be allowed to counsel, either for each period of five hours (or part thereof), after the first, during which a trial or hearing is proceeding or, at the discretion of the taxing master, in respect of any day, after the first day, on which the attendance of counsel at the place of trial is necessary.

(5) The amount of fees to be allowed to counsel is in the discretion of the taxing master who shall, in exercising his discretion, have regard to all relevant circumstances and in particular to the matters set out in paragraph 1(2). (L.N. 152 of 2008)

### **Items to be authorized, certified etc.**

4. (1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless-

- (a) before the trial the Court authorized the preparation of the plan, or
- (b) notwithstanding the absence of an authorization under sub-paragraph (a) the taxing officer is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any question as to which a court expert is appointed under Order 40 (or a scientific adviser is appointed under Order 103 rule 27) shall not be allowed on a taxation of costs in relation to which rule 28(2) or (3) has effect unless the Court at the trial has certified that the calling of the witness was reasonable.

(3) If any action or claim for a declaration under section 8(1) of the Registration of Patents Ordinance (Cap 42) proceeds to trial, no costs shall be allowed to the parties delivering any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except in so far as those issues or particulars have been certified by the Court to have been proven or to have been reasonable and proper.

### **Attendances in Chambers-equity jurisdiction**

5. (1) The following provisions of this paragraph apply in relation to every hearing in chambers in the equity jurisdiction of the Court.

(3) Where on any such hearing as aforesaid the Court certifies that the speedy and satisfactory disposal of the proceedings required and received from the solicitor engaged in them exceptional skill and labour in the preparation for the hearing, the taxing master in taxing the costs to be allowed for instructions in relation to the summons or application shall take the certificate into account.



## Copies of documents

7. (1) There shall be allowed for printing copies of any document the amount properly paid to the printer; and where any part of a document is properly printed in a foreign language or as a facsimile or in any unusual or special manner, or where any alteration becomes necessary after the first proof of the document, there shall be allowed such an amount as the taxing master thinks reasonable, such amount to include any attendances on the printer.

(2) The solicitor for a party entitled to take printed copies of any documents shall be allowed the amount he pays for such number of copies as he necessarily or properly takes.

(3) The allowance for printed copies of documents under item 1 of Part I of this Schedule shall be made in addition to the allowances under the foregoing provisions of this paragraph and shall, subject to sub-paragraph (4), be made for such printed copies as may be necessary or proper-

- (a) of any pleading, for service on the opposite party;
- (b) of any special case, for filing;
- (c) of any pleading or special case, for the use of the Court;
- (d) of any affidavit, for attestation in print;
- (e) of any pleading, special case or evidence for the use of counsel in court; or
- (f) of any other document necessarily and properly copied and not otherwise provided for.

(4) The allowance under item 1 of Part I shall not be made in relation to printed copies of documents for the use of the Court or of counsel where written copies have been made before printing, and shall not be made more than once in the same cause or matter.

## SECOND SCHEDULE

[rule 32]

### PART I

#### COSTS ON JUDGMENT WITHOUT TRIAL FOR A LIQUIDATED SUM OR UNDER ORDER 13A

(L.N. 152 of 2008)

1. The scale of costs set out in Part II of this Schedule (which includes the scale prescribed pursuant to section 72 of the District Court Ordinance (Cap 336) shall apply in relation to the following cases if the writ of summons therein was issued after the commencement\* of the Amendment Rules 2008, and was indorsed with a claim for a debt or liquidated demand only, that is to say- (L.N. 152 of 2008)

- (a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;
- (b) cases in which the plaintiff obtains judgment on failure to give notice of intention to defend under Order 13, rule 1, or judgment in default of defence under Order 19, rule 2. (L.N. 152 of 2008)
- (c) (Repealed L.N. 152 of 2008)

1A. The scale of costs set out in Part II of this Schedule applies in relation to cases in which the plaintiff obtains judgment under Order 13A without a hearing. (L.N. 152 of 2008)

2. Notwithstanding anything in paragraph 1 or 1A of this Schedule or in the said scale, no costs shall be allowed in any case to which the said paragraph 1 or 1A applies unless- (L.N. 152 of 2008)

- (a) the Court orders costs to be allowed; or
- (b) in a case to which sub-paragraph (b) of paragraph 1 applies, judgment or an order for judgment, as the case may be, is obtained within 28 days after the service of the writ or within such further time as the Court may allow.

3. In every case to which the said scale applies there shall be added to the basic costs set out in the said scale the fee which would have been payable on the issue of a writ for the amount recovered.

### PART II

## SCALE OF COSTS

Item	Scale
	\$
<b>Basic Costs</b>	
To be allowed in cases under-	
sub-paragraph (a) of paragraph 1	9000 if the plaintiff is legally represented and 500 if the plaintiff is not legally represented
sub-paragraph (b) of paragraph 1	10000 if the plaintiff is legally represented and 600 if the plaintiff is not legally represented
paragraph 1A	10000 if the plaintiff is legally represented and 600 if the plaintiff is not legally represented
<b>Additional Costs</b>	
1. For each additional defendant after the first	500
2. Where substituted service is ordered and effected, for each defendant served	1000
3-7. (Repealed L.N. 152 of 2008)	(L.N. 152 of 2008)

## PART III

### MISCELLANEOUS

Item	Scale
	\$
1. Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed- (L.N. 152 of 2008)	
cost of the judgment	1000
2. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is made under Order 49 against a garnishee attaching debts owing or accruing from him to the debtor, the following costs shall be allowed-	
(a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to the applicant-	
(i) if no affidavit used	100
(ii) if affidavit used	300
(b) (Repealed L.N. 152 of 2008)	
3. (Repealed L.N. 152 of 2008)	
4. Where a writ of execution within the meaning of Order 46, rule 1 is issued against any party, there shall be allowed-	
cost of issuing execution	600
	(L.N. 152 of 2008)
	(Enacted 1988)

#### **Note:**

# Please also see following-

(a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2

- to Cap 508;  
 (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.

\* Commencement day: 2 April 2009.

Order:	62A	<b>COSTS OFFER AND PAYMENTS INTO COURT</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## I. PRELIMINARY

### 1. Interpretation and application

(O. 62A, r. 1)

(1) In this Order-

"costs offer" (訟費提議) means an offer to settle-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

### 3. Paying party's costs offer requires sanctioned payment (O. 62A, r. 3)

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

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

**4. Receiving party's costs offer requires sanctioned offer**

(O. 62A, r. 4)

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

**5. Form and content of sanctioned offer**

(O. 62A, r. 5)

(1) A sanctioned offer must be in writing.

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

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

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

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

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

(b) the Court grants leave to accept it.

**6. Service of sanctioned offer**

(O. 62A, r. 6)

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

**7. Withdrawal or diminution of sanctioned offer (O. 62A, r. 7)**

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

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

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

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

**8. Notice of sanctioned payment**

(O. 62A, r. 8)

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

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

(a) states the amount of the payment;

(b) states whether the payment relates to the whole or part of the costs, and if it relates to part of the costs, to which part it relates;

(c) if an interim payment of costs has been made, states that the paying party has taken into account the interim payment;

(d) if it is expressed not to be inclusive of interest, states-

(i) whether interest is offered; and

(ii) if so, the amount offered, the rate or rates offered and the period or periods for which it is

offered; and

- (e) if a sum of money has been paid into court as security for the costs of the action, cause or matter, states whether the sanctioned payment has taken into account that sum of money.

**9. Service of sanctioned payment**

(O. 62A, r. 9)

A paying party who makes a sanctioned payment shall-

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

**10. Withdrawal or diminution of sanctioned payment**

(O. 62A, r. 10)

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

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

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

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

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

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

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

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

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

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

**12. Clarification of sanctioned offer or sanctioned payment notice**

(O. 62A, r. 12)

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

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

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

**III. ACCEPTANCE OF SANCTIONED OFFER  
OR SANCTIONED PAYMENT**

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

(O. 62A, r. 13)

(1) Subject to rule 10(2) and paragraph (2), a receiving party may accept a sanctioned payment at any time before the relevant date without requiring the leave of the Court if he files with the Court and serves on the paying

party a written notice of acceptance not later than 14 days after the payment was made.

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

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

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

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

**14. Time for acceptance of receiving party's sanctioned offer**  
(O. 62A, r. 14)

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

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

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

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

**15. Payment out of a sum in court on acceptance of sanctioned payment**  
(O. 62A, r. 15)

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

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

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

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

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

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

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

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

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

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

(O. 62A, r. 17)

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

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

#### IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

##### **18. Consequences of acceptance of sanctioned offer or sanctioned payment (O. 62A, r. 18)**

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

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

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

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

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

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

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

(6) Where-

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

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

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

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

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

(3) The taxing master may also-

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

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

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

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

- (c) the information available to the parties at the time when the sanctioned payment was made; and
  - (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the payment to be made or evaluated.
- (6) The power of the taxing master under this rule is in addition to any other power he may have to award or disallow interest.

**20. Costs and other consequences where receiving party does better than he proposed in his sanctioned offer**  
(O. 62A, r. 20)

- (1) This rule applies where upon taxation a paying party is held liable for more than the proposals contained in a receiving party's sanctioned offer.
- (2) The taxing master may order interest on the whole or part of the amount of the costs allowed to the receiving party at a rate not exceeding 10% above judgment rate for some or all of the period after the date on which the sanctioned offer was served on the paying party.
- (3) The taxing master may also order that the receiving party is entitled to-
- (a) his costs on the indemnity basis after the date on which the sanctioned offer was served on the paying party; and
  - (b) interest on those costs at a rate not exceeding 10% above judgment rate.
- (4) Where this rule applies, the taxing master shall make the orders referred to in paragraphs (2) and (3) unless he considers it unjust to do so.
- (5) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3), the taxing master shall take into account all the circumstances of the case including-
- (a) the terms of the sanctioned offer;
  - (b) the stage in the proceedings at which the sanctioned offer was made;
  - (c) the information available to the parties at the time when the sanctioned offer was made; and
  - (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.
- (6) The power of the taxing master under this rule is in addition to any other power he may have to award interest.

## V. MISCELLANEOUS

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

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

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

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



- (a) whether interest is offered; and
  - (b) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered.
- (L.N. 152 of 2008)

Order:	63	THE REGISTRY	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## GENERAL AND ADMINISTRATIVE PROVISIONS

### **2. Practice master (O. 63, r. 2)**

Subject to the direction of the Registrar one of the masters shall be present at the Registry on every day on which the Registry is open for the purpose of superintending the business performed there and giving any directions which may be required on questions of practice and procedure.

### **3. Date of filing to be marked, etc. (O. 63, r. 3)**

(1) Any document filed in the Registry in any proceedings must be marked showing the date on which the document was filed.

(2) Particulars of the time of delivery at the Registry of any document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record shall be entered in books kept in the Registry for the purpose.

### **(HK)3A. Filing of documents in the Registry**

(O. 63, r. 3A)

(1) Subject to paragraph (2) and to Order 12, rule 1(3), any document to be filed in court in accordance with these rules or by order of the Court shall be filed by delivering such document to the Registry by hand.

(2) When any document is to be filed by a litigant in person, not being a director representing a body corporate by leave of the Court given pursuant to Order 5, rule 6(3) or Order 12, rule 1(2A), such document may be filed by sending it by post to the Registry, and the date of filing thereof shall be the date the document is received by the Registry.

(L.N. 127 of 1995)

### **4. Right to inspect, etc. certain documents filed in the Registry (O. 63, r. 4)**

(1) Any person shall, on payment of the prescribed fee, be entitled during such hours as the Registrar may direct to search for, inspect and obtain a copy of any of the following documents filed in the Registry, namely-

- (a) the copy of any writ of summons or other originating process,
- (b) any judgment or order given or made in court or the copy of any such judgment or order, and
- (c) with the leave of the Court, which may be granted on an application made ex parte, any other document.

(2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and obtaining a copy of any affidavit or other document filed in the Registry in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.

### **5. Deposit of documents (O. 63, r. 5)**

Where the Court orders any documents to be lodged in court, they must, unless otherwise directed, be deposited in the Registry.

### **8. Inspection, etc. of powers of attorney (O. 63, r. 8)**

(1) An index shall be kept in the Registry of all powers of attorney which have been deposited in the Registry prior to 1 October 1972.

(2) Any person shall, on payment of the prescribed fee, be entitled to-

(a) search the index;

(b) inspect any power of attorney and any document which has been deposited together with the power of attorney; and

(c) office copies of the power of attorney and any document relating thereto,

and a copy of such power of attorney and document may be presented at the Registry to be marked as office copies.

(3) Any person shall, on payment of the prescribed fee, be entitled to-

(a) search the register of enduring powers of attorney kept under section 9(4) of the Enduring Powers of Attorney Ordinance (Cap 501);

(b) inspect any enduring power of attorney lodged under section 9(3) of that Ordinance; and

(c) office copies of the enduring power of attorney,

and a copy of such enduring power of attorney may be presented at the Registry to be marked as an office copy. (L.N. 284 of 1997)

## **9. Restriction on removal of documents (O. 63, r. 9)**

No document filed in or in the custody of the Registry of the High Court shall be taken out of that Registry without the leave of the Court.

(25 of 1998 s. 2)

## **10. Enrolment of instruments (O. 63, r. 10)**

Any deed which by virtue of any written law is required or authorized to be enrolled in the High Court may be enrolled in the Registry.

In this rule "deed" (契據) includes assurances and other instruments.

(25 of 1998 s. 2)

(Enacted 1988)

Order:	64	<b>SITTINGS, VACATIONS AND OFFICE HOURS</b>	L.N. 92 of 2012	13/07/2012
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## **1. Sittings of the Supreme Court (O. 64, r. 1)**

(1) The sittings of the Court of Appeal and of the Court of First Instance shall be three in every year, that is to say- (25 of 1998 s. 2)

(a) the Winter sittings which shall begin on 4 January and end on the Thursday before Easter Sunday;

(b) the Spring sittings which shall begin on the second Monday after Easter Sunday and end on 31 July;

(c) the Autumn sittings which shall begin on 1 September and end on 23 December. (L.N. 404 of 1991)

## **2. Court of Appeal (O. 64, r. 2)**

(1) The Court of Appeal shall sit in vacation on such days as the Chief Justice may, from time to time direct to hear such appeals or applications as require to be immediately or promptly heard and to hear other appeals and applications if the Chief Justice determines that sittings are necessary for that purpose.

(2) Any party to an appeal may at any time apply to the Court of Appeal for an order that the appeal be heard in vacation and, if that Court is satisfied that the appeal requires to be immediately or promptly heard, it may make an order accordingly and fix a date for the hearing.

(3) The Court of Appeal may hear such other appeals in vacation as that Court may direct.

(4) The provisions of O. 59, r. 10(9) shall apply to the powers conferred on the Court of Appeal by this rule.

## **3. Court of First Instance (O. 64, r. 3)**

(1) One or more judges of the Court of First Instance shall sit in vacation on such days as the Chief Justice

may, from time to time direct, to hear such causes, matters or applications as require to be immediately or promptly heard and to hear other causes, matters or applications if the Chief Justice determines that sittings are necessary for that purpose.

(2) Any party to a cause or matter may at any time apply to the Court for an order that such cause or matter be heard in vacation and, if the Court is satisfied that the cause or matter requires to be immediately or promptly heard, it may make an order accordingly and fix a date for the hearing.

(3) Any judge of the Court of First Instance may hear such other causes or matters in vacation as the Court may direct.

(25 of 1998 s. 2)

### **3A. Business in vacation (O. 64, r. 3A)**

(HK)(1) Upon application by any party to an action or matter, the Court may, if it thinks fit-

- (a) complete such action or matter in vacation if it is parheard; and
- (b) deliver judgment in such action or matter in vacation.

### **7. High Court Offices: days on which open and office hours (O. 64, r. 7)**

(1) The offices of the High Court shall be open on every day of the year except-

- (a) Saturdays from 1 p.m.,
- (b) Sundays,
- (c)-(ca) (Repealed L.N. 92 of 2012)
- (e) general holidays under the General Holidays Ordinance (Cap 149), (35 of 1998 s. 5)
- (f) such other days as the Chief Justice may direct.

(2) The hours during which any office of the High Court shall be open to the public shall be such as the Chief Justice may from time to time direct.

(25 of 1998 s. 2)

(Enacted 1988)

Order:	65	<b>SERVICE OF DOCUMENTS</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

### **1. When personal service required (O. 65, r. 1)**

(1) Any document which by virtue of these rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these rules to dispense with the requirement for personal service.

### **2. Personal service: how effected (O. 65, r. 2)**

Personal service of a document is effected by leaving a copy of the document with the person to be served.

### **3. Personal service on body corporate (O. 65, r. 3)**

(1) Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any written law, be effected by serving it in accordance with rule 2 on the chairman or president of the body, or the clerk, secretary, treasurer or other similar officer thereof.

(2) Where a writ is served on a body corporate in accordance with Order 10, rule 1(2), that rule shall have effect as if for the reference to the usual or last known address of the defendant there were substituted a reference to

the registered or principal office of the body corporate and as if for the reference to the knowledge of the defendant there were substituted a reference to the knowledge of a person mentioned in paragraph (1).

#### **4. Substituted service (O. 65, r. 4)**

(1) If, in the case of any document which by virtue of any provision of these rules is required to be served personally or in the case of a document to which Order 10, rule 1, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

#### **5. Ordinary service: how effected (O. 65, r. 5)**

(1) Service of any document, not being a document which by virtue of any provision of these rules is required to be served personally or a document to which Order 10, rule 1, applies, may be effected-

- (a) by leaving the document at the proper address of the person to be served, or
- (b) by post, or
- (c) where the proper address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents every business day to that document exchange, or
- (d) in such other manner as the court may direct.

In these rules "document exchange" (文件轉遞處) means any document exchange, or exchanges under the control of the same operator, for the time being approved by the Chief Justice. (L.N. 223 of 1995)

(2) For the purposes of this rule, and of section 8 of the Interpretation and General Clauses Ordinance (Cap 1), in its application to this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his proper address for the purposes aforesaid shall be-

- (a) in any case, the business address of the solicitor (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected, or
- (b) in the case of an individual, his usual or last known address, or
- (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction, or
- (d) in the case of a body corporate, the registered or principal office of the body.

(2A) Any such document which is left at a document exchange in accordance with paragraph (1)(c) shall, unless the contrary is proved, be deemed to have been served on the business day following the day on which it is left.

(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate.

(4) In this rule "business day" (工作天) means a day other than a general holiday.

#### **6. Service on Secretary for Justice in proceedings which are not by or against the Crown (O. 65, r. 6)**

Where for the purpose of or in connection with any proceedings in the High Court, not being civil proceedings by or against the Crown within the meaning of Part III of the Crown Proceedings Ordinance (Cap 300), any document is required by any written law or these rules to be served on the Secretary for Justice, section 14 of the said Ordinance and Order 77, rule 4, shall apply in relation to the service of the document as they apply in relation to the service of documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown.

(L.N. 362 of 1997; 25 of 1998 s. 2)

#### **7. Effect of service after certain hours (O. 65, r. 7)**

Any document (other than a writ of summons or other originating process) service of which is effected under rule 2 or under rule 5(1)(a) between 1 p.m. on a Saturday and midnight on the following day or after four in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

#### **8. Affidavit of service (O. 65, r. 8)**

Except as provided in Order 10, rule 1(3)(b) and Order 81, rule 3(2)(b), an affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

#### **9. No service required in certain cases (O. 65, r. 9)**

Where by virtue of these rules any document is required to be served on any person but it is not required to be served personally or in accordance with Order 10, rule 1(2), and at the time when service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.

#### **10. Service of process on Sunday (O. 65, r. 10)**

(1) No process shall be served or executed within the jurisdiction on a Sunday, except, in case of urgency, with the leave of the Court.

(2) For the purposes of this rule "process" (法律程序文件) includes a writ, judgment, notice, order, petition, originating or other summons or warrant.

(Enacted 1988)

Order:	66	<b>PAPER, PRINTING, NOTICES AND COPIES</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

#### **1. Quality of paper (O. 66, r. 1)**

Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Court must be on paper of durable quality, having a margin not less than 35 mm wide, to be left blank on the left side of the face of the paper and on the right side of the reverse.

#### **2. Regulations as to printing, etc. (O. 66, r. 2)**

(1) Except where these rules otherwise provide, every document prepared by a party for use in the High Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them. (25 of 1998 s. 2)

(2) For the purposes of these rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11 point type for printing or elite type for type lithography, stencil duplicating or typewriting.

(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these rules as if it were printed, written or typewritten, as the case may be.

(5) Any notice required by these rules may not be given orally except with the leave of the Court.

### **3. Copies of documents for other party (O. 66, r. 3)**

(1) Where a document prepared by a party for use in the High Court is printed the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof, not exceeding ten, as may be specified in the request.

(2) Where a document prepared by a party for use in the High Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it.

The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

(25 of 1998 s. 2)

### **4. Requirements as to copies (O. 66, r. 4)**

(2) Before a copy of a document is supplied to a party under these rules, it must be indorsed with the name and address of the party or solicitor by whom it was supplied.

(3) The party by whom a copy is supplied under rule 3, or, if he sues or appears by a solicitor, his solicitor, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

(Enacted 1988)

Order:	67	<b>CHANGE OF SOLICITOR</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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### **1. Notice of change of solicitor (O. 67, r. 1)**

(1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are lodged and served in accordance with this rule, the former solicitor shall, subject to rules 5 and 6, be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the Court of First Instance or the Court of Appeal. (25 of 1998 s. 2)

(2) Notice of a change of solicitor must be filed, and a copy thereof lodged in the Registry.

(3) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to acknowledgment of service) and on the former solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the Registry.

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new solicitor.

### **3. Notice of appointment of solicitor (O. 67, r. 3)**

Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rule 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of a solicitor as they apply in relation to a notice of change of solicitor.

### **4. Notice of intention to act in person (O. 67, r. 4)**

Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor except that the notice of intention to act in person must contain an address for service of the party giving it.

### **5. Removal of solicitor from record at instance of another party (O. 67, r. 5)**

(1) Where-

- (a) a solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of solicitors or has been suspended from practising or has for any other reason ceased to practise, and
- (b) the party has not given notice of change of solicitor or notice of intention to act in person in accordance with the foregoing provisions of this Order,

any other party to the cause or matter may apply to the Court, or if an appeal to the Court of Appeal is pending in the cause or matter, to the Court of Appeal, for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly.

(2) An application for an order under this rule must be made by summons and the summons must, unless the Court or Court of Appeal, as the case may be, otherwise directs, be served on the party to whose solicitor the application relates. (L.N. 152 of 2008)

The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this rule the party on whose application it was made must-

- (a) serve on every other party to the cause or matter (not being a party in default as to acknowledgment of service) a copy of the order, and
- (b) procure the order to be entered in the Registry, and
- (c) leave at the Registry a copy of the order and a certificate signed by him or his solicitor that the order has been duly served as aforesaid.

(4) An order made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

#### **6. Withdrawal of solicitor who has ceased to act for party (O. 67, r. 6)**

(1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 4, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or Court of Appeal, as the case may be, may make an order accordingly, but, unless and until the solicitor-

- (a) serves on every party to the cause or matter (not being a party in default as to acknowledgment of service) a copy of the order, and
- (b) procures the order to be entered in the Registry, and
- (c) leaves at the Registry a copy of the order and a certificate signed by him that the order has been duly served as aforesaid,

he shall, subject to the foregoing provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter whether in the Court of First Instance or Court of Appeal. (25 of 1998 s. 2)

(2) An application for an order under this rule must be made by summons which must, unless the Court or the Court of Appeal, as the case may be, otherwise directs, be served on the party for whom the solicitor acted. The application must be supported by an affidavit stating the grounds of the application. (L.N. 363 of 1990)

(3) An order made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the certificate of an assisted person within the meaning of the Legal Aid Ordinance (Cap 91) is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the cause or matter as soon as his retainer is determined under that Ordinance; and if the assisted person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, the provisions of rule 3 shall apply as if that party had previously sued or defended in person.

#### **(HK)6A. Leave required to inspect affidavits (O. 67, r. 6A)**

(HK) Notwithstanding the provisions of Order 63, rule 4(2), the leave of the Court or the Court of Appeal, as the case may be, is required before inspection can be made, or any copy obtained, of any affidavit made or filed pursuant

to rule 6(2).

(L.N. 167 of 1994)

**7. Address for service of party whose solicitor is removed, etc. (O. 67, r. 7)**

Where-

- (a) an order is made under rule 5, or
- (b) an order is made under rule 6, and the applicant for that order has complied with rule 6(1), or
- (c) the certificate of an assisted person within the meaning of the Legal Aid Ordinance (Cap 91) is revoked or discharged,

then, unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another solicitor and complies with rule 3 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 4, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

**9. Order to apply to matrimonial causes and matters (O. 67, r. 9)**

This Order shall have effect in relation to matrimonial causes and matters and, in its application to such a cause or matter, any reference in rules 4 and 7 to an address for service shall be construed as a reference to the address for service required by the rules in force by virtue of the provisions of section 10 or made under section 54 of the Matrimonial Causes Ordinance (Cap 179).

(Enacted 1988)

Order:	68	OFFICIAL SHORTHAND NOTE	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Official shorthand note of all evidence, etc. (O. 68, r. 1)**

(1) In every action or other proceeding in the Court of First Instance which is tried or heard with witnesses, an official shorthand note shall, unless the judge otherwise directs, be taken of any evidence given orally in court and of any summing up by the judge and of any judgment delivered by him, and, if any party so requires the note so taken shall be transcribed and such number of transcripts as any party may demand shall be supplied to him at the charges authorized by any scheme in force providing for the taking of official shorthand notes of proceedings in the Court of First Instance. (25 of 1998 s. 2)

(2) Nothing in this rule shall be construed as prohibiting the supply of transcripts to persons not parties to the proceedings.

(3) The powers of the Court of Appeal under this Order may be exercised by a single judge of that Court or by the registrar of civil appeals.

**2. Evidence when not to be transcribed (O. 68, r. 2)**

(1) If the judge intimates that in the event of an appeal his note will be sufficient, the shorthand note of the evidence need not be transcribed for the purposes of an appeal.

(2) If the parties agree or the judge is of opinion that the evidence or some part of the evidence of any witness would, in the event of an appeal, be of no assistance to the Court of Appeal, the shorthand note of such evidence need not be transcribed for the purposes of an appeal.

(3) If any party requires a transcript of any such evidence as aforesaid the charge therefor shall be borne by that party in any event.



**3. Payment for transcripts out of public funds:  
excepted proceedings (O. 68, r. 3)**

Rules 4 and 5 shall not apply in relation to a transcript of a note taken in proceedings in connection with which legal aid might have been given under the Legal Aid Ordinance (Cap 91) whether or not such aid was given thereunder to any party to the proceedings.

**4. Payment for transcripts for the Court  
of Appeal (O. 68, r. 4)**

(1) An appellant shall not be required to pay for the transcript to which a certificate given under this rule relates but, except as aforesaid, any transcript required for the Court of Appeal shall be paid for by the appellant in the first instance.

(2) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that an appellant in that proceeding is in such poor financial circumstances that the cost of a transcript would be an excessive burden on him, and, in the case of a transcript of evidence, that there is reasonable ground for the appeal, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the said cost should be borne by public funds.

(3) An application for a certificate under this rule must be made in the first instance to the judge; if the application is refused, the application (if any) to the Court of Appeal must be made within 7 days after the refusal.

(4) Where an application is made to the Court of Appeal for a certificate under this rule, then, if the Court of Appeal is of opinion that for the purpose of determining the application it is necessary for that Court to see a transcript of the summing up and judgment, with or without a transcript of the evidence, the Court of Appeal may certify that both transcripts or, as the case may be, only a transcript of the summing up and judgment may properly be supplied for the use of that Court at the expense of public funds.

(5) No transcript supplied for the use of the Court of Appeal under a certificate given under paragraph (4) shall be handed to the appellant except by direction of the Court of Appeal.

(6) Where the judge or the Court of Appeal certifies under paragraph (2) that there is reasonable ground for the appeal, the appellant may be supplied with as many free copies of the transcript referred to in the certificate as will, together with any free copies already supplied under a certificate given under paragraph (4), make up a total of one for his own use and three for the use of the Court of Appeal.

(7) References in this rule to an appellant include references to an intending appellant.

**5. Payment for transcript for poor respondent  
(O. 68, r. 5)**

(1) Where the judge by whom any such proceeding as is referred to in rule 1 was tried or heard or the Court of Appeal is satisfied that the respondent to an appeal in that proceeding is in such poor financial circumstances that the cost of obtaining a transcript, or a specified part thereof, for the purpose of resisting the appeal would be an excessive burden on him, the judge or the Court of Appeal, as the case may be, may certify that the case is one in which it is proper that the cost of the transcript or that part thereof, as the case may be, should be borne by public funds, and where such a certificate is given the respondent shall not be required to pay the said cost.

(2) Rule 4(3) shall apply in relation to an application for a certificate under this rule as it applies in relation to an application for a certificate under that rule.

**8. Mechanical recording (O. 68, r. 8)**

In this Order any reference to a shorthand note of any proceedings shall be construed as including a reference to a record of the proceedings made by mechanical means.

**8A. Definition (O. 68, r. 8A)**

In this Order "transcript" (謄本) includes the transcript of the official shorthand note and any official typescript of the Judge's manuscript note.

(Enacted 1988)

Order:	69	<b>SERVICE OF PROCESS FROM A COUNTRY OR PLACE OUTSIDE HONG KONG</b>	L.N. 89 of 1999	30/03/1999
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PROVISIONS AS TO PROCEEDINGS OF A COUNTRY  
OR PLACE OUTSIDE HONG KONG

(L.N. 39 of 1999)

SERVICE OF PROCESS FROM A COUNTRY OR PLACE OUTSIDE HONG KONG

(L.N. 39 of 1999)

**1. Definitions (O. 69, r. 1)**

In this Order-

"a convention country" (協約國) means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the Court of First Instance, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at The Hague on 15 November 1965; (25 of 1998 s. 2)

"process" (法律程序文件) includes a citation;

"process server" (法律程序文件送達人) means the process server appointed under rule 4 or his authorized agent;

"taxing master" (訟費評定官) means a taxing master of the High Court. (25 of 1998 s. 2)

**2. Applications (O. 69, r. 2)**

This Order applies to the service on a person in Hong Kong of any process in connection with civil or commercial proceedings in a court or tribunal of a country or place outside Hong Kong where the Registrar receives a written request for service-

- (a) from the Chief Secretary for Administration with a recommendation by him that service should be effected; (L.N. 362 of 1997)
- (b) where the court or tribunal is in a convention country, from a consular or other authority of that country; or
- (c) where the court or tribunal is in the Mainland of China, from the judicial authorities of the Mainland of China. (L.N. 39 of 1999)

(L.N. 39 of 1999)

**3. Service of process (O. 69, r. 3)**

(1) If the request is in a language other than either or both of Hong Kong's official languages, it shall be accompanied by a translation of the request in either of Hong Kong's official languages, 2 copies of the process and, unless the court or tribunal of a country or place outside Hong Kong certifies that the person to be served understands the language of the process, 2 copies of the translation of the process. (L.N. 39 of 1999)

(2) Subject to paragraphs (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the process server's leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.

(3) The provisions of Order 10, rule 1(2)(b) regarding service by insertion through a letter-box shall apply to the service of process from a country or place outside Hong Kong as they apply to the service of writs, except that service may be proved by an affidavit or by a certificate or report in such form as the Registrar may direct. (L.N. 39 of 1999)

(4) The process server shall send to the Registrar a copy of the process and an affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and shall, if the Court so directs, specify the costs incurred in effecting or attempting to effect service.

(5) Order 65, rule 4 (substituted service) shall apply to the service of process from a country or place outside

Hong Kong as it applies to the service of writs, except that the Registrar may make an order for substituted service of process from a country or place outside Hong Kong on the basis of the process server's affidavit, certificate or report, without an application being made to him in that behalf. (L.N. 39 of 1999)

(6) The Registrar shall send a certificate, together with a copy of the process, to the consular or other authority, the judicial authorities of the Mainland of China or the Chief Secretary for Administration, as the case may be, stating- (L.N. 362 of 1997; L.N. 39 of 1999)

- (a) when and how service was effected or the reason why service could not be effected, as the case may be;
- (b) where appropriate, the amount certified by the taxing master to be the costs of effecting or attempting to effect service.

(7) The certificate under paragraph (6) shall be sealed with the seal of the High Court for use out of the jurisdiction. (25 of 1998 s. 2)

#### **4. Appointment of process server (O. 69, r. 4)**

The process server for the purposes of this Order shall be the Chief Bailiff.

(Enacted 1988)

Order:	70	<b>OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.</b>	L.N. 322 of 1998	25/09/1998
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#### **1. Interpretation and exercise of jurisdiction (O. 70, r. 1)**

(1) In this Order "the Ordinance" (條例) means the Evidence Ordinance (Cap 8) and expressions used in this Order which are used in the Ordinance shall have the same meaning as in the Ordinance.

(2) The power of the Court of First Instance to make an order under section 76 or section 76 as extended by section 77B of the Ordinance may be exercised by the Registrar. (L.N. 403 of 1992; 25 of 1998 s. 2)

#### **2. Application for order (O. 70, r. 2)**

(1) Subject to rule 3 an application for an order under the Ordinance must be made ex parte and must be supported by affidavit.

(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

#### **\*3. Application by Law Officer (International Law) in certain cases (O. 70 r. 3)**

Where a request-

- (a) is received by the Chief Secretary for Administration and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Hong Kong of any party to the matter pending or contemplated before the foreign court or tribunal; or
- (b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Hong Kong for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Registrar shall send the document to the Law Officer (International Law) and the Law Officer (International Law) may make an application for an order under the Ordinance, and take such other steps as may be necessary, to give effect to the request.

(L.N. 362 of 1997; L.N. 322 of 1998)

#### **4. Person to take and manner of taking examination (O. 70, r. 4)**

(1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.

(2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by Order 39, rules 5 to 10 and 11(1) to (3), and an order may be made under Order 39, rule 14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

(3) Any order made in pursuance of this Order for the examination of a witness shall permit the cross-examination of the witness by a person who-

- (a) has the examiner's approval to do so; and
- (b) is affected by the examination or his legal representative. (87 of 1997 s. 36)

## **5. Dealing with deposition (O. 70, r. 5)**

Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Registrar, and the Registrar shall-

- (a) give a certificate sealed with the Seal of the Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Chief Secretary for Administration, or, where the request was sent to the Registrar by some other person in accordance with a Civil Procedure Convention, to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination. (L.N. 362 of 1997)

## **6. Claim to privilege (O. 70, r. 6)**

(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 77(1)(b) of the Ordinance is not supported or conceded as mentioned in subsection (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the Court may do so, on the ex parte application of the person who obtained the order under section 76.

(3) If such evidence is taken-

- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner shall send to the Registrar with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the Registrar shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) if the claim is rejected by the foreign court or tribunal, the Registrar shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 76 of the court or tribunal's determination.

(Enacted 1988)

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### **Note:**

**\* Please see the transitional provision in rule 2 of L.N. 322 of 1998.**

Order:	71	<b>RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS*</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **2. Application for registration (O. 71, r. 2)**

(1) An application under section 4 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319), (in this Order referred to as "the Ordinance") in respect of a judgment to which the Ordinance applies to have the judgment registered in the Court may be made ex parte, but the Court may direct a summons to be issued. (See App. A, Form 63)

(2) If the Court directs a summons to be issued, the summons shall be an originating summons.

(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.

### **3. Evidence in support of application (O. 71, r. 3)**

(1) An application for registration must be supported by an affidavit-

(a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;

(b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;

(c) stating to the best of the information or belief of the deponent-

(i) that the judgment creditor is entitled to enforce the judgment;

(ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;

(iv) that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 6 of the Ordinance;

(d) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration.

(2) Where a judgment sought to be registered is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit must state the provisions in respect of which it is sought to register the judgment.

(3) The affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order in Council extending the Ordinance to that country.

### **4. Security for costs (O. 71, r. 4)**

Save as otherwise provided by any relevant Order in Council, the Court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

### **5. Order for registration (O. 71, r. 5)**

(1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) Except where the order is made on summons, no such order need be served on the judgment debtor.

(3) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

### **6. Register of judgments (O. 71, r. 6)**

(1) There shall be kept in the Registry under the direction of the Registrar a register of the judgments ordered to be registered under the Ordinance.

(2) There shall be included in each such register particulars of any execution issued on a judgment ordered to

be so registered.

#### **7. Notice of registration (O. 71, r. 7)**

(1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to notice of a writ.

(3) The notice of registration must state-

- (a) full particulars of the judgment registered and the order for registration,
- (b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served,
- (c) the right of the judgment debtor to apply to have the registration set aside, and
- (d) the period within which an application to set aside the registration may be made.

#### **9. Application to set aside registration (O. 71, r. 9)**

(1) An application to set aside the registration of a judgment must be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(HK)(3) The Court may, either of its own motion or on an application made by the judgment creditor, and if, having regard to all the circumstances of the case it thinks it just to do so, impose such terms, as to giving security or otherwise, as a condition of the further conduct of an application under this rule, as it thinks fit. (L.N. 127 of 1995)

#### **10. Issue of execution (O. 71, r. 10)**

(1) Execution shall not issue on a judgment registered under the Ordinance until after the expiration of the period which, in accordance with rule 5(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the Court, until after the expiration of that period as so extended.

(2) If an application is made to set aside the registration of a judgment, execution on the judgment shall not issue until after such application is finally determined.

(3) Any party wishing to issue execution on a judgment registered under the Ordinance must produce to the Registrar an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

#### **11. Determination of certain questions (O. 71, r. 11)**

If, in any case under the Ordinance, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order in Council extending the Ordinance to that country.

#### **12. Rules to have effect subject to Orders in Council (O. 71, r. 12)**

The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Ordinance, have effect subject to any such provisions contained in the Order in Council extending the Ordinance to the country of the original court as are declared by the Order to be necessary for giving effect to the agreement made between Hong Kong and that country in relation to matters with respect to which there is power to make those rules.

#### **13. Certified copy of judgment (O. 71, r. 13)**

(1) An application under section 12 of the Ordinance for a certified copy of a judgment entered in the Court of

First Instance must be made ex parte to the Registrar on affidavit.

- (3) An affidavit by which an application under section 12 of the Ordinance is made must-
  - (a) give particulars of the proceedings in which the judgment was obtained;
  - (b) (Repealed L.N. 103 of 1994)
  - (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
  - (d) show that the judgment is not subject to any stay of execution;
  - (e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and
  - (f) state the rate at which the judgment carries interest.
- (4) The certified copy of the judgment shall be an office copy sealed with the Seal of the High Court and indorsed with a certificate signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the Court of First Instance of Hong Kong and that it is issued in accordance with section 12 of the Ordinance.
- (5) There shall also be issued a certificate (signed by the Registrar and sealed with the Seal of the High Court) having annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun, and stating-
  - (a) the manner in which the writ or such summons or other process was served on the defendant or that the defendant acknowledged service thereof,
  - (b) what objections, if any, were made to the jurisdiction,
  - (c) what pleadings, if any, were served,
  - (d) the grounds on which the judgment was based,
  - (e) that the time for appealing has expired or, as the case may be, the date on which it will expire,
  - (f) whether notice of appeal against the judgment has been entered, and
  - (g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment,and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

(25 of 1998 s. 2)

ENFORCEMENT OF RECOMMENDATIONS ETC. UNDER THE MERCHANT  
SHIPPING (LINER CONFERENCES) ORDINANCE (CAP 482)

(L.N. 152 of 2008)

**41. Application for registration (O. 71, r. 41)**

An application under section 10 of the Merchant Shipping (Liner Conferences) Ordinance (Cap 482)(in this Order referred to as "the Liner Conferences Ordinance") for the registration of a recommendation, determination or award shall be made by originating summons, which shall be in Form No. 10 in Appendix A.

(L.N. 152 of 2008)

**42. Evidence in support of application (O. 71, r. 42)**

- (1) An application under section 10 of the Liner Conferences Ordinance for the registration of a recommendation must be supported by an affidavit- (L.N. 152 of 2008)
  - (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation and the reasons therefor and of the record of settlement;
  - (b) where the recommendation and reasons or the record of settlement or the acceptance of the recommendation is not in the English language, a translation thereof into English certified by a notary public or authenticated by affidavit;
  - (c) exhibiting copies of the acceptance of the recommendation by the parties upon whom it is binding, where the acceptance was in writing, or otherwise verifying the acceptance;
  - (d) giving particulars of the failure to implement the recommendations; and
  - (e) verifying that none of the grounds which would render the recommendation unenforceable under section 10(2) of the Liner Conferences Ordinance is applicable. (L.N. 152 of 2008)
- (2) An application under section 10 of the Liner Conferences Ordinance for the registration of a determination or award as to costs must be supported by an affidavit- (L.N. 152 of 2008)
  - (a) exhibiting a verified or certified or otherwise duly authenticated copy of the recommendation or other

- document containing the pronouncement on costs; and  
(b) stating that such costs have not been paid.

#### **43. Order for registration (O. 71, r. 43)**

- (1) An order giving leave to register a recommendation, determination or award under section 10 of the Liner Conferences Ordinance must be drawn up by or on behalf of the party making the application for registration. (L.N. 152 of 2008)  
(2) Such an order shall contain a provision that the reasonable costs of registration be taxed.

#### **44. Register of recommendations etc. (O. 71, r. 44)**

- (1) There shall be kept in the Registry under the direction of the Registrar a register of the recommendations, determinations and awards ordered to be registered under section 10 of the Liner Conferences Ordinance. (L.N. 152 of 2008)  
(2) There shall be included in such register particulars of the enforcement of a recommendation, determination or award so registered.

(Enacted 1988)

#### **Note:**

\*(Amended 9 of 2008 s. 27)

Order:	71A	<b>RECIPROCAL ENFORCEMENT OF MAINLAND JUDGMENTS</b>	L.N. 195 of 2008	01/08/2008
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#### **1. Interpretation (O. 71A, r. 1)**

In this Order—

- “choice of Mainland court agreement” (選用內地法院協議), “judgment creditor” (判定債權人), “judgment debtor” (判定債務人), “Mainland” (內地), “Mainland judgment” (內地判決), “original court” (原審法院) and “registered judgment” (已登記判決) have the meanings assigned to them by section 2 of the Ordinance;  
“the Ordinance” (《條例》) means the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597).

#### **2. Application for registration (O. 71A, r. 2)**

- (1) An application under section 5(1) of the Ordinance to have a Mainland judgment registered in the Court may be made ex parte, but the Court may direct a summons to be issued.  
(2) If the Court directs a summons to be issued, the summons shall be an originating summons.  
(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.

#### **3. Evidence in support of application for registration of Mainland judgments (O. 71A, r. 3)**

- (1) An application for registration of a Mainland judgment shall be supported by an affidavit—  
(a) exhibiting—  
(i) a copy of the Mainland judgment duly sealed by the original court;  
(ii) the original or a verified or certified or otherwise duly authenticated copy of the relevant choice of Mainland court agreement;  
(iii) a certificate issued by the original court certifying that the judgment is final and enforceable in the Mainland; and  
(iv) where the judgment creditor is a body of persons, the documents specified for the purposes of this sub-subparagraph in paragraph (2);



- (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
  - (c) stating to the best of the information or belief of the deponent—
    - (i) that at the date of the application, the judgment is enforceable in the Mainland;
    - (ii) that the judgment creditor is entitled to enforce the judgment;
    - (iii) whether any action has been taken to enforce the judgment in the Mainland and, if so, the details of such enforcement;
    - (iv) as the case may require, either that at the date of the application the judgment has not been satisfied or the amount in respect of which it remains unsatisfied at that date; and
    - (v) if the judgment were registered, the registration would not be, or be liable to be, set aside under section 18 or 19 of the Ordinance;
  - (d) specifying the amount of the interest, if any, which by the law of the Mainland has become due under the judgment up to the time of registration together with the costs duly certified by the original court for the judgment.
- (2) The documents specified for the purposes of paragraph (1)(a)(iv) are—
- (a) if the judgment creditor is a body of persons incorporated, formed or established under the law of Hong Kong, a verified or certified or otherwise duly authenticated copy of its certificate of incorporation or similar documents;
  - (b) if the judgment creditor is a body of persons incorporated, formed or established under the law of any place other than Hong Kong, a verified or certified or otherwise duly authenticated copy of documents stating that its incorporation, formation or establishment was in accordance with the law of the place where it was so incorporated, formed or established.
- (3) Where a Mainland judgment sought to be registered is in respect of different matters, and that some, but not all, of the provisions of the judgment would, if contained in separate Mainland judgments that are the subjects of applications for registration under section 5(1) of the Ordinance, satisfy the requirements specified in section 5(2)(a) to (e) of the Ordinance, the affidavit shall state the provisions in respect of which it is sought to register the judgment.
- (4) The affidavit shall be accompanied by any evidence relevant to the enforceability of the Mainland judgment, and of the law of the Mainland under which any interest has become due under the judgment.

#### **4. Security for costs (O. 71A, r. 4)**

The Court may order the judgment creditor to give security for the costs of the application for registration of a Mainland judgment and of any proceedings which may be brought to set aside the registration.

#### **5. Order for registration (O. 71A, r. 5)**

- (1) An order for registration of a Mainland judgment shall be drawn up by or on behalf of the judgment creditor, and the order so drawn up shall—
- (a) state the period within which an application may be made to set aside the registration; and
  - (b) contain a notification that execution on the judgment will not be issued until after the expiration of that period.
- (2) Except where the order is made on summons, the order so drawn up is not required to be served on the judgment debtor.

#### **6. Register of Mainland judgments (O. 71A, r. 6)**

- (1) The Registrar shall keep in the Registry a register of the Mainland judgments ordered to be registered under the Ordinance.
- (2) There shall be included in such register particulars of any execution issued on a Mainland judgment.

#### **7. Notice of registration (O. 71A, r. 7)**

- (1) The judgment creditor shall serve a notice of registration of a Mainland judgment on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in

such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5A and 8A, shall apply in relation to such a notice as they apply in relation to a writ.

(3) The notice of registration shall set out—

- (a) full particulars of the registered judgment and the order for registration;
- (b) the name and address of the judgment creditor or of his solicitor or agent on whom, and at which, any summons issued by the judgment debtor may be served;
- (c) the right of the judgment debtor to apply to have the registration set aside; and
- (d) the period within which an application to set aside the registration may be made.

## **8. Application to set aside registration**

(O. 71A, r. 8)

(1) An application to set aside the registration of a registered judgment shall be made by summons supported by affidavit.

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) The Court may, either of its own motion or on an application made by the judgment creditor, and if having regard to all the circumstances of the case it thinks it just to do so, impose such terms (whether as to giving security or otherwise) as it thinks fit as a condition of the further conduct of an application under this rule.

## **9. Issue of execution (O. 71A, r. 9)**

Any party wishing to issue execution on a registered judgment shall produce to the Registrar an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

## **10. Application for registration of part of**

**Mainland judgments (O. 71A, r. 10)**

In the case of an application for registration of any part of a Mainland judgment under section 5(1) of the Ordinance—

- (a) rule 2 applies to such an application;
- (b) unless the context otherwise requires, a reference to a Mainland judgment (however described) in this Order shall be construed as a reference to that part of the Mainland judgment; and
- (c) the other provisions of this Order shall, subject to all necessary modifications, be construed and have application accordingly.

## **11. Evidence in support of application for registration of part of Mainland judgments (O. 71A, r. 11)**

(1) Subject to paragraph (2), in the case of an application for registration of any part of a Mainland judgment under section 5(1) of the Ordinance, in addition to the information specified in rule 3(1), the affidavit submitted in support of the application shall also state to the best of the information or belief of the deponent that the sum of money ordered to be paid under that part of the judgment is due.

(2) Where—

- (a) the Court has under section 5(2) of the Ordinance ordered a part of a Mainland judgment to be registered; and
- (b) the registration has not been set aside under section 18 or 19 of the Ordinance,

then notwithstanding rule 3, any application subsequently made for registration of any other part of the judgment under section 5(1) of the Ordinance shall be supported by an affidavit specified for the purposes of this paragraph in paragraph (3).

(3) An affidavit specified for the purposes of paragraph (2) shall—

- (a) cite the Mainland judgment;

- (b) state to the best of the information or belief of the deponent—
  - (i) that the sum of money ordered to be paid under the part of the judgment sought to be registered under the application is due; and
  - (ii) any other information relevant to the application; and
- (c) exhibit a copy of the last order made by the Court under section 5(2) of the Ordinance for registration of any other part of the judgment.

(9 of 2008 s. 27)

Order:	71B	<b>CERTIFIED COPIES OF JUDGMENTS GIVEN BY COURT OF FINAL APPEAL AND HIGH COURT</b>	L.N. 195 of 2008	01/08/2008
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## 1. Interpretation (O. 71B, r. 1)

In this Order—

“choice of Hong Kong court agreement” (選用香港法院協議) has the meaning assigned to it by section 2 of the Ordinance;

“judgment” (判決) includes any judgment, order and allocatur in civil or commercial matters;

“Mainland” (內地) has the meaning assigned to it by section 2 of the Ordinance;

“the Ordinance” (《條例》) means the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597).

## 2. Certified copies of judgments (O. 71B, r. 2)

(1) An application under section 21 of the Ordinance for a certified copy of a judgment given by the Court of Final Appeal or the High Court shall be made ex parte to the Registrar on affidavit.

(2) The affidavit shall—

- (a) exhibit the original or a verified or certified or otherwise duly authenticated copy of the relevant choice of Hong Kong court agreement;
- (b) give particulars of the proceedings in which the judgment was obtained;
- (c) state the amount in respect of which the judgment remains unsatisfied at the date of the application;
- (d) state whether the defendant did or did not object to the jurisdiction and, if he objected, on what grounds;
- (e) state whether any action has been taken to enforce the judgment in Hong Kong and, if so, the details of such enforcement;
- (f) show that the judgment is not subject to any stay of execution;
- (g) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether any notice of appeal against the judgment has been entered; and
- (h) state the rate at which the judgment carries interest.

(3) The certified copy of the judgment shall be an office copy sealed with the seal of the High Court and indorsed with a certificate signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the Court of Final Appeal or the High Court, as the case may be, and that it is issued in accordance with section 21 of the Ordinance.

(4) The certificate issued by the High Court under section 21(3) of the Ordinance shall have annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun and a copy of the reasoned judgment (if any), and state—

- (a) what pleadings, if any, were served;
- (b) the manner in which the writ or such summons or other process was served on the defendant or that the defendant acknowledged service of the writ or summons or process;
- (c) the amount in respect of which the judgment remains unsatisfied at the date of the application as stated by the deponent in the affidavit by which the application is made;
- (d) what objections, if any, were made to the jurisdiction;
- (e) the date from which the judgment takes effect;
- (f) whether any action has been taken to enforce the judgment in Hong Kong and, if so, the details of such enforcement;

- (g) that the time for appealing has expired or, as the case may be, the date on which it will expire;
  - (h) whether any notice of appeal against the judgment has been entered;
  - (i) the rate at which the judgment carries interest; and
  - (j) such other particulars as it may be necessary to give to the court in the Mainland in which it is sought to obtain execution of the judgment.
- (5) The certificate shall be signed by the Registrar and sealed with the seal of the High Court.

(9 of 2008 s. 27)

Order:	72	<b>(HK) PARTICULAR PROCEEDINGS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS

### 1. Application and interpretation (O. 72, r. 1)

(1) This Order applies to particular proceedings, and the other provisions of these rules apply to those actions subject to the provisions of this Order.

(2) In this Order "particular proceedings" (特定法律程序) means a type of proceedings for which provision has been made by the Chief Justice for separate listing.

### 2. The Various Lists (O. 72, r. 2)

(1) There may be lists, in which actions and other proceedings may be entered in accordance with the provisions of this Order, and a judge shall be in charge of each list. (L.N. 307 of 1998)

(2) In this Order references to the judge shall be construed as references to the judge for the time being in charge of a particular list.

(3) The judge shall have control of the proceedings in his particular list and, subject to the provisions of this Order and to any directions of the judge, the powers of a judge in chambers (including those exercisable by the Registrar) shall, in relation to any proceedings in such an action (including any appeal from any judgment, order or decision of the Registrar, given or made prior to the transfer of the action or proceedings to the relevant list) be exercisable by the judge.

(4) Paragraph (3) shall not be construed as preventing the powers of the judge being exercised by some other judge.

### 4. Entry of action in particular list when action begun (O. 72, r. 4)

(1) Before a writ or originating summons by which particular proceedings are to be begun is issued out of the Registry, it may be marked in the top left hand corner with words identifying the relevant list, and on the issue of a writ or summons so marked the action begun thereby shall be entered in that list.

(2) If the plaintiff intends to issue the writ or originating summons by which particular proceedings are to be begun out of the Registry and to mark it in accordance with paragraph (1), and the writ or the originating summons, as the case may be, is to be served out of the jurisdiction, an application for leave to issue the writ or summons and to serve the writ or the summons out of the jurisdiction may be made to the judge.

(3) The affidavit in support of an application made to the judge by virtue of paragraph (2) must, in addition to the matters required by Order 11, rule 4(1), to be stated, state that the plaintiff intends to mark the writ or originating summons in accordance with paragraph (1) of this rule.

(4) If the judge hearing an application made to him by virtue of paragraph (2) is of opinion that the action in question should not be entered in the list in question, he may adjourn the application to be heard by the Registrar.

### 5. Transfer of action to particular list after action begun (O. 72, r. 5)

(1) At any stage of the proceedings in any action any party thereto may apply by summons to the judge to transfer the action to a particular list.

(3) If, at any stage of the proceedings in any action, it appears to the Court that the action may be one suitable for trial in a particular list and any party wishes the action to be transferred to that list, then the Court may adjourn any hearing so that it can proceed before the judge and be treated by him as a summons to transfer the action to that list.

#### **6. Removal of action from particular list (O. 72, r. 6)**

(1) The judge may, of his own motion or on the application of any party, order an action in a particular list to be removed from that list. (L.N. 126 of 1995)

(2) Where an action is in a particular list by virtue of rule 4, an application by a defendant or third party for an order under this rule must be made within 7 days after giving notice of intention to defend.

#### **7. Pleadings in particular proceedings (O. 72, r. 7)**

(1) The pleadings in an action in a particular list may be in the form of points of claim, or of defence, counterclaim, defence to counterclaim or reply, as the case may be, and must be as brief as possible.

(2) Without prejudice to Order 18, rule 12(1), no particulars shall be applied for or ordered in an action in the particular list designated the commercial list except such particulars as are necessary to enable the party applying to be informed of the case he has to meet or as are for some other reason necessary to secure the just, expeditious and economical disposal of any question at issue in the proceedings.

(3) The foregoing provisions are without prejudice to the power of the judge to order that an action in a particular list shall be tried without pleadings or further pleadings, as the case may be.

#### **8. Directions in particular proceedings (O. 72, r. 8)**

(1) Notwithstanding anything in Order 25, rule 1(1B)(b), any party to particular proceedings may take out a case management summons before the pleadings are deemed to be closed.

(2) Where an application is made to transfer an action to a particular list, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a case management summons. (L.N. 152 of 2008)

#### **9. (Repealed 13 of 1995 s. 20)**

#### **10. Production of certain documents in marine insurance actions (O. 72, r. 10)**

(1) Where in an action in a particular list relating to a marine insurance policy an application for an order under Order 24, rule 3, is made by the insurer, then, without prejudice to its powers under that rule, the Court, if satisfied that the circumstances of the case are such that it is necessary or expedient to do so, may make an order, either in Form No. 94 in Appendix A or in such other form as it thinks fit, for the production of such documents as are therein specified or described.

(2) An order under this rule may be made on such terms, if any, as to staying proceedings in the action or otherwise, as the Court thinks fit.

(3) In this rule "the Court" (法庭) means the judge.

(Enacted 1988)

Order:	73	ARBITRAL PROCEEDINGS*	L.N. 153 of 2013	16/12/2013
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#### **1. Applications under Arbitration Ordinance (O. 73, r. 1)**

Subject to the following rules of this Order, an application, request or appeal to the Court under the Arbitration Ordinance (Cap 609) must be made by originating summons in Form No. 10 in Appendix A to a single judge in court. (17 of 2010 s. 112)

## **2. Applications in pending actions (O. 73, r. 2)**

An application, request or appeal to which rule 1 applies must, if an action is pending, be made by summons in the action.

(17 of 2010 s. 112)

## **3. Applications in relation to proceedings under Arbitration Ordinance (O. 73, r. 3)**

An application in relation to proceedings referred to in section 16 of the Arbitration Ordinance (Cap 609) must be made to a judge in chambers.

(17 of 2010 s. 112)

## **4. Applications for interim measures or other orders in relation to arbitral proceedings outside Hong Kong (O. 73, r. 4)**

If an application for an interim measure under section 45(2) of the Arbitration Ordinance (Cap 609) or for an order under section 60(1) of that Ordinance is in relation to any arbitral proceedings outside Hong Kong, rules 1, 2, 3, 4, 7(1), 7A and 8 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

(17 of 2010 s. 112)

## **5. Time limits and other special provisions for certain applications under Arbitration Ordinance (O. 73, r. 5)**

(1) An application to challenge an arbitral award on the ground of serious irregularity under section 4 of Schedule 2 to the Arbitration Ordinance (Cap 609) must be made, and the originating summons or summons must be served, within 30 days after the award is delivered.

(2) An application for leave to appeal on a question of law arising out of an arbitral award under section 6 of Schedule 2 to the Arbitration Ordinance (Cap 609) must be made, and the originating summons or summons must be served, within 30 days after the award is delivered and, if there is a correction or interpretation of the award under section 69 of that Ordinance, the period of 30 days runs from the date on which the award with the correction made or interpretation given is delivered.

(3) An application to decide any question of law arising in the course of the arbitral proceedings under section 3 of Schedule 2 to the Arbitration Ordinance (Cap 609) must be made, and the originating summons or summons must be served, within 30 days after the arbitral tribunal has given permission in writing for the making of the application or all the other parties to the arbitral proceedings have agreed in writing to the making of the application.

(4) In relation to an application to which paragraph (1), (2) or (3) applies or an application to set aside an arbitral award under section 81 of the Arbitration Ordinance (Cap 609)—

- (a) the originating summons or summons must state the grounds of application; and
- (b) if the application—

- (i) is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with the originating summons or summons; or
  - (ii) is made with the permission of the arbitral tribunal or agreement of all the other parties to the arbitral proceedings, a copy of every permission or agreement in writing must be served with the originating summons or summons.

(5) In relation to—

- (a) an application to which paragraph (1) applies;
- (b) a request for the Court to decide on a challenge to an arbitrator or umpire under section 26(1) of the Arbitration Ordinance (Cap 609) or to decide on the termination of the mandate of an arbitrator or umpire under section 27 of that Ordinance;
- (c) an application for the Court to decide that the umpire is to replace the arbitrators as the arbitral tribunal under section 31(8) of that Ordinance or that the arbitrator or umpire is not entitled to or must repay

- fees or expenses under section 62 of that Ordinance;
- (d) an application to extend the time limit for making an award under section 72(2) of that Ordinance;
- (e) an application to set aside an arbitral award under section 81 of that Ordinance; or
- (f) an appeal on a question of law arising out of an arbitral award or application for leave to appeal under section 5, 6 or 7 of Schedule 2 to that Ordinance,

the originating summons or summons must be served on the arbitrator or umpire, the arbitral tribunal and on all the other parties to the arbitral proceedings.

(6) An appeal on a question of law arising out of an arbitral award under section 5 of Schedule 2 to the Arbitration Ordinance (Cap 609) may be included in the application for leave to appeal, if leave is required.

(17 of 2010 s. 112)

## **6. Applications, requests and appeals to be heard in Construction and Arbitration List (O. 73, r. 6)**

(1) An application, request or appeal which is required by rule 1 or 3 to be made to a judge must be entered in the Construction and Arbitration List unless the judge in charge of the list otherwise directs.

(2) Nothing in paragraph (1) is to be construed as preventing the powers of the judge in charge of the Construction and Arbitration List from being exercised by any judge of the Court of First Instance.

(17 of 2010 s. 112)

## **7. Service out of jurisdiction of originating summons, summons or order (O. 73, r. 7)**

(1) Subject to paragraphs (2) and (3), service out of the jurisdiction of—

- (a) any originating summons or summons under this Order; or
- (b) any order made on such originating summons or summons,

is permissible with the leave of the Court if the arbitration to which the originating summons, summons or order relates is governed by Hong Kong law or has been, is being, or is to be held within the jurisdiction.

(2) Service out of the jurisdiction of an originating summons or summons by which an application for leave to enforce an award is made is permissible with the leave of the Court, whether or not the arbitration is governed by Hong Kong law.

(3) Service out of the jurisdiction of an originating summons or summons by which an application for an interim measure under section 45(2) of the Arbitration Ordinance (Cap 609) or for an order under section 60(1) of that Ordinance is made is permissible with the leave of the Court.

(4) An application for the grant of leave under this rule must be supported by an affidavit stating—

- (a) the grounds on which the application is made; and
- (b) in what place the person to be served is, or probably may be found.

(5) No leave may be granted under this rule unless it is made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(6) Order 11, rules 5, 5A, 6, 7, 7A, 8 and 8A apply in relation to any originating summons, summons or order referred to in paragraph (1) as they apply in relation to a writ.

(17 of 2010 s. 112)

## **8-9. (Repealed 17 of 2010 s. 112)**

## **10. Enforcement of settlement agreement, award, order, direction or emergency relief under Arbitration Ordinance (O. 73, r. 10)**

(17 of 2010 s. 112; 7 of 2013 s. 22)

(1) An application for leave-

(HK)(a) under section 2C of the Arbitration Ordinance (Cap 341) ( “the repealed Ordinance” ) repealed by the

Arbitration Ordinance (Cap 609) ( “the Arbitration Ordinance” ) to enforce a settlement agreement entered into before the commencement<sup>#</sup> of the Arbitration Ordinance; (L.N. 363 of 1990)

- (b) under section 2GG of the repealed Ordinance to enforce an award, order or direction made or given by an arbitral tribunal before the commencement of the Arbitration Ordinance; (L.N. 363 of 1990; 2 of 2000 s. 15)
- (ba) under section 22B(1) of the Arbitration Ordinance to enforce any emergency relief; (7 of 2013 s. 22)
- (c) under section 61(1) of the Arbitration Ordinance to enforce an order or direction (including an interim measure) of an arbitral tribunal; or (17 of 2010 s. 112)
- (d) under section 84(1) of the Arbitration Ordinance, or in accordance with section 84 of the Arbitration Ordinance as provided by section 87(1)(b), 92(1)(b) or 98A(1)(b) of that Ordinance, to enforce an arbitral award, (17 of 2010 s. 112; 7 of 2013 s. 22)

in the same manner as a judgment, order or direction may be made ex parte but the Court hearing the application may direct a summons to be issued. (7 of 2013 s. 22)

(2) If the Court directs a summons to be issued, the summons may be an originating summons which shall be in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(3) An application for leave must be supported by affidavit-

(a) exhibiting-

- (i) if the application is under section 2C of the repealed Ordinance, the arbitration agreement (or a copy of it) and the original settlement agreement (or a copy of it); (17 of 2010 s. 112)
- (ii) if the application is under section 2GG of the repealed Ordinance, the arbitration agreement (or a copy of it) and the original award, order or direction (or a copy of it); (17 of 2010 s. 112)
- (iia) if the application is under section 22B(1) of the Arbitration Ordinance, the arbitration agreement (or a copy of it) and the original instrument of grant of emergency relief (or a copy of it); (7 of 2013 s. 22)
- (iia) if the application is under section 61(1) of the Arbitration Ordinance, the arbitration agreement (or a copy of it) and the original order or direction (or a copy of it); (17 of 2010 s. 112)
- (iii) subject to sub-subparagraphs (iv), (v) and (vi), if the application is under section 84(1) of the Arbitration Ordinance, the documents required to be produced under section 85 of that Ordinance; (17 of 2010 s. 112)
- (iv) if the application is in accordance with section 84 of the Arbitration Ordinance as provided by section 87(1)(b) of that Ordinance, the documents required to be produced under section 88 of that Ordinance; (17 of 2010 s. 112)
- (v) if the application is in accordance with section 84 of the Arbitration Ordinance as provided by section 92(1)(b) of that Ordinance, the documents required to be produced under section 94 of that Ordinance; (17 of 2010 s. 112; 7 of 2013 s. 22)
- (vi) if the application is in accordance with section 84 of the Arbitration Ordinance as provided by section 98A(1)(b) of that Ordinance, the documents required to be produced under section 98C of that Ordinance; (7 of 2013 s. 22)
- (b) stating the name and the usual or last known place of abode or business of the applicant (hereinafter referred to as "the creditor") and the person against whom it is sought to enforce the settlement agreement, award, order, direction or emergency relief (hereinafter referred to as "the debtor") respectively,
- (c) as the case may require, either that the settlement agreement, award, order, direction or emergency relief has not been complied with or the extent to which it has not been complied with at the date of the application. (7 of 2013 s. 22)

(4) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(5) Service of the order made under paragraph (4) out of the jurisdiction is permissible without leave, and Order 11, rules 5, 5A, 6, 7, 7A, 8 and 8A shall apply in relation to such an order as they apply in relation to a writ.

(6) Within 14 days after service of the order made under paragraph (4) or, if the order made under paragraph (4) is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside that order, and the settlement agreement, award, order, direction or emergency relief shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order made under paragraph (4), until after the application is finally disposed of. (7 of 2013 s. 22)



(HK)(6A) An application under paragraph (6) to set aside the order made under paragraph (4) must be made by summons supported by affidavit, and such affidavit must be filed at the same time as the summons. (L.N. 127 of 1995)

(7) The copy of the order made under paragraph (4) served on the debtor shall state the effect of paragraph (6).

(8) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

(17 of 2010 s. 112)

**(HK) 10A. Other provisions as to applications  
to set aside an order made under  
rule 10(4) (O. 73, r. 10A)**

(17 of 2010 s. 112)

(HK) Where a debtor has applied under rule 10(6) to set aside an order made under rule 10(4), the Court may, either of its own motion or on an application made by the creditor, and if, having regard to all the circumstances of the case it thinks it just to do so, impose such terms, as to giving security or otherwise, as a condition of the further conduct of the application, as it thinks fit.

(L.N. 167 of 1994; 17 of 2010 s. 112)

**11- 18.** (Repealed 17 of 2010 s. 112)

**19. Transitional provision relating  
to Arbitration Ordinance (O. 73, r. 19)**

If, immediately before the commencement<sup>#</sup> of the Arbitration Ordinance (Cap 609), an application, request or appeal by originating motion, summons or notice made under this Order as in force immediately before the commencement of that Ordinance is pending, then the application, request or appeal is to be determined as if that Ordinance had not been enacted.

(17 of 2010 s. 112)  
(Enacted 1988)

**Note:**

**\* (Amended 17 of 2010 s. 112)**

**# Commencement date : 1 June 2011.**

Order:	74	(Repealed L.N. 343 of 1989)	25 of 1998	01/07/1997
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**Remarks:**

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Order:	75	(HK) ADMIRALTY PROCEEDINGS	L.N. 235 of 2009	22/01/2010
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**1. Application and interpretation (O. 75, r. 1)**

(1) This Order applies to Admiralty causes and matters, and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order. (See App. B, Form 14)

(2) In this Order-

"action in rem" (對物訴訟) means an Admiralty action in rem;

"caveat against arrest" (針對扣押的知會備忘) means a caveat entered in the caveat book under rule 6;

"caveat against release and payment" (針對發還及付款的知會備忘) means a caveat entered in the caveat book under rule 14;

"caveat book" (知會備忘登記冊) means the book kept in the Registry in which caveats issued under this Order are

entered;

"collision regulations" (碰撞規例) means the regulations made or deemed to be made under section 93 of the Merchant Shipping (Safety) Ordinance (Cap 369);

"limitation action" (局限法律責任的訴訟) means an action by shipowners or other persons under the Merchant Shipping Acts 1894 to 1984<sup>#</sup>, the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414), the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap 434) or the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap 605) for the limitation of the amount of their liability in connection with a ship or other property; (L.N. 363 of 1990; 14 of 2009 s. 35)

"ship" (船舶) includes any description of vessel used in navigation.

## **2A. Proceedings against, or concerning, the International Oil Pollution Compensation Fund (O. 75, r. 2A)**

(2) For the purposes of section 27(1) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414) any party to proceedings brought against an owner or guarantor in respect of liability under section 6 of that Ordinance may give notice to the Fund of such proceedings by serving notice in writing on the Fund together with a copy of the writ and copies of the pleadings (if any) served in the action. (L.N. 363 of 1990)

(3) The Court shall, on the application made ex parte by the Fund grant leave to the Fund to intervene in any proceedings to which the preceding paragraph applies, whether notice of such proceedings has been served on the Fund or not, and paragraphs (3) and (4) of rule 17 shall apply to such an application.

(4) Where judgment is given against the Fund in any proceedings under section 25 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414), the Registrar shall cause a stamped copy of the judgment to be sent by post to the Fund. (L.N. 363 of 1990)

(5) The Fund shall notify the Registrar of the matters set out in section 25(11)(b) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414) by a notice in writing sent by post to, or delivered at, the Registry. (L.N. 363 of 1990)

## **3. Issue of writ and acknowledgment of service (O. 75, r. 3)**

(1) An action in rem may be begun by writ; and the writ must be in Form No. 1 in Appendix B. (L.N. 152 of 2008)

(2) The writ by which an Admiralty action in personam is begun must be in Form No. 1 in Appendix A.

(3) The writ by which a limitation action is begun must be in Form No. 2 in Appendix B.

(4) Subject to the following paragraphs Order 6, rule 7, shall apply in relation to a writ by which an Admiralty action is begun.

(5) An acknowledgment of service in an action in rem or a limitation action shall be in Form No. 2B in Appendix B.

(6) A defendant to an action in rem in which the writ has not been served, or a defendant to a limitation action who has not been served with the writ, may, if he desires to take part in the proceedings, acknowledge the issue of the writ by handing in at, or sending to, the Registry an acknowledgment of issue in the same form as an acknowledgment of service but with the substitution for the references therein to service of references to issue of the writ.

(7) These rules shall apply, with the necessary modifications, in relation to an acknowledgment of issue or service in Form 2B in Appendix B as they apply in relation to an acknowledgment of service in Form No. 14 in Appendix A which contains a statement to the effect that the defendant intends to contest the proceedings to which the acknowledgment relates.

## **4. Service of writ out of jurisdiction (O. 75, r. 4)**

(1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ containing any claim for damage, loss of life or personal injury arising out of a collision between ships or the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or non-compliance on the part of one or more of two or more ships with the collision regulations, every limitation action and every action to enforce a claim under section 6 or 25 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414) or

section 5 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap 605) is permissible with the leave of the Court if, but only if- (L.N. 363 of 1990; 14 of 2009 s. 36)

- (a) the defendant has his habitual residence or a place of business in Hong Kong; or
- (b) the cause of action arose within the territorial waters of Hong Kong; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(2) Order 11, rule 4(1), (2) and (4), shall apply in relation to an application for the grant of leave under this rule as it applies in relation to an application for the grant of leave under rule 1 of that Order. (L.N. 152 of 2008)

(3) Paragraph (1) shall not apply to an action in rem.

(4) The proviso to rule 7(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any Admiralty action is begun.

## **5. Warrant of arrest (O. 75, r. 5)**

(1) After a writ has been issued in an action in rem a warrant in Form No. 3 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(3) A party applying for the issue out of the Registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(4) A warrant of arrest shall not be issued until the party applying for it has filed an affidavit requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraph (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in Hong Kong, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(6) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(7) Where, by, or under, any convention or treaty, Hong Kong has undertaken to minimise the possibility of arrest of ships of another state, no application shall be made for the issue of a warrant of arrest in an action in rem against a ship owned by that state until a notice in Form No. 15 in Appendix B has been served on a consular officer at the consular office of, or acting on behalf of, that state in Hong Kong.

(8) An affidavit required by paragraph (4) must state-

- (a) in every case-
  - (i) the nature of the claim or counterclaim and that it has not been satisfied and, if it arises in connection with a ship, the name of that ship; and
  - (ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and
- (b) in the case of a claim against a ship in rem by virtue of paragraph (10)-
  - (i) the name of the person who would be liable on the claim in an action in personam ("the relevant person"); and
  - (ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and
  - (iii) that at the time of the issue of the writ the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and
- (c) in the case of a claim for possession of a ship or for wages, the nationality of the ship in respect of which the warrant is required and that the notice (if any) required by paragraph (5) has been sent; (14 of 2009 s. 37)
- (e) in the case of a claim in respect of a liability incurred under section 6 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414), the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of section 18(1) of that

Ordinance; and (L.N. 363 of 1990; 14 of 2009 s. 37)

- (f) in the case of a claim in respect of a liability incurred under section 5 of the Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap 605), the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of section 18(2) of that Ordinance. (14 of 2009 s. 37)
- (9) The following documents shall, where appropriate, be exhibited to an affidavit required by paragraph (4)-
  - (a) a copy of any notice sent to a consul under paragraph (5);
  - (b) a certified copy of any bottomry bond, or of the translation thereof, produced under paragraph (6);
  - (c) a copy of any notice served on a consular officer under paragraph (7).
- (10) The claims against a ship in rem coming within the provisions of sub-paragraph (b) (whether or not the claim gives rise to a maritime lien on that ship) are-
  - (a) for damage done by a ship;
  - (b) for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment or in consequence of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or the master or crew of a ship or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of a ship in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
  - (c) for loss of or damage to goods carried in a ship;
  - (d) those arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
  - (e) those in the nature of salvage (including any claim arising by virtue of the application by or under section 9 of the Civil Aviation Ordinance (Cap 448), of the law relating to salvage to aircraft and their apparel and cargo); (L.N. 152 of 2008)
  - (f) those in the nature of towage or pilotage in respect of a ship or an aircraft when an action in rem may be brought against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam;
  - (g) those in respect of goods or materials supplied to a ship for her operation or maintenance;
  - (h) those in respect of the construction, repair or equipment of a ship or dock charges or dues;
  - (i) those by a master or member of a crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
  - (j) those by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
  - (k) those arising out of an act which is or is claimed to be a general average act;
  - (l) those arising out of bottomry.

And where the person who would be liable on the claim in an action in personam ("the relevant person") was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship and at the time when the action is brought is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise or, in the case of any other ship, where the relevant person is the beneficial owner as respects all the shares in it at the time when the action is brought.

## **6. Caveat against arrest (O. 75, r. 6)**

(1) A person who desires to prevent the arrest of any property must file in the Registry a praecipe, in Form No. 5 in Appendix B, signed by him or his solicitor undertaking-

- (a) to acknowledge issue or service (as may be appropriate) of the writ in any action that may be begun against the property described in the praecipe, and
- (b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court,

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

## **7. Remedy where property protected by**

### **caveat is arrested (O. 75, r.7)**

Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

### **8. Service of writ in action in rem (O. 75, r. 8)**

(1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought save that-

- (a) where that property is freight it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried, or
- (b) where the property has been sold by the bailiff, the writ may not be served on that property, but a sealed copy of it must be filed in the Registry and the writ shall be deemed to have been duly served on the day on which it was filed.

(2) A writ need not be served or filed as mentioned in paragraph (1) if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4) or (5).

(3) Where by virtue of this rule a writ is required to be served on any property, then, if the plaintiff wishes service of the writ to be effected by the bailiff, he must file in the Registry a praecipe in Form No. 6 in Appendix B and lodge-

- (a) the writ and a copy thereof, and
- (b) an undertaking to pay on demand all expenses incurred by the bailiff or his substitute in respect of the service of the writ,

and thereupon the bailiff or his substitute shall serve the writ on the property described in the praecipe.

(3A) Where a writ is served on any property by the bailiff or his substitute the person effecting service must indorse on the writ the following particulars, that is to say, where it was served, the property on which it was served, the day of the week and the date on which it was served, the manner in which it was served and the name and the address of the person effecting service, and the indorsement shall be evidence of the facts stated therein.

(4) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any intervener and any defendant who has acknowledged issue or service of the writ in the action or, if no defendant has acknowledged issue or service of the writ, it must be served in accordance with paragraph (1) of this rule.

### **9. Committal of solicitor failing to comply with undertaking (O. 75, r. 9)**

Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to acknowledge issue or service of the writ in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

### **10. Execution, etc., of warrant of arrest (O. 75, r. 10)**

(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the bailiff or his substitute.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the bailiff and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the bailiff's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request

to that effect with the bailiff.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed, in the Registry by the bailiff.

#### **11. Service on ships, etc.: how effected (O. 75, r. 11)**

(1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by-

- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and
- (b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected-

- (a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo, or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

(3) Order 65, rule 10, shall not apply to a warrant of arrest or a writ in rem.

#### **12. Applications with respect to property under arrest (O. 75, r. 12)**

(1) The bailiff may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the persons referred to in paragraph 2.

(2) The bailiff shall send by hand or by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have-

- (a) entered a caveat which is still in force; or
- (b) caused a warrant for the arrest of the property to be executed by the bailiff; or
- (c) acknowledged issue or service of the writ in any action in which the property is under arrest; or
- (d) intervened in any action in which the property is under arrest.

(3) A person other than the bailiff may make an application under this rule by summons or motion in the action in which the property is under arrest and the summons or notice of motion together with copies of any affidavits in support must be served upon the bailiff and all persons referred to in paragraph (2) unless the court otherwise orders on an application made ex parte.

(4) Unless otherwise directed by the Registrar, the bailiff shall serve a copy of any notice of motion or summons on the property under arrest.

#### **13. Release of property under arrest (O. 75, r. 13)**

(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this rule referred to as a "release"), in Form No. 7 in Appendix B, issued out of the Registry.

(3) A release shall not be issued with respect to property as to which a caveat against release is in force, unless, either

- (a) at the time of the issue of the release the property is under arrest in one or more other actions, or
- (b) the Court so orders.

(4) A release may be issued at the instance of any party to the action in which the warrant of arrest was issued if the Court so orders, or, subject to paragraph (3), if all the other parties, except any defendant who has not acknowledged issue or service of the writ, consent.

(6) Before a release is issued, the party applying for its issue must, unless paragraph (3)(a) applies, give notice

to any person at whose instance a subsisting caveat against release has been entered, or to his solicitor, requiring the caveat to be withdrawn.

(7) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the bailiff, either-

- (a) pay the fees of the bailiff already incurred and lodge in the bailiff's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or
- (b) lodge in the bailiff's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(8) The Court, on the application of any party who objects to directions given to him by the bailiff under paragraph (7), may vary or revoke the directions.

#### **14. Caveat against release etc. (O. 75, r. 14)**

(1) Where a person claiming to have a right of action in rem against any property which is under arrest or the proceeds of sale thereof wishes to be served with notice of any application to the Court in respect of that property or those proceeds, he must file in the Registry a praecipe in Form No. 9 in Appendix B and, on the filing of the praecipe, a caveat shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

#### **15. Duration of caveats (O. 75, r. 15)**

(1) Every caveat entered in the caveat book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 10 in Appendix B.

(2) The period of validity of a caveat may not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

#### **16. Bail (O. 75, r. 16)**

(1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 11 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner for oaths or a solicitor exercising the powers of a commissioner for oaths under section 7A of the Legal Practitioners Ordinance (Cap 159) not being a solicitor who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

#### **17. Interveners (O. 75, r. 17)**

(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted under this rule shall thereupon become a party to the action.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and such pleadings as may be so specified.

## **18. Preliminary acts (O. 75, r. 18)**

(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, the following provisions of this rule shall apply unless the Court otherwise orders.

(2) The plaintiff must within 2 months after service of the writ on any defendant and the defendant must within 2 months of acknowledging issue or service of the writ file in the Registry a document in two parts (in these rules referred to as a preliminary act) containing a statement of the following-

### **Part One**

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
- (iii) the date and time (including the time zone) of the collision;
- (iv) the place of the collision;
- (v) the direction and force of the wind;
- (vi) the state of the weather;
- (vii) the state, direction and force of the tidal or other current;
- (viii) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (ix) the lights or shapes (if any) carried by the ship;
- (x) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;  
(b) the distance, bearing and approximate heading of the other ship when first seen;
- (xi) what light or shape or combination of lights or shapes (if any) of the other ship was first seen;
- (xii) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
- (xiii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (viii) up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;
- (xiv) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xv) what sound signals (if any) were given, and when;
- (xvi) what sound signals (if any) were heard from the other ship, and when.

### **Part Two**

- (i) a statement that the particulars in Part One are incorporated in Part Two;
- (ii) any other facts and matters upon which the party filing the preliminary act relies;
- (iii) all allegations of negligence or other fault which the party filing the preliminary act makes;
- (iv) the remedy or relief which the party filing the preliminary act claims.

(3) Part Two of the preliminary act shall be deemed to be the pleading of the person filing the preliminary act (in the case of the plaintiff his statement of claim and in the case of the defendant his defence and, where appropriate, his counterclaim) and the provisions of these rules relating to pleadings shall apply to it save insofar as this rule and rule 20 provide otherwise.

(4) The Court may order that Part Two of the preliminary act need not be filed by the plaintiff or defendant and give directions for the further conduct of the action.

(5) Every preliminary act shall before filing be sealed by the proper officer and be filed in a sealed envelope which shall not be opened except as provided in paragraph (7) or by order of the Court.

(6) A plaintiff must serve notice of filing his preliminary act on every defendant who acknowledges issue or service of the writ within 3 days of receiving notice of that acknowledgment or upon filing his preliminary act, whichever is the later. A defendant must, upon filing his preliminary act, serve notice that he has done so on the plaintiff and on every other defendant who has acknowledged issue or service of the writ.

(7) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing in the



Registry a consent signed by that other party or his solicitor.

(8) Order 18, rule 20 (close of pleadings) shall not apply; and for the purposes of Order 18, rule 14 (denial by joinder of issue), Order 20, rule 3 (amendment of pleadings without leave) and Order 24, rules 1 and 2 (discovery of documents) the pleadings shall be deemed to be closed-

- (a) at the expiration of 7 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim pursuant to leave given under rule 20; or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 7 days after the last preliminary act in the action was served pursuant to paragraph (9).

(9) Within 14 days after the last preliminary act in the action is filed each party must serve on every other party a copy of his preliminary act.

(10) At any time after all preliminary acts have been filed any party may apply to the Court for an order that-

- (a) one or more parties file in the Registry particulars of the damages claimed by them and serve a copy thereof on every other party; and
- (b) that the damages be assessed prior to or at the trial on liability.

The application must be made by summons to the Registrar even if it is made after the issue of a case management summons. (L.N. 152 of 2008)

(11) When an order is made under paragraph (10) the claim or claims concerned shall be treated as referred to the Registrar for assessment and rules 41 and 42 shall apply unless the Registrar otherwise directs.

(L.N. 404 of 1991)

## **19. Failure to lodge preliminary act: proceedings against party in default (O. 75, r. 19)**

(1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against that defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(2) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act. (L.N. 404 of 1991)

## **20. Special provisions as to pleadings in collision, etc. actions (O. 75, r. 20)**

(1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 4(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court. (L.N. 356 of 1988)

(2) Subject to paragraph (3), in any such action Order 18, rule 13(3) shall not apply to any allegation of fact in—  
(a) a statement of claim contained in Part Two of a preliminary act; or  
(b) a counterclaim (whether contained in Part Two of a preliminary act or not),  
and notwithstanding Order 18, rule 14(3) but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the statement of claim or counterclaim. (L.N. 404 of 1991)

(3) Paragraph (2) does not apply to a counterclaim if the plaintiff has served a defence to counterclaim pursuant to leave given under paragraph (1). (L.N. 404 of 1991)

## **21. Judgment by default (O. 75, r. 21)**

(1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if—

- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of that caveat, and
- (b) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to acknowledge service of the writ within the time limited for doing so, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4), or was served by the bailiff or his substitute under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(4) or indorsed as mentioned in rule 8(3A) must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships or the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or non-compliance on the part of one or more of two or more ships with the collision regulations.

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions in rem.

**22. Order for sale of ship: determination of priority of claims (O. 75, r. 22)**

(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may-

- (a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a), or
- (b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order-

- (a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;
- (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the Order;
- (c) that within 7 days after the date of payment into court of the proceeds of sale the bailiff shall send for publication in the Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state-

- (a) that the ship (naming her) has been sold by order of the Court in an action in rem, identifying the action;
- (b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;
- (c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
- (d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The bailiff must lodge in the Registry a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the bailiff in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

(7) In this rule "the Court" (法庭) means the judge in person.

**23. Appraisalment and sale of property (O. 75, r. 23)**

(1) A commission for the appraisalment and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 12 in Appendix B.

(2) Such a commission must, unless the Court otherwise orders, be executed by the bailiff and must be in Form No. 13 in Appendix B.

(3) A commission for appraisalment and sale shall not be executed until an undertaking in writing satisfactory to the bailiff to pay the fees and expenses of the bailiff on demand has been lodged in the bailiff's office.

(4) The bailiff shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the bailiff's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of the Registrar made in taxation proceedings under Order 62, and rules 33 to 35 of that Order shall apply accordingly with the necessary modifications.

**23A. Undertaking as to expenses, etc. (O. 75, r. 23A)**

(1) Every undertaking under rule 8(3), 10(3), 13(7) or 23(3) shall be given in writing to the satisfaction of the bailiff.

(2) Where a party is required by rule 8(3), 10(3), 13(7) or 23(3) to give to the bailiff an undertaking to pay any fees or expenses, the bailiff may require from time to time the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court may, on the application of any party who is dissatisfied with a direction or determination of the bailiff under rule 13(7) or this rule, vary or revoke the direction or determination.

#### **24. Payment into and out of court (O. 75, r. 24)**

(1) Subject to this rule, Order 22 shall apply in relation to an Admiralty action (other than a limitation action) as it applies to an action for a debt or damages. (L.N. 152 of 2008)

(2) Subject to paragraphs (3) and (4), money paid into court shall not be paid out except in pursuance of an order of the judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say-

- (a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;
- (b) where property has been sold and the proceeds of sale thereof paid into court and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;
- (c) where in any other case there is no dispute between the parties.

(4) Where in an Admiralty action money has been paid into court pursuant to an order made under Order 29, rule 12, the Registrar may make an order under rule 13(1) of that Order for the money to be paid out to the person entitled thereto.

#### **25. Case management summons (O. 75, r. 25)**

(L.N. 152 of 2008)

(1) Order 25 shall apply to Admiralty actions (other than limitation actions) as it applies to other actions, except that-

- (a) the case management summons shall be returnable in not less than 7 weeks;
- (b) any notice under Order 25, rule 7(1), must be served within 21 days after service of the case management summons on the party giving the notice; and
- (c) unless a judge in person otherwise directs, the case management summons shall be heard by a judge in person.

On or before the day on which any party serves on any other party a notice under Order 75, rule 7, he must lodge 2 copies of the notice in the Registry.

(2) An order made on the case management summons shall determine whether the trial is to be without assessors or with one or more assessors.

(3) The trial shall be before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the case management summons otherwise provides.

(5) Any such order or direction as is referred to in paragraph (2) or (3) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by the judge in person or, with the judge's consent by the Registrar.

(L.N. 152 of 2008)

#### **26. Fixing date for trial, etc. (O. 75, r. 26)**

(1) Subject to paragraph (2), the date for trial of an Admiralty action shall be fixed by the judge at the hearing of the case management summons, unless a judge in person otherwise directs. (L.N. 152 of 2008)

(2) Where an action is ordered to be tried without pleadings or a case management summons is directed to be heard by the Registrar the date for trial shall be fixed by the Registrar. (L.N. 152 of 2008)

(3) Order 34 shall apply to Admiralty actions subject to the following and any other necessary modifications-

- (a) the bundles referred to in rule 3(1) shall include any preliminary acts and any particulars filed pursuant to an order under rule 18(10)(a) of this Order, and where trial with one or more assessors has been ordered an additional bundle shall be lodged for the use of each assessor; (L.N. 404 of 1991)
- (b) "the proper officer" (恰當人員) shall mean the chief judicial clerk of the Registry; and
- (c) in an action which has been ordered to be tried with an assessor or assessors the solicitor to the party setting it down must file in the Registry an undertaking to pay the proper fee and expenses of such assessor or assessors.

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by filing in the Registry a written consent to the action being withdrawn signed by all the parties.

## **27. Stay of proceedings in collision, etc. actions until security given (O. 75, r. 27)**

Where an action in rem, being an action to enforce any such claim as is referred to in rule 2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then-

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

## **28. Inspection of ship, etc. (O. 75, r. 28)**

Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 8, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

## **30. Examination of witnesses and other persons (O. 75, r. 30)**

(1) The power conferred by Order 39, rule 1, shall extend to the making of an order authorizing the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect-

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
- (b) any representative, being counsel or solicitor, of either of the parties shall have authority to administer the oath to the witness;
- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor must file it in the Registry;
- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order

39, rule 1, authorizing any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

**31. Trial without pleadings (O. 75, r. 31)**

Order 18, rule 21 shall apply to Admiralty as it applies to other actions except that the summons must be served on every other party not less than 7 days before the day specified in the summons for the hearing thereof.

**32. Further provisions with respect to evidence (O. 75, r. 32)**

(3) (Repealed 2 of 1999 s. 6)

(7) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 38(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof.

**33. Proceedings for apportionment of salvage (O. 75, r. 33)**

(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by originating motion.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act 1894 (1984 c. 60 U.K.)<sup>#</sup>.

**34. Notice of motion in actions in rem (O. 75, r. 34)**

(1) The affidavits, if any, in support of a motion in an action in rem must be filed in the Registry before the notice of motion is issued, unless the Court gives leave to the contrary.

(2) A notice of motion, except a motion for judgment in default, must be served on all caveators together with copies of the affidavits, if any, in support of the motion 2 clear days at least before the hearing, unless the Court gives leave to the contrary.

**35. Agreement between solicitors may be made order of court (O. 75, r. 35)**

(1) Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by those solicitors, may, if the Registrar thinks it reasonable and such as the judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by the judge in person.

**37. Limitation action: parties (O. 75, r. 37)**

(1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 38, 39 and 40 "name" (姓名或名稱) includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be

deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

**38. Limitation action: summons for decree or directions (O. 75, r. 38)**

(1) Within 7 days after the acknowledgment of issue or service of the writ by one of the defendants named therein by their names or, if none of them acknowledges issue or service, within 7 days after the time limited for acknowledging service, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving-

(a) the plaintiff's case in the action, and

(b) if none of the defendants named in the writ by their names has acknowledged service, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state-

(a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and

(b) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has acknowledged issue or service of the writ.

(5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a case management summons under Order 25 and, if he gives no such direction, a direction fixing the period within which any notice under Order 38, rule 21, must be served. (L.N. 152 of 2008)

(8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the Registry, and serve a copy on the plaintiff and on any other defendant who has acknowledged issue or service of the writ.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the Registrar, asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

**39. Limitation action: proceedings under decree (O. 75, r. 39)**

(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or acknowledged the issue thereof, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action)-

(a) need not be advertised, but

(b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability-

(a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;

(b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may file their claims, and, in cases to which rule 40 applies, take out a

summons, if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a) shall, unless for special reasons the Registrar thinks fit otherwise to provide, be a single advertisement in each of 3 newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under paragraph (2)(b) file in the Registry a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed no claim may be filed or summons taken out to set aside the decree except with the leave of the Registrar.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by the Registrar or on trial of the action) may make any such provisions as is authorized by section 504 of the Merchant Shipping Act, 1894 (1894 c. 60 U.K.)<sup>#</sup>.

#### **40. Limitation action: proceedings to set aside decree (O. 75, r. 40)**

(1) Where a decree limiting the plaintiff's liability (whether made by Registrar or on trial of the action) fixes a time in accordance with rule 39(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who-

(a) was not named by his name in the writ as a defendant to the action, or

(b) if so named, neither was served with the writ nor has acknowledged the issue thereof,

may, within that time, after acknowledging issue of the writ, take out a summons returnable in chambers before the Registrar, asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has acknowledged issue or service of the writ.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a case management summons under Order 25. (L.N. 152 of 2008)

#### **41. References to Registrar (O. 75, r. 41)**

(1) Any party (hereafter in this rule referred to as the "claimant") making a claim which is referred to the Registrar for decision must within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by case management summons as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim. (L.N. 152 of 2008)

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim



or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the Registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file-

- (a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and
- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

#### **42. Hearing of reference (O. 75, r. 42)**

(1) Unless a judge in person otherwise orders, a reference shall be heard in public.

(2) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.

(4) When the hearing of the reference has been concluded, the Registrar shall-

- (a) reduce to writing his decision on the question arising in the reference (including any order as to costs) and cause it to be filed;
- (b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and
- (c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

#### **43. Objection to decision on reference (O. 75, r. 43)**

(1) Any party to a reference to the Registrar may, by motion in objection, apply to set aside or vary the decision of the Registrar on the reference, but notice of the motion, specifying the points of objection to the decision, must be filed within 28 days after the date on which notice of the filing of the decision was sent to that party under rule 42(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 28 days after the date on which the notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but, unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 42(4).

#### **45. Drawing up and entry of judgments and orders (O. 75, r. 45)**

Every judgment given or order made in an Admiralty cause or matter, except an order which by virtue of Order 42, rule 4, is not required to be drawn up, shall be drawn up in the Registry and shall be entered by an officer of the Registry in the book kept for the purpose.

#### **46. Inspection of documents filed in Registry (O. 75, r. 46)**

- (1) Order 63, rule 4, shall apply in relation to documents filed in the Registry.
- (2) For the purpose of Order 63, rule 4, a decree made by the Registrar in a limitation action and a decision and any statement of the grounds of that decision filed under rule 42 shall be deemed to have been made or given in court.
- (Enacted 1988)

**Note:**

# Please also see following-

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2 to Cap 508;
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.

Order:	76	<b>CONTENTIOUS PROBATE PROCEEDINGS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Application and interpretation (O. 76, r. 1)**

(1) This Order applies to probate causes and matters, and the other provisions of these rules apply to those causes and matters including applications for the rectification of a will subject to the provisions of this Order.

(2) In these rules "probate action" (遺囑認證訴訟) means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order, "will" (遺囑) includes a codicil.

**2. Requirements in connection with issue of writ (O. 76, r. 2)**

(1) A probate action may be begun by writ. (L.N. 152 of 2008)

(2) Before a writ beginning a probate action is issued it must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates.

**3. Parties to action for revocation of grant (O. 76, r. 3)**

Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his estate shall be made a party to any action for revocation of the grant.

**4. Lodgment of grant in action for revocation (O. 76, r. 4)**

(1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration, as the case may be, have not been lodged in court, then-

- (a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Registry within 7 days after the issue of the writ;
- (b) if any defendant to the action has the probate or letters of administration in his possession or under his control, he shall lodge it or them in the Registry within 14 days after the service of the writ upon him.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the Registry within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

**5. Affidavit of testamentary scripts (O. 76, r. 5)**

(1) Unless the Court otherwise directs, the plaintiff and every defendant who has acknowledged service of the writ in a probate action must swear an affidavit-

- (a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
- (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed, and an office copy thereof and any testamentary script referred to therein which is in the possession or under the control of the deponent, must be lodged in the Registry within 14 days after the acknowledgment of service by a defendant to the action or, if no defendant acknowledges service and the Court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script required by this rule to be lodged in the Registry or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged in the Registry and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule "testamentary script" (遺囑性質的文稿) means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

#### **6. Failure to acknowledge service (O. 76, r. 6)**

(1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to acknowledge service of the writ, the plaintiff may, after the time for acknowledging service has expired and upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant proceed with the action as if that defendant had acknowledged service.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to acknowledge service of the writ, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for acknowledging service by the defendant apply to the Court for an order for trial of the action.

(4) Before applying for an order under paragraph (3) the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he must lodge a statement of claim in the judge's chambers.

(5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

#### **7. Service of statement of claim (O. 76, r. 7)**

The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who acknowledges service of the writ in the action and must do so before the expiration of 6 weeks after acknowledgment of service by that defendant or of 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

#### **8. Counterclaim (O. 76, r. 8)**

(1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

#### **9. Contents of pleadings (O. 76, r. 9)**

(1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 18, rule 7, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say-

(a) that the will was not duly executed;

(b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and

(c) that the execution of the will was obtained by undue influence or fraud,  
shall be made by that party unless that other plea is also pleaded.

#### **10. Default of pleadings (O. 76, r. 10)**

(1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made the Court may direct the action to be tried on affidavit evidence.

#### **11. Discontinuance and dismissal (O. 76, r. 11)**

(1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has acknowledged service of the writ therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.

(3) An application for an order under this rule may be made by summons or by notice under Order 25, rule 7. (L.N. 152 of 2008)

#### **12. Compromise of action: trial on affidavit evidence (O. 76, r. 12)**

Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

#### **13. Application for order to bring in will, etc. (O. 76, r. 13)**

(1) Any application in a probate action for an order under section 7(1) of the Probate and Administration Ordinance (Cap 10) shall be for an order requiring a person to bring a will or other testamentary paper into the Registry or to attend in court for examination.

(2) An application under paragraph (1) shall be made by summons in the action, which must be served on the person against whom the order is sought.

(3) Any application in a probate action for the issue of a subpoena under section 7(3) of the Probate and Administration Ordinance (Cap 10) shall be for the issue of a subpoena requiring a person to bring into the Registry a will or other testamentary paper.

(4) An application under paragraph (3) may be made ex parte and must be supported by an affidavit setting out the grounds of the application.

(5) An application under paragraph (3) shall be made to a master who may, if the application is granted, authorize the issue of a subpoena accordingly.

(6) Any person against whom a subpoena is issued under section 7(3) of the Probate and Administration Ordinance (Cap 10) and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

#### **14. Administration pendente lite (O. 76, r. 14)**

(1) An application under section 40 of the Probate and Administration Ordinance (Cap 10) for an order for the grant of administration may be made by summons.

(2) Where an order for a grant of administration is made under the said section 40, Order 30, rules 2, 4 and 6 and (subject to section 60 of the Probate and Administration Ordinance (Cap 10)) rule 3 shall apply as if the administrator were a receiver appointed by the Court.

#### **15. Probate counterclaim in other proceedings (O. 76, r. 15)**

(1) In this rule "probate counterclaim" (遺囑認證反申索) means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).

(2) Subject to the following paragraphs, this Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

(4) Before it is served a probate counterclaim must be indorsed with a memorandum signed by a master showing that the counterclaim has been produced to him for examination and that three copies of it have been lodged with him.

#### **16. Rectification of wills (O. 76, r. 16)**

(1) Where an application is made for rectification of a will, and the grant has not been lodged in court, rule 4 shall apply, with the necessary modifications, as if the proceedings were a probate action.

(2) A copy of every order made for the rectification of a will shall be sent to the principal Registry for filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the grant under which the estate is administered.

(Enacted 1988)

Order:	77	<b>PROCEEDINGS BY AND AGAINST THE CROWN</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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Expanded Cross Reference:

45, 46, 47, 48, 49, 49B, 50, 51, 52

#### **1. Application and interpretation (O. 77, r. 1)**

(1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order-

"civil proceedings by the Crown" (由官方提出的民事法律程序) 和 "civil proceedings against the Crown" (針對官方提出的民事法律程序) have the same respective meanings as in Part III of the Crown Proceedings Ordinance (Cap 300), and do not include any of the proceedings specified in section 19(3) of that Ordinance;

"civil proceedings to which the Crown is a party" (以官方作為一方的民事法律程序) has the same meaning as it has for the purposes of Part V of the Crown Proceedings Ordinance (Cap 300), by virtue of section 2(4) of that Ordinance;

"order against the Crown" (針對官方的命令) means any order (including an order for costs) made in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, in

favour of any person against the Crown or against a government department or against an officer of the Crown as such;

"order" (命令) includes a judgment, decree, rule, award or declaration.

### **3. Particulars to be included in indorsement of claim (O. 77, r. 3)**

(1) In the case of a writ which begins proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for acknowledging service of the writ, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the writ shall not expire until 4 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice, or 4 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7 days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

### **4. Service on the Crown (O. 77, r. 4)**

(1) Order 10, Order 11 and any other provision of these rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(HK)(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected by service on the Secretary for Justice. (L.N. 362 of 1997)

(3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7, shall apply as if the reference therein to rules 2 and 5(1)(a) of that Order were a reference to paragraph (2) of this rule.

### **6. Counterclaim and set-off (O. 77, r. 6)**

(1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown-

(a) if the Crown is sued or sues in the name of a government department and the subject-matter of the counterclaim or set-off does not relate to that department; or

(b) if the Crown is sued or sues in the name of the Secretary for Justice. (L.N. 362 of 1997)

(3) Any application for leave under this rule must be made by summons.

### **7. Summary judgment (O. 77, r. 7)**

(1) No application shall be made against the Crown-

(a) under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown;

(b) under Order 14, rule 5, in any proceedings by the Crown; or

(c) under Order 14A, rule 1, in any proceedings by or against the Crown. (L.N. 165 of 1992)

(2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by-

(a) the solicitor acting for the Crown, or

(b) an officer duly authorized by the solicitor so acting or by the department concerned;

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

**9. Judgment in default (O. 77, r. 9)**

(1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.

(2) Except with the leave of the Court, Order 16, rule 5(1)(a), shall not apply in the case of third party proceedings against the Crown.

(3) An application for leave under this rule may be made by summons and the summons must be served not less than 7 days before the return day. (L.N. 152 of 2008)

**10. Third party notices (O. 77, r. 10)**

(1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the Crown shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Crown.

(2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

**11. Interpleader: application for order against Crown (O. 77, r. 11)**

No order shall be made against the Crown under Order 17, rule 5(3), except upon an application by summons served not less than 7 days before the return day.

**12. Discovery and interrogatories (O. 77, r. 12)**

(1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.

(2) In any civil proceedings to which the Crown is a party any order of the Court made under the power conferred by section 24(1) of the Crown Proceedings Ordinance (Cap 300), shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of the Chief Secretary for Administration, be injurious to the public interest to disclose. (L.N. 362 of 1997)

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 24 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

(5) (Repealed L.N. 404 of 1991)

**14. Evidence (O. 77, r. 14)**

(1) Civil proceedings against the Crown may be instituted under Order 39, rule 15, in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings between subjects.

**15. Execution and satisfaction of orders (O. 77, r. 15)**

(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown. (See App. A, Form 96)  
<\* Note - Exp. X-Ref.: Orders 45, 46, 47, 48, 49, 49B, 50, 51, 52\*>

(2) An application under the proviso to subsection (1) of section 21 of the Crown Proceedings Ordinance (Cap

300), for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court ex parte without summons.

(3) Any such certificate must be in Form No. 95 or 96 in Appendix A, whichever is appropriate.

#### **16. Attachment of debts, etc. (O. 77, r. 16)**

(1) No order-

- (a) for the attachment of debts under Order 49, or
- (b) for the appointment of a sequestrator under Order 45, or
- (c) for the appointment of a receiver under Order 30 or 51,

shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

(1A) No application shall be made under paragraph (2) unless the order of the Court to be enforced is for a sum of money amounting in value to at least \$5000.

(2) Every application to the Court for an order under section 23(1) of the Crown Proceedings Ordinance (Cap 300), restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by summons and, unless the Court otherwise directs, served-

- (a) on the Crown at least 15 days before the return day, and
- (b) on the person to be restrained or his solicitor at least 7 days after the summons has been served on the Crown and at least 7 days before the return day.

(2A) An application under paragraph (2) must be supported by an affidavit-

- (a) setting out the facts giving rise to the application;
- (b) stating the name and last known address of the person to be restrained;
- (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of the application, and
- (d) identifying the particular debt from the Crown in respect of which the application is made.

(3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the Crown.

#### **17. Proceedings relating to postal packets (O. 77, r. 17)**

(1) An application by any person under section 7(3) of the Crown Proceedings Ordinance (Cap 300), for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by originating summons.

(2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this rule.

(3) A summons under this rule shall be in Form No. 10 in Appendix A.

#### **18. Applications under section 25 of Crown Proceedings Ordinance (O. 77, r. 18)**

(2) An application such as is referred to in section 25(2) of the Crown Proceedings Ordinance (Cap 300) may be made to the Court at any time before trial by summons, or may be made at the trial of the proceedings.

(L.N. 152 of 2008)

(Enacted 1988)

Order:	78	<b>DISTRICT COURT PROCEEDINGS TRANSFERRED OR REMOVED TO COURT OF FIRST INSTANCE</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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DISTRICT COURT PROCEEDINGS TRANSFERRED OR  
REMOVED TO COURT OF FIRST INSTANCE

(25 of 1998 s. 2)



## **1. Application and interpretation (O. 78, r. 1)**

(1) This Order applies where an order has been made under section 41 or 42 of the District Court Ordinance (Cap 336), for the transfer, or under section 15 of the Crown Proceedings Ordinance (Cap 300), for the removal, of proceedings from the District Court to the Court of First Instance. (25 of 1998 s. 2; 28 of 2000 s. 45)

(2) Where only the proceedings on a counterclaim are transferred, this Order shall apply as if the party setting up the counterclaim were the plaintiff and the party resisting it the defendant, and references in this Order to the plaintiff and the defendant shall be construed accordingly.

(3) References in the following provisions of this Order to the plaintiff and the defendant shall, in relation to proceedings begun in the District Court otherwise than by writ, be construed as references to the applicant and the respondent respectively.

(L.N. 152 of 2008)

## **2. Duties of officer (O. 78, r. 2)**

On receipt by the Registrar of the documents relating to the transfer or removal, the Registrar must forthwith- (L.N. 356 of 1988; L.N. 152 of 2008)

- (a) file the said documents and make an entry of the filing thereof in the cause book,
- (c) give notice to all parties to the proceedings in the District Court that the action is proceeding in the Court of First Instance and that the defendant is required to acknowledge service of the notice in writing. (L.N. 152 of 2008)

(25 of 1998 s. 2)

## **3. Acknowledgment of service (O. 78, r. 3)**

(1) The defendant must, within 7 days after receipt of the notice referred to in rule 2, acknowledge service in writing of the notice of transfer or removal. (L.N. 152 of 2008)

(2) Where the defendant has not, before the proceedings are transferred or removed to the Court, acknowledged service of the writ or the originating summons by which the proceedings were begun in the District Court, he shall file an acknowledgement of service in accordance with Order 12, rules 1, 3, 5 and 9 within 14 days after receipt of the notice referred to in rule 2. (L.N. 152 of 2008)

## **4. Judgment on failure to give notice of intention to defend (O. 78, r. 4)**

(1) If the defendant fails, or all the defendants (if more than one) fail, to give notice of intention to defend within the period prescribed by rule 3(2), the plaintiff, after having caused an address for service to be entered in the cause book, may, with the leave of the Court, enter judgment against the defendant or defendants, as the case may be, with costs.

(2) An application for leave under this rule must be made by summons which must, notwithstanding anything in Order 65, rule 9, be served on the defendant, and the address for service of the defendant shall be his address for service in the proceedings in the District Court.

(L.N. 152 of 2008)

## **5. Case management summons or summary judgment (O. 78, r. 5)**

(L.N. 152 of 2008)

(1) Unless the plaintiff has entered judgment against a defendant under rule 4(1) or has entered judgment (final or interlocutory) or applied for judgment against a defendant under Order 19, the plaintiff must, within 7 days after a notice under rule 2 is given, cause an address for service to be entered in the cause book and either- (L.N. 152 of 2008)

- (a) take out and serve on the defendant a case management summons returnable in not less than 21 days,
- or

(b) except where the defendant is the Crown, make an application under Order 14, rule 1, for judgment against the defendant;

and where a summons is served on the defendant under sub-paragraph (a) Order 25, rules 2 to 7, shall, with any necessary modifications, apply as if that summons were a case management summons under that Order.

(2) If the plaintiff fails either to take out such a summons, or make such an application, as is referred to in paragraph (1) within the period prescribed thereby the defendant or any defendant may take out such a summons or may apply for an order dismissing the action.

(3) On the hearing of an application to dismiss the action the Court may either dismiss the action on such terms as may be just or may deal with the application as if it were a case management summons.

(L.N. 152 of 2008)

(Enacted 1988)

Order:	79	<b>TRIBUNAL PROCEEDINGS TRANSFER OR REMOVAL TO THE COURT OF FIRST INSTANCE</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**TRIBUNAL PROCEEDINGS TRANSFER OR REMOVAL TO  
THE COURT OF FIRST INSTANCE**

(25 of 1998 s. 2)

**1. Tribunal proceedings; transfer or removal to the  
Court of First Instance (O. 79, r. 1)**

(HK) Save as is otherwise provided by Ordinance or rules of court when a matter is transferred or removed from a tribunal to the Court of First Instance it shall be set down before a master who shall make such directions as he sees fit for the further conduct of the proceedings.

(25 of 1998 s. 2)

(Enacted 1988)

Order:	80	<b>DISABILITY</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**1. Interpretation (O. 80, r. 1)**

In this Order-

"mentally incapacitated person" (精神上無行為能力的人) means a mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap 136)) who, by reason of mental disorder or mental handicap, as the case may be, is incapable of managing and administering his property and affairs; (81 of 1997 s. 59)

"the Ordinance" (條例) means the Mental Health Ordinance (Cap 136);

"person under disability" (無行為能力的人) means a person who is a minor or a mentally incapacitated person. (81 of 1997 s. 59)

(81 of 1997 s. 59)

**2. Person under disability must sue, etc. by next friend or  
guardian ad litem (O. 80, r. 2)**

(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not acknowledge service, defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem.

(2) Subject to the provision of these rules, anything which in the ordinary conduct of any proceedings is

required or authorized by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

(3) Except where the Official Solicitor is acting as next friend or guardian ad litem, a next friend or guardian ad litem of a person under disability must act by a solicitor. (L.N. 375 of 1991)

### **3. Appointment of next friend or guardian ad litem (O. 80, r. 3)**

(2) Except as provided by paragraph (4) or (5) or by rule 6, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.

(3) Where a person is authorized under Part II of the Ordinance to conduct legal proceedings in the name of a mentally incapacitated person or on his behalf, that person shall be entitled to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in any proceedings to which his authority extends unless, in a case to which paragraph (4) or (5) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in those proceedings. (81 of 1997 s. 59)

(4) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(5) Where, after any proceedings have been begun, a party to the proceedings becomes a mentally incapacitated person, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party. (81 of 1997 s. 59)

(6) Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court-

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability,
- (b) service shall not be acknowledged in a cause or matter for a person under disability, and
- (c) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (8) have been filed in the Registry.

(8) The documents referred to in paragraph (6) are the following-

- (a) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian; and
- (b) where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized under Part II of the Ordinance to conduct the proceedings in the cause or matter in question in the name of the mentally incapacitated person or on his behalf, an office copy, sealed with the seal of the High Court, of the order or other authorization made or given under the said Part II by virtue of which he is so authorized; and (25 of 1998 s. 2)
- (c) except where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized as mentioned in sub-paragraph (b) a certificate made by the solicitor for the person under disability certifying-
  - (i) that he knows or believes, as the case may be, that the person to whom the certificate relates is a minor or a mentally incapacitated person, giving (in the case of a mentally incapacitated person) the grounds of his knowledge or belief; and
  - (ii) where the person under disability is a mentally incapacitated person, that there is no person authorized as aforesaid; and
  - (iii) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the Official Solicitor, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability. (L.N. 375 of 1991; 81 of 1997 s. 59)

### **6. Appointment of guardian where person under disability does not acknowledge service (O. 80, r. 6)**

(1) Where-

- (a) in an action against a person under disability begun by writ, or by originating summons, no acknowledgment of service is given in the action for that person, or
- (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgment of service is given for that person,

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for acknowledging service and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgment of service is given for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limited (as respects that person) for acknowledging service and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian ad litem at the hearing of the petition or motion, as the case may be, the Court hearing it may appoint a guardian ad litem of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving-

- (a) that the person to whom the application relates is a person under disability,
- (b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,
- (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability, and
- (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for acknowledging service and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court given under paragraph (3) must be supported by evidence proving the matters referred to in paragraph (5)(b).

**7. Application to discharge or vary certain orders (O. 80, r. 7)**

An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, for the discharge or variation of the order must be made-

- (a) if a next friend or guardian ad litem is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian ad litem acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

**8. Admission not to be implied from pleading of person under disability (O. 80, r. 8)**

Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

**9. Discovery and interrogatories (O. 80, r. 9)**

Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

**10. Compromise, etc., by person under disability (O. 80, r. 10)**

Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

#### **11. Approval of settlement (O. 80, r. 11)**

(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then the claim may be made in proceedings begun by originating summons, and in the summons an application may also be made for- (L.N. 152 of 2008)

- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under rule 12, or
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Ordinance (Cap 22), the originating summons must include the particulars mentioned in section 5(4) of the Fatal Accidents Ordinance (Cap 22).

- (4) An originating summons under this rule shall be in Form No. 10 in Appendix A.
- (5) In this rule "settlement" (和解) includes a compromise.

#### **12. Control of money recovered by person under disability (O. 80, r. 12)**

(1) Where in any proceedings-

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or
- (b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a District Court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

(4) Where in pursuance of directions given under this rule money is paid into the Court of First Instance to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court. (25 of 1998 s. 2)

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively. (81 of 1997 s. 59)

#### **13. Provisions supplementary to rule 12 (O. 80, r. 13)**

(HK)(3) Where money is ordered to be transferred to or paid into a District Court, the Registrar shall send a sealed copy of the judgment or order to the Registrar of the District Court.

#### **15. Proceedings under Fatal Accidents Ordinance: apportionment by Court (O. 80, r. 15)**

(1) Where a single sum of money is paid into court under Order 22, in satisfaction of a cause of action under the Fatal Accidents Ordinance (Cap 22) and a cause of action under Part IV or IVA of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23), and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 12 (if that rule

applies) or when authorizing its payment out of court.

(2) Where, in an action in which a claim under the Fatal Accidents Ordinance (Cap 22) is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under Order 22, is accepted in satisfaction of the cause of action under the said Ordinance, then, unless the sum has been apportioned between the persons entitled thereto by a jury, it shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Ordinances.

(L.N. 152 of 2008)

#### **16. Service of certain documents on person under disability (O. 80, r. 16)**

(1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, rule 1(2) on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24, rule 16(3) and Order 26, rule 6(3) the document must be served-

- (a) in the case of a minor who is not also a mentally incapacitated person, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a mentally incapacitated person, on the person (if any) who is authorized under Part II of the Ordinance to conduct in the name of the mentally incapacitated person or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorized, on the person with whom he resides or in whose care he is;

and must be served in the manner required by these rules with respect to the document in question. (81 of 1997 s. 59)

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

(Enacted 1988)

Order:	81	<b>PARTNERS</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

#### **1. Actions by and against firms within jurisdiction (O. 81, r. 1)**

Subject to the provisions of any written law, any 2 or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

#### **2. Disclosure of partners' names (O. 81, r. 2)**

(1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made

under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words "or may order" to the end.

### **3. Service of writ (O. 81, r. 3)**

(1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (3), be served-

- (a) on any one or more of the partners, or
- (b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there, or
- (c) by sending a copy of the writ by registered post (in accordance with Order 10, rule 1(2)) to the firm at the principal place of business of the partnership within the jurisdiction; (L.N. 165 of 1992)

and, subject to paragraph (2), where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a writ is served on a firm in accordance with paragraph (1)(c)-

- (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to the firm, and
- (b) any affidavit proving due service of the writ must contain a statement to the effect that-
  - (i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to the firm at the address in question, will have come to the knowledge of one of the persons mentioned in paragraph (1)(a) or (b) within 7 days thereafter, and
  - (ii) the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(3) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(4) Every person on whom a writ is served under paragraph (1)(a) or (b) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

### **4. Acknowledgment of service in an action against firm (O. 81, r. 4)**

(1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the writ and state in his acknowledgment that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

(3) Where an acknowledgment of service has been given by a defendant in accordance with paragraph (2), then-

- (a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
- (b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence

on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has acknowledged service in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not acknowledge service of the writ unless he is a member of the firm sued.

## **5. Enforcing judgment or order against firm (O. 81, r. 5)**

(1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who-

- (a) acknowledged service of the writ in the action as a partner, or
- (b) having been served as a partner with the writ of summons, failed to acknowledge service of it in the action, or
- (c) admitted in his pleading that he is a partner, or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he-

- (a) acknowledged service of the writ in the action as a partner, or
- (b) was served within the jurisdiction with the writ as a partner, or
- (c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ as a partner;

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by summons which must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

## **6. Enforcing judgment or order in actions between partners, etc. (O. 81, r. 6)**

(1) Execution to enforce a judgment or order given or made in-

- (a) an action by or against a firm in the name of the firm against or by a member of the firm, or
- (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the leave of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

## **7. Attachment of debts owed by firm (O. 81, r. 7)**

(1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.



(2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

#### **8. Actions begun by originating summons (O. 81, r. 8)**

Rules 2 to 7 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such an action begun by writ.

#### **9. Application to person carrying on business in another name (O. 81, r. 9)**

An individual carrying on business within the jurisdiction in a name or style other than his own name, may, whether or not he is within the jurisdiction, be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

#### **10. Applications for orders charging partner's interest in partnership property, etc. (O. 81, r. 10)**

(1) Every application to the Court by a judgment creditor of a partner for an order under section 25 of the Partnership Ordinance (Cap 38) (which authorizes the Court of First Instance or a judge thereof to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property), and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application, must be made by summons. (25 of 1998 s. 2)

(2) A master may exercise the powers conferred on a judge by the said section 25.

(3) Every summons issued by a judgment creditor under this rule, and every order made on such a summons, must be served on the judgment debtor and on such of his partners as are within the jurisdiction.

(4) Every summons issued by a partner of a judgment debtor under this rule, and every order made on such a summons, must be served-

(a) on the judgment creditor, and

(b) on the judgment debtor, and

(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction.

(5) A summons or order served in accordance with this rule on some only of the partners shall be deemed to have been served on all the partners of the partnership.

(Enacted 1988)

Order:	82	<b>DEFAMATION ACTIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Application (O. 82, r. 1)**

These rules apply to actions for libel or slander subject to the following rules of this Order.

#### **2. Indorsement of claim in libel action (O. 82, r. 2)**

Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

#### **3. Obligation to give particulars (O. 82, r. 3)**

(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

#### **4. Provisions as to payment into court (O. 82, r. 4)**

(1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in that Order, the action shall be stayed as against that defendant only, but- (L.N. 152 of 2008)

- (a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed, and
- (b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which section 4 of the Defamation Ordinance (Cap 21) provides, Order 22, rule 25, shall not apply in relation to that pleading. (L.N. 152 of 2008)

#### **5. Statement in open court (O. 82, r. 5)**

(1) Where a party wishes to accept money paid into court in satisfaction of a cause of action for libel or slander, malicious prosecution or false imprisonment, that party may before or after accepting the money apply to a judge in chambers by summons for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander, malicious prosecution or false imprisonment which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that an action be set down for trial, and before the date fixed for the trial a statement must be submitted for the approval of the judge before whom it is to be made.

(L.N. 404 of 1991)

#### **6. Interrogatories not allowed in certain cases (O. 82, r. 6)**

In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

#### **7. Evidence in mitigation of damages (O. 82, r. 7)**

In an action for libel or slander in which the defendant does not by his defence assert the truth of the statement

complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

**8. Fulfilment of offer of amends under section 25 of the Defamation Ordinance (O. 82, r. 8)**

(1) An application to the Court under section 25 of the Defamation Ordinance (Cap 21) to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section must, unless the application is made in the course of proceedings for libel or slander in respect of the publication to which the offer relates, be made before a judge in chambers.

(2) An originating summons by which such an application is made shall be in Form No. 10 in Appendix A.  
(Enacted 1988)

Order:	83A	<b>MONEY LENDERS' ACTIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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(HK) ORDER 83A

**MONEY LENDERS' ACTIONS**

**1. Application and interpretation (O. 83A, r. 1)**

(1) These rules apply to a money lender's action subject to the following rules of this Order.

(2) In these rules-

"money lender" (放債人) has the meaning assigned to it by section 2 of the Money Lenders Ordinance (Cap 163);

"money lender's action" (放債人訴訟) means an action for the recovery of money lent by a money lender or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee.

**2. Commencement of money lender's action (O. 83A, r. 2)**

(1) Every money lender's action may be begun by writ. (L.N. 152 of 2008)

(2) Before a writ beginning a money lender's action is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a money lender.

**3. Particulars to be included in statement of claim (O. 83A, r. 3)**

Every statement of claim in a money lender's action (whether indorsed on the writ or not) must state-

- (a) the date on which the loan was made;
- (b) the amount actually lent to the borrower;
- (c) the rate per cent per annum of interest charged;
- (d) the date when the contract for repayment was made;
- (g) the amount repaid;
- (h) the amount due but unpaid;
- (i) the date upon which such unpaid sum or sums became due; and
- (j) the amount of interest accrued due and unpaid on every such sum.

**4. Judgment on failure to give notice of intention to defend or in default of defence (O. 83A, r. 4)**

(1) In a money lender's action judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

(2) (a) An application for the grant of leave under this rule must be made by summons supported by an affidavit which must-

- (i) prove that the money is due and payable;
- (ii) give the particulars required by rules 2 and 3; and
- (iii) exhibit a true copy of any agreement or security relating to the money lent, and the original agreement or security must be produced at the hearing of the summons.

(b) The summons and a copy of the affidavit in support and of any exhibits referred to therein must, notwithstanding anything in Order 65, rule 9 be served on the defendant not less than 4 clear days before the day fixed for the hearing of the summons.

(3) If the application is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued until after the time limited for acknowledgment of service of the writ.

(4) On the hearing of such application, whether the defendant appears or not, the Court-

- (a) may exercise the powers of the court under section 25 of the Money Lenders Ordinance (Cap 163);
- (b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

5. (Repealed L.N. 129 of 2000)

(Enacted 1988)

Order:	84A	<b>ACTIONS ARISING OUT OF HIRE-PURCHASE OR CONDITIONAL SALE AGREEMENTS</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

#### (HK) ORDER 84A

### ACTIONS ARISING OUT OF HIRE-PURCHASE OR CONDITIONAL SALE AGREEMENTS

#### 1. Application and interpretation (O. 84A, r. 1)

(1) These rules apply to actions to which this Order applies subject to the following Order.

(2) This Order applies to any action arising out of a hire-purchase agreement or a conditional sale agreement brought against the hirer or buyer of the goods to which the agreement relates or a guarantor, if the writ beginning the action is indorsed with a claim for money, not being-

- (a) a claim for unliquidated damages, or
- (b) a claim for no more than the amount of any instalment or instalments of the hire-purchase price or total purchase price, as the case may be, which is due and unpaid.

(3) (a) In this Order-

"hire-purchase agreement" (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;

"conditional sale agreement" (有條件售賣協議) means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

"contract of guarantee" (擔保合約), in relation to a hire-purchase agreement, credit-sale agreement or conditional sale agreement, means a contract, made at the request (express or implied) of the

hirer or buyer, either to guarantee the performance of the hirer's or buyer's obligations under the hire-purchase agreement, credit-sale agreement or conditional sale agreement, or to indemnify the owner or seller against any loss which he may incur in respect of that agreement, and "guarantee" (擔保) shall be considered accordingly;

"buyer" (買方) in relation to a conditional sale agreement, means the person who agrees to purchase goods under the agreement and includes a person to whom the rights or liabilities of that person under the agreement have passed by assignment or by operation of law;

"hire-purchase price" (租購價) (subject to sub-paragraph (b)) means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of goods to which the agreement relates, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"total purchase price" (總買價) (subject to sub-paragraph (b)) means the total sum payable by the buyer under a credit-sale agreement or a conditional sale agreement, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

"hirer" (租用人) means the person who takes or has taken goods from an owner under a hire-purchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law; and

"goods" (貨品), "buyer" (買方) (except in relation to a conditional sale agreement) have the meanings assigned to them respectively by the Sale of Goods Ordinance (Cap 26).

- (b) For the purposes of this Order, any sum payable by the hirer under a hire-purchase agreement, or by the buyer under a conditional sale agreement, by way of a deposit or other initial payment, or credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or seller or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means, shall form part of the hire-purchase price or total purchase price, as the case may be.

## **2. Particulars to be included in statement of claim (O. 84A, r. 2)**

Every statement of claim in an action to which this Order applies (whether indorsed on the writ or not) must state the circumstances in which the claim mentioned in rule 1(2) arises.

## **3. Judgment on failure to give notice of intention to defend or in default of defence (O. 84A, r. 3)**

(1) In an action to which this Order applies judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

- (2) (a) An application for the grant of leave under this rule must be made by summons supported by an affidavit which must-
- (i) give the particulars required by rule 2; and
  - (ii) exhibit a true copy of the hire-purchase or conditional sale agreement, the original of which must be produced at the hearing of the summons.

- (b) The summons and a copy of the affidavit in support and of any exhibits referred to therein must, notwithstanding anything in Order 65, rule 9, be served on the defendant not less than 4 clear days before the day fixed for the hearing of the summons.

(3) If the application is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued until after the time limited for acknowledgment of service of the writ.

(4) The plaintiff must produce to the Court hearing an application for the grant of leave under this rule the hire-purchase or conditional sale agreement to which the action relates.

(5) Unless the Court hearing such application grants leave to enter judgment for the amount claimed or, having power to do so, transfers the action to a District Court, it shall (whether or not the defendant appears on the hearing) try the action.

(Enacted 1988)

Order:	85	ADMINISTRATION AND SIMILAR ACTIONS	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

### 1. Interpretation (O. 85, r. 1)

In this Order "administration action" (遺產管理訴訟) means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

### 2. Determination of questions, etc., without administration (O. 85, r. 2)

(1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions-

- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
- (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs-

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into court of money held by a person in his capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

### 3. Parties (O. 85, r. 3)

(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate

shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

#### **4. Grant of relief in action begun by originating summons (O. 85, r. 4)**

In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 8, in relation to the action.

#### **5. Judgments and orders in administration actions (O. 85, r. 5)**

(1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may-

- (a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge in person.

#### **6. Conduct of sale of trust property (O. 85, r. 6)**

Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

(Enacted 1988)

Order:	86	<b>ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Application by plaintiff for summary judgment (O. 86, r. 1)**

(1) In any action begun by writ indorsed with a claim-

- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
- (b) for rescission of such an agreement, or
- (c) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ.

**2. Manner in which application under rule 1 must be made (O. 86, r. 2)**

(1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action.

Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.

(2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.

(3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

**3. Judgment for plaintiff (O. 86, r. 3)**

(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against the defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action. (L.N. 356 of 1988)

**4. Leave to defend (O. 86, r. 4)**

(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity-

(a) to produce any document;

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

**5. Directions (O. 86, r. 5)**

Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 were a case management summons.

(L.N. 152 of 2008)

**6. Costs (O. 86, r. 6)**

If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an aided person, require the costs to be paid by him forthwith.

**7. Setting aside judgment (O. 86, r. 7)**

Any judgement given against a defendant who does not appear at the hearing of an application under rule 1 may be set aside or varied by the Court on such terms as it thinks just.

**8. (HK) Application for summary judgment on counterclaim (O. 86, r. 8)**



(1) Where a defendant to an action begun by writ has served a counterclaim claiming against the plaintiff such relief as appears in rule 1(1) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim or to a particular part of such a claim, apply to the court for judgment against the plaintiff on that claim or that part.

(2) Rules 2, 3, 4, 5, 6 and 7 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications-

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted;
- (c) the reference in rule 4(2) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(L.N. 356 of 1988)

**9. (HK) Right to proceed with residue of action or counterclaim (O. 86, r. 9)**

(1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 8 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or against any other defendant to the counterclaim.

(L.N. 356 of 1988)

(Enacted 1988)

Order:	87	<b>DEBENTURE HOLDERS' ACTIONS: RECEIVER'S REGISTER</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Receiver's register (O. 87, r. 1)**

Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as "the receiver's register").

**2. Registration of transfers, etc. (O. 87, r. 2)**

(1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmissions of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating-

- (a) that an application for the registration of the transfer has been made, and
- (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

**3. Application for rectification of receiver's register (O. 87, r. 3)**

(1) Any person aggrieved by any thing done or omission made by a receiver under rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by summons in the action in which the receiver was appointed.

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

**4. Receiver's register evidence of transfers, etc. (O. 87, r. 4)**

Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

**5. Proof of title of holder of bearer debenture, etc. (O. 87, r. 5)**

(1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the Registry, the solicitor of the plaintiff in the action must cause to be indorsed thereon a notice stating-

- (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in the Registry as the holder of the debenture or debenture stock certificate, as the case may be, and
- (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2), and
- (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The solicitor of the plaintiff in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

**6. Requirements in connection with payments (O. 87, r. 6)**

(1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Registrar shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the plaintiff in the action or to such other person as the Court may direct, and that solicitor or other person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Registrar.

(Enacted 1988)

Order:	88	<b>MORTGAGE ACTIONS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Application and interpretation (O. 88, r. 1)**

(1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action (other than an action to which rule 5A applies) in which there is a claim for any of the following reliefs, namely-

- (a) payment of moneys secured by the mortgage,
- (b) sale of the mortgaged property,
- (c) foreclosure,
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property,
- (e) redemption,
- (f) reconveyance of the property or its release from the security,
- (g) delivery of possession by the mortgagee.

(2) In this Order "mortgage" (按揭) includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These rules apply to mortgage actions subject to the following provisions of this Order.

#### **4. Claim for possession: failure by a defendant to acknowledge service (O. 88, r. 4)**

(1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to acknowledge service of the originating summons, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

This rule shall not be taken as affecting Order 28, rule 3, or rule 5(2), in so far as it requires any document to be served on, or notice given to, a defendant who has acknowledged service of the originating summons in the action.

(2) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (3).

(5) Service under paragraph (2) or (4), and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his solicitor.

The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

(7) Where the plaintiff gives notice to the defendant under Order 3, rule 6, of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraph (5).

## **5. Action for possession or payment: evidence (O. 88, r. 5)**

(1) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit must exhibit a true copy of the mortgage and the original mortgage must be produced at the hearing of the summons.

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and except where the Court in any case or class of case otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of-

- (a) the amount of the advance,
- (b) the amount of the periodic payments required to be made,
- (c) the amount of any interest or instalments in arrear at the date of the originating summons and at the date of the affidavit, and
- (d) the amount remaining due under the mortgage.

(4) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (3).

(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

## **5A. Action for the enforcement of charging order by sale (O. 88, r. 5A)**

(1) This rule applies to a mortgage action to enforce a charging order by sale of the property charged.

(2) The affidavit in support of the originating summons must-

- (a) identify the charging sought to be enforced and the subject-matter of the charge;
- (b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the affidavit;
- (c) verify, so far as is known, the debtor's title to the property charged;
- (d) identify any other incumbrances on the property charged stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;
- (e) set out the plaintiff's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such sale;
- (f) where the property charged consists of land in respect of which the plaintiff claims delivery of possession, give particulars of every person who to the best of the plaintiff's knowledge is in possession of the property charged or any part of it.

## **6. Action by writ: judgment in default (O. 88, r. 6)**

(1) Notwithstanding anything in Order 13 or Order 19, in a mortgage action begun by writ judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(3) Where a summons for leave under this rule is issued, rule 4(2) to (7) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (2) to the notice of appointment, there shall be substituted references to the summons.

(4) Where a summons for leave under this rule is issued in an action to which rule 5 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

## **7. Foreclosure in redemption action (O. 88, r. 7)**

Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by summons for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

(L.N. 152 of 2008)

(Enacted 1988)

Order:	89	<b>PROCEEDINGS BETWEEN HUSBAND AND WIFE</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **1. Determination of questions as to property (O. 89, r. 1)**

(HK)(1) Proceedings under section 6 of the Married Persons Status Ordinance (Cap 182) may be begun by originating summons.

(L.N. 152 of 2008)

## **2. Provisions as to actions in tort (O. 89, r. 2)**

(1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

(2) On the first application by summons in an action to which this rule applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 5(2) of the Married Persons Status Ordinance (Cap 182) should or should not be exercised. (L.N. 152 of 2008)

(3) Notwithstanding anything in Order 13 or Order 19, judgment on failure to give notice of intention to defend or in default of defence shall not be entered in an action to which this rule applies except with the leave of the Court.

(4) An application for grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(5) If the summons is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued before the time limited for acknowledging service of the writ.

(Enacted 1988)

Order:	90	<b>PROCEEDINGS CONCERNING MINORS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **3. Application to make a minor a ward of court (O. 90, r. 3)**

(1) Where an action to which a minor is a party is proceeding, an application to make that minor a ward of court may be made by summons in the action; in any other case an application to make a minor a ward of court may be made by originating summons. (L.N. 152 of 2008)

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made ex parte to the Registrar for leave to issue either an ex parte originating summons or an originating summons with the infant as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to an

originating summons under this rule in the first instance.

(3) Particulars of any summons under this rule shall be recorded in the register of wards.

(3A) The date of the minor's birth shall, unless otherwise directed, be stated in the summons and the plaintiff shall-

- (a) on issuing the summons or before or at the first hearing thereof lodge in the Registry a certified copy of the entry in the birth register book kept under the Births and Deaths Registration Ordinance (Cap 174) or, as the case may be, in the Adopted Children Register maintained under the Adoption Ordinance (Cap 290), relating to the minor, or
- (b) at the first hearing of the summons apply for directions as to proof of birth of the minor in some other manner.

(3B) The name of each party to the proceedings shall be qualified by a brief description in the body of the summons, of his interest in, or relationship to, the minor.

(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the plaintiff is unaware of his whereabouts.

(5) Every defendant other than the minor shall, forthwith after being served with the summons-

- (a) lodge in the Registry a notice stating the address of the defendant and the whereabouts of the minor or, as the case may be, that the defendant is unaware of his whereabouts, and
- (b) unless the Court otherwise directs, serve a copy of the notice on the plaintiff.

(6) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue of, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the Registry and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the defendant informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

### **3A. Enforcement of order by bailiff (O. 90, r. 3A)**

The power of the Court of First Instance to secure, through an officer attending upon the Court, compliance with any direction relating to a ward of court may be exercised by an order addressed to the bailiff.

(25 of 1998 s. 2)

### **4. When minor ceases to be ward of court (O. 90, r. 4)**

(1) A minor who, by virtue of section 26(2) of the High Court Ordinance, becomes a ward of court on the issue of a summons under rule 3 shall cease to be a ward of court- (25 of 1998 s. 2)

- (a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;
- (b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the judge hearing it orders that the minor be made a ward of court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 26(3) of the said Ordinance to order that any minor who is for the time being a ward of court shall cease to be a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 3 is made within the period of 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the Registry immediately after the expiration of that period.

### **4B. Hearing of an application to make a minor a ward of Court (O. 90, r. 4B)**

(HK) An application to make a minor a ward of court may be disposed of in chambers and shall be heard by a judge.

### **5. Applications under the Guardianship of Minors Ordinance (O. 90, r. 5)**

Where there is pending any action or other proceeding by reason of which a minor is a ward of court, any application under the Guardianship of Minors Ordinance (Cap 13) with respect to that minor may be made by summons in the proceedings; and in any other case any such application may be made by originating summons.

(L.N. 152 of 2008)

## **6. Defendants to summons (O. 90, r. 6)**

(1) Where the minor with respect to whom an application under the Guardianship of Minors Ordinance (Cap 13) is made is not the plaintiff he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the summons, but, subject to paragraph (2), any other person appearing to be interested in, or affected by, the application shall be made a defendant or be served with the summons, as the case may be.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

## **7. Hearing of applications as to guardianship, maintenance, etc. (O. 90, r. 7)**

(1) Applications as to the guardianship of minors may be disposed of in chambers and shall be heard by a judge.

(2) Applications as to the maintenance and advancement of any minor may be disposed of in chambers.

## **8. Verification and passing of guardians accounts (O. 90, r. 8)**

(HK) A guardian's account must be verified and passed in the same manner as that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

## **10. Removal of guardianship proceedings from the District Court (O. 90, r. 10)**

(1) An application for an order under section 24 of the Guardianship of Minors Ordinance (Cap 13) for the removal of an application from a District Court into the Court may be made by an originating summons and, unless the Court otherwise directs, the summons need not be served on any person. (L.N. 152 of 2008)

(2) The application may be heard by a master, but, if an order is made for the removal to the Court of the application to the District Court, that application shall be heard by a judge.

(HK)(3A) Section 44, subsections (1), (2) (except the proviso) and (4), of the District Court Ordinance (Cap 336) shall apply to an application ordered to be transferred to the Court under this rule.

(5) The application so removed shall proceed in the Court as if it had been made by originating summons.

## **11. Application of Matrimonial Causes Rules (O. 90, r. 11)**

(1) The provisions of the Matrimonial Causes Rules (Cap 179 sub. leg. A) relating to proceedings under section 48 of the Matrimonial Causes Ordinance (Cap 179) shall apply, with the necessary modifications, to proceedings under sections 13(1), 14 and 15 of the Guardianship of Minors Ordinance (Cap 13).

(2) The provisions of the Matrimonial Causes Rules (Cap 179 sub. leg. A) relating to the drawing up and service of orders shall apply to proceedings under this Order as if they were proceedings under those rules.

(Enacted 1988)

Order:	92	<b>LODGMET, INVESTMENT, ETC. OF FUNDS IN COURT</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **2. Payment into court under the Trustee**

## **Ordinance (O. 92, r. 2)**

(1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 62 of the Trustee Ordinance (Cap 29) must make and file an affidavit setting out-

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and
- (d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which a minor or a person resident outside Hong Kong is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by the High Court Suitors' Funds Rules (Cap 4 sub. leg. B) for the time being in force. (25 of 1998 s. 2)

## **4. Notice of lodgment (O. 92, r. 4)**

Any person who has lodged money or securities in court in accordance with rule 2 must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

## **5. Applications with respect to funds in court (O. 92, r. 5)**

(1) Where an application to the Court-

- (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
- (b) for the investment, or change of investment, of any funds in court;
- (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
- (d) for the payment or transfer out of court of any such funds as are mentioned in sub-paragraph (c),

is made the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application must be made by summons and, unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

(3) Where an application under paragraph (1)(d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed \$50000 in value, the application may be made ex parte to a master and the master may dispose of the application or may direct it to be made by originating summons. Unless otherwise directed, an ex parte application under this paragraph shall be made by affidavit.

(5) This rule does not apply to any application for an order under Order 22A. (L.N. 152 of 2008)

(Enacted 1988)

Order:	93	THE VARIATION OF TRUSTS ORDINANCE	23 of 2002	19/07/2002
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## **6. Application under Variation of Trusts Ordinance (O. 93, r. 6)**

(2) In addition to any other persons who are necessary and proper defendants to the originating summons by which an application under section 3 of the Variation of Trusts Ordinance (Cap 253), is made, the settlor and any other person who provided property for the purposes of the trusts to which the application relates must, if still alive and not the plaintiff, be made a defendant unless the Court for some special reason otherwise directs.

## **14. (Repealed 23 of 2002 s. 126)**



Order:	95	<b>THE BILLS OF SALE ORDINANCE AND BANKRUPTCY ORDINANCE</b>	25 of 1998	01/07/1997
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## Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

### 1. Rectification of register (O. 95, r. 1)

- (1) Every application to the Court under section 20 of the Bills of Sale Ordinance (Cap 20) for an order-
  - (a) that any omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by that Ordinance be rectified by extending the time for such registration, or
  - (b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by affidavit ex parte to a master.

(2) Every application for such an order as is described in paragraph (1) shall be supported by an affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

### 2. Entry of satisfaction (O. 95, r. 2)

(1) Every application under section 21 of the Bills of Sale Ordinance (Cap 20) to a master for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must-

- (a) if a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, be made ex parte;
- (b) in all other cases, be made by originating summons.

(2) An ex parte application under paragraph (1)(a) must be supported by-

- (a) particulars of the consent referred to in that paragraph; and
- (b) an affidavit by a witness who attested the consent verifying the signature on it.

(3) An originating summons under paragraph (1)(b) must be served on the person entitled to the benefit of the bill of sale and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

(4) An originating summons under paragraph (1)(b) shall be in Form No. 10 in Appendix A.

### 3. Restraining removal on sale of goods seized (O. 95, r. 3)

An originating summons by which an application to the Court under the proviso to section 14 of the Bills of Sale Ordinance (Cap 20) must be made shall be in Form No. 10 in Appendix A.

### 4. Search of register (O. 95, r. 4)

The Registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

### 6. Assignment of book debts (O. 95, r. 6)

(1) There shall continue to be kept in the Registry a register of assignment of book debts.

(2) Every application for registration of an assignment of a book debt under section 48 of the Bankruptcy Ordinance (Cap 6) shall be made by producing at the Registry-

- (a) a true copy of the assignment, and of every schedule thereto, and
- (b) an affidavit verifying the date and the time, and the due execution of the assignment in the presence of the deponent, and setting out the particulars of the assignment, and of the parties thereto.

(3) On an application being made in accordance with the preceding paragraph, the documents there referred to

shall be filed and the particulars of the assignment and the parties to it, shall be entered in the register.

(Enacted 1988)

Order:	100	<b>THE TRADE MARKS ORDINANCE</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**2. Appeals and applications under the Trade Marks Ordinance (O. 100, r. 2)**

(1) Every appeal to the Court under the Trade Marks Ordinance (Cap 559), shall be heard and determined by a single judge. (35 of 2000 s. 98)

(2) Subject to rule 3, every application to the Court under the said Ordinance may be begun by originating summons in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(3) The summons by which any such application is made must be served on the Registrar of Trade Marks. (L.N. 152 of 2008)

(4) Where the Registrar of Trade Marks refers to the Court an application under the said Ordinance made to him, then, unless within one month after receiving notification of the decision to refer, the applicant makes to the Court the application referred, he shall be deemed to have abandoned it.

(5) The period prescribed in relation to an appeal to which paragraph (1) applies or the period prescribed by paragraph (4) in relation to an application or appeal to which that paragraph applies may be extended by the Registrar of Trade Marks on the application of any party interested and may be so extended although the application is not made until after the expiration of that period, but the foregoing provision shall not be taken to affect the power of the Court under Order 3, rule 5, to extend that period.

(6) (Repealed 35 of 2000 s. 98)

**3. Proceedings for infringement of registered trade mark: validity of registration disputed (O. 100, r. 3)**

(1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order that the register of trade marks be rectified by cancelling or varying the relevant entry or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered trade mark must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified must serve on the Registrar of Trade Marks a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Registrar of Trade Marks shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

(Enacted 1988)

Order:	102	<b>THE COMPANIES ORDINANCE AND THE COMPANIES (WINDING UP AND MISCELLANEOUS PROVISIONS) ORDINANCE*</b>	L.N. 163 of 2013	03/03/2014
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**1.** (Repealed 28 of 2012 ss. 912 & 920)

**2. Applications to be made by originating summons (O. 102, r. 2)**

(1) Except in the case of applications made in proceedings relating to the winding up of companies, applications made pursuant to section 724 of the Companies Ordinance (Cap 622) and the applications mentioned in rule 5, every application under that Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) may be made by originating summons. (L.N. 152 of 2008)

(2) An originating summons under this rule shall be in Form No. 10 in Appendix A unless the application made by the summons is-

- (a) an application under section 675 of the Companies Ordinance (Cap 622) for an order to make provision for all or any of the matters mentioned in subsection (2) of that section where an order sanctioning the compromise or arrangement to which the application relates has previously been made, or
- (b) an application under section 302 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) for an order directing a receiver or manager of a company to make good any such default as is mentioned in subsection (1) of that section, or
- (c) an application under section 306 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) or section 898 of the Companies Ordinance (Cap 622) for an order directing a company and any officer thereof to make good any such default as is mentioned in that section.

(3) (Repealed 28 of 2003 s. 120)

(4) An application under section 733 of the Companies Ordinance (Cap 622) for leave to dispense with the service of a written notice required by that section may be made by ex parte originating summons. (L.N. 80 of 2005)  
(28 of 2012 ss. 912 & 920)

**3-4.** (Repealed L.N. 152 of 2008)

## **5. Applications to be made by petition (O. 102, r. 5)**

- (1) The following applications must be made by petition, namely applications- (28 of 2012 ss. 912 & 920)
  - (a) under section 89(5) of the Companies Ordinance (Cap 622) to cancel the alteration of a private company's objects, (28 of 2003 s. 120)
  - (b) under section 90(4) of the Companies Ordinance (Cap 622) to cancel the alteration of a provision contained in the articles of association of a relevant company as defined by section 90(10) of that Ordinance, (28 of 2003 s. 120)
  - (c)-(e) (Repealed 28 of 2012 ss. 912 & 920)
  - (f) under section 226 of the Companies Ordinance (Cap 622) to confirm a reduction of the share capital of a company,
  - (g) under section 182 of the Companies Ordinance (Cap 622) to disallow any variation or abrogation of the rights attached to shares in any class of shares in a company,
  - (ga) under section 190 of the Companies Ordinance (Cap 622) to disallow any variation or abrogation of the rights of any class of members of a company that does not have a share capital, (28 of 2012 ss. 912 & 920)
  - (h) under section 673 of the Companies Ordinance (Cap 622) to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,
  - (i) under section 765 of the Companies Ordinance (Cap 622) for the restoration of a company to the Companies Register, where the application is made in conjunction with an application for the winding up of the company,
  - (j) under section 817 of the Companies Ordinance (Cap 622) to cancel the alteration of the form of a company's constitution, and
  - (k) under section 904 of the Companies Ordinance (Cap 622) for relief from liability of an officer of a company or a person employed by a company as auditor. (28 of 2012 ss. 912 & 920)

## **6. Entitlement of proceedings (O. 102, r. 6)**

(2) Every originating summons and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies Ordinance (Cap 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32). (L.N. 152 of 2008; 28 of 2012 ss. 912 & 920)

(3) (Repealed 28 of 2003 s. 120)

## **7. Case management summons (O. 102, r. 7)**

(1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a case management summons under this rule. (L.N. 152 of 2008)

(2) The applications referred to in paragraph (1) are-

(a) (Repealed 28 of 2012 ss. 912 & 920)

(b) an application under section 673 of the Companies Ordinance (Cap 622) to sanction an arrangement or compromise (except where the petition for such sanction includes an application for an order under section 675 of the Companies Ordinance (Cap 622)), and

(c) an application under section 765 of the Companies Ordinance (Cap 622) for the restoration of a company to the Companies Register. (28 of 2012 ss. 912 & 920)

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions- (28 of 2012 ss. 912 & 920)

(a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;

(b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made;

and the power of the Court under section 226(3) of the Companies Ordinance (Cap 622) to direct that section 227 of that Ordinance shall not apply as regards any class or classes of creditors may be exercised on any hearing of the summons. (28 of 2012 ss. 912 & 920)

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

## **8. Inquiry as to debts: company to make list of creditors (O. 102, r. 8)**

(1) Where under rule 7 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file in the Registry an affidavit made by an officer of the company competent to make it verifying a list containing-

(a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends,

(b) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof, and

(c) the total of those amounts and values.

(2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

(3) The list must be left at the office mentioned in paragraph (1) not later than one day after the affidavit is filed.

## **9. Inspection of list of creditors (O. 102, r. 9)**

(1) Copies of the list made under rule 8 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of one dollar, to inspect the said list at any such office and to take extracts therefrom.

## **10. Notice to creditors (O. 102, r. 10)**

Within 7 days after filing the affidavit required by rule 8 the company must send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating-

- (a) the amount of the reduction sought to be confirmed,
- (b) the effect of the order directing an inquiry as to debts and claims,
- (c) the amount or value specified in the list as due or estimated to be due to that creditor, and
- (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

#### **11. Advertisement of petition and list of creditors**

(O. 102, r. 11)

After filing the affidavit required by rule 8 the company must insert, in such newspapers and at such times as the Court directs, a notice stating-

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed,
- (b) the inquiry ordered by the Court under rule 7,
- (c) the places where the list of creditors may be inspected in accordance with rule 9, and
- (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

#### **12. Affidavit as to claims made by creditors**

(O. 102, r. 12)

Within such time as the Court directs the company must file in the Registry an affidavit made by the company's solicitor and an officer of the company competent to make it-

- (a) proving service of the notices mentioned in rule 10 and advertisement of the notice mentioned in rule 11,
- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim,
- (c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry, and
- (d) stating which of the persons named in the list made under rule 8, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

#### **13. Adjudication of disputed claims (O. 102, r. 13)**

If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company must, if the Court so directs, send to that person by post at his last known address a notice requiring him-

- (a) within such time as may be specified in the notice, being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company, and
- (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

#### **14. Certifying lists of creditors entitled to object to reduction (O. 102, r. 14)**

The list of creditors entitled to object to such reduction as is mentioned in rule 7(4), as settled by the Court under section 227 of the Companies Ordinance (Cap 622) shall be certified and filed by the Registrar and his certificate shall- (28 of 2012 ss. 912 & 920)

- (a) specify the debts or claims (if any) disallowed by the Court,

- (b) distinguish the debts or claims (if any) the full amount of which is admitted by the company, the debts or claims (if any) the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 227 of the Companies Ordinance (Cap 622) and other debts or claims; (28 of 2012 ss. 912 & 920)
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriation under section 227 of the Companies Ordinance (Cap 622); (28 of 2012 ss. 912 & 920)
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 13 and state which of such debts or claims were allowed.

#### **15. Evidence of consent of creditor (O. 102, r. 15)**

The consent of a creditor to such reduction as is mentioned in rule 7(4) may be proved in such manner as the Court thinks sufficient.

#### **16. Time, etc. of hearing of petition for confirmation of reduction (O. 102, r. 16)**

(1) A petition for the confirmation of any such reduction as is mentioned in rule 7(4) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 14.

(2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing must be published at such times and in such newspapers as the Court may direct.

#### **17. (Repealed 28 of 2012 ss. 912 & 920)**

(Enacted 1988)

#### **Note:**

**\* (28 of 2012 ss. 912 & 920)**

Order:	103	<b>THE REGISTRATION OF PATENTS ORDINANCE: THE PATENTS ACTS 1949 TO 1961 AND 1977</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Definitions (O. 103, r. 1)**

In this Order-

"existing patent" (現存的專利) means a patent mentioned in section 127(2)(a) or (c) of the Act;

"the Act" (法令) means the Patents Act 1977; (1977 c. 37 U.K.);

"the Ordinance" (條例) means the Registration of Patents Ordinance (Cap 42).

#### **19. Actions for infringement: particulars of pleading (O. 103, r. 19)**

(1) The plaintiff in an action for infringement of a patent must serve with his statement of claim particulars of the infringements relied on.

(2) If a defendant in such an action disputes the validity of the patent, he must serve with his defence particulars of the objections to the validity of the patent on which he relies in support of the allegation of invalidity.

(3) If a defendant in such an action alleges, as a defence to the action, that at the time of the infringement there was in force a contract or licence relating to the patent made by or with the consent of the plaintiff and containing a condition or term void by virtue of section 44 of the Act, he must serve on the plaintiff particulars of the date of, and parties to, each such contract or licence and particulars of each such condition or term.

(4) A defendant to such an action who applies by counterclaim in the action for a declaration under section 8(1)

of the Ordinance must, with his counterclaim, serve particulars of the grounds on which he relies in support of his counterclaim.

**20. Particulars of infringements (O. 103, r. 20)**

Particulars of infringements of a patent must specify which of the claims in the specification of the patent are alleged to be infringed and must give at least one instance of each type of infringement alleged.

**21. Particulars of objections (O. 103, r. 21)**

(1) Particulars of objections to the validity of a patent must state every ground on which the validity of the patent is disputed and must include such particulars as will clearly define every issue which it is intended to raise.

(2) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars must state the manner, time and place of every prior publication or user relied upon and, if prior user is alleged, must-

- (a) specify the name of every person alleged to have made such user,
- (b) state whether such user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest and latest date on which such user is alleged to have taken place,
- (c) contain a description, accompanied by drawings, if necessary, sufficient to identify such user, and
- (d) if such user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it can be inspected.

(3) If in the case of an existing patent-

- (a) one of the grounds stated in the particulars of objection is that the invention, so far as claimed in any claim of the complete specification, is not useful, and
- (b) it is intended, in connection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification,

the particulars must state the fact and identify each such claim and must include particulars of each such example, specifying the respects in which it is alleged that it does not work or does not work as described.

**22. Amendment of particulars (O. 103, r. 22)**

Without prejudice to Order 20, rule 5, the Court may at any stage of the proceedings allow a party to amend any particulars served by him under the foregoing provisions of this Order on such terms as to costs or otherwise as may be just.

**23. Further particulars (O. 103, r. 23)**

The Court may at any stage of the proceedings order a party to serve on any other party further or better particulars of infringements or of objections.

**24. Restrictions on admission of evidence (O. 103, r. 24)**

(1) Except with the leave of the judge hearing any action or other proceeding relating to a patent, no evidence shall be admissible in proof of any alleged infringement, or of any objection to the validity, of the patent, if the infringement or objection was not raised in the particulars of infringements or objections, as the case may be.

(2) In any action or other proceeding relating to a patent, evidence which is not in accordance with a statement contained in particulars of objections to the validity of the patent shall not be admissible in support of such an objection unless the judge hearing the proceeding allows the evidence to be admitted.

(3) If any machinery or apparatus alleged to have been used before the priority date mentioned in rule 21(2)(b) is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on such user offered, where the machinery or apparatus is in his possession, inspection of it to the other parties to the proceedings, or, where it is not, did his best to obtain inspection of it for those parties.

**25. Proceedings for infringement: admissions must be requested (O. 103, r. 25)**

(1) In an action for infringement of a patent (whether or not any other relief is claimed) each party must, within 14 days after service of a reply or answer or after the expiration of the period fixed for service thereof, write to each other party from whom he requires an admission for the purpose of the action or proceedings requesting him to make the admission, and the party receiving the request must within 14 days after the receipt thereof reply in writing making the admission or stating that he refuses to make it.

(2) No order shall be made authorizing a party to any such action or proceedings to serve any interrogatory on any other party unless the first-mentioned party requested that other party in accordance with paragraph (1) to admit the facts sought to be proved by the answer to the interrogatory and the other party refused or failed to comply with the request.

**26. Proceedings for infringement: case management summons (O. 103, r. 26)**

(L.N. 152 of 2008)

(1) In such an action, and in such proceedings, as are referred to in rule 25(1), the plaintiff or petitioner must—  
(a) within one month after the date on which the last reply to a request made under rule 25(1) is received or after the date on which the period fixed for making such a reply expires, whichever first occurs, or  
(b) if no request for an admission is made by any party to the action or proceedings, within one month after service of a reply or answer or after the expiration of the period fixed for service thereof,  
take out a case management summons as to the place and mode of trial returnable in not less than 21 days, and if the plaintiff or petitioner does not take out such a summons in accordance with this paragraph, the defendant or respondent, as the case may be, may do so. (L.N. 152 of 2008)

The summons may be heard in chambers or in court as the Court thinks fit.

(2) The Court hearing a summons under this rule may give such directions—

- (a) for the service of further pleadings or particulars,
- (b) the discovery of documents,
- (c) (subject to rule 25(2)) for the service of interrogatories and of answers thereto,
- (d) for the taking by affidavit of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties,
- (e) for the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he claims to be able to establish thereby,
- (f) for the making of experiments, tests, inspections or reports,
- (g) for the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents),

and otherwise as the Court thinks necessary or expedient for the purpose of defining and limiting the issues to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

Where evidence is directed to be given by affidavit, the deponents must attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.

(3) Order 24, rules 1 and 2, shall not apply in an action for infringement of a patent.

(4) No action for a declaration under section 8(1) of the Ordinance shall be set down for trial unless and until a summons under this rule in the action or proceedings has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.

(5) An action for a declaration under section 8(1) of the Ordinance shall not be tried sooner than 21 days after the action has been set down for trial.

**27. Appointment of scientific adviser (O. 103, r. 27)**

(1) In an action for infringement of a patent and in any proceedings under the Ordinance, the Court may at any time, and on or without the application of any party, appoint an independent scientific adviser to assist the Court or to



inquire and report on any question of fact or of opinion not involving questions of law or construction.

(2) The Court may nominate the scientific adviser and shall settle the question or instructions to be submitted or given to him.

(3) The remuneration of any adviser appointed under this rule shall be fixed by the Court and shall include the costs of making any report and a proper daily fee for any day on which he is required to attend before the Court.

(4) Order 40, rules 2, 3, 4 and 6, shall apply in relation to an adviser appointed under this rule and any report made by him as they apply in relation to a Court expert and a report made by him.

## **29. Application for rectification of register of patents in Hong Kong (O. 103, r. 29)**

An application to the Court for an order that the register of patents be rectified must be made by originating summons, except where it is made by way of counterclaim in proceedings for infringement or by originating summons in proceedings for an order under section 52 of the Trustee Ordinance (Cap 29).

(L.N. 152 of 2008)  
(Enacted 1988)

Order:	106	<b>PROCEEDINGS RELATING TO SOLICITORS: THE LEGAL PRACTITIONERS ORDINANCE</b>	L.N. 275 of 1998	10/07/1998
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### **1. Definitions (O. 106, r. 1)**

In this Order-

"the Ordinance" (條例) means the Legal Practitioners Ordinance (Cap 159);

"appeal" (上訴) means an appeal against any order made by the disciplinary tribunal on an application or complaint under the Ordinance; (L.N. 275 of 1998)

"disciplinary tribunal" (紀律審裁組) means the Solicitors Disciplinary Tribunal constituted in accordance with section 9B of the Ordinance; (L.N. 275 of 1998)

"Society" (律師會) means The Law Society of Hong Kong.

(L.N. 275 of 1998)

### **2. Jurisdiction under Part VI of the Ordinance exercisable by judge in chambers, etc. (O. 106, r. 2)**

(1) Any application to the Court under Part VI of the Ordinance may be disposed of in chambers.

(2) The jurisdiction of the Court under Part VI of the Ordinance may be exercised by a judge in chambers.

### **3. Power to order solicitor to deliver cash account, etc. (O. 106, r. 3)**

(1) Where the relationship of solicitor and client exists or has existed, the Court may, on the application of the client or his personal representative, make an order for-

(a) the delivery by the solicitor of a cash account;

(b) the payment or delivery up by the solicitor of money or securities;

(c) the delivery to the plaintiff of a list of the moneys or securities which the solicitor has in his possession or control on behalf of the plaintiff;

(d) the payment into or lodging in court of any such moneys or securities.

(2) An application for an order under this rule must be made by originating summons.

(3) If the defendant alleges that he has a claim for costs, the Court may make such order for the taxation and payment, or securing the payment, thereof and the protection of the defendant's lien, if any, as the Court thinks fit.

### **5. Form of originating summons (O. 106, r. 5)**

An originating summons by which an application under the Ordinance, or any application for an order under rule

3, is made shall be in Form No. 10 in Appendix A.

**10. Service of documents (O. 106, r. 10)**

(1) Any document required to be served on the Society in proceedings under this Order shall be served by sending it by prepaid post to the secretary of the Society.

(2) Subject to paragraph (1), any document not required to be served personally which is to be served on a defendant to proceedings under this Order shall, unless the Court otherwise directs, be deemed to be properly served by sending it by prepaid post to the defendant at his last known address.

**11. Constitution of the Court of Appeal to hear appeals (O. 106, r. 11)**

Every appeal shall be heard by the Court of Appeal consisting, unless the Chief Justice otherwise directs, of not less than 3 judges.

**12. Title, service, etc. of notice of motion (O. 106, r. 12)**

(1) The notice of the originating motion by which an appeal is brought must be entitled in the matter of a solicitor, or, as the case may be, a solicitor's clerk, without naming him, and in the matter of the Ordinance.

(2) Unless the Court otherwise orders, the persons to be served with such notice are every party to the proceedings before the disciplinary tribunal and the Society. (L.N. 275 of 1998)

(3) The notice must be served within 21 days from the day on which the order appealed against is pronounced. (L.N. 275 of 1998)

(4) (Repealed L.N. 275 of 1998)

**13. Society to produce certain documents (O. 106, r. 13)**

(1) Within 7 days after being served with notice of the originating motion by which an appeal is brought the Society must lodge in the Registry 3 copies of each of the following documents-

- (a) the order appealed against, prefaced by the statement of the disciplinary tribunal's findings required by section 12 of the Ordinance,
- (b) any document lodged by a party with the disciplinary tribunal which is relevant to a matter in issue on the appeal, and
- (c) the transcript of the shorthand note, or, as the case may be, the note taken by the chairman of the disciplinary tribunal, of the evidence in the proceedings before the tribunal. (L.N. 275 of 1998)

(2) At the hearing of the appeal the Court shall direct by whom the costs incurred in complying with paragraph (1) are to be borne and may order them to be paid to the Society by one of the parties notwithstanding that the Society does not appear at the hearing.

**14. Restriction on requiring security for costs (O. 106, r. 14)**

No person other than an appellant who was the applicant in the proceedings before the disciplinary tribunal or, in the case of an application to that tribunal by a solicitor to procure his name to be removed from the roll, was an objector, shall be ordered to give security for the costs of an appeal.

(L.N. 275 of 1998)

**15. Disciplinary tribunal's opinion may be required (O. 106, r. 15)**

The Court may direct the disciplinary tribunal to furnish the Court with a written statement of their opinion on the case which is the subject-matter of an appeal or on any question arising therein, and where such a direction is

given, the clerk to the disciplinary tribunal must as soon as may be lodge 3 copies of such statement in the Registry and at the same time send a copy to each of the parties to the appeal.

(L.N. 275 of 1998)

**16. Persons entitled to be heard on appeal**  
(O. 106, r. 16)

A person who has not been served with notice of the originating motion by which an appeal is brought but who desires to be heard in opposition to the appeal shall, if he appears to the Court to be a proper person to be so heard, be entitled to be so heard.

**17. Discontinuance of appeal** (O. 106, r. 17)

(1) An appellant may at any time discontinue his appeal by serving notice of discontinuance on the clerk to the disciplinary tribunal and every other party to the appeal and, if the appeal has been entered, by lodging a copy of the notice in the Registry. (L.N. 275 of 1998)

(2) Where an appeal has been discontinued in accordance with paragraph (1), it shall be treated as having been dismissed with an order for payment by the appellant of the costs of and incidental to the appeal, including any costs incurred by the Society in complying with rule 13(1).

(Enacted 1988)

Order:	113	<b>SUMMARY PROCEEDINGS FOR POSSESSION OF LAND</b>	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1.** Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

**1A. Jurisdiction of masters** (O. 113, r. 1A)

Proceedings under this Order may be heard and determined by a master, who may refer them to a judge if he thinks they should properly be decided by the judge.

(L.N. 404 of 1991)

**2. Form of originating summons** (O. 113, r. 2)

The originating summons shall be in Form No. 11A in Appendix A and no acknowledgment of service of it shall be required.

**3. Affidavit in support** (O. 113, r. 3)

The plaintiff shall file in support of the originating summons an affidavit stating-

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) that he does not know the name of any person occupying the land who is not named in the summons.

**4. Service of originating summons** (O. 113, r. 4)

(1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him-

- (a) personally, or
- (HK)(aa) by sending a copy of the summons and of the affidavit by ordinary post to him at the premises, or
- (b) by leaving a copy of the summons and of the affidavit, or sending them to him, at the premises, or
- (c) in such other manner as the Court may direct.
- (2) The summons shall, in addition to being served on the named defendants (if any) in accordance with paragraph (1), be served, unless the Court otherwise directs, by-
  - (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises, and
  - (b) if practicable, inserting through the letter-box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".
- (2A) Every copy of an originating summons for service under paragraph (1) or (2) shall be sealed with the seal of the High Court. (25 of 1998 s. 2)
- (3) Order 28, rule 3, shall not apply to proceedings under this Order.

**5. Application by occupier to be made a party (O. 113, r. 5)**

Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

**6. Order for possession (O. 113, r. 6)**

- (1) A final order shall, except in case of urgency and by leave of the Court, not be made less than 5 clear days after the date of service. (L.N. 165 of 1992)
- (2) An order for possession in proceedings under this Order shall be in Form No. 42A in Appendix A.
- (3) Nothing in this Order shall prevent the Court from ordering possession to be given on a specified date, in exercise of any power which could have been exercised if possession had been claimed in an action begun by writ.

**7. Writ of possession (O. 113, r. 7)**

- (1) Order 45, rule 3(2), shall not apply in relation to an order for possession under this Order but no writ of possession to enforce such an order shall be issued after the expiry of 3 months from the date of the order without the leave of the Court.
- An application for leave may be made ex parte unless the Court otherwise directs.
- (2) The writ of possession shall be in Form No. 66A in Appendix A.

**8. Setting aside order (O. 113, r. 8)**

The judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order.

(Enacted 1988)

Order:	114	(HK) COMMISSIONERS FOR OATHS	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**1. Appointment of commissioners for oaths (O. 114, r. 1)**

(HK)(1) The Chief Justice may, by a commission signed by him, appoint fit and proper persons to be commissioners to administer oaths and take declarations, affirmations, and attestations of honour, and may revoke any such appointment.

(1A) The power of appointment under paragraph (1) may, by a notice in writing signed by the Chief Justice, be delegated to the Registrar. (L.N. 167 of 1994)

(2) Every person so appointed shall be styled a commissioner for oaths and shall have all the powers and discharge all the duties which now belong to the office of a commissioner to administer oaths.

## **2. Officers of the court to administer oaths (O. 114, r. 2)**

(HK) Every person who, being an officer of or performing duties in relation to the Court, is for the time being so authorized by the Court or by or in pursuance of any rules or orders regulating the procedure of the Court, and every person directed to take an examination in any cause or matter in the Court, shall have authority to administer any oath or take any affidavit required for any purpose connected with his duties.

(Enacted 1988)

Order:	115	<b>DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE (CAP 405)</b>	L.N. 163 of 2013	03/03/2014
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## **1. Interpretation (O. 115, r. 1)**

(1) In this Order "the Ordinance" (條例) means the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

## **2. Assignment of proceedings (O. 115, r. 2)**

Subject to Order 32, rule 18, and to rule 12, the jurisdiction of the Court under the Ordinance shall be exercised by a judge of the Court in chambers notwithstanding that the originating process is an originating summons.

(L.N. 296 of 1996; L.N. 152 of 2008)

### **2A. Application for confiscation order where person has died or absconded (O. 115, r. 2A)**

(1) An application for a confiscation order under section 3 where the defendant has died or absconded shall be made by the Secretary for Justice. (L.N. 152 of 2008)

(2) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(89 of 1995 s. 30; L.N. 296 of 1996; L.N. 362 of 1997)

## **3. Application for restraint order or charging order (O. 115, r. 3)**

(1) An application for a restraint order under section 10 or for a charging order under section 11 (to either of which may be joined an application for the appointment of a receiver) shall be made by the Secretary for Justice ex parte. (L.N. 296 of 1996; L.N. 362 of 1997; L.N. 152 of 2008)

(1A) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(2) An application under paragraph (1) shall be supported by an affidavit, which shall-

(a) state, as the case may be, the grounds for believing that-

(i) the defendant has benefited from drug trafficking; or

(ii) the Court of First Instance will be satisfied as specified in section 15(1A); (89 of 1995 s. 30; 25 of 1998 s. 2)

(b) state, as the case may be-

(i) that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded;

(ii) that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence;

(iii) that an application for a confiscation order has been made in respect of the defendant where

- section 3(1)(a)(ii) or (7) is applicable; or
  - (iv) that an application has been made under section 15(1A) in respect of a confiscation order made against the defendant; (89 of 1995 s. 30)
  - (c) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
  - (d) where proceedings have not been instituted, verify that the Secretary for Justice is to have the conduct of the proposed proceedings; (L.N. 362 of 1997)
  - (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.
- (3) An originating summons under paragraph (1A) shall be entitled in the matter of the defendant, naming him, and in the matter of the Ordinance, and all subsequent documents in the matter shall be so entitled. (L.N. 152 of 2008)
- (4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

#### **4. Restraint order and charging order (O. 115, r. 4)**

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to reasonable living expenses and reasonable legal expenses of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order. (89 of 1995 s. 30)

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the Secretary for Justice shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Secretary for Justice shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

(L.N. 362 of 1997)

#### **5. Discharge or variation of order (O. 115, r. 5)**

(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be served on the Secretary for Justice and, where he is not the applicant, on the defendant, not less than 2 clear days before the date fixed for the hearing of the summons. (L.N. 296 of 1996; L.N. 362 of 1997)

(3) Upon the Court being notified that proceedings for the offences have been concluded or that the amount payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

#### **6. Further application by Secretary for Justice (O. 115, r. 6)**

(1) Where a restraint order or a charging order has been made the Secretary for Justice may apply (and, if so, by summons) or, where the case is one of urgency, ex parte- (L.N. 296 of 1996; L.N. 362 of 1997)

- (a) to discharge or vary such order; or
- (b) for a restraint order or a charging order in respect of other realisable property; or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be served on the defendant and, where one has been appointed in the matter, on the receiver, not less than 2 clear days before the date fixed for the hearing of the summons. (L.N.

296 of 1996)

(4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

#### **7. Realisation of property (O. 115, r. 7)**

(1) An application under section 12 must be made by the Secretary for Justice. (L.N. 152 of 2008)

(1A) The application may, where there have been proceedings against the defendant in the Court of First Instance, be made by summons and may otherwise be made by originating summons in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(2) The summons or originating summons, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant;
- (b) any person holding any interest in the realisable property to which the application relates; and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Court under section 6(2) and of any charging order made in the matter shall be exhibited to such affidavit.

(4) The Court may, on an application under section 12, exercise the power conferred by section 13(1) to direct the making of payments by the receiver.

#### **8. Receivers (O. 115, r. 8)**

(1) Subject to this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under section 10 or 12.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Ordinance, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by case management summons as to the distribution of such sums. (L.N. 152 of 2008)

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant; and
- (b) any other person who held property realised by the receiver.

#### **9. Variation of confiscation order (O. 115, r. 9)**

(1) The Secretary for Justice or defendant may apply by summons for an order under section 15(1).

(2) A summons under paragraph (1) shall be served, with any supporting evidence, not less than 7 days before the date fixed for the hearing of the summons on-

- (a) where the Secretary for Justice is making the application, the defendant;
- (b) where the defendant is making the application, the Secretary for Justice,

and, in either case, on the receiver, where one has been appointed in the matter.

(3) The Secretary for Justice may apply by summons for an order under section 15(1A). (89 of 1995 s. 30)  
(89 of 1995 s. 30; L.N. 362 of 1997)

#### **10. Compensation (O. 115, r. 10)**

An application for an order under section 27 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default and on the Secretary for Justice not less than 7 days before the date fixed for the hearing of the summons.

(L.N. 362 of 1997)

#### **11. Disclosure of information (O. 115, r. 11)**

(1) An application under section 23 shall be made by the Secretary for Justice by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 10 or 12 or in pursuance of a charging order or to an authorized officer. (L.N. 362 of 1997)

(2) The summons and affidavit in support shall be served on the public body-

(a) not less than 7 days before the date fixed for the hearing of the summons; and

(b) where the public body is a Government Department, in accordance with Order 77, rule 4.

(3) The affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 23(4) and, if appropriate, section 23(7) are fulfilled.

## **12. Exercise of powers under section 29 (O. 115, r. 12)**

The powers conferred on the Court by section 29 may be exercised by a judge in chambers and a Master.

## **13. Application for registration (O. 115, r. 13)**

An application for registration of an external confiscation order under section 29(1) may be ex parte.

## **15. Evidence in support of application under section 29(1) (O. 115, r. 15)**

An application for registration of an external confiscation order must be supported by an affidavit-

(a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by affidavit; and

(b) stating-

(i) that the order is in force and is not subject to appeal;

(ii) where the person against whom, or in relation to whose property, the order was made did not appear in the proceedings, that he received notice of the proceedings, in accordance with the law of the designated country concerned, in sufficient time to enable him to defend them; (89 of 1995 s. 30)

(iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and

(iv) to the best of the deponent's knowledge, particulars of what property the person against whom, or in relation to whose property, the order was made holds in Hong Kong, giving the source of the deponent's knowledge. (89 of 1995 s. 30)

## **16. Register of orders (O. 115, r. 16)**

(1) The Registrar shall keep a register of the orders registered under the Ordinance.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation, satisfaction or discharge of a registered order, and of any execution issued on such an order.

## **17. Notice of registration (O. 115, r. 17)**

(1) Notice of the registration of an order must be served on the person against whom, or in relation to whose property, it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct. (89 of 1995 s. 30)

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

(3) The notice shall state the period within which an application may be made to vary or set aside the registration and that the order will not be enforced until after the expiration of that period.

## **18. Application to vary or set aside**



**registration (O. 115, r. 18)**

An application by the person against whom, or in relation to whose property, an order was made to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

(89 of 1995 s. 30)

**19. Enforcement of order (O. 115, r. 19)**

(1) An order registered under the Ordinance shall not be enforced until after the expiration of the period specified in accordance with rule 17(3) or, if that period has been extended by the Court, until after the expiration of the period so extended.

(2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

**20. Variation, satisfaction and discharge of registered order (O. 115, r. 20)**

Upon the Court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

**21. Rules to have effect subject to orders (O. 115, r. 21)**

Rules 12 to 20 shall have effect subject to the provisions of any order made under section 28.

**22. Statement relating to drug trafficking (O. 115, r. 22)**

(HK)(1) Where the Secretary for Justice or the defendant proposes to tender to the Court any statement or other document under section 5 he shall give a copy thereof as soon as practicable to the defendant or the Secretary for Justice, as the case may be, and to the appropriate officer of the Court. (89 of 1995 s. 30)

(2) Any statement tendered to the Court by the Secretary for Justice under section 5(1) shall include the following particulars, namely- (L.N. 362 of 1997)

- (a) the name of the defendant;
- (b) the name of the person who made the statement;
- (c) such information known to the person who made the statement as is relevant to-
  - (i) where section 3(1)(a)(ii) is applicable, the determination whether the defendant could have been convicted in respect of the drug trafficking offence or offences concerned;
  - (ii) the determination whether the defendant has benefited from drug trafficking;
  - (iii) the assessment of the value of the defendant's proceeds of drug trafficking. (89 of 1995 s. 30)

(L.N. 362 of 1997)

**23. Investigation into drug trafficking-discharge and variation of orders (O. 115, r. 23)**

(1A) An authorized officer shall make an application for an order under section 20 or a warrant under section 21 ex parte to a judge by laying an information on oath. (L.N. 142 of 1990)

(HK)(1) Where an order under section 20 has been made, the person required to comply with it may apply in writing to the appropriate officer of the Court for the order to be discharged or varied, and on hearing such an application the Court may discharge the order or make such variations to it as it thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, he shall give a copy of the application, not later than 48 hours before the making of the application, to the authorized officer by whom the application for an order was made, or if such officer is not known or cannot be found, to another authorized officer, together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) The Court may direct that paragraph (2) need not be complied with if it is satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(L.N. 282 of 1989)

**24. Application for continued detention of seized property** (O. 115, r. 24)

(1) An application under section 24C(2) for an order to authorize the continued detention of seized property may be made by originating summons in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(2) An application under paragraph (1) shall be supported by an affidavit, which shall-

- (a) state what the seized property consists of (including, in the case of money, the amount and currency thereof) and the date on which and the place at which it was seized;
- (b) state the grounds for suspecting that the seized property is specified property; and
- (c) give particulars, in terms of the matters referred to in section 24C(2)(b), as to why the continued detention of the seized property is justified.

(L.N. 296 of 1996)

**25. Order for continued detention of seized property** (O. 115, r. 25)

(1) Where an order is made under section 24C(2), the applicant shall, as soon as is practicable, serve a copy of the order on each person affected by the order.

(2) An order under section 24C(2) shall be in Form No. 108 in Appendix A.

(3) In rules 26(3) and (4), 27, 28(2) and 29(3) and (4), "affected person" (受影響的人), in relation to any summons or order referred to in those rules, means a person-

- (a) on whom a copy of an order made under section 24C(2) has been served pursuant to paragraph (1) where the seized property (or any part thereof) the subject of the summons or first-mentioned order is or was the subject of the second-mentioned order; or
- (b) in respect of whom the Court has made an order under rule 31 in connection with the summons or first-mentioned order.

(L.N. 296 of 1996)

**26. Application for further detention of seized property** (O. 115, r. 26)

(1) An application under section 24C(3) for an order to authorize the further detention of seized property shall be made by summons in the proceedings commenced under rule 24.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall-

- (a) state the grounds for suspecting that the seized property is specified property; and
- (b) give particulars, in terms of the matters referred to in section 24C(2)(b), as to why the continued detention of the seized property is justified.

(3) The summons and the affidavit in support shall be served on each affected person not less than 5 clear days before the date fixed for the hearing of the summons.

(4) Affidavit evidence in response to the summons shall be served by an affected person on-

- (a) the Secretary for Justice on behalf of the applicant; and (L.N. 362 of 1997)
- (b) each other affected person,

not less than 2 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

**27. Order for further detention of seized property** (O. 115, r. 27)

Where an order is made under section 24C(3), the applicant shall, as soon as is practicable, serve a copy of the order on each affected person.

**28. Application for release of seized property** (O. 115, r. 28)

(1) An application under section 24C(4)(a) for the release of seized property detained by an order under section 24C(2) or (3) shall be made by summons which shall state the grounds on which the application is made.

(2) The summons and any affidavit in support shall be served on-

(a) the Secretary for Justice on behalf of the authorized officer who obtained the order by virtue of which the seized property is detained; and (L.N. 362 of 1997)

(b) each other affected person,

not less than 5 clear days before the date fixed for the hearing of the summons.

(3) Any affidavit in opposition to the summons shall be served on-

(a) the person who made the application under paragraph (1); and

(b) each of the other persons referred to in paragraph (2)(a) and (b),

not less than 2 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

**29. Application for forfeiture of seized property** (O. 115, r. 29)

(1) An application under section 24D(1) for the forfeiture of seized property shall be made by summons in the proceedings under which any order under rule 24 has been obtained.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall state the grounds for believing that the seized property-

(a) in whole or in part directly or indirectly represents any person's proceeds of drug trafficking;

(b) has been used in drug trafficking; or

(c) is intended for use in drug trafficking.

(3) The summons and the affidavit in support referred to in paragraphs (1) and (2) shall be served on each affected person not less than 14 clear days before the date fixed for the hearing of the summons.

(4) Any affidavit in opposition to the summons shall be served by an affected person on-

(a) the Secretary for Justice on behalf of the applicant; and (L.N. 362 of 1997)

(b) each other affected person,

not less than 5 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

**30. Release of seized property** (O. 115, r. 30)

Where in relation to any seized property-

(a) an order under section 24C(2) expires without an order being made under section 24C(3);

(b) an order under section 24C(3) expires without a further order being made thereunder; or

(c) a direction is obtained under section 24C(4),

then, unless the Court has directed that an issue be stated and tried as between affected persons, the property shall be forthwith released on such terms, if any, as the Court thinks fit to the person from whom the property was seized or to such other person as appears to be entitled to it.

(L.N. 296 of 1996)

**31. Joinder and payment into Court** (O. 115, r. 31)

(1) Without prejudice to its powers under Order 15, rule 6, the Court may either of its own motion or on application order that any person who may be affected by any order made by it be joined as a party to the proceedings.

(2) The Court may order that the property which is the subject of an application or order shall be paid into or lodged in Court on such terms as it thinks fit.

(L.N. 296 of 1996)

### **32. Service of documents (O. 115, r. 32)**

(1) Without prejudice to Order 65, any documents required to be served on a party under rules 25 to 29 may be served in accordance with the provisions of this rule.

(2) Where documents are required to be served on a party from whom property has been seized and that party has provided an authorized officer with an address or facsimile number at which any such document may be served, the documents may be served by leaving them at or sending them by registered mail to that address or by sending it by facsimile to the number provided.

(3) If that party has refused to provide an authorized officer with any such address or facsimile number and there is no other method of serving him or if it is otherwise not possible to serve a party, the documents may be served on that party by exhibiting them on a notice board at a place to which the public have access on the ground floor of the High Court Building but where any application made under rule 25, 26, 27, 28 or 29 is so served, the applicant shall state in his affidavit of service why this method of service has been adopted and the Court shall consider whether to give directions for some other form of service (including substituted service) by the applicant. (25 of 1998 s. 2)

(4) A body corporate which is not incorporated in Hong Kong and which is not a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap 622) may be served by leaving the document to be served at or by sending it by registered mail to the registered office or principal place of business of that body corporate. (28 of 2012 ss. 912 & 920)

(L.N. 296 of 1996)

### **33. Power to extend or abridge time (O. 115, r. 33)**

Rules 26(3) and (4), 28(2) and (3), and 29(3) and (4) shall not operate to prejudice the power of the Court under Order 3, rule 5, to extend or abridge the period within which a person is required or authorized by any of those rules to do any act in any proceedings.

(L.N. 296 of 1996)

Order:	115A	<b>(HK) MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE (Cap 525)</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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#### **1. Interpretation (O. 115A, r. 1)**

(1) In this Order "the Ordinance" means the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525), and a section referred to by number in rules 3 to 12 means the section so numbered in the Ordinance and in rules 13 to 18 means the section so numbered in Schedule 2 to the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance (including Schedule 2 to the Ordinance) have the same meanings in this Order as in the Ordinance.

#### **2. Assignment of proceedings (O. 115A, r. 2)**

Subject to rule 3, the jurisdiction of the Court under the Ordinance shall be exercised by a judge of the Court in chambers.

#### **3. Exercise of powers under section 28 (O. 115A, r. 3)**

The powers conferred on the Court by section 28 may be exercised by a judge in chambers and a Master.

#### **4. Application for registration (O. 115A, r. 4)**

An application for registration of an external confiscation order under section 28(1) may be ex parte.

#### **5. Evidence in support of application under section 28(1) (O. 115A, r. 5)**

An application for registration of an external confiscation order must be supported by an affidavit-

- (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by affidavit; and
- (b) stating-
  - (i) that the order is in force and is not subject to appeal;
  - (ii) where the person against whom, or in relation to whose property, the order was made did not appear in the proceedings, that he received notice of the proceedings, in accordance with the law of the place outside Hong Kong concerned, in sufficient time to enable him to defend them;
  - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and
  - (iv) to the best of the deponent's knowledge, particulars of what property the person against whom, or in relation to whose property, the order was made holds in, or controls from, Hong Kong, giving the source of the deponent's knowledge.

#### **6. Register of orders (O. 115A, r. 6)**

- (1) The Registrar shall keep a register of the orders registered under the Ordinance.
- (2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation, satisfaction or discharge of a registered order, and of any execution issued on such an order.

#### **7. Notice of registration (O. 115A, r. 7)**

- (1) Notice of the registration of an order must be served on the person against whom, or in relation to whose property, it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.
- (2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.
- (3) The notice shall state the period within which an application may be made to vary or set aside the registration and that the order will not be enforced until after the expiration of that period.

#### **8. Application to vary or set aside registration (O. 115A, r. 8)**

An application by the person against whom an order was made to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

#### **9. Enforcement of order (O. 115A, r. 9)**

- (1) An order registered under the Ordinance shall not be enforced until after the expiration of the period specified in accordance with rule 7(3) or, if that period has been extended by the Court, until after the expiration of the period so extended.
- (2) If an application is made under rule 8, an order shall not be enforced until after such application is determined.

#### **10. Variation, satisfaction and discharge of registered order (O. 115A, r. 10)**

Upon the Court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

#### **11. Rules to have effect subject to orders**

(O. 115A, r. 11)

Rules 3 to 10 shall have effect subject to the provisions of any order made under section 27.

**12. Investigation or proceeding relating to criminal matter-discharge and variation of orders**

(O. 115A, r. 12)

(1) An authorized officer shall make an application for an order under section 15 ex parte to a judge by laying an information on oath.

(2) Where an order under section 15 has been made, the person required to comply with it may apply in writing to the appropriate officer of the Court for the order to be discharged or varied, and on hearing such an application the Court may discharge the order or make such variations to it as it thinks fit.

(3) Subject to paragraph (4), where a person proposes to make an application under paragraph (2) for the discharge or variation of an order, he shall give a copy of the application, not later than 48 hours before the making of the application, to the authorized officer by whom the application for an order was made, or if such officer is not known or cannot be found, to another authorized officer, together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(4) The Court may direct that paragraph (3) need not be complied with if it is satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

**13. Application for restraint order or charging order**

(O. 115A, r. 13)

(1) An application for a restraint order under section 7 or for a charging order under section 8 (to either of which may be joined an application for the appointment of a receiver) may be made by the Secretary for Justice ex parte by originating summons. (L.N. 362 of 1997; L.N. 152 of 2008)

(2) An application under section 7(4) or 8(3) shall be supported by an affidavit which shall-

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the place outside Hong Kong concerned;
- (b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which section 6(2) applies, indicate when it is intended that proceedings should be instituted in the place outside Hong Kong concerned.

(3) An originating summons under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Ordinance, and all subsequent documents in the matter shall be so entitled. (L.N. 152 of 2008)

(4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

**14. Restraint order and charging order (O. 115A, r. 14)**

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to reasonable living expenses and reasonable legal expenses of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the Secretary for Justice shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Secretary for Justice shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates

is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

(L.N. 362 of 1997)

#### **15. Discharge or variation of order (O. 115A, r. 15)**

(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the Court and served on the Secretary for Justice and, where he is not the applicant, on the defendant, not less than 2 clear days before the date fixed for the hearing of the summons. (L.N. 362 of 1997)

(3) Upon the Court being notified that proceedings have been concluded any restraint or charging order shall be discharged.

#### **16. Further application by Secretary for Justice (O. 115A, r. 16)**

(1) Where a restraint order or a charging order has been made the Secretary for Justice may apply by summons or, where the case is one of urgency, *ex parte*- (L.N. 362 of 1997)

- (a) to discharge or vary such order;
- (b) for a restraint order or a charging order in respect of other realisable property; or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be lodged with the Court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than 2 clear days before the date fixed for the hearing of the summons.

(4) Rule 14(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

#### **17. Realisation of property (O. 115A, r. 17)**

(1) An application under section 9 shall, where there have been proceedings against the defendant in the Court of First Instance, be made by the Secretary for Justice by summons and shall otherwise be made by originating summons. (L.N. 362 of 1997; 25 of 1998 s. 2; L.N. 152 of 2008)

(2) The summons or originating summons, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant;
- (b) any person holding any interest in the realisable property to which the application relates; and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property.

(4) The Court may, on an application under section 9, exercise the power conferred by section 10(1) to direct the making of payments by the receiver.

#### **18. Receivers (O. 115A, r. 18)**

(1) Subject to this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under section 7 or 9.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Ordinance, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the external confiscation order and any sums remain in his hands, he shall apply by case management summons as to the distribution of such sums. (L.N. 152 of

2008)

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant; and
- (b) any other person who held property realised by the receiver.

(87 of 1997 s. 36)

Order:	116	<b>(HK) ORGANIZED AND SERIOUS CRIMES ORDINANCE (CAP 455)</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

## PART II-POWERS OF INVESTIGATION

### 1. Interpretation (O. 116, r. 1)

(1) In this Order "the Ordinance" (條例) means the Organized and Serious Crimes Ordinance (Cap 455), and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

### 2. Application of this Order (O. 116, r. 2)

This Order applies to applications-

- (a) by the Secretary for Justice under section 3 for an order authorizing the Secretary for Justice to require a person to furnish information or produce material;
- (b) by the Secretary for Justice or an authorized officer under section 4 for an order that a person make material available; and
- (c) by an authorized officer under section 5 for the issue of a search warrant.

(L.N. 362 of 1997)

### 3. Assignment of proceedings (O. 116, r. 3)

For the purposes of this Order, the jurisdiction of the Court under the Ordinance shall be exercised by a judge of the Court in chambers.

### 4. Applications under section 3, 4 or 5 (O. 116, r. 4)

(1) An application to which this Order applies-

- (a) shall be made by laying an information on oath;
- (b) may, where a judge so directs, be heard at a place other than within the court premises.

(2) At the hearing of an application to which this Order applies the Court may receive evidence from the applicant.

### 5. Application to be heard in camera (O. 116, r. 5)

(1) An application to which this Order applies, and any other application provided for in this Order, shall be heard in camera.

(2) The information and all other documents relating to such application shall be treated as confidential and shall, immediately on the determination of the application, be placed in a packet and sealed by order of the judge by whom the application was heard.

(3) The packet shall be kept in the custody of the Court in a place to which the public has no access or in such other place as the judge may authorize and-

- (a) shall not be opened or its contents removed except by order of a judge;



(b) shall not be destroyed except pursuant to an order of the Court.

**6. Discharge or variation of order under section 3 or 4 (O. 116, r. 6)**

(1) An application under section 3(17) for the discharge or variation of an order made under section 3 or under section 4(7) for the discharge or variation of an order made under section 4(2) or (6) shall be made to a judge by summons supported by affidavit.

(2) The summons and affidavit in support-

(a) shall set out the grounds on which the applicant relies in seeking the discharge or variation of the order; and

(b) shall be lodged with the Court and served on the Secretary for Justice not less than 3 clear days before the date fixed for the hearing of the summons. (L.N. 362 of 1997)

(3) On the hearing of the application the Court may discharge the order or make such variation as it thinks fit.

**7. Claim of legal privilege in relation to order under section 3 or 4 (O. 116, r. 7)**

(1) If in the course of the exercise by an authorized officer of powers conferred by an order made under section 3 a claim of legal privilege is made in respect of any information, the person making the claim shall-

(a) within 3 days of making the claim, apply to the Court by summons supported by affidavit for a declaration that the information is subject to legal privilege; and

(b) not less than 3 clear days before the hearing of the application, serve a copy of the summons and affidavit on the Secretary for Justice.

(2) If in the course of the exercise by an authorized officer of powers conferred by an order made under section 3 or 4 a claim of legal privilege is made in respect of any material, the person making the claim shall-

(a) in the presence of the authorized officer, secure the material in a sealed container;

(b) immediately deposit the sealed container with the Court;

(c) within 3 days of depositing the material with the Court, apply to the Court by summons supported by affidavit for a declaration that the material is subject to legal privilege; and

(d) not less than 3 clear days before the hearing of the application, serve a copy of the summons and affidavit on the Secretary for Justice.

(L.N. 362 of 1997)

**8. Claim of legal privilege in relation to search warrant issued under section 5 (O. 116, r. 8)**

If in the course of execution by an authorized officer of a warrant issued under section 5 a claim of legal privilege is made in respect of any material, the person making the claim shall-

(a) secure the material in a sealed container in the presence of the authorized officer and hand the sealed container to the authorized officer for safe keeping pending an application by the person under this rule;

(b) within 3 days of making the claim of legal privilege, apply to the Court by summons supported by affidavit for a declaration that the material is subject to legal privilege; and

(c) not less than 3 clear days before the hearing of the application, serve a copy of the summons and affidavit on the authorized officer and the Secretary for Justice. (L.N. 362 of 1997)

(L.N. 156 of 1995)

Order:	117	<b>(HK) ORGANIZED AND SERIOUS CRIMES ORDINANCE (Cap 455)</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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**PART IV-ENFORCEMENT, ETC. OF CONFISCATION ORDERS**

## **1. Interpretation (O. 117, r. 1)**

(1) In this Order "the Ordinance" (條例) means the Organized and Serious Crimes Ordinance (Cap 455), and a Part or section referred to by number means the Part or section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

## **2. Application of this Order (O. 117, r. 2)**

This Order applies to applications under Part IV.

## **3. Assignment of proceedings (O. 117, r. 3)**

The jurisdiction of the Court under the Ordinance shall, for the purposes of this Order, be exercised by a judge of the Court in chambers.

### **3A. Application for confiscation order where person has died or absconded (O. 117, r. 3A)**

An application for a confiscation order under section 8 where the defendant has died or absconded may be made by the Secretary for Justice by originating summons.

(90 of 1995 s. 27; L.N. 362 of 1997)

## **4. Application for restraint order or charging order (O. 117, r. 4)**

(1) An application for a restraint order under section 15 or for a charging order under section 16 (to either of which may be joined an application for the appointment of a receiver) may be made by the Secretary for Justice ex parte by summons. (L.N. 362 of 1997)

(2) An application under paragraph (1) shall be supported by an affidavit, which shall-

- (a) state, as the case may be, the grounds for believing that-
  - (i) the defendant has benefited from a specified offence; or
  - (ii) the Court of First Instance will be satisfied as specified in section 20(1A); (90 of 1995 s. 27; 25 of 1998 s. 2)
- (b) state, as the case may be-
  - (i) that proceedings have been instituted against the defendant for a specified offence (giving particulars of the offence) and that they have not been concluded;
  - (ii) that, whether by the laying of an information or otherwise, a person is to be charged with a specified offence;
  - (iii) that an application for a confiscation order has been made in respect of the defendant where section 8(1)(a)(ii) or (7A) is applicable; or
  - (iv) that an application has been made under section 20(1A) in respect of a confiscation order made against the defendant; (90 of 1995 s. 27)
- (c) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (d) where proceedings have not been instituted, verify that the Secretary for Justice is to have the conduct of the proposed proceedings; (L.N. 362 of 1997)
- (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.

(3) A summons under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Ordinance, and all subsequent documents in the matter shall be so entitled.

(4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds of the information or belief.

## **5. Restraint order and charging order (O. 117, r. 5)**

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to reasonable living and legal expenses of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the Secretary for Justice shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Secretary for Justice shall- (L.N. 362 of 1997)

(a) unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person; and

(b) serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

(L.N. 362 of 1997)

## **6. Discharge or variation of order (O. 117, r. 6)**

(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the Court and served on the Secretary for Justice and, where he is not the applicant, on the defendant, not less than 2 clear days before the date fixed for the hearing of the summons. (L.N. 362 of 1997)

(3) Upon the Court being notified that proceedings for the offences have been concluded or that the amount payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

## **7. Further application by Secretary for Justice**

(O. 117, r. 7)

(1) Where a restraint order or a charging order has been made the Secretary for Justice may apply by summons or, where the case is one of urgency, ex parte- (L.N. 362 of 1997)

(a) to discharge or vary such order; or

(b) for a restraint order or a charging order in respect of other realisable property; or

(c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be lodged with the Court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than 2 clear days before the date fixed for the hearing of the summons.

(4) Rule 5(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

## **8. Consent order for variation of restraint order or charging order (O. 117, r. 8)**

Order 42, rule 5A shall apply to an order for the variation of a restraint order or a charging order pursuant to rule 6 or 7 as it applies to an order for the dismissal, discontinuance or withdrawal of such an order.

## **9. Realisation of property (O. 117, r. 9)**

(1) An application under section 17 shall, where there have been proceedings against the defendant in the Court

of First Instance, be made by the Secretary for Justice by summons and shall otherwise be made by originating summons. (L.N. 362 of 1997; 25 of 1998 s. 2; L.N. 152 of 2008)

(2) The summons or originating summons, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant;
- (b) any person holding any interest in the realisable property to which the application relates; and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Court under section 11(2) and of any charging order made in the matter shall be exhibited to such affidavit.

(4) The Court may, on an application under section 17, exercise the power conferred by section 18(1) to direct the making of payments by the receiver.

#### **10. Receivers (O. 117, r. 10)**

(1) Subject to this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under section 15 or 17.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Ordinance, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by case management summons as to the distribution of such sums. (L.N. 152 of 2008)

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant; and
- (b) any other person who held property realised by the receiver.

#### **11. Variation of confiscation order (O. 117, r. 11)**

(1) The Secretary for Justice or defendant may apply by summons for an order under section 20(1).

(2) The summons shall be served, with any supporting evidence, not less than 7 days before the date fixed for the hearing of the summons on-

- (a) where the Secretary for Justice is making the application, the defendant;
- (b) where the defendant is making the application, the Secretary for Justice,

and, in either case, on the receiver, where one has been appointed in the matter.

(3) The Secretary for Justice may apply by summons for an order under section 20(1A). (90 of 1995 s. 27)  
(90 of 1995 s. 27; L.N. 362 of 1997)

#### **12. Compensation (O. 117, r. 12)**

An application for an order under section 29 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default and on the Secretary for Justice not less than 7 days before the date fixed for the hearing of the summons.

(L.N. 362 of 1997)

#### **13. Disclosure of information (O. 117, r. 13)**

(1) An application under section 28 shall be made by the Secretary for Justice by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 15 or 17 or in pursuance of a charging order or to an authorized officer. (L.N. 362 of 1997)

(2) The summons and affidavit in support shall be served on the public body-

- (a) not less than 7 days before the date fixed for the hearing of the summons; and
- (b) where the public body is a Government department, in accordance with Order 77, rule 4.

(3) The affidavit in support shall state the grounds for believing that the conditions in section 28(4) and, if

appropriate, section 28(7) are fulfilled.

#### 14. Statement relating to specified offence or organized crime (O. 117, r. 14)

(1) Where in any proceedings the Secretary for Justice or the defendant proposes to tender to the Court any statement or other document under section 10 he shall give a copy of the statement or other document as soon as practicable to the defendant or the Secretary for Justice, as the case may be, and to the appropriate officer of the Court.

(2) A statement tendered to the Court by the Secretary for Justice under section 10(1) shall include the following particulars, namely- (90 of 1995 s. 27; L.N. 362 of 1997)

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is tendered;
- (c) if the statement is tendered after the defendant has been convicted, the date on which and the place where the relevant conviction occurred;
- (d) such information known to the person who made the statement as is relevant to-
  - (i) where section 8(1)(a)(ii) is applicable, the determination-
    - (A) whether the defendant could have been convicted in respect of the specified offence or offences concerned;
    - (B) whether the specified offence or any of the specified offences concerned could have been an organized crime;
  - (ii) the determination whether the defendant has benefited from a specified offence or an organized crime;
  - (iii) the assessment of the value of the defendant's proceeds of a specified offence or an organized crime. (90 of 1995 s. 27)

(L.N. 156 of 1995; L.N. 362 of 1997)

Order:	117A	(HK) United Nations (Anti-Terrorism Measures) Ordinance (Cap 575)	E.R. 2 of 2012	02/08/2012
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#### 1. Interpretation (O. 117A, r. 1)

(1) In this Order—

**ex parte originating summons** (單方面原訴傳票) means an originating summons in Form No. 11 in Appendix A;

**expedited originating summons** (速辦原訴傳票) means an originating summons in Form No. 10 in Appendix A;

**holder** (持有人), in relation to any subject property, means a person whom the applicant can reasonably ascertain to be a person by, for or on behalf of whom the property is held;

**the Ordinance** (《條例》) means the United Nations (Anti-Terrorism Measures) Ordinance (Cap 575);

**subject person** (標的人士), in relation to an application under section 5(1)(a), means the person who is the subject of the application;

**subject property** (標的財產), in relation to an application under section 5(1)(b) or 13, means the property that is the subject of the application.

(2) An expression used in this Order that is used in the Ordinance has the same meaning in this Order as in the Ordinance.

(3) A section referred to by number in this Order means the section so numbered in the Ordinance.

(4) For the purposes of the Ordinance (under which a person who has a prescribed interest in any property is deemed to be a person by, for or on behalf of whom the property is or was held), **prescribed interest** (訂明權益), in relation to any property, means—

- (a) a legal or equitable estate or interest in the property; or
- (b) a right, power or privilege in connection with the property.

#### 2. Judge to exercise jurisdiction (O. 117A, r. 2)

The jurisdiction of the Court under the Ordinance must, for the purposes of this Order, be exercised by a judge of the Court.

**3. Ex parte application to specify person as terrorist or terrorist associate (O. 117A, r. 3)**

- (1) An application under section 5(1)(a) for an order to specify a person as a terrorist or terrorist associate may be made ex parte if—
  - (a) there exist circumstances of urgency; or
  - (b) the whereabouts of the subject person are not known to the applicant, and—
    - (i) the applicant has taken reasonable steps to ascertain the whereabouts of the subject person; and
    - (ii) a notice of the applicant's intention to make the application, addressed to the subject person, has been published in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (2) The ex parte application must be made by an ex parte originating summons supported by an affidavit.
- (3) The affidavit in support must state the grounds for believing that—
  - (a) this rule applies; and
  - (b) the subject person is a terrorist or terrorist associate.
- (4) As soon as practicable after obtaining an order under section 5(2) on an ex parte application, the applicant must—
  - (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
  - (b) if the whereabouts of the subject person are known or have become known to the applicant, serve the order, the ex parte originating summons and a copy of the affidavit in support on the subject person.

**4. Inter partes application to specify person as terrorist or terrorist associate (O. 117A, r. 4)**

- (1) This rule applies if an application under section 5(1)(a) is made other than in the circumstances referred to in rule 3(1)(a) and (b).
- (2) The application must be made by an expedited originating summons supported by an affidavit.
- (3) The affidavit in support must state the grounds for believing that the subject person is a terrorist or terrorist associate.
- (4) The expedited originating summons and a copy of the affidavit in support must be served on the subject person not less than 7 clear days before the date fixed for the hearing of the application.
- (5) If a subject person served with the expedited originating summons wishes to adduce any affidavit evidence in opposition to it, the person must, within 28 days after the service, file an affidavit of evidence with the Court and serve a copy of the affidavit on the Secretary for Justice.

**5. Additional affidavit procedure for application under section 5(1)(a) (O. 117A, r. 5)**

- (1) This rule applies if, after the application referred to in rule 4 is made, the applicant cannot serve the expedited originating summons on the subject person because the whereabouts of the subject person have become unknown to the applicant.
- (2) The applicant may file with the Court an additional affidavit that complies with paragraph (3) if the applicant—
  - (a) has taken reasonable steps to ascertain the whereabouts of the subject person; and
  - (b) has published a notice of the applicant's intention to proceed with the application, addressed to the subject person, in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (3) The additional affidavit referred to in paragraph (2) must—
  - (a) state that the applicant believes that this rule applies; and
  - (b) state the facts showing that the applicant has done the acts referred to in paragraph (2)(a) and (b).
- (4) The Court may direct that the application be heard in the absence of the subject person, if the Court—
  - (a) is satisfied that—

- (i) this rule applies; and
    - (ii) the applicant has done the acts referred to in paragraph (2)(a) and (b); and
  - (b) having regard to the nature and circumstances of the application, thinks it just and expedient so to do.
- (5) As soon as practicable after obtaining an order under section 5(2) on an application to which this rule applies, the applicant must—
- (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
  - (b) if the whereabouts of the subject person have become known to the applicant, serve the order, the expedited originating summons, a copy of the affidavit in support and a copy of the additional affidavit on the subject person.

**6. Ex parte application to specify property as terrorist property (O. 117A, r. 6)**

- (1) An application under section 5(1)(b) for an order to specify any property as terrorist property may be made ex parte if—
  - (a) there exist circumstances of urgency; or
  - (b) the whereabouts of the holder are not known to the applicant, or if there is more than one holder, the whereabouts of none of them are known to the applicant, and—
    - (i) the applicant has taken reasonable steps to ascertain the whereabouts of that holder or those holders; and
    - (ii) a notice of the applicant's intention to make the application, addressed to that holder or those holders, has been published in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (2) The ex parte application must be made by an ex parte originating summons supported by an affidavit.
- (3) The affidavit in support must—
  - (a) state the grounds for believing that—
    - (i) this rule applies; and
    - (ii) the subject property is terrorist property; and
  - (b) specify the holder, or if there is more than one holder, specify all the holders.
- (4) As soon as practicable after obtaining an order under section 5(2) on an ex parte application, the applicant must—
  - (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
  - (b) if the whereabouts of the holder or holders specified in the affidavit in support are known or have become known to the applicant, serve the order, the ex parte originating summons and a copy of the affidavit in support on that holder or each of those holders.

**7. Inter partes application to specify property as terrorist property (O. 117A, r. 7)**

- (1) This rule applies if an application under section 5(1)(b) is made other than in the circumstances referred to in rule 6(1)(a) and (b).
- (2) The application must be made by an expedited originating summons supported by an affidavit.
- (3) The affidavit in support must—
  - (a) state the grounds for believing that the subject property is terrorist property; and
  - (b) specify the holder, or if there is more than one holder, specify all the holders, and their whereabouts (if known to the applicant).
- (4) The expedited originating summons and a copy of the affidavit in support must be served on the holder, or each holder specified in the affidavit whose whereabouts are known to the applicant, not less than 7 clear days before the date fixed for the hearing of the application.
- (5) If a person served with the expedited originating summons wishes to adduce any affidavit evidence in opposition to it, the person must, within 28 days after the service, file an affidavit of evidence with the Court and serve a copy of the affidavit—
  - (a) on the Secretary for Justice; and
  - (b) on any other holder specified in the affidavit in support whose whereabouts are known to the applicant.

- (6) The person who files an affidavit of evidence under paragraph (5) may also serve a copy of the affidavit on any other person whom that person believes to be a person by, for or on behalf of whom the subject property is held.
- (7) The service under paragraph (6) must be effected within the period referred to in paragraph (5).

**8. Additional affidavit procedure for application under section 5(1)(b) (O. 117A, r. 8)**

- (1) This rule applies if—
  - (a) in the application referred to in rule 7, there is more than one holder and the whereabouts of one or more (but not all) of the holders are not known to the applicant at the time the application is made; or
  - (b) after the application referred to in rule 7 is made, the applicant cannot serve the expedited originating summons on the holder, or if there is more than one holder, on one or more of them, because the whereabouts of that holder or those holders have become unknown to the applicant.
- (2) The applicant may file with the Court an additional affidavit that complies with paragraph (3) if the applicant—
  - (a) has taken reasonable steps to ascertain the whereabouts of the holder or holders that are not known or have become unknown; and
  - (b) has published a notice of the applicant's intention to make or proceed with the application, addressed to the holder or holders whose whereabouts are not known or have become unknown, in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (3) The additional affidavit referred to in paragraph (2) must—
  - (a) state that the applicant believes that this rule applies; and
  - (b) state the facts showing that the applicant has done the acts referred to in paragraph (2)(a) and (b).
- (4) The applicant must, within 7 days after filing the additional affidavit, serve a copy of the additional affidavit on each holder whose whereabouts are known to the applicant (if any).
- (5) The Court may direct that the application be heard in the absence of a holder whose whereabouts are not known or have become unknown to the applicant, if the Court—
  - (a) is satisfied that—
    - (i) this rule applies; and
    - (ii) the applicant has done the acts referred to in paragraph (2)(a) and (b); and
  - (b) having regard to the nature and circumstances of the application, thinks it just and expedient so to do.
- (6) As soon as practicable after obtaining an order under section 5(2) on an application to which this rule applies, the applicant must—
  - (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
  - (b) if the whereabouts of the holder or holders in whose absence the application was heard have become known to the applicant, serve the order, the expedited originating summons, a copy of the affidavit in support and a copy of the additional affidavit on that holder or each of those holders.

**9. Ex parte application for forfeiture of certain terrorist property (O. 117A, r. 9)**

- (1) An application under section 13 for an order to forfeit any terrorist property may be made ex parte if—
  - (a) there exist circumstances of urgency; or
  - (b) the whereabouts of the holder are not known to the applicant, or if there is more than one holder, the whereabouts of none of them are known to the applicant, and—
    - (i) the applicant has taken reasonable steps to ascertain the whereabouts of that holder or those holders; and
    - (ii) a notice of the applicant's intention to make the application, addressed to that holder or those holders, has been published in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (2) The ex parte application must be made—
  - (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the subject property, by a summons supported by an affidavit that complies with rule 11; or



- (b) if there are no such proceedings, by an ex parte originating summons supported by an affidavit that complies with rule 11.
- (3) As soon as practicable after obtaining an order under section 13 on an ex parte application, the applicant must—
  - (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
  - (b) if the whereabouts of the holder or holders specified in the affidavit in support are known or have become known to the applicant, serve the order, the summons or ex parte originating summons (as the case may be) and a copy of the affidavit in support on that holder or each of those holders.

#### **10. Inter partes application for forfeiture of certain terrorist property (O. 117A, r. 10)**

- (1) This rule applies if an application under section 13 is made other than in the circumstances referred to in rule 9(1)(a) and (b).
- (2) The application must be made—
  - (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the subject property, by a summons supported by an affidavit that complies with rule 11; or
  - (b) if there are no such proceedings, by an expedited originating summons supported by an affidavit that complies with rule 11.
- (3) The summons or expedited originating summons, and a copy of the affidavit in support, must be served on the holder, or each holder specified in the affidavit whose whereabouts are known to the applicant, not less than 14 clear days before the date fixed for the hearing of the application.
- (4) If a person served with the summons or expedited originating summons wishes to adduce any affidavit evidence in opposition to it, the person must, within 28 days after the service, file an affidavit of evidence with the Court and serve a copy of the affidavit—
  - (a) on the Secretary for Justice; and
  - (b) on any other holder specified in the affidavit in support whose whereabouts are known to the applicant.
- (5) The person who files an affidavit of evidence under paragraph (4) may also serve a copy of the affidavit on any other person whom that person believes to be a person by, for or on behalf of whom the subject property is held.
- (6) The service under paragraph (5) must be effected within the period referred to in paragraph (4).

#### **11. Contents of affidavit in support for application under section 13 (O. 117A, r. 11)**

- (1) The affidavit in support referred to in rule 9(2) must state the grounds for believing that rule 9 applies.
- (2) The affidavit in support referred to in rules 9(2) and 10(2) must state the grounds—
  - (a) for believing that the subject property is terrorist property referred to in paragraph (a) of the definition of **terrorist property** in section 2(1) and for believing that it also—
    - (i) in whole or in part, directly or indirectly, represents any proceeds arising from a terrorist act;
    - (ii) is intended to be used to finance or otherwise assist the commission of a terrorist act; or
    - (iii) was used to finance or otherwise assist the commission of a terrorist act; or
  - (b) for believing that the subject property is terrorist property referred to in paragraph (b) of that definition.
- (3) The affidavit in support referred to in rules 9(2) and 10(2) must also specify the holder, or if there is more than one holder, specify all the holders, and their whereabouts (if known to the applicant).

#### **12. Additional affidavit procedure for application under section 13 (O. 117A, r. 12)**

- (1) This rule applies if—
  - (a) in the application referred to in rule 10, there is more than one holder and the whereabouts of one or more (but not all) of the holders are not known to the applicant at the time the application is made; or
  - (b) after the application referred to in rule 10 is made, the applicant cannot serve the summons or expedited originating summons on the holder, or if there is more than one holder, on one or more of them, because the whereabouts of that holder or those holders have become unknown to the applicant.

- (2) The applicant may file with the Court an additional affidavit that complies with paragraph (3) if the applicant—
  - (a) has taken reasonable steps to ascertain the whereabouts of the holder or holders that are not known or have become unknown; and
  - (b) has published a notice of the applicant's intention to make or proceed with the application, addressed to the holder or holders whose whereabouts are not known or have become unknown, in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong.
- (3) The additional affidavit referred to in paragraph (2) must—
  - (a) state that the applicant believes that this rule applies; and
  - (b) state the facts showing that the applicant has done the acts referred to in paragraph (2)(a) and (b).
- (4) The applicant must, within 7 days after filing the additional affidavit, serve a copy of the additional affidavit on each holder whose whereabouts are known to the applicant (if any).
- (5) The Court may direct that the application be heard in the absence of a holder whose whereabouts are not known or have become unknown to the applicant, if the Court—
  - (a) is satisfied that—
    - (i) this rule applies; and
    - (ii) the applicant has done the acts referred to in paragraph (2)(a) and (b); and
  - (b) having regard to the nature and circumstances of the application, thinks it just and expedient so to do.
- (6) As soon as practicable after obtaining an order under section 13 on an application to which this rule applies, the applicant must—
  - (a) publish the order in a Chinese newspaper and an English newspaper that circulate generally in Hong Kong; and
  - (b) if the whereabouts of the holder or holders in whose absence the application was heard have become known to the applicant, serve the order, the summons or expedited originating summons (as the case may be), a copy of the affidavit in support and a copy of the additional affidavit on that holder or each of those holders.

**13. Revocation of order specifying person as terrorist or terrorist associate or specifying property as terrorist property (O. 117A, r. 13)**

- (1) An application under section 5(5) to revoke, in whole or in part, an order under section 5(2) may be made *ex parte*.
- (2) The *ex parte* application must be made by a summons supported by an affidavit.
- (3) The affidavit in support must state the circumstances that have caused the applicant to have reasonable grounds to believe that the person who or the property that is the subject of the application is not, or is no longer, a terrorist, terrorist associate or terrorist property (as the case may be).

**14. Application under section 12A, 12B, 12C or 12G (O. 117A, r. 14)**

- (1) This rule applies to an application for—
  - (a) an order under section 12A(1);
  - (b) an order under section 12B(1);
  - (c) a warrant under section 12C(1); or
  - (d) a warrant under section 12G(1).
- (2) An application to which this rule applies must be made by laying an information on oath.
- (3) The application may, if a judge so directs, be heard at a place other than within the court premises.
- (4) At the hearing of the application, the Court may receive evidence from the applicant.

**15. Revocation or variation of order made under section 12A or 12B (O. 117A, r. 15)**

- (1) An application under—
  - (a) section 12A(13) for the revocation or variation of an order under section 12A(2); or
  - (b) section 12B(8) for the revocation or variation of an order under section 12B(2) or (7),
 must be made to a judge by a summons supported by an affidavit.

- (2) The summons and affidavit in support must state the grounds on which the applicant seeks the revocation or variation of the order.
- (3) The summons and a copy of the affidavit in support must be served on the Secretary for Justice not less than 3 clear days before the date fixed for the hearing of the application.
- (4) At the hearing of the application, the Court may revoke the order or make such variation as it thinks fit.

**16. Claim of legal privilege in relation to order under section 12A or 12B (O. 117A, r. 16)**

- (1) If, in the course of the exercise of powers conferred by an order under section 12A to require a person to answer questions or otherwise furnish information, a claim of legal privilege is made in respect of any information, the person making the claim must—
  - (a) within 3 days of making the claim, apply to the Court by a summons supported by an affidavit for a declaration that the information is an item subject to legal privilege; and
  - (b) not less than 3 clear days before the date fixed for the hearing of the application, serve the summons and a copy of the affidavit in support on the Secretary for Justice.
- (2) If, in the course of the exercise of powers conferred by an order under section 12A or 12B to require a person to produce material or to give an authorized officer access to it, a claim of legal privilege is made in respect of any material, the person making the claim must—
  - (a) in the presence of an authorized officer, secure the material in a sealed container;
  - (b) immediately deposit the sealed container with the Court;
  - (c) within 3 days of depositing the material with the Court, apply to the Court by a summons supported by an affidavit for a declaration that the material is an item subject to legal privilege; and
  - (d) not less than 3 clear days before the date fixed for the hearing of the application, serve the summons and a copy of the affidavit in support on the Secretary for Justice.

**17. Claim of legal privilege in relation to warrant under section 12C or 12G (O. 117A, r. 17)**

If, in the course of the execution by an authorized officer of a warrant issued under section 12C or 12G, a claim of legal privilege is made in respect of any thing, the person making the claim must—

- (a) in the presence of the authorized officer, secure the thing in a sealed container and hand the sealed container to the authorized officer for safe keeping pending an application by the person under this rule;
- (b) within 3 days of making the claim, apply to the Court by a summons supported by an affidavit for a declaration that the thing is an item subject to legal privilege; and
- (c) not less than 3 clear days before the date fixed for the hearing of the application, serve the summons and a copy of the affidavit in support on the authorized officer and the Secretary for Justice.

**18. Application to be heard in camera (O. 117A, r. 18)**

- (1) An application under section 12A, 12B, 12C or 12G must be heard in camera.
- (2) The information and all other documents relating to the application must be treated as confidential and must, immediately on the determination of the application, be placed in a packet and sealed by order of the judge by whom the application was heard.
- (3) The packet must be kept in the custody of the Court in a place to which the public has no access or in such other place as the judge may authorize and—
  - (a) must not be opened nor must its contents be removed except by order of a judge; and
  - (b) must not be destroyed except pursuant to an order of the Court.

**19. Application for continued detention of seized property under section 12H(2) (O. 117A, r. 19)**

- (1) An application under section 12H(2) for an order to authorize the continued detention of seized property must be made by an ex parte originating summons supported by an affidavit.
- (2) The affidavit in support must—
  - (a) state what the seized property consists of (including, for money, the amount and currency of the

- money) and the date on which and the place at which it was seized;
  - (b) state the grounds for suspecting that the seized property is terrorist property; and
  - (c) give particulars, in terms of the matters referred to in section 12H(2)(b), as to why the continued detention of the seized property is justified.
- (3) If an order is made under section 12H(2) in respect of any seized property, the applicant for the order must, as soon as practicable, serve the order—
- (a) on the person from whom the property was seized; and
  - (b) on each person whom the applicant can reasonably ascertain to be a person by, for or on behalf of whom the property was held immediately before it was seized.

**20. Application for further detention of seized property under section 12H(3) (O. 117A, r. 20)**

- (1) An application under section 12H(3) for an order to authorize the further detention of seized property must be made by a summons supported by an affidavit in the proceedings commenced under rule 19.
- (2) The affidavit in support must—
  - (a) state the grounds for suspecting that the seized property is terrorist property; and
  - (b) give particulars, in terms of the matters referred to in section 12H(2)(b), as to why the further detention of the seized property is justified.
- (3) The summons and a copy of the affidavit in support must be served not less than 5 clear days before the date fixed for the hearing of the application on each affected person.
- (4) If a person served with the summons wishes to adduce any affidavit evidence in opposition to it, the person must, not less than 2 clear days before the date fixed for the hearing of the application, file an affidavit of evidence with the Court and serve a copy of the affidavit—
  - (a) on the Secretary for Justice; and
  - (b) on every other affected person.
- (5) If an order is made under section 12H(3), the applicant for the order must, as soon as practicable, serve the order on each affected person.
- (6) In this rule and rules 21 and 22, **affected person** (受影響的人), in relation to the seized property, means a person on whom an order has been served under rule 19(3) in respect of that property.

**21. Application for release of seized property under section 12H(4) (O. 117A, r. 21)**

- (1) An application under section 12H(4)(a) for the release of seized property detained by an order under section 12H(2) or (3) must be made by a summons supported by an affidavit stating the grounds on which the application is made.
- (2) The summons and a copy of the affidavit in support must be served not less than 5 clear days before the date fixed for the hearing of the application—
  - (a) on the Secretary for Justice; and
  - (b) on each affected person.
- (3) An application under section 12H(4)(b) for the release of seized property detained by an order under section 12H(2) or (3) must be made ex parte by a summons supported by an affidavit stating the grounds on which the application is made.

**22. Release of seized property (O. 117A, r. 22)**

If, in relation to any seized property—

- (a) an order under section 12H(2) expires without an order being made under section 12H(3);
- (b) an order under section 12H(3) expires without a further order being made under that section; or
- (c) a direction is obtained under section 12H(4),

then, subject to section 12H(5) and unless the Court has directed that an issue be stated and tried as between the affected persons, the property must be forthwith released, on such terms, if any, as the Court thinks fit, to the person from whom the property was seized or to such other person as appears to be entitled to it.

**23. Application to Court to revoke order made under section 5(2) or notice given under section 6(1) (O. 117A,**

r. 23)

- (1) An application under section 17(1)(a) to revoke, in whole or in part, an order under section 5(2) that has been made ex parte must be made by a summons.
- (2) For the purposes of paragraph (1) and section 17(1)(a), if an order under section 5(2) has been obtained by an application heard in the absence of the subject person or a holder under rule 5 or 8, in relation to that subject person or holder only, the application and the order are regarded to have been made ex parte.
- (3) An application under section 17(1)(b) to revoke, in whole or in part, a notice under section 6(1) must be made—
  - (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the property that is the subject of the application, by a summons; or
  - (b) if there are no such proceedings, by an expedited originating summons.

**24. Application concerning direction mentioned in section 6(10) or licence mentioned in section 6(1) or 8 (O. 117A, r. 24)**

- (1) An application under section 17(4) for the revocation or variation of a direction mentioned in section 6(10) or for the grant or variation of a licence mentioned in section 6(1) or 8 must be made—
  - (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the property or financial (or related) services that is or are the subject of the application, by a summons; or (20 of 2012 s. 10)
  - (b) if there are no such proceedings, by an expedited originating summons.
- (2) If any affidavit in opposition to the summons or expedited originating summons has been filed with the Court, a copy of the affidavit must be served on the applicant not less than 3 clear days before the date fixed for the hearing of the application.

**25. Application for compensation (O. 117A, r. 25)**

- (1) An application under section 18 for an order for compensation must be made—
  - (a) if in the Court there are existing proceedings conducted under the Ordinance in respect of the person or property to whom or which the application relates, by a summons; or
  - (b) if there are no such proceedings, by an expedited originating summons.
- (2) The summons or expedited originating summons, and a copy of any affidavit in support, must be served not less than 14 clear days before the date fixed for the hearing of the application—
  - (a) on the Secretary for Justice; and
  - (b) on any other person on whose part, it is alleged, there has been default.
- (3) If any affidavit in opposition to the summons or expedited originating summons has been filed with the Court, a copy of the affidavit must be served by the Secretary for Justice on the applicant not less than 7 clear days before the date fixed for the hearing of the application.

**26. Affidavits containing statements of information or belief (O. 117A, r. 26)**

If an affidavit referred to in this Order contains a statement of information or belief, it must also contain the sources and grounds of the information or belief unless the Court otherwise directs.

**27. Service out of jurisdiction (O. 117A, r. 27)**

The service of any document under this Order out of the jurisdiction is permissible with the leave of the Court.

(L.N. 186 of 2009)

(Format changes—E.R. 2 of 2012)

Order:	118	<b>(HK) INTERPRETATION AND GENERAL CLAUSES ORDINANCE (CAP 1)</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## PART XII-SEARCH AND SEIZURE OF JOURNALISTIC MATERIAL

### 1. Interpretation (O. 118, r. 1)

In this Order "the Ordinance" (條例) means the Interpretation and General Clauses Ordinance (Cap 1), and a section referred to by number means the section so numbered in the Ordinance.

(L.N. 242 of 1996)

### 2. Application (O. 118, r. 2)

This Order applies to proceedings under sections 84, 85 and 87.

(L.N. 242 of 1996)

### 3. Proceedings under section 84 (O. 118, r. 3)

(1) An application for an order under section 84 may be made by originating summons in the expedited form supported by affidavit. (L.N. 152 of 2008)

(2) The affidavit shall contain the evidence relied on to show that the conditions set out in section 84(3) have been fulfilled.

(3) Unless the court otherwise directs, the affidavit may contain statements of information or belief with the sources and grounds of such information or belief.

(4) Notwithstanding Order 28, rule 1A, a copy of the originating summons and affidavit shall be served on the respondent not less than 3 clear days before the date fixed for the hearing of the application.

(L.N. 242 of 1996)

### 4. Proceedings under section 85 (O. 118, r. 4)

(1) An application for a warrant under section 85 shall be made ex parte by originating summons in Form No. 11 in Appendix A supported by affidavit. (L.N. 152 of 2008)

(2) The affidavit shall-

(a) state which of the grounds set out in section 85 is relied on;

(b) contain the evidence relied on in support of those grounds; and

(c) specify the name, rank, title and address of the officer who has approved the making of the application.

(3) Unless the court otherwise directs, the affidavit may contain statements of information or belief with the sources and grounds of such information or belief.

(4) All applications under section 85 shall be heard in chambers.

(L.N. 242 of 1996)

### 5. Proceedings under section 87 (O. 118, r. 5)

(1) An application for an order under section 87 shall be made by summons which may be supported by affidavit.

(2) The summons shall set out the grounds on which the applicant relies.

(3) A copy of the summons and affidavit (if any) shall be served on the person named in the warrant pursuant to section 86(1)(a) by delivering it to him not less than 3 clear days before the date fixed for the hearing of the summons.

(4) Unless the court otherwise directs, a party wishing to adduce evidence shall do so by affidavit, and such affidavit may contain statements of information or belief with the sources and grounds of such information or belief.

Order:	119	<b>(HK) PREVENTION OF BRIBERY ORDINANCE (CAP 201)</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## PART III-POWERS OF INVESTIGATION

**1. Interpretation** (O.119, r. 1)

(1) In this Order "the Ordinance" (條例) means the Prevention of Bribery Ordinance (Cap 201), and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

**2. Application of this Order** (O. 119, r. 2)

This Order applies to an application made to the Court under Part III of the Ordinance.

**3. Assignment of proceedings** (O. 119, r. 3)

An application to which this Order applies shall be heard by a judge in chambers.

**4. Form of application** (O. 119, r. 4)

Subject to rule 6, an application to which this Order applies shall be made ex parte by originating summons in Form No. 11 in Appendix A and, except for an application made under section 14D of the Ordinance, be supported by affidavit.

(L.N. 152 of 2008)

**5. Restrictions on access to documents, etc.**  
(O. 119, r. 5)

(1) The originating summons, affidavit, if any, information and all other documents relating to the application shall be treated as confidential and shall, immediately on the determination of the application, be placed in a packet and sealed by order of the judge by whom the application was heard. (L.N. 152 of 2008)

(2) The packet shall be kept in the custody of the Court in a place to which the public has no access or in such other place as the judge may authorize and shall not-

- (a) be opened;
- (b) have its contents removed;
- (c) be copied; or
- (d) be destroyed,

except by order of a judge.

**6. Variation or revocation of orders** (O. 119, r. 6)

(1) An application made under section 14D of the Ordinance shall be made by summons issued in the proceedings in which the order which it is sought to vary or revoke was made and shall state, so far as the applicant is able, the grounds on which the application is made.

(2) The summons and any affidavit in support shall be served on the Commissioner not less than 3 clear days before the hearing of the application.

(L.N. 222 of 1997)

Order:	120	<b>(HK) CHARITABLE TRUSTS</b>	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

### **1. Appointment or removal of trustee (O. 120, r. 1)**

(HK) Where the appointment or removal of any trustee or any other relief, order or direction relating to any charity is deemed desirable, any person mentioned in rule 3 of this Order may make application by summons (without any information, action or petition) to the Court in chambers for such relief, order or direction as the nature of the case may require.

### **2. Powers of Court (O. 120, r. 2)**

(HK) The Court may proceed upon and dispose of such application in chambers, unless it thinks fit otherwise to direct, and shall and may have and exercise thereupon all jurisdiction, power and authority, and may make such orders and give such directions relating to the matter of such application, as might now be exercised, made or given by the Court in an action regularly instituted, or upon petition as the case may require:

Provided that the Court may, where in the circumstances of any such application it sees fit, direct that, for obtaining the relief, order or direction sought for by such application, an information, action or petition, as the case may require, shall be brought or presented and prosecuted, and abstain from further proceeding on such application.

### **3. Applications (O. 120, r. 3)**

(HK) An application under rule 1 of this Order may be made by-

- (a) the Secretary for Justice;
- (b) all or any one or more of the trustees or persons administering the trust, or persons claiming to administer the trust, or persons otherwise interested in the trust; or
- (c) in the case of any relief, order or direction sought under section 57A of the Trustee Ordinance (Cap 29), 2 or more persons who have the consent in writing of the Secretary for Justice to make the application.

(79 of 1997 s. 4; L.N. 362 of 1997)

### **4. Secretary for Justice to be made party to certain applications (O. 120, r. 4)**

(HK) Where an application under rule 1 of this Order is made by any trustee or person referred to in rule 3(b) of this Order, the Secretary for Justice shall be made a party to the application unless the Court otherwise orders.

(79 of 1997 s. 4; L.N. 362 of 1997)  
(L.N. 282 of 1989; L.N. 383 of 1996)

Order:	121	<b>CHILD ABDUCTION AND CUSTODY ORDINANCE (Cap 512)</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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## **PROCEEDINGS AND APPLICATIONS**

### **1. Interpretation (O. 121, r. 1)**

(1) In this Order "the Ordinance" means the Child Abduction and Custody Ordinance (Cap 512) and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

(3) In this Order, unless the context otherwise requires-



"application" means an application under the Convention or the Ordinance;

"decision" includes a judgment or an order of any judicial authority as well as an order of an administrative authority;

"relevant authority" includes the Court, a District Court and a juvenile court.

## **2. Mode of application (O. 121, r. 2)**

(1) Subject to paragraph (2), every originating application may be made by originating summons in Form No. 10 in Appendix A. (L.N. 152 of 2008)

(2) Where an applicant seeks a direction under rule 9 without having filed an originating summons, the Court may, on sufficient cause being shown, allow such an application to be made on the applicant's undertaking to the Court to issue an originating summons as soon as possible and on such other terms, if any, as the Court thinks fit.

## **3. Application for return of a child (O. 121, r. 3)**

(1) An application for the return of a child shall be supported by an affidavit sworn by the applicant or, if the circumstances of the case justify it, a person duly authorized to swear it on behalf of the applicant, and the affidavit shall, so far as it is possible to do so-

(a) state the following-

- (i) the matters specified in Article 8(a) to (d) of the Convention;
- (ii) if applicable, the matters stated in Article 8(e) and (f) of the Convention;
- (iii) particulars of any pending or concluded proceedings, including proceedings out of Hong Kong, relating to the child;
- (iv) any other information which may assist in securing the return of the child;

(b) exhibit all relevant documents.

(2) The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application.

## **4. Application for a declaration under section 10**

(O. 121, r. 4)

(1) An application for a declaration that the removal or retention of the child was wrongful shall be supported by an affidavit sworn by the applicant or, if the circumstances of the case justify it, by a person duly authorized to swear it on behalf of the applicant, and the affidavit shall, so far as is possible-

(a) state-

- (i) full particulars of the request made by the requesting state;
- (ii) the matters specified in Article 8(a) to (c) of the Convention and all other facts on which the applicant relies;

(b) exhibit all relevant documents.

(2) The affidavit shall be filed at the same time as the application except that, where the case is one of urgency, the affidavit may be filed as soon as possible after the application.

## **5. Defendants (O. 121, r. 5)**

(1) The following persons shall be made defendants to an application for the return of a child-

- (a) the person alleged in the affidavit to have brought into Hong Kong the child in respect of whom the application under the Convention is made;
- (b) the person with whom the child is alleged in the affidavit to be;
- (c) any parent or guardian of the child who is not otherwise a party;
- (d) the person in whose favour a decision, including a decision of a relevant authority in a Contracting State other than Hong Kong, relating to custody has been made, if he is not otherwise a party; and
- (e) any other person who has a sufficient interest in the welfare of the child.

(2) The persons referred to in paragraph (1)(b) to (e) shall be made defendants to an application under section 10.

## **6. Time for acknowledging service (O. 121, r. 6)**

The time limited for acknowledging service of an originating summons issued pursuant to rule 2 is 7 days after the service of the originating summons, including the day of service, or 14 days after the service of the originating summons, including the day of service, where the service has taken place outside the jurisdiction.

**7. Further evidence (O. 121, r. 7)**

(1) Any defendant may within 5 days after acknowledging service of the originating summons file and serve on the other parties any affidavit on which he intends to rely.

(2) The plaintiff may within 5 days thereafter file and serve on the defendant an affidavit in reply.

**8. Assignment of proceedings (O. 121, r. 8)**

Every application shall be heard and determined by a judge, except that applications to extend time and to join a defendant may be heard by a Master, and shall be dealt with in chambers unless the Court otherwise directs.

**9. Interim directions (O. 121, r. 9)**

An application for interim directions under section 7 may, where the case is one of urgency, be made ex parte.

**10. Stay of proceedings (O. 121, r. 10)**

(1) A person wishing to give notice under Article 16 of the Convention that there has been a wrongful removal or retention of a child who is the subject of proceedings relating to the merits of rights of custody shall file in the Registry a notice to that effect, which shall contain a concise statement of the nature of those proceedings and shall identify the relevant authority before which they are pending.

(2) A notice given under paragraph (1) shall be verified on affidavit by the person giving it and the affidavit shall be filed at the same time as the notice.

(3) The Registrar, upon receipt of such notice and affidavit, shall as soon as practicable, provide the relevant authority with copies thereof.

**11. Authenticated copy of Court's order**

(O. 121, r. 11)

(1) A person who wishes to make an application under the Convention in a Contracting State other than Hong Kong and who wishes to obtain from the Court an authenticated copy of an order of the Court relating to the child in respect of whom the application is to be made shall apply in writing in that behalf to the Registrar.

(2) An application under paragraph (1) shall specify, so far as it is possible to do so-

(a) the name and date of birth of the child;

(b) the date of the order and the short title of the proceedings in which the order was made;

(c) the nature of the application which is intended to be made, identifying the Contracting State in which the application is intended to be made;

(d) the relationship of the applicant to the child;

(e) the address of the applicant.

(3) On receipt of an application under this rule, the Registrar shall send by post to the applicant at the address indicated in the application an authenticated copy of the order or, if he is unable to locate the order, shall notify the applicant accordingly.

(4) The authenticated copy of the order shall be an office copy sealed with the Seal of the Court and endorsed with a certificate signed by the Registrar certifying that the copy is a true copy of an order obtained in the Court and that it is issued for the purposes of the Convention.

(L.N. 119 of 1998)

Appendix:	A	<b>FORMS</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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No. 1

**Writ of Summons**

(O. 6 r. 1)

(Hong Kong Coat of Arms)

IN THE HIGH COURT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

20 ....., No. ....

Between

A.B.  
AND  
C.D.

Plaintiff

Defendant

TO THE DEFENDANT (name) ..... of  
(address) .....

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within (14 days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registry of the High Court the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest these proceedings or to make an admission.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

\*[If you intend to make an admission, you may complete an appropriate form enclosed in accordance with the accompanying Directions for Acknowledgment of Service.]

Issued from the Registry of the High Court this ..... day of ..... 20 .....

Note:-This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

(Back of No. 1)

\*[Statement of Claim]

The Plaintiff's claim is for .....

\*Where words appear between square brackets delete if inapplicable.

\*(Signed if statement of claim indorsed. A statement of claim must be verified by a statement of truth in accordance with Order 41A of the Rules of the High Court (Cap 4 sub. leg. A).)

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(Where the Plaintiff's claim is for a debt or liquidated demand only: If, within the time for returning the Acknowledgment of Service, the Defendant pays the amount claimed and \$ ..... for costs, further proceedings will be stayed. The money must be paid to the Plaintiff or his Solicitor.)

THIS WRIT was issued by .....  
of .....

Solicitors for the said Plaintiff whose address is ..... \*(or where the Plaintiff sues in person.

THIS WRIT was issued by the said Plaintiff who resides at .....  
..... and (if the Plaintiff does not  
reside within the jurisdiction) whose address for service is .....  
.....).  
(L.N. 251 of 1997; 25 of 1998 s. 2; L.N. 152 of 2008)

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No. 8

**Originating summons-general form**

(O. 7 r. 2)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

19 ....., No. ....

(IN THE MATTER OF .....)

Between	A.B.	Plaintiff
	AND	
	C.D.	Defendant

To C.D. of

Let the defendant, within (14 days) after service of this summons on him, counting the day of service, return the accompanying Acknowledgment of Service to the Registry of the High Court.

By this summons, which is issued on the application of the plaintiff A.B. of ....., the plaintiff claims against the defendant ..... (or seeks the determination of the Court on the following questions, namely, ..... or as may be).

If the defendant does not acknowledge service, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the ..... day of ..... 19 .....

Note:-This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by ..... of ..... solicitors for the said plaintiff ..... whose address is as stated above (or where the plaintiff sues in person. This summons was taken out by the said plaintiff who resides at the above-named address or as may be and (if the plaintiff does not reside within the jurisdiction) whose address for service is .....).

### IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

(L.N. 251 of 1997; 25 of 1998 s. 2)

No. 10

### Originating summons-expedited form

(O. 7 r. 2 O. 29 r. 8A; O. 30 r. 9; O. 62 r. 11A; O. 73 rr. 2, 3 & 4; O. 100 r. 2; O. 115 rr. 2A, 3, 7 & 24)

IN THE HIGH COURT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

20 ....., No. ....

(IN THE MATTER OF .....)

Between

A.B.  
AND  
C.D.

Plaintiff

Defendant

Let C.D. of ..... attend before the Registrar (or Judge) in Chambers, at the High Court, Hong Kong, on ..... day, the ..... day of ..... 20....., at ..... o'clock, (or, if no application has yet been made for a day to be fixed, on a day to be fixed) on the hearing of an application by the plaintiff A.B. of ..... that .....

And let the defendant within (14 days) after service of this summons on him counting the day of service, return the accompanying Acknowledgment of Service to the Registry of the High Court.

Dated the ..... day of ..... 20 .....

Note:-This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by ..... of ..... solicitors for the said plaintiff whose address is as stated above (or where the plaintiff sues in person.

This summons was taken out by the said plaintiff who resides at ..... and (if the plaintiff does

not reside within the jurisdiction) whose address for service is .....  
.....)

Note:-If a defendant does not attend personally or by his counsel or solicitor at the time and place above-mentioned such order will be made as the Court may think just and expedient.

### IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

(L.N. 251 of 1997; 25 of 1998 s. 2; L.N. 152 of 2008)

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No. 11

### Ex parte originating summons

(O. 7 r. 2; O. 118 r. 4(1); O. 119 r. 4)

20 ....., No. ....

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

In the matter of .....

Let all parties concerned attend before the Judge in Chambers (or the master) at the High Court in Hong Kong,  
on ..... day, the ..... day of ..... 20 ....., at .....  
o'clock, on the hearing of an application by A.B. that .....

Dated the ..... day of ..... 20 .....

This summons was taken out by ..... of ..... solicitor for the applicant whose  
address is .....

(L.N. 313 of 1997; 25 of 1998 s. 2; L.N. 152 of 2008)

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No. 11A

### Originating summons for possession

(O. 113 r. 2)

19 ....., No. ....

### IN THE COURT OF FIRST INSTANCE OF HONG KONG

(IN THE MATTER OF .....)

Between

A.B.  
AND  
C.D.

Plaintiff

Defendant (if any)  
whose name is known

To [C.D. and] every [other] person in occupation of .....

Let all persons concerned attend before .....

..... Court of First Instance ..... of Hong Kong in Hong Kong  
on ..... day, the ..... day of ..... 19 ....., at .....  
o'clock, on the hearing of an application by A.B. for an order that he do recover possession  
of ..... on the ground that he is entitled to possession and that the person(s) in occupation

is (are) in occupation without licence or consent.

Dated the ..... day of ..... 19 .....

This summons was taken out by ..... of ..... solicitor for the said plaintiff whose address is ..... [or when the plaintiff acts in person]

This summons was taken out by the said plaintiff who resides at ..... and is (state occupation) and (if the plaintiff does not reside within the jurisdiction) whose address for service is .....

Note:-Any person occupying the premises may apply to the Court personally or by counsel or solicitor to be joined as a defendant. If a person occupying the premises does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient.

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 12

**Notice of appointment to hear originating summons**

(O. 28 r. 2)

(Heading as in summons)

To (name of defendant) of .....

Take notice that the originating summons issued herein on the ..... day of ..... 19 ....., will be heard by the Judge in Chambers (or the master) at the High Court in Hong Kong, on ..... day, the ..... day of ..... 19....., at ..... o'clock. You may attend in person, or by your solicitor or counsel. If you fail to attend, such order will be made as the Court may think just and expedient.

Dated the ..... day of ..... 19 .....

(Signed) .....

Solicitor for the plaintiff.

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 13

**Notice of originating motion**

(O. 8 r. 3)

19 ....., No. ....

**IN THE HIGH COURT OF HONG KONG**

In the matter of .....

and

In the matter of .....

Take notice that the High Court of Hong Kong in Hong Kong will be moved (before his Lordship, Mr. Justice ..... ) at the expiration of ..... days from the service upon you of this notice (or on ..... day, the ..... day of ..... 19 ....., at the sitting of the Court) or so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that ..... (or for the following

relief, namely .....)

And that the costs of and incidental to this (application) (appeal) may be paid by .....

(And further take notice that the grounds of this (application) (appeal) are: .....)

Dated the ..... day of ..... 19 .....

(Signed) .....

C.D. of ..... solicitor for the above named (applicant) (appellant) A.B. whose address  
is ..... or A.B. whose address for service  
is ..... (applicant) (appellant) in  
person .....

To ..... of .....

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

No. 14

### **Acknowledgment of Service of Writ of Summons**

(O. 12 r. 3)

#### **Directions for Acknowledgment of Service**

1. The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court at the following address:-

*[insert here the address of the Registry of the High Court]*

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings MUST ALSO file a DEFENCE which must be written in either the Chinese or the English language with the registry and serve a copy thereof on the Solicitor for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear at the top of the back), the Defence must be filed and served within 28 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If a Statement of Claim is not indorsed on the Writ, the Defence must be filed and served within 28 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to file and serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

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

3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the Plaintiff's claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the Writ of Summons.

A completed Form No. 16 or 16C must be filed with the Registry of the High Court and served on the Plaintiff [or the Plaintiff's Solicitors] within the period for service of the Defence.

4. A Defendant who wishes to dispute the jurisdiction of the Court of First Instance in the proceedings or to argue that the Court of First Instance should not exercise its jurisdiction in the proceedings, and wishes to apply to the Court of First Instance for an order staying the proceedings, must give notice of intention to defend the proceedings and make the application within the time limited for service of a defence.

See attached Notes for Guidance

#### **Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and



return it to the Registry of the High Court.

[2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him and a writ served by post or by insertion through the Defendant's letter box is treated as having been served on the seventh day after the date of posting or insertion.]

(Note: Not applicable if the defendant is a company served at its registered office.)

3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4. Where the Defendant is a FIRM and a Solicitor is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "partner in the firm of (.....)" after his name.

5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.

6. Where the Defendant is a LIMITED COMPANY the form must be completed by a Solicitor or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without a Solicitor acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL Patient, the form must be completed by a Solicitor acting for a guardian ad litem.

8. A Defendant acting in person may obtain help in completing the form at the Registry of the High Court.

9. These notes deal only with the more usual cases. In case of difficulty a Defendant in person should refer to paragraph 8 above.

(Heading as in No. 1 to be completed by plaintiff)

#### ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

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

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

Delay may result in judgment being entered against a Defendant whereby he or his Solicitor may have to pay the costs of applying to set it aside.

see Notes 1,  
3, 4 and 5.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)  
☐ yes ☐ no

See Direction 3.

3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state whether the Defendant intends to make an admission (tick appropriate box).  
☐ yes ☐ no

If yes, the Defendant may make the admission by completing Form No. 16 or 16C (as the case may require) accompanying the Writ of Summons.

Where words  
appear between  
square brackets,  
delete if  
inapplicable.

Service of the Writ is acknowledged accordingly.

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

Notes as to Address for Service

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

Kong.

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

(Back of page (1))

Indorsement by plaintiff's solicitor (or by plaintiff if suing in person) of his name, address and reference, if any.  
(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2; L.N. 129 of 2000; L.N. 152 of 2008)

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No. 15

**Acknowledgment of Service of Originating  
Summons-for all cases other than  
costs-only proceedings under  
section 52B of the High  
Court Ordinance**

(O. 10 r. 5; O. 12 r. 3(1))

**Directions for Acknowledgment of Service**

1. The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court of the following address:-

*[insert here the address of the Registry of the High Court]*

2. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the Plaintiff's claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the Originating Summons.

A completed Form No. 16 or 16C must be filed with the Registry of the High Court and served on the Plaintiff [or the Plaintiff's Solicitors] within the period for filing of the Defendant's affidavit evidence.

3. A Defendant who wishes to dispute the jurisdiction of the Court of First Instance in the proceedings or to argue that the Court of First Instance should not exercise its jurisdiction in the proceedings, and wishes to apply to the Court of First Instance for an order staying the proceedings, must give notice of intention to defend the proceedings and make the application within the time limited for service of a defence.

See over for Notes for Guidance

[Back of page (1)]

**Notes for Guidance**

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

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

**ACKNOWLEDGMENT OF SERVICE  
OF ORIGINATING SUMMONS**

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

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If

any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

see Notes 1,  
3, 4 and 5.

1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)  
☐ yes ☐ no

See Direction 2.

3. If the only remedy that the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state whether the Defendant intends to make an admission (tick appropriate box).  
☐ yes ☐ no

If yes, the Defendant may make the admission by completing Form No. 16 or 16C (as the case may require) accompanying the Originating Summons.

Where words  
appear between  
square brackets,  
delete if  
inapplicable.

Service of the Originating Summons is acknowledged accordingly.

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

Notes as to Address for Service

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

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

(Back of page (1))

Indorsement by plaintiff's Solicitors (or by plaintiff if suing in person) of his name, address and reference, if any.  
(L.N. 251 of 1997; 25 of 1998 s. 2; L.N. 152 of 2008)

No. 15A

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

(O. 10 r. 5; O. 12 r. 3(1); O. 62 r. 11A)

*Directions for Acknowledgment of Service*

The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a solicitor acting on behalf of the defendant or by the defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court of the following address-

[insert here the address of the Registry of the High Court]

*See over for Notes for Guidance*

[Back of page (1)]

### Notes for Guidance

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

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

#### ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS

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

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

See Notes 1,  
3, 4 and 5.

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

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

☐ yes

☐ no

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

☐ yes

☐ no

Where words  
appear between  
square brackets,  
delete if  
inapplicable.

Service of the originating summons is acknowledged accordingly.

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

#### Notes as to Address for Service

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

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

(Back of page (1))

Indorsement by plaintiff's solicitors (or by plaintiff if suing in person) of his name, address and reference, if any.  
(L.N. 152 of 2008)

No. 16

#### Admission (liquidated amount)

(O. 13A rr. 4(2), 5(2) & 13(2))

(Heading as in action)

#### Explanatory Note

1. The only claim the plaintiff has made against you is for a liquidated amount of money.  
You may admit the plaintiff's claim in whole or in part by completing this form-
  - (a) within the period for service of your defence if you have been served with a writ; *or*
  - (b) the period for filing of your affidavit evidence if you have been served with an originating summons; *or*
  - (c) within 14 days after service of the originating process in any other case.
2. If you have made an admission, you may only be allowed to amend or withdraw your admission if the Court considers it just to do so.
3. If you do not ask for time to pay, the plaintiff will decide how much and when you should pay.
4. If you ask for time to pay, the plaintiff will decide whether or not to accept your proposal for payment.
5. If the plaintiff accepts your proposal for payment, the plaintiff may, within 14 days after the copy of your admission is served on him, request the Court to enter judgment against you.
6. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made after considering-
  - (a) the information set out in this form;
  - (b) the reasons why the plaintiff does not accept your proposal for payment; and
  - (c) all other relevant matters.
7. The completed form should be filed in the Registry of the High Court.

#### How to fill in this form

- Tick the correct boxes and give as much information as you can. **Then sign and date the form.** If necessary provide details on a separate sheet, add the action number and attach it to this form.
- **If you do not ask for time to pay, you need not complete items 2 to 9 and 11 to 14.**
- If you ask for time to pay, make your offer of payment in item 14.
- **If you are not an individual, you need not complete items 1 to 9 but you should complete items 10 to 12 and ensure that you comply with the requirement specified in item 13 and provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made in item 14.**
- **If you are an individual, you need not complete items 10 to 12 and need not comply with the requirement specified in item 13.**
- You can get help to complete this form at the Registry of the High Court.

#### How much of the claim do you admit?

- ☐ I admit the full amount claimed as shown on the statement of claim **or**
- ☐ I admit the amount of  \$

#### 1. Personal details

Surname

Forename

☐ Mr

☐ Mrs

☐ Miss

☐ Ms

Address

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

(give details)

#### 3. Employment

☐ I am employed as a

My employer is

Jobs other than main job  
(give details)

☐ **I am self employed as a**

Annual turnover is

☐ **I am not** in arrears with my mandatory provident fund contributions and income tax

☐ **I am** in arrears and I owe

Give details of:

(a) contracts and other work in  
hand

(b) any sums due for work done

☐ **I have been unemployed for**

☐ **I am a pensioner**

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

Bank account	In credit by \$	Overdrawn by \$

**5. Residence**

- I live in ☐ my own flat  
☐ my jointly owned flat  
☐ public housing estate  
☐ rented private flat  
☐ others (please specify)

**6. Income**

My usual take-home pay (including overtime, commission, bonuses, etc.)

\$ per month

My pension(s)

\$ per month

Others living in my home give me

\$ per month

Other income (give details below)

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

**7. Other assets** (please list and indicate their location)

## 8. Expenses

*(Do not include any payments made by other members of the household out of their own income)*

I have regular expenses as follows:

Mortgage (including second mortgage)	\$	per month
Rent	\$	per month
Rates and government rent	\$	per month
Management fees	\$	per month
Domestic helper's salary	\$	per month
Gas	\$	per month
Electricity	\$	per month
Water charges	\$	per month
Telephone charges	\$	per month
Housekeeping, food, school meals	\$	per month
Travelling expenses	\$	per month
Children's clothing	\$	per month
Tuition fees	\$	per month
Maintenance payments	\$	per month
Court orders	\$	per month
Others		
	\$	per month
	\$	per month
	\$	per month
<b>Total expenses</b>	<b>\$</b>	<b>per month</b>

## 9. Liabilities

(This section is for arrears only. Do not include regular expenses listed in item 8.)

listed in item 8.)	
Rent arrears	\$
Mortgage arrears	\$
Rates and government rent arrears	\$
Water charges arrears	\$
Fuel debts: Gas	\$
Electricity	\$
Others	\$
Maintenance arrears	\$
Loans and credit card debts (please list)	\$
Others (give details below)	
	\$
	\$
<b>Total liabilities</b>	<b>\$</b>

## 10. Firm, company or corporation

Name

--

Address

--

Tel. no.

\_\_\_\_\_

**11. Assets of firm, company or corporation (please list)**

Property, plant and equipment		\$
Inventories		\$
Goodwill and other intangible assets		\$
Loans and receivables		\$
Bank balances and cash		\$
Others		\$
<b>Total</b>		<b>\$</b>

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

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

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

<input type="checkbox"/> I can pay the amount admitted on or <input type="checkbox"/> I can pay by [weekly/monthly etc.] instalments of Starting (date) If you cannot pay immediately, please give brief reasons below:	<div style="border: 1px solid black; height: 20px; margin-bottom: 10px;"></div> <div style="border: 1px solid black; padding: 2px;">\$</div>
---	--

**15. Declaration**

I \_\_\_\_\_ declare that the details I have given above and in the attached sheet(s) (if any) are true to the best of my knowledge

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declaration Ordinance (Cap 11)

**Signed**

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

**With company chop**  
(if applicable)

Declared at \_\_\_\_\_ in Hong Kong on \_\_\_\_\_ of 20 \_\_\_\_.

Before me,

[Signature and designation, i.e., Justice of  
the Peace/Notary Public/Commissioner  
for Oaths.]



**Note—** Under section 36 of the Crimes Ordinance (Cap 200), a person who knowingly and wilfully makes a statement false in a material particular in a declaration or other document which he is authorized or required to make by an enactment is guilty of an offence.

- A defendant who is an individual must sign personally. A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.
- If a plaintiff does not file a request for judgment within 14 days after this form is served on him, his claim is stayed until he files the request.

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 16A

**Request for judgment (admission of liquidated amount)**

(O. 13A rr. 4(3), 9(4) & 10(2))

*(Heading as in action)*

- Remember to sign and date the form. Your signature certifies that the information you have given is correct.
- Return the completed form to the Court.
- The completed form should be filed in the Registry of the High Court.

---

**A The defendant has admitted the whole of my claim**

Tick only **one** box below and follow the instructions given.

☐ **I accept the defendant's proposal for payment**

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the defendant's proposal.

☐ **The defendant has not made any proposal for payment**

Enclose a draft judgment for approval. You can ask for the judgment to be paid by instalments or in one payment.

☐ **I DO NOT accept the defendant's proposal for payment**

Enclose a draft judgment for approval. You can say how you want the defendant to pay.

Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

**Note—** The Court will notify you and the defendant of its judgment.

---

**I certify that the information given is correct**

**Signed**

\_\_\_\_\_  
(Plaintiff) (Plaintiff's solicitor) (next friend)

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

**Date**

\_\_\_\_\_

**With company chop  
(if applicable)**

\_\_\_\_\_

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 16B

## Reply to part admission of liquidated amount and Request for judgment

(O. 13A rr. 5(3) & (5), 9(4) & 10(2))

*(Heading as in action)*

- **Please tell the Court what you wish to do by completing the lower half of this form and filing it in the Registry of the High Court within 14 days after the copy of the defendant's admission is served on you.** At the same time you must serve a copy on the defendant. If you do not file this form in the Registry of the High Court within the prescribed period, your claim will be stayed. No further action will be taken by the Court until the form is received.
- You must tick box A or B.
- Remember to sign and date the notice.

---

**A ☐ I DO NOT accept the defendant's part admission**

If you tick box A the claim will proceed as a defended claim.

**B ☐ I ACCEPT the amount admitted by the defendant in satisfaction of my whole claim**

Tick only **one** box and follow the instructions given.

☐ **I accept the defendant's proposal for payment**

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the offer.

☐ **The defendant has not made any proposal for payment**

Enclose a draft judgment for approval. You can ask for the judgment to be paid by instalments or in one payment.

☐ **I DO NOT accept the defendant's proposal for payment**

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note:— The Court will notify you and the defendant of its judgment.

---

**I certify that the information given is correct**

**Signed**

(Plaintiff) (Plaintiff's solicitor) (next friend)

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

**Date**

**With company chop  
(if applicable)**

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 16C

**Admission (unliquidated amount)**

(O. 13A rr. 6(2), 7(2) & 13(2))

*(Heading as in action)*

---

**Explanatory Note**

1. The only claim the plaintiff has made against you is for an unliquidated amount of money. You may admit the plaintiff's claim in whole or in part by completing this form-
  - (a) within the period for service of your defence if you have been served with a writ; *or*
  - (b) the period for filing of your affidavit evidence if you have been served with an originating summons; *or*
  - (c) within 14 days after service of the originating process in any other case.
2. If you have made an admission, you may only be allowed to amend or withdraw your admission if the Court considers it just to do so.
3. You may offer a specified amount to satisfy the claim. If the amount you offer is accepted by the plaintiff, the plaintiff may request the Court to enter judgment against you for that amount. Alternatively, the plaintiff may request the Court to enter judgment against you for an amount to be decided by the Court and costs.
4. You may also ask for time to pay. If the plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made after considering-
  - (a) the information set out in this form;
  - (b) the reasons why the plaintiff does not accept your proposal for payment; and
  - (c) all other relevant matters.
5. The completed form should be filed in the Registry of the High Court.

#### How to fill in this form

- Tick the correct boxes and give as much information as you can. **Then sign and date the form.** If necessary provide details on a separate sheet, add the action number and attach it to this form.
- **If you do not ask for time to pay, you need not complete items 2 to 9 and 11 and 12.**
- **If you are not an individual, you need not complete items 1 to 9 but you should complete items 10 to 12 and ensure that you comply with the requirement specified in item 13 and provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made.**
- **If you are an individual, you need not complete items 10 to 12 and need not comply with the requirement specified in item 13.**
- You can get help to complete this form at the Registry of the High Court.

#### Part A Response to claim *(tick one box only)*

- ☐ I admit liability for the whole claim but want the Court to decide the amount I should pay (if you tick this box, you need not complete Part B and items 2 to 9, 11 and 12 and need not comply with the requirement specified in item 13)

**OR**

- ☐ I admit liability for the claim and offer to pay  in satisfaction of the claim

#### Part B How are you going to pay the amount you have admitted? *(tick one box only)*

- ☐ I offer to pay on (date)

**OR**

- ☐ I cannot pay the amount immediately because (state reason)

**AND**

I offer to pay by instalments of  \$  per (week)(month) starting (date)

#### 1. Personal details

Surname

Forename

☐ Mr

☐ Mrs

☐ Miss

☐ Ms

Address

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

**3. Employment**

☐ **I am employed as a**

My employer is

Jobs other than main job  
(*give details*)

☐ **I am self employed as a**

Annual turnover is

\$

☐ **I am not** in arrears with my mandatory provident fund contributions and income tax

☐ **I am** in arrears and I owe

\$

Give details of:

(a) contracts and other work in hand

(b) any sums due for work done

☐ **I have been unemployed for**

☐ **I am a pensioner**

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

Bank account	In credit by \$	Overdrawn by \$

**5. Residence**

I live in ☐ my own flat

☐ my jointly owned flat

☐ public housing estate

☐ rented private flat

☐ others (please specify)

**6. Income**

My usual take-home pay (including overtime, commission, bonuses, etc.)

\$ per month

My pension(s)

\$ per month

Others living in my home give me

\$ per month

Other income (*give details below*)

\$ per month

\$ per month

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

**7. Other assets** *(please list and indicate their location)*

--

**8. Expenses**

*(Do not include any payments made by other members of the household out of their own income)*

I have regular expenses as follows:

Mortgage *(including second mortgage)*

Rent

Rates and government rent

Management fees

Domestic helper's salary

Gas

Electricity

Water charges

Telephone charges

Housekeeping, food, school meals

Travelling expenses

Children's clothing

Tuition fees

Maintenance payments

Court orders

Others

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

**9. Liabilities**

*(This section is for arrears only. Do not include regular expenses listed in item 8.)*

Rent arrears

Mortgage arrears

Rates and government rent arrears

Water charges arrears

Fuel debts: Gas

Electricity

Others

Maintenance arrears

Loans and credit card debts *(please list)*

Others *(give details below)*

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

**10. Firm, company or corporation**

Name

--

Address

Tel. no.

**11. Assets of firm, company or corporation (please list)**

Property, plant and equipment		\$
Inventories		\$
Goodwill and other intangible assets		\$
Loans and receivables		\$
Bank balances and cash		\$
Others		\$
<b>Total</b>		<b>\$</b>

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

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

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

**14. Declaration**

I \_\_\_\_\_ declare that the details I have given above and in the attached sheet(s) (if any) are true to the best of my knowledge

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declaration Ordinance (Cap 11)

**Signed**

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

**With company chop**  
(if applicable)

Declared at \_\_\_\_\_ in Hong Kong on \_\_\_\_\_ of 20 \_\_\_\_.

Before me,

[Signature and designation, i.e., Justice of  
the Peace/Notary Public/Commissioner  
for Oaths.]

**Note—** Under section 36 of the Crimes Ordinance (Cap 200), a person who knowingly and wilfully makes a statement false in a material particular in a declaration or other document which he is authorized or required to make by an enactment is guilty of an offence.

- A defendant who is an individual must sign personally. A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.
- If a plaintiff does not file a request for judgment within 14 days after this form is served on him, his claim is stayed until he files the request.

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 16D

**Request for judgment (admission of unliquidated amount)**

(O. 13A r. 6(3))

*(Heading as in action)*

The defendant has admitted liability to pay the whole of my claim but has not made any proposal for payment.

I request judgment to be entered against the defendant for an amount to be decided by the Court and costs.

[Enclose a draft judgment for approval]

**Signed**

(Plaintiff) (Plaintiff's solicitor) (next friend)

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

**Date**

**With company chop  
(if applicable)**

- The completed form should be filed in the Registry of the High Court.

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 16E

**Reply to admission of unliquidated amount and Request for judgment**

(O. 13A rr. 7(3), (5) & (9), 9(4) & 10(2))

*(Heading as in action)*

---

**Important notes for plaintiff**

- You must tick either item A **or** complete item B and file the form in the Registry of the High Court within 14 days after the copy of the defendant's admission is sent to you.  
At the same time you must send a copy to the defendant. If you do not return the form within the prescribed period, your claim will be stayed. No further action will be taken by the Court until the form is received.
  - Remember to sign and date the notice.
-

A ☐ **I DO NOT accept the amount offered by the defendant in satisfaction of my claim. I wish judgment to be entered for an amount to be decided by the Court.**  
The Court will give directions for management of the case.

B ☐ **I ACCEPT the amount admitted by the defendant in satisfaction of my claim**  
Tick only **one** box and follow the instructions given.

☐ **I accept the defendant's proposal for payment**

Enclose a draft judgment for approval. The Court will enter judgment in accordance with the offer.

☐ **I DO NOT accept the defendant's proposal for payment**

Enclose a draft judgment for approval. You can say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.)

Note:— The Court will notify you and the defendant of its judgment.

---

**I certify that the information given is correct**

**Signed**

(Plaintiff) (Plaintiff's solicitor) (next friend)

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

**Date**

**With company chop  
(if applicable)**

(L.N. 152 of 2008)

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No. 17

**Notice to be indorsed on copy of counterclaim**

(O. 15 r. 3(6))

To X. Y.

1. Take notice that, within [14 days] after service of this defence and counterclaim on you, counting the day of service, you must acknowledge service and state in your acknowledgment whether you intend to contest the proceedings. If you fail to do so or if your acknowledgment does not state your intention to contest the proceedings, judgment may be given against you without further notice.

2. If the only remedy that the counterclaiming plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, you may admit the counterclaiming plaintiff's claim in whole or in part by completing Form No. 16 or 16C (as the case may require) accompanying the counterclaim.

A completed Form No. 16 or 16C must be filed with the Registry of the High Court and served on the counterclaiming plaintiff [or the counterclaiming plaintiff's solicitors] within the period for service of the defence to counterclaim.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

(L.N. 251 of 1997; L.N. 152 of 2008)

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No. 20



**Third party notice claiming contribution or indemnity  
or other relief or remedy**

(O. 16)

19 ....., No. ....

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Between

A.B.

Plaintiff

AND

C.D.

Defendant

AND

T.P.

Third Party

Third Party Notice

[Issued pursuant to the order of ..... dated the ..... day of .....].

To T.P. of ..... in the .....  
of .....

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [here state the nature of the plaintiff's claim] as appears from the writ of summons [or originating summons] a copy whereof is served herewith [together with a copy of the statement of claim].

The defendant claims against you [here state the nature of the claim against the third party as for instance] to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of [one half] of the plaintiff's claim or the following relief or remedy namely ..... on the grounds that (state the grounds of the claim).

And take notice that within [14 days] after service of this notice on you, counting the day of service, you must acknowledge service and state in your acknowledgment whether you intend to contest the proceedings. If you fail to do so, or if your acknowledgment does not state your intention to contest the proceedings, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to [indemnify the defendant or to contribute to the extent claimed or to ..... stating the relief for remedy sought] and will be bound by any judgement or decision given in the action, and the judgement may be enforced against you in accordance with Order 16 of the Rules of the High Court Chapter 4.

Dated the ..... day of ..... 19 .....

(Signed) .....  
Solicitor for the defendant.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

(L.N. 251 of 1997; 25 of 1998 s. 2)

No. 21

**Third party notice where question or  
Issue to be determined**

(O. 16)

[Title etc. as in No. 20 down to end of first paragraph]

The defendant requires that the following question or issue, viz. [here state the question or issue required to be determined] should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

And take notice that [as in No. 20 down to the words "intention to contest the proceedings"] you will be bound by any judgment or decision in the action so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the High Court Chapter 4.

Dated the ..... day of ..... 19 .....

(Signed) .....  
Solicitor for the defendant.

### IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

(L.N. 251 of 1997; 25 of 1998 s. 2)

\_\_\_\_\_  
No. 23

### Notice of sanctioned payment

(O. 22 r. 8(2))

*(Heading as in action)*

To the plaintiff('s solicitor) and to the Director of Legal Aid (if applicable)

\_\_\_\_\_  
**Take notice** that the defendant(s) \_\_\_\_\_ has/have paid \$ \_\_\_\_\_ (a further amount of \$ \_\_\_\_\_) into court in settlement of-

(tick as appropriate)

- ☐ the whole of your claim
- ☐ part of your claim *(give details below)*
- ☐ a certain issue or certain issues arising from your claim *(give details below)*

The (part)(issue or issues) to which it relates is (are): *(give details)*

- ☐ It is in addition to the amount of \$ \_\_\_\_\_ already paid into court on \_\_\_\_\_ and the total amount in court now offered in settlement is \$ \_\_\_\_\_ *(give total of all payments in court to date)*
- ☐ It is not inclusive of interest and an additional amount of \$ \_\_\_\_\_ is offered for interest *(give details of the rate(s) and period(s) for which the amount of interest is offered)*
- ☐ It takes into account all (part) of the following counterclaim or set off: *(give details of the party and the part of the counterclaim to which the payment relates)*
- ☐ It takes into account the interim payment(s) made in the following amount(s) on the following date(s): *(give details)*
- ☐ It takes into account the following sum(s) of money that has (have) been paid into court: *(give details)*

- ☐ It is part of the terms of a sanctioned offer set out in (identify the document). If you give notice of acceptance of this sanctioned payment, you will be treated as also accepting the sanctioned offer.

Note:-This notice will need to be modified where an offer of provisional damages is made (Order 22, rule 11).

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

**Note:** To the plaintiff

If you wish to accept the payment made into court and the Court's leave for acceptance is not required, you should complete Form No. 24, send it to the defendant and file a copy in the Registry of the High Court.

(L.N. 152 of 2008)

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No. 24

**Notice of acceptance of sanctioned payment**

(O. 22 r. 15(4))

*(Heading as in action)*

To the defendant('s solicitor) and to the Director of Legal Aid (if applicable)

---

**Take notice** that the plaintiff accepts the payment(s) into court totalling \$ \_\_\_\_\_ in settlement of (the whole of)(part of)(certain issue(s) arising from) \*the plaintiff's claim as set out in the notice of sanctioned payment received on \_\_\_\_\_ (and abandons the other part(s) of or issue(s) arising from the plaintiff's claim).

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

\* Delete as appropriate

(L.N. 152 of 2008)

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No. 25

**Notice of request for payment**

(O. 22 r. 17)

(Heading as in action)

On \_\_\_\_\_ I accepted the payment(s) into court totalling \$ \_\_\_\_\_ in settlement of (the whole of)(part of)(certain issue(s) arising from) \*my claim as set out in the notice of sanctioned payment received on \_\_\_\_\_ (and abandoned the other part(s) of or issue(s) arising from my claim).\*

**I declare that:**

- ☐ the sanctioned payment has been accepted [within 28 days][after 28 days but costs have been agreed][less than 28 days before trial but costs have been agreed]\*
- ☐ the payment into court was not made with a defence of tender
- ☐ the offeree is not a person under disability
- ☐ [at no time has the offeree been on legal aid in these proceedings][the offeree has been on legal aid]\*
- ☐ there is no pending application to withdraw or diminish the sanctioned payment
- ☐ [there is only 1 defendant][the sanctioned payment is made by all defendants][I have discontinued my claim against those defendants who have not made the sanctioned payment and they have given written consent to the acceptance of the sanctioned payment]\*
- ☐ [my claim does not include a claim for provisional damages][my claim for provisional damages has been disposed of under Order 37, rule 8]\*

*(If any of the above declarations has not been made, the money in court can only be paid out by order of the Court)*

- ☐ a copy of this notice has been served on the defendant('s solicitor) named below and I request payment of this money held in court to be made to:

Plaintiff or solicitor's full name/Director of Legal Aid\*

Address and telephone number

**Signature**

**Note:** Before signing this form please read the notes for guidance overleaf. Incorrectly signed forms may be returned unactioned.

Signed

Date

**DETAILS OF PLAINTIFF'S SOLICITOR**

Name of firm

Solicitor for

Defendant or solicitor's full name/Director of Legal Aid\*

Address and telephone number

**Signature**

**Note:** The plaintiff('s solicitor) should obtain the signature of the defendant('s solicitor) on the box below before serving a copy of this notice on him

Signed

Date

**DETAILS OF DEFENDANT'S SOLICITOR**

Name of firm

Solicitor for

\* Delete as appropriate

**Notes for guidance on completion of Form No. 25**

In order to request payment out of funds in court, file this form, signed and completed in accordance with these notes for guidance in the Registry of the High Court. A copy of this form should also be sent to the defendant('s solicitors).

- When completing this form, please ensure that you tick all of the boxes under the heading:  
**'I declare that'**. If you do not tick all of the boxes, the Registry of the High Court will not be able to process your request for payment and will have to return the form to you.
- The form should be signed either by the plaintiff or his solicitor.
- The Accounts Office of the High Court will only issue payment upon receipt of a properly completed Form No. 25 with an original signature. Faxed copies of the form and photocopies of signatures will not be accepted and will be returned to sender.

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 25A

**Notice of payment into court under order or certificate**

(O. 22 r. 27(1))

*(Heading as in action)*

**Take notice** that the plaintiff/defendant \_\_\_\_\_ has paid \$ \_\_\_\_\_ into court in compliance with the order/certificate of \_\_\_\_\_ dated \_\_\_\_\_.

Signed

\_\_\_\_\_  
Plaintiff/Defendant('s solicitor)

**Position or office held**

(If signing on behalf of a firm,  
company or corporation)

Date

**With company chop  
(if applicable)**

**Solicitors' certificate**

We certify that-

- (a) the payment is made within time.  
\*(b) there is no direction in the order for investment of the money.

\*(c) the Court has directed that the money be invested in the following manner-

Signed	Date
--------	------

SOLICITOR'S DETAILS

Name of firm
Solicitor for

\* Delete as appropriate

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 26

**List of Documents**

(O. 24 r. 5)

(Heading as in cause or matter)

**List of documents**

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the above-named plaintiff (or defendant) A.B. and which is served in compliance with Order 24, rule 2 (or the order herein dated the ..... day of ..... 19 .....).

1. The plaintiff (or defendant) has in his possession, custody or power the documents relating to the matters in question in this action enumerated in schedule 1 hereto.

2. The plaintiff (or defendant) objects to produce the documents enumerated in part 2 of the said schedule 1 on the ground that (stating the ground of objection).

3. The plaintiff (or defendant) has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this action enumerated in schedule 2 hereto.

4. Of the documents in the said schedule 2, those numbered ..... in that schedule were last in the plaintiff's (or defendant's) possession, custody or power on (stating when) and the remainder on (stating when).

(Here state what has become of the said documents and in whose possession they now are.)

5. Neither the plaintiff (or defendant), nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question this action, other than the documents enumerated in schedules 1 and 2 hereto.

SCHEDULE 1

Part 1

(Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.)

Part 2

(Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which

he objects to produce.)

## SCHEDULE 2

(Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question.)

Dated the ..... day of ..... 19 .....

### Notice to inspect

Take notice that the documents in the above list, other than those listed in part 2 of schedule 1 (and schedule 2), may be inspected at (the office of the solicitor of the above-named (plaintiff) (defendant) (insert address) or as may be) on the ..... day of ..... 19....., between the hours of ..... and .....

To the defendant (or plaintiff) C.D. and his solicitor.

Served the ..... day of ..... 19 ..... by ..... of ..... solicitor for the (plaintiff) (defendant).

---

No. 27

### Affidavit verifying list of documents

(O. 24 r. 5)

(Heading as in cause or matter)

I, the above-named plaintiff (or defendant) A.B., make oath and say as follows:-

1. The statements made by me in paragraphs 1, 3 and 4 of the list of documents now produced and shown to me marked ..... are true.

2. The statements of fact made by me in paragraph 2 of the said list are true.

3. The statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

Sworn, etc.

This affidavit is filed on behalf of the plaintiff (or defendant).

---

No. 27A

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

(O. 32A r. 2)

No. ....

IN THE HIGH COURT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

Applicant

Notice of application for leave to institute or continue proceedings in court (O. 32A r. 2)	
To the Registrar, High Court, Hong Kong.	
Name and address of applicant	
Title and reference number of the proceedings in which the order under section 27(1) of the High Court Ordinance (Cap 4) was made	
Order sought	
Previous applications for leave which the applicant has made under section 27 of the High Court Ordinance (Cap 4), and the results of those applications	
Signed	Dated

*Grounds on which leave is sought*

Note:-Grounds must be supported by the affidavit evidence on which the applicant relies in support of his application.  
 (L.N. 152 of 2008)

\_\_\_\_\_

No. 28

**Writ of subpoena**

(O. 38 r. 14)

(Heading as in cause or matter)

To (names of witnesses).

You are required to attend (at the High Court in Hong Kong at the sittings of our High Court) on the day fixed for the trial of the above-named cause, notice of which will be given to you, and from day to day thereafter until the end of the trial, to give evidence on behalf of the (plaintiff) or (defendant)\*.

Witness ..... Chief Justice of Hong Kong the ..... day  
 of ..... 19 .....

Issued on the ..... day of ..... 19 ..... by .....  
 solicitor for the .....



\*If duces tecum add: And it is also required to bring with you and produce at the place aforesaid on the day notified to you (here describe the documents or things to be produced).

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 29

**Writ of subpoena: proceedings in chambers**

(O. 38 r. 14)

(Heading as in cause or matter)

To (names of witnesses).

You are required to attend before (Mr. Justice ..... ) in chambers, at the High Court in Hong Kong on ..... day the ..... day of ..... 19 ..... at ..... and so from day to day until your evidence shall have been taken, to give evidence on behalf of the (plaintiff) or (defendant) in the above-named cause (and it is also required to bring with you and produce at the time and place aforesaid describe the documents or things to be produced).

Witness (as in No. 28).

Issued (as in No. 28).

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 31

**Summons for examination within jurisdiction of witness before trial**

(O. 39 r. 1)

(Heading as in cause or matter)

Let all parties concerned attend the Judge (or Registrar) in chambers at the High Court in Hong Kong on ..... the ..... day of ..... 19 ..... at ..... o'clock on the hearing of an application on the part of .....

..... that A.B. a witness on behalf of the ..... be examined forthwith before a Judge, [the Registrar] or one of the examiners of the Court (or an examiner to be agreed upon) upon the usual terms, and that the costs of this application be (costs in the cause).

Dated the ..... day of ..... 19 .....

This summons was taken out by ..... of ..... solicitor for the .....

To the above-named ..... (and ..... his solicitor).

(L.N. 313 of 1997; 25 of 1998 s. 2)

No. 32

**Order for examination within jurisdiction of witness before trial**

(O. 39 r. 1)

(Heading as in cause or matter)

On hearing (the solicitors on both sides) and on reading the affidavit of ..... filed herein the ..... day of ..... 19 .....

It is ordered that ..... a witness on behalf of the ..... be examined viva voce on oath or affirmation before a Judge, the Registrar or one of the examiners of the Court (or ..... Esq., the examiner agreed upon or an examiner to be agreed upon), the plaintiff's (or defendant's) solicitor giving to the defendant's (or plaintiff's) solicitor ..... days' notice in writing of the time and place where the examination is to take place (or state the time and place if fixed by the order). And it is ordered that the depositions taken at the examination be filed in the Registry of the High Court, and that office copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor of the party using the same, as to his belief, and that the costs of this application (and of the examination) be (costs in the cause).

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; 25 of 1998 s. 2)

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No. 33

**Summons for issue of letter of request to judicial authority  
out of jurisdiction**

(O. 39 r. 2)

(Heading as in cause or matter)

Let all parties (as in No. 31) on the hearing of an application on the part of ..... for an order that a letter of request shall issue to the proper judicial authority of ..... for the examination of E.F. and G.H. and other witnesses on the plaintiff's (or the defendant's) behalf at ..... in (name of country), and that the action be stayed until the return of the said letter of request and examination, and that the costs of and incidental to this application and the said letter of request and examination be costs in the cause.

Dated, etc. (conclude as in No. 31).

---

No. 34

**Order for issue of letter of request to judicial authority  
out of jurisdiction**

(O. 39 r. 2)

(Heading as in cause or matter)

On hearing (as in No. 32).

It is ordered that a letter of request do issue directed to the proper judicial authority for the examination of the following witnesses, namely:

E.F. of .....

G.H. ....

And it is ordered that the depositions taken pursuant thereto when received be filed in the Registry of the High Court and that office copies thereof may be read and given in evidence on the trial of this action, saving all just exceptions, without any further proof of the absence of the said witnesses than the affidavit of the solicitor of the party using the same as to his belief.

And it is ordered that (the trial of this action be stayed until the said depositions have been filed and that) the costs of and incidental to the application for this order and the said letter of request and examination be (costs in the cause).

Dated the ..... day of ..... 19 .....

(25 of 1998 s. 2)

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No. 35

**Letter of request for examination of witness out of jurisdiction**

(O. 39 r. 3)

To the Competent Judicial Authority of ..... in the .....  
of .....

WHEREAS an action is now pending in the High Court of Hong Kong in which ..... is plaintiff  
and ..... is defendant and in which the plaintiff  
claims .....

AND WHEREAS it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, namely ..... of ..... and .....  
of ..... and it appears that such witnesses are resident within your jurisdiction.

Now I ..... the Registrar of the High Court in Hong Kong hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined viva voce (or upon the interrogatories which accompany this letter of request) touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend the examination.

And I further request that you will permit the agents of both the plaintiff and defendant or such of them as shall be present to examine (upon interrogatories and viva voce upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and the other party to cross-examine the said witnesses (upon cross-interrogatories and viva voce) and the party producing the witness for examination to re-examine him viva voce.

And I further request that you will be pleased to cause the evidence of the said witnesses (or the answers of the said witnesses and all additional viva voce questions, whether on examination, cross-examination or re-examination) to be reduced into writing and all books, letters, papers and documents produced on such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return it together with (the interrogatories and cross-interrogatories and) a note of the charges and expenses payable in respect of the execution of this request through the British Consul from whom the same was received (or ....., one of Her Majesty's Secretaries of State) for transmission to the High Court, Hong Kong.

And I further request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

Dated the ..... day of ..... 19 .....

(25 of 1998 s. 2)

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No. 36

**Summons for appointment of examiner to take evidence  
of witness out of jurisdiction**

(O. 39 r. 2)

(Heading as in cause or matter)

Let all parties (as in No. 31) on the hearing of an application on the part of ..... for an order that (the British Consul at ..... in (name of country) or his deputy) (..... Esq.) be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, viva voce, on oath or affirmation, of ..... and ....., witnesses on behalf of the ..... at ..... in (name of country) on the usual terms and that the costs of and incidental to this application and the said examination be costs in the cause.

Dated, etc. (conclude as in No. 31).

---

No. 37

**Order for appointment of examiner to take evidence  
of witness out of jurisdiction**

(O. 39 r. 2)

(Heading as in cause or matter)

On hearing the solicitors on both sides and on reading the affidavit of ..... filed the ..... day of ..... 19 .....

It is ordered that the British Consul or his deputy at ..... (or ..... Esq.) be appointed as special examiner for the purpose of taking the examination, cross-examination and re-examination viva voce, on oath or affirmation, of ..... witnesses on the part of ..... at ..... in

(name of country). The examiner shall be at liberty to invite the attendance of the witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be conducted in accordance with the procedure followed in the Court of First Instance of Hong Kong. The ..... solicitors to give to the ..... solicitors ..... days' notice in writing of the date on which they propose to send out this order to ..... for execution, and that ..... days after the service of such notice the solicitors for the plaintiff and defendant respectively do exchange the names of their agents at ..... to whom notice relating to the examination of the said witnesses may be sent. And that ..... days (exclusive of Sunday) before the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party, unless such notice be dispensed with. And that the depositions when taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be sent by the examiner, under seal, to the Registrar of the High Court in Hong Kong, on or before the ..... day of ..... next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incidental to the application for this order and such examination be costs in the cause.

Dated the ..... day of ..... 19 .....

(L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 38

**Notice of Motion**

(O. 8 r. 3)

(Heading as in cause or matter)

Take notice that (pursuant to the leave of ..... given on the ..... day of ..... 19 ..... ) the Court (or Mr. Justice ..... ) will be moved ..... the ..... day of ..... 19 ....., at ..... o'clock, or so soon thereafter as counsel can be heard, by (Mr. .... of ..... ) counsel for the above-named plaintiff (or defendant) that ..... and that the costs of the application be .....

Dated the ..... day of ..... 19 .....

(Signed) .....

of .....

Solicitor for .....

To

Solicitor for .....

(L.N. 251 of 1997)

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No. 39

**Default judgment in action for liquidated demand**

(O. 13 r. 1; O. 19 r. 2; O. 42 r. 1)

(Heading as in action)

The ..... day of ..... 19 .....

No notice of intention to defend having been given (or no defence having been served) by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff \$ ..... and \$ ..... costs (or costs to be taxed).

(The above costs have been taxed and allowed at \$ ..... as appears by a taxing officer's certificate dated the ..... day of ..... 19 .....).  
(L.N. 251 of 1997)

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No. 40

**Default judgment in action for unliquidated damages**

(O. 13 r. 2; O. 19 r. 3; O. 42 r. 1)

(Heading as in action)

The ..... day of ..... 19 .....

No notice of intention to defend having been given (or no defence having been served) by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff damages to be assessed.

---

The amount found due to the plaintiff under this judgment having been certified at \$ ..... as appears by the (Judge's or Registrar's certificate or as may be) filed the ..... day of ..... 19 .....

It is adjudged that the defendant do pay the plaintiff \$ ..... and costs to be taxed.

The above costs, etc. (as in No. 39).

(Note:-This form is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting the words below the line in the form and enter a separate final judgment in Form No. 43.)

(L.N. 251 of 1997)

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No. 41

**Default judgment in action relating to detention of goods**

(O. 13 r. 3; O. 19 r. 4; O. 42 r. 1)

(Heading as in action)

The ..... day of ..... 19 .....

No notice of intention to defend having been given (or no defence having been served) by the defendant herein.

It is this day adjudged that the defendant do deliver to the plaintiff the goods described in the writ of summons (or statement of claim) as (description of goods) or pay the plaintiff the value of the said goods to be assessed (and also damages for their detention to be assessed).

or

It is this day adjudged that the defendant do pay the plaintiff the value of the goods described in the writ of summons (or statement of claim) to be assessed (and also damages for their detention to be assessed).

---

The value of the said goods having been assessed at \$ ..... (and damages at \$ ..... ) as appears by the (Judge's or Registrar's certificate or as may be) filed the ..... day of ..... 19 .....

It is adjudged that the defendant do pay the plaintiff \$ ..... and costs to be taxed.

The above costs, etc. (as in No. 39).

(Note:-See the note to No. 40.)

(L.N. 251 of 1997)

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No. 42

**Default judgment in action for possession of land**

(O. 13 r. 4; O. 19 r. 5; O. 42 r. 1)

(Heading as in action)

The ..... day of ..... 19 .....

No notice of intention to defend having been given (or no defence having been served) by the defendant herein, it is this day adjudged that the defendant do give the plaintiff possession of the land described in the writ of summons (or statement of claim) as ..... and pay the plaintiff \$ ..... costs (or costs to be taxed).

The above costs, etc. (as in No. 39).

(L.N. 251 of 1997)

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No. 42A

**Order for possession**

(O. 113 r. 6)

[Heading as in summons]

Upon hearing ..... and upon reading the affidavit of ..... filed the ..... day of ..... 19 ....., it is ordered that the plaintiff A.B. do recover possession of the land described in the

originating summons as ..... [and that the defendant ..... do pay the plaintiff \$ ..... costs [or costs to be taxed]].

The above costs have been taxed and allowed at \$ ..... as appears by a taxing master's certificate dated the ..... day of ..... 19 .....

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997)

---

No. 43

**Final judgment after assessment of damages, etc.**

(O. 42 r. 1)

(Heading as in action)

The ..... day of ..... 19 .....

The plaintiff having on the ..... day of ..... 19 ..... obtained interlocutory judgment herein against the defendant for damages (or as may be) to be assessed, and the amount found due to the plaintiff having been certified at \$ ..... as appears by the (Judge's or Registrar's certificate or as may be) filed the ..... day of ..... 19 .....

It is this day adjudged that the defendant do pay the plaintiff \$ ..... and costs to be taxed.

The above costs, etc. (as in No. 39).

(L.N. 251 of 1997)

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No. 44

**Judgment under Order 14**

(O. 14 r. 3; O. 42 r. 1)

(Heading as in action)

The ..... day of ..... 19 .....

The defendant having given notice of intention to defend herein and the Court having under Order 14, rule 3 ordered that judgment as hereinafter provided be entered for the plaintiff against the defendant.

It is this day adjudged that the defendant do pay the plaintiff \$ ..... and \$ ..... costs (or costs to be taxed)

or

pay the plaintiff damages to be assessed and costs to be taxed

or



deliver to the plaintiff the goods described in the writ of summons (or statement of claim) as ..... (or pay the plaintiff the value of the said goods to be assessed) (and also damages for their detention to be assessed) and costs to be taxed

or

give the plaintiff possession of the land described in the writ of summons (or statement of claim) as ..... and costs to be taxed.

The above costs, etc. (as in No. 39).

(L.N. 251 of 1997)

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No. 45

**Judgment after trial before judge without jury**

(O. 42 r. 1)

(Heading as in action)

Dated and entered the ..... day of ..... 19 .....

This action having been tried before the Honourable Mr. Justice ..... without a jury, at the High Court, Hong Kong, and the said Mr. Justice ..... having on the ..... day of ..... 19 ..... ordered that judgment as hereinafter provided be entered for the plaintiff (or defendant) (and directed that execution be stayed for the period and on the terms hereinafter provided).

It is adjudged that the defendant do pay the plaintiff \$ ..... and his costs of action to be taxed (or that the plaintiff do pay the defendant his costs of defence to be taxed or as may be according to the judge's order).

(It is further adjudged that execution be stayed for ..... days and if within that time the ..... gives notice of appeal and sets down the appeal, execution be further stayed until the determination of the appeal or as may be according to the judge's direction).

The above costs, etc. (as in No. 39).

(L.N. 251 of 1997; 25 of 1998 s. 2)

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No. 46

**Judgment after trial before judge with jury**

(O. 42 r. 1)

(Heading as in action)

Dated and entered the ..... day of ..... 19 .....

This action having been tried before the Honourable Mr. Justice ..... with a jury and the jury having found (state findings) and the said Mr. Justice ..... having on the ..... day

of ..... 19 ..... ordered that judgment as hereinafter provided be entered for (etc. as in No. 45).  
(L.N. 251 of 1997)

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No. 48

**Judgment after decision of preliminary issue**

(O. 33 r. 7; O. 42 r. 1)

(Heading as in cause or matter)

Dated and entered the ..... day of ..... 19 .....

The issue (or question) arising in this cause (or matter) by the order dated the ..... day of ..... 19 ..... ordered to be tried before .....  
..... having on the ..... day of ..... 19 ..... been  
tried before the said ..... and the said ..... having  
found ..... and having ordered that judgment as hereinafter provided be entered for  
the .....  
..... (or having dismissed the cause or matter).

It is adjudged that (the defendant do pay the plaintiff \$ ..... and his costs of action to be  
taxed) (the plaintiff do pay the defendant his costs of defence to be taxed) or as may be according to the order made.  
(L.N. 251 of 1997)

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No. 49

**Judgment for liquidated sum against personal representative**

(O. 42 r. 1)

(Heading as in action)

Dated and entered the ..... day of ..... 19 ..... (Recital as in No. 39, 43-48 according to the  
circumstances in which judgment was obtained).

It is adjudged that the defendant as executor (or administrator) of the above  
named ..... deceased do pay the plaintiff \$ ..... and costs to be taxed,  
the said sum and costs to be levied of the real and personal estate of the deceased at the time of his death come to the  
hands of the defendant as such executor (or administrator) to be administered, if he has or shall hereafter have so  
much thereof in his hands to be administered, and if he has not so much thereof in his hands to be administered, then,  
as to the costs aforesaid, to be levied of the goods, chattels and other property of the defendant authorized by law to be  
seized in execution (or as may be according to the order made).

The above costs, etc. (as in No. 39).

(L.N. 251 of 1997)

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No. 50

**Judgment for defendant's costs on discontinuance**

(O. 62 r. 10(1))

(Heading as in action)

The ..... day of ..... 19 .....

The plaintiff having by a notice in writing dated the ..... day of ..... 19 ....., discontinued this action (or withdrawn his claim in this action for .....  
.....) and the defendant's costs of the action (or of the claim withdrawn) having been taxed and allowed at \$ ..... as appears by a taxing officer's certificate dated the ..... day of ..... 19 ....., and the plaintiff not having paid the sum within 4 days after taxation.

It is this day adjudged that the plaintiff do pay the defendant \$ ..... the said taxed costs.

(L.N. 251 of 1997)

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No. 51

(Repealed L.N. 152 of 2008)

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No. 52

**Notice of judgment or order**

(O. 44 r. 3)

(Heading as in cause or matter)

Take notice that a judgment (or order) of this Court was given (or made) on the ..... day of ..... 19 ..... by which it was (state substance of judgment or order).

And also take notice that from the time of the service of this notice you (or the infant ..... or the patient ..... as may be) will be bound by the said judgment (or order) to the same extent as you (or he) would have been if you (or he) had originally been made a party.

And also take notice that you (or the said infant or patient) may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment (or order) and that after acknowledging service of this notice at the Registry of the High Court in Hong Kong, you (or the said infant or patient) may attend the proceedings under the said judgment (or order).

Dated the ..... day of ..... 19 .....

To .....

(Signed) .....

(L.N. 126 of 1995; L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

No. 53

**Writ of fieri facias**

(O. 45 r. 12)

(Heading as in action)

To the bailiff .....

Whereas in the above named action it was on the ..... day of ..... 19 ..... adjudged (or ordered) that the defendant C.D. do pay the plaintiff A.B. \$ ..... (and \$ ..... costs or costs to be taxed, which costs have been taxed and allowed at \$ ..... as appears by the certificate of the taxing officer dated the ..... day of ..... 19 .....):

It is required that of the goods, chattels and other property of C.D. authorized by law to be seized in execution you cause to be made the sums of \$ ..... and \$ ..... for costs of execution and also interest on \$ ..... at the rate of \$4 per cent per annum from the ..... day of ..... 19 ..... until payment (together with bailiff's fees, costs of levying and all other legal, incidental expenses) and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment (or order) the amount levied in respect of the said sums and interest.

And it is also required that you indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement to A.B.

And the court has fixed support and maintenance allowance at the rate of ..... a day.

Witness ..... Chief Justice of Hong Kong, the ..... day of ..... 19 .....

This writ was issued by ..... of ..... solicitor for ..... the ..... (or this writ was issued by A.B. (the plaintiff) in person who resides at .....).

(L.N. 251 of 1997; L.N. 313 of 1997)

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No. 54

**Writ of fieri facias on order for costs**

(O. 45 r. 12)

(Heading as in cause or matter)

To the bailiff .....

Whereas in the above named cause (or matter) it was on the ..... day of ..... 19 ..... ordered that the ..... C.D. do pay the ..... A.B. costs to be taxed, which costs have been taxed and allowed at \$ ..... as appears by the taxing officer's certificate dated the ..... day of ..... 19 ..... :

It is required that of the goods, chattels and other property of C.D. authorized by law to be seized in execution you cause to be made the sum of \$ ..... and \$ ..... for cause of execution, and also interest on \$ ..... at the rate of \$4 per cent per annum from the ..... day of ..... 19 ..... until payment together with bailiff's fees, cost of levying and all other legal incidental expenses and that immediately

after execution of this writ you pay A.B. in pursuance of the said order the amount levied in respect of the said sum and interest.

And it is also required (as in No. 53).

And the court (as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997)

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No. 56

**Writ of fieri facias after levy of part**

(O. 45 r. 12)

(Heading as in action)

To the bailiff .....

Whereas (as in No. 53).

And whereas by our writ issued the ..... day of ..... 19 ..... it is required that of the goods, chattels and other property of C.D. you should cause to be made the sums of \$ ..... and \$ ..... for costs of execution and also interest on \$ ..... at \$4 per cent per annum from the ..... day of ..... 19 ..... until payment and should pay A.B. in pursuance of the said judgment (or order) the amount levied in respect of the said sums and interest and should indorse on the writ a statement of the manner in which you had executed it and send a copy of the statement to A.B.

And whereas the indorsement on the said writ states that by virtue thereof you (or he) caused to be made of the property aforesaid the sum of \$ .....

It is required that of the goods, chattels and other property of C.D. authorized by law to be seized in execution you cause to be made the sum of \$ ....., the residue of the said \$ ....., and \$ ..... for costs of execution and also interest on \$ ..... at the rate of \$4 per cent per annum from the ..... day of ..... 19 ..... until payment (continue as in No. 53).

And it is also required (as in No. 53).

And the court (as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997)

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No. 57

**Writ of fieri facias against personal representative**

(O. 45 r. 12)

(Heading as in action)

To the bailiff .....

Whereas in the above named action it was on the ..... day of ..... 19 ..... adjudged (or ordered) that the defendant C.D. as executor (or administrator) of E.F. deceased do pay the plaintiff A.B. \$ ..... and \$ ..... costs (or costs to be taxed which costs have been taxed and allowed at \$ ..... as appears by the certificate of the taxing officer dated the ..... day of ..... 19 .....), the said sums and interest to be levied of the real and personal estate of the said E.F. at the time of his death in the hands of the defendant C.D. as his executor (or administrator) to be administered, if he had or should thereafter have so much thereof in his hands to be administered, (and if he had not, then the said costs to be levied of the goods, chattels and other property of the defendant C.D. authorized by law to be seized in execution):

It is required that of the real and personal estate of E.F. deceased, at the time of his death, which is in the hands of C.D. as his executor (or administrator) to be administered you cause to be made the sums of \$ ..... and \$ ..... for costs of execution and also interest on \$ ..... at the rate of \$4 per cent per annum from the ..... day of ..... 19 ..... until payment (together with bailiff's fees, cost of levying and all other legal incidental expenses) (and if the said C.D. has not so much thereof in his hands to be administered that you cause to be made of the goods, chattels and other property of C.D. authorized by law to be seized in execution the sum of \$ ..... for costs) and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment (or order) the amount levied in respect of the said sums and interest.

And it is also required (remainder as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997)

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No. 63

**Writ of fieri facias to enforce foreign registered judgment**

(O. 45 r. 12; O. 71)

IN THE HIGH COURT OF HONG KONG

In the matter of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319).

and

In the matter of a judgment of (describe the court) obtained in (describe the cause or matter) and dated the ..... day of ..... 19 .....

To the bailiff .....

Whereas by a judgment dated the ..... day of ..... 19 ..... of (describe the court) registered in our High Court, Hong Kong pursuant to the Foreign Judgments (Reciprocal Enforcement) Ordinance it was adjudged that C.D. do pay A.B. .... dollars (or as may be) and the amount now due and owing under the said judgment is equivalent to the sum of \$ .....

It is required that of the goods, chattels and other property of C.D. authorized by law to be seized in execution you cause to be made the sums, of \$ ..... and \$ ..... for costs of execution together with bailiff, officers' fees (remainder as in No. 53).

And it is also required (as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 64

**Writ of delivery: delivery of goods, damages and costs**

(O. 45 r. 12)

(Heading as in action)

To the bailiff ..... :

Whereas in the above named action it was on the ..... day of ..... 19..... adjudged (or ordered) that the defendant C.D. do deliver to the plaintiff A.B. the following goods, namely (describe the goods delivery of which has been adjudged or ordered) (and \$ ..... damages) and \$ ..... costs (or costs to be taxed, which costs have been taxed and allowed at \$ ..... as appears by the certificate of the taxing officer dated the ..... day of ..... 19 .....):

It is required that you cause the said goods to be delivered to A.B. and that of the goods, chattels and other property of C.D. authorized by law to be seized in execution you cause to be made the sums of \$ ..... and \$ ..... for costs of execution and also interest on \$ ..... at the rate of \$4 per cent per annum from the ..... day of ..... 19..... until payment together with bailiff's fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment (or order) the amount levied in respect of the said sums and interest.

And it is also required that you indorse (remainder as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997)

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No. 65

**Writ of delivery: delivery of goods or value, damages, costs**

(O. 45 r. 12)

(Heading as in action)

To the bailiff .....

Whereas in the above named action it was on the ..... day of ..... 19 ..... adjudged (or ordered) that the defendant C.D. do deliver to the plaintiff A.B. the following goods, namely (describe the goods delivery of which has been adjudged or ordered) or do pay him \$ ..... being the assessed value of the said goods, (and \$ ..... damages) and \$ ..... costs (or costs to be taxed, which costs have been taxed and allowed at \$ ..... as appears by the certificate of the taxing officer dated the ..... day of ..... 19 .....).

It is required that you cause the said goods to be delivered to A.B. and that if possession of the said goods cannot be obtained by you you cause to be made of the goods, chattels and other property of C.D. authorized by law to be seized in execution \$ ..... the assessed value of the said goods and pay it to A.B.

And it is also required that of the said property of C.D. you cause to be made the sums of \$ ..... for (damages and) costs and \$ ..... for costs of execution and also interest on \$ ..... at the rate of \$4 per cent per annum from the ..... day of ..... 19 ..... until payment together with bailiff's fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment (or order) the amount levied in respect of the said sums and interest.

And it is also required that you indorse (remainder as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997)

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No. 66

**Writ of possession**

(O. 45 r. 12)

(Heading as in action)

To the bailiff .....

Whereas in the above named action it was on the ..... day of ..... 19 ..... adjudged (or ordered) that the defendant C.D. do give the plaintiff A.B. possession of (describe the land delivery of which has been adjudged or ordered) and do pay him (\$ ..... and) \$ ..... costs (or costs to be taxed, which costs have been taxed and allowed at \$ ..... as appears by the taxing officer's certificate dated the ..... day of ..... 19 .....):

It is required that you enter the said land and cause A.B. to have possession of it.

And it is also required that of the goods, chattels and other property (remainder as in No. 53).

And it is also required that you indorse (as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997)



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No. 66A

**Writ of Possession**

(O. 113 r. 7)

[Heading as in summons]

To the bailiff .....

Whereas it was on the ..... day of ..... 19 ..... ordered that the plaintiff A.B. do recover possession of [describe the land recovery of which has been ordered] [and that the defendant C.D. do pay him \$ ..... costs [or costs to be taxed, which costs have been taxed and allowed at \$ ..... as appears by the taxing master's certificate dated the ..... day of ..... 19 .....]]:

It is required that you enter the said land and cause A.B. to have possession of it.

[And it is also required that of the goods, chattels and other property [remainder as in No. 53].]

Witness (as in No. 53).

This writ (as in No. 53).

Dated this ..... day of ..... 19 .....

(L.N. 251 of 1997; L.N. 313 of 1997)

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No. 67

**Writ of sequestration**

(O. 45 r. 12)

(Heading as in cause or matter)

To (names of not less than four commissioners) :

Whereas in the above named action (or matter) in our High Court, Hong Kong it was on the ..... day of ..... 19 ..... adjudged (or ordered) that C.D. should (pay into Court the sum of \$ ..... or as may be):

You are hereby authorized and directed by this writ that you, or any two or three of you, may enter upon and take possession of all the real and personal estate of the said C.D. and may collect, receive and get into your hands the rents and profits of his real estate and all his personal estate and keep the same under sequestration in your hands until the said C.D. shall (pay into Court to the credit of the said action or matter the sum of \$ ..... or as may be) and clear his contempt and the said Court make other order to the contrary.

Witness (as in No. 53).

This writ was issued (as in No. 53).

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No. 68

**Writ of restitution**

(O. 46 r. 1)

(Heading as in action)

To the bailiff ..... :

Whereas in the above named action it was on the ..... day of ..... 19 ..... adjudged (or ordered) that the defendant C.D. do give the plaintiff A.B. possession of (describe the land delivery of which was adjudged or ordered):

And whereas on the ..... day of ..... 19 ..... a writ of possession was issued pursuant to the said judgment (or order) directing you to give possession of the said land to the said A.B., but it appearing to the High Court, Hong Kong that certain other persons have wrongfully taken possession of the said land and the said Court having on the ..... day of ..... 19 ..... ordered that a writ of restitution should issue in respect of the said land:

It is required that you enter the said land and cause A.B. to have restitution thereof.

And it is also required that you indorse (remainder as in No. 53).

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 69

**Writ of assistance**

(O. 46 r. 1)

(Heading as in action)

To the present and any future bailiff ..... :

Whereas by an order dated the ..... day of ..... 19 ..... made in an action in the High Court, Hong Kong between A.B., plaintiff, and C.D., defendant, the said C.D. was ordered to give to the said A.B. possession of the goods therein described, namely (describe the goods), but he the said C.D. and other persons have refused to obey the order and keep the possession of the goods in contempt of the said Court:

And whereas by an order made in the said action dated the ..... day of ..... 19 ..... it was ordered that a writ of assistance should issue to give the said A.B. possession of the said goods:

It is required that you put the said A.B. and his assigns into full peaceable and quiet possession of the said goods

and defend and keep him and his assigns in such peaceable and quiet possession, when and as often as any interruption thereof is at any time effected, according to the intent of the said orders. And herein you are not in any wise to fail.

Witness (as in No. 53).

This writ (as in No. 53).

(L.N. 165 of 1992; L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

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No. 71

**Notice of renewal of writ of execution**

(O. 46 r. 8)

(Heading as in cause or matter)

Take notice that the writ of ..... issued in this cause (or matter) directed to the bailiff and bearing date the ..... day of ..... 19 ..... has by order dated the ..... day of ..... 19 ..... been renewed for one year beginning with the date of the said order.

To the bailiff.

(Signed)

Solicitor for .....

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No. 72

**Garnishee order to show cause**

(O. 49 r. 1)

In the High Court of Hong Kong

19 ....., No. ....

(Mr. Justice ..... Judge in chambers)

Between

A.B.  
AND  
C.D.  
F.G.

Judgment creditor  
Judgment debtor  
Garnishee

Upon reading the affidavit of ..... filed the ..... day of ..... 19 .....

It is ordered by (Mr. Justice ..... ) that all debts due or accruing due from the above-mentioned garnishee to the above-mentioned judgment debtor (in the sum of \$ ..... ) be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court on the ..... day of ..... 19 ..... for the sum (or to answer an order made

in the High Court on the ..... day of ..... 19 .....; ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ ..... remains due and unpaid.

And it is ordered that the said garnishee attend Mr. Justice ..... in Chambers, at the High Court, in Hong Kong on the ..... day of ..... 19 ..... at ..... o'clock, on an application by the said judgment creditor that the garnishee do pay to the said judgment creditor the debt due from the said garnishee to the said judgment debtor, or so much thereof as may be sufficient to satisfy the said judgment (or order), and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(ba)(i) and (ii) together with the costs of the garnishee proceedings.

Dated the ..... day of ..... 19 .....

To the above-named garnishee  
and judgment debtor.

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2; 18 of 2003 s. 15)

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No. 73

**Garnishee order absolute where garnishee owes more than judgment debt**

(O. 49 rr. 1, 4)

(Heading as in No. 72)

Upon hearing the solicitors for the judgment creditor and the garnishee, and upon reading the affidavit of ..... filed herein, and the order to show cause made herein dated the ..... day of ..... 19 ....., whereby it was ordered that all debts due or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court on the ..... day of ..... 19 ..... for the sum (or to answer an order made in the High Court dated the ..... day of ..... 19 ..... ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ ..... (debt and \$ ..... costs) and interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the High Court, as referred to in Order 49, rule 2(ba)(i) and (ii) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ ..... remained due and unpaid:

It is ordered that the said garnishee do forthwith pay to the said judgment creditor \$ ..... being so much of the debt from the said garnishee to the said judgment debt, \$ ..... interest and \$ ..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii) or as is sufficient to satisfy the said judgment debt and costs, together with \$ ..... the costs of the garnishee proceedings, and that the said garnishee be at liberty to retain \$ ..... for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; 25 of 1998 s. 2; 18 of 2003 s. 15)

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No. 74

**Garnishee order absolute where garnishee owes less than judgment debt**

(O. 49 rr. 1, 4)

(Heading as in No. 72)

Upon hearing (as in No. 73).

It is ordered that the said garnishee (after deducting therefrom \$ ..... for his costs of this application) do forthwith pay to the said judgment creditor \$ ..... the debt due from the said garnishee to the said judgment debtor and \$..... interest and \$..... surcharge, as referred to in Order 49, rule 2(ba)(i) and (ii). And that the sum of \$ ..... the costs or the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; 18 of 2003 s. 15)

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No. 75

**Charging order: notice to show cause**

(O. 50, r. 1)

(Heading as in cause or matter)

Upon hearing the ..... and upon reading the affidavit of ..... filed herein the ..... day of ..... 19 ..... whereby it appears that by a judgment (or order) made in the Court of First Instance on the ..... day of ..... 19 ..... the defendant was ordered to pay to the plaintiff the sum of \$ ..... and \$ ..... costs on which judgment (or order) the sum of \$ ..... remains due and unpaid and that the defendant has a beneficial interest in the asset specified in the schedule hereto:

It is ordered by (Mr. Justice/Master ..... ) that unless sufficient cause to the contrary be shown before (Mr. Justice/Master ..... at the High Court of Hong Kong, 38 Queensway, Hong Kong) on the ..... day of ..... 19 ....., at ..... o'clock, the defendant's interest in the said asset shall, and it is ordered that in the meantime it do, stand charged with the payment of \$ ..... due on the said judgment (or order) and (interest thereon at the statutory rate) (interest at the judgment rate calculated from the date on which maintenance payment is due to the date of payment and surcharge at a rate to be decided by the Court, as referred to in Order 50, rule 1(3)(ba)(i) and (ii)) together with the costs of this application.

Dated the ..... day of ..... 19 .....

**SCHEDULE**

(Describe with full particulars the relevant land, securities, funds or trust, stating, in relation to securities, their full title, the amount of them and the name in which they stand and whether the beneficial interest charged is in the securities only or in dividends or interest as well, and stating, in relation to funds in court, the number of the account).

(L.N. 251 of 1997; 25 of 1998 s. 2; 18 of 2003 s. 15)

No. 76

**Charging order absolute**

(O. 50, r. 3)

(Heading as in cause or matter)

Upon hearing the ..... and upon reading the affidavits of ..... and ..... filed herein the ..... day of ..... 19 ..... and the order to show cause made herein on the ..... day of ..... 19 .....

It is ordered that the interest of the defendant C.D. in the asset specified in the schedule hereto stand charged with the payment of \$ ....., the amount due from the defendant to the plaintiff A.B. on a judgment (or order) of the Court of First Instance dated the ..... day of ..... 19 ....., and (interest thereon at the statutory rate) (\$..... interest and \$..... surcharge, as referred to in Order 50, rule 1(3)(ba)(i) and (ii)) together with \$ ..... the costs of this application, the said costs to be added to the judgment debt.

Dated the ..... day of ..... 19 .....

**SCHEDULE**

(Describe with full particulars the relevant land, securities, funds or trust, stating, in relation to securities, their full title, the amount of them and the name in which they stand and whether the beneficial interest charged is in the securities only or in dividends or interest as well, and stating, in relation to funds in court, the number of the account).

**STOP NOTICE**

To the (describe the person having custody of the security)

Take notice that, in relation to the securities specified in the schedule to this order, you may not, without notice to (name of the plaintiff) at (his address for service) register any transfer, or make any redemption payment, or, in the case of a unit trust, deal with the units, or, where dividends or interest are included in the order, pay any dividend or interest.

**SCHEDULE**

(L.N. 251 of 1997; 25 of 1998 s. 2; 18 of 2003 s. 15)

\_\_\_\_\_

No. 77

(Repealed L.N. 356 of 1988)

\_\_\_\_\_

No. 78

(Repealed L.N. 356 of 1988)

\_\_\_\_\_

No. 79

**Stop order on capital and income of funds in court**

(O. 50 r. 10)

(Heading as in cause or matter)

Upon hearing ..... for the plaintiff A.B. and ..... for the defendant C.D. and upon reading the affidavit of ..... filed herein the ..... day of ..... 19 .....

It is ordered that no part of the capital of (describe funds) in court to the credit of this action (or matter) (state title of action or matter), the account of C.D., and of the sum of \$ ..... cash (being income) in court to the same credit, and of any interest or dividends to accrue due on the said funds in court, to which the said C.D. is (or may become) entitled, be transferred, sold, paid or otherwise dealt with without notice to the said A.B.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997)

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No. 80

**Affidavit and notice under O. 50 r. 11**

(O. 50 r. 11)

IN THE HIGH COURT OF HONG KONG

In the matter of (state the settlement or other document under which the deponent's interest arises giving the date and other particulars sufficient to identify the document).

and

In the matter of Order 50, rule 11, of the Rules of the High Court.

I, A.B. (or C.D. the solicitor of A.B.) of ..... make oath and say that according to the best of my knowledge, information and belief I am (or the said A.B. is) beneficially entitled under the above-mentioned settlement (or as may be) to an interest in the securities specified in the notice hereto annexed.

Sworn, etc. ....

This affidavit is filed on behalf of A.B. whose address is .....

**Notice to be annexed to affidavit**

To ..... Co. Ltd.

Take notice that the securities comprised in and subject to the trusts of the settlement (or as may be) referred to in the affidavit to which this notice is annexed consist of the following, namely (specify the stock, shares, etc. stating the names in which it stands).

This notice is intended to stop the transfer of the said securities and not the payment of any dividend thereof or interest thereon (or and also the payment of any dividend thereof or interest thereon).

(Signed)

A.B. (or C.D. if affidavit  
sworn by him)

(25 of 1998 s. 2)

---

No. 81

**Order on originating summons restraining transfer of stock, etc.**

(O. 50 r. 15)

In the High Court of the Hong Kong Special Administrative Region

20 ....., No. ....

In the matter of the trusts of

.....

and

In the matter of Order 50, rule 15, of the Rules of the High Court.

Upon the hearing of the originating summons for an injunction this day made unto this Court by counsel for the applicant A.B.:

And the applicant by his counsel undertaking to abide by any order the Court may hereafter make should it decide that the respondents (the ..... Co. Ltd.) have sustained damage by reason of this order and are entitled to damages which the applicant ought to pay:

It is ordered that (the ..... Co. Ltd.) be restrained until the ..... day of ..... 20 ..... or further order from permitting the transfer of (describe stock) standing in the name of (state name of holder of stock) in their books, or any part thereof, and from paying any dividend or interest due or to become due thereon.

Dated the ..... day of ..... 20 .....

(L.N. 251 of 1997; 25 of 1998 s. 2; L.N. 152 of 2008)

---

No. 82

**Summons for appointment of receiver**

(O. 51 r. 3)

(Heading as in action)

Let the defendant C.D. attend the (Judge in chambers, at the High Court in Hong Kong) on ..... the ..... day of ..... 19 ..... at ..... o'clock on the hearing of an application on the part of the plaintiff for an order that a receiver be appointed (or that P.R. be appointed receiver) in this action to receive the rents, profits and moneys receivable in respect of the interest of the defendant C.D. in the following property, namely (describe the property) in or towards satisfaction of the moneys and interest due to the plaintiff under the judgment (or order) in this action dated the ..... day of ..... 19 ..... and for an order as to the costs of this application.



Dated the ..... day of ..... 19 .....

This summons was taken out by ..... of .....

To the above-named ..... (and his solicitor).

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

---

No. 83

**Order directing summons for appointment of receiver and  
granting injunction meanwhile**

(O. 51 r. 3)

(Heading as in action)

Upon reading the affidavit of ..... filed the ..... day of ..... 19 .....

Let the defendant C.D. attend the (Judge in chambers, at the High Court in Hong Kong) on the ..... day of ..... 19 ..... at ..... o'clock on the hearing of an application on the part of the plaintiff for the appointment of P.R. as receiver in this action, on the usual terms, to receive the rents, profits and moneys receivable in respect of the said defendant's interest in the following property, namely (describe the property) in or towards satisfaction of the sum of \$ ..... debt and \$ ..... costs, and interest on the said sums at the rate of \$4 per cent per annum from the ..... day of ..... 19 ..... due under the judgment (or order) in this action dated the ..... day of ..... 19 .....

And the plaintiff (by his solicitor) hereby undertaking to abide by any order the Court may hereafter make should it decide that the said defendant has sustained damage by reason of this order and is entitled to damages which the plaintiff ought to pay, it is ordered that the said defendant by himself, his agents or servants, or otherwise, be restrained, and an injunction is hereby granted restraining him, until after the hearing of the above application, from assigning, charging or otherwise dealing with the said property.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

---

No. 84

**Order appointing receiver by way of equitable execution**

(O. 51 r. 1)

(Heading as in action)

Upon hearing ..... and upon reading the affidavit of ..... filed the ..... day of ..... 19 .....

(If security ordered) It is ordered that P.R. of ..... on first giving security to the satisfaction of the Court, be and is hereby appointed to receive the rents, profits and moneys receivable in respect of the above-named defendant's interest in the following property, namely (describe the property).

(If no security ordered and receiver is not the plaintiff) The plaintiff being answerable for the acts and defaults of

the receiver, it is ordered that P.R. of ..... be and is hereby appointed to receive (continue as above) but he shall not receive more than the amount of the judgment debt and allowed costs of obtaining this order without leave of the Court or first giving (at the plaintiff's cost unless otherwise ordered) the usual security to the satisfaction of the Court.

(If no security ordered and receiver is the plaintiff: as above omitting "The plaintiff being answerable for the acts and defaults of the receiver" and the words after "the Court").

(In all cases continue as follows:-)

That this appointment shall be without prejudice to the rights of any prior incumbrances upon the said property who may think proper to take possession of or receive the same by virtue of their respective securities or, if any prior incumbrances is in possession, then without prejudice to such possession.

And that the tenants of premises comprised in the said property do attorn and pay their rents in arrear and growing rents to the receiver.

And that the receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits and moneys to be received by him to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments, if any, in passing his accounts.

And that the receiver shall on the ..... day of ..... (3 months after the date of order), and at such further and other times as may be ordered by the Court leave and pass his accounts, and shall on the ..... day of ..... (4 months after the date of order) and at such further and other times as may be hereafter ordered by the Court pay the balance or balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be so paid, such sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the ..... day of ..... for the sum of \$ ..... debt and \$ ..... costs, making together the sum of \$ .....

And that the costs of the receiver (including his remuneration), the costs of obtaining his appointment, of completing his security (if any), of passing his accounts and of obtaining his discharge shall not exceed ten per cent of the amount due under the said judgment or the amount recovered by the receiver, whichever is the less, provided that not less than ..... be allowed unless otherwise ordered. Such costs shall be taxed unless assessed by the Court and shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the Court being given stating the amount of the deficiency, such certificate to be given after passing the final account, the amount of the deficiency so certified shall be paid by the defendant to the plaintiff.

It is also ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall unless otherwise directed by the Court forthwith be paid by the receiver into Court to the credit of this action, subject to further order.

And that any of the parties be at liberty to apply to the Judge in chambers as there may be occasion.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997)

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No. 85

**Order of committal**

(O. 52 r. 1)

(Heading as in action)

Upon hearing the originating summons dated the ..... day of ..... 20 ..... taken out by the solicitor for the plaintiff/plaintiff and upon reading (an affidavit of ..... filed the ..... day of ..... 20 ..... of service on the defendant C.D. of a copy of the order of the Court dated the ..... day of ..... 20 ..... and of notice of hearing of this originating summons):

And it appearing to the satisfaction of the Court that the defendant C.D. has been guilty of contempt of court in (state the contempt):

It is ordered that for his said contempt the defendant do stand committed to ..... Prison to be there imprisoned (until further order).

(It is further ordered that this order shall not be executed if the defendant C.D. complies with the following terms, namely, .....).

Dated the ..... day of ..... 20 .....

(L.N. 251 of 1997; L.N. 152 of 2008)

\_\_\_\_\_  
No. 85A

**Warrant for committal**

(O. 52 r. 1)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Between

A.B.  
AND  
C.D.

Plaintiff

Defendant

To: The Chief Bailiff and his assistants and the Commissioner of Correctional Services.

WHEREAS by an order of this Court pronounced this day it was ordered that the above-named [here insert name of defendant], do stand committed to Prison for his/her contempt in the said order mentioned.

You are required to apprehend the said [here insert name of defendant], and him/her safely convey to Prison there to be detained and kept in safe custody until such time as the said Order granted by the Honourable Mr. Justice ..... on the ..... day of ..... 19 ..... shall have been complied with and obeyed or until such time as the said [here insert name of defendant] may be discharged by the Court on his/her application.

Dated the ..... day of ..... 19 .....

.....  
A Judge of the Court of First Instance

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

\_\_\_\_\_  
No. 86

**Notice of application for leave to apply for judicial review**

(O. 53 r. 3(2))

No. ....

IN THE HIGH COURT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

Applicant

Notice of application for leave to apply  
for judicial review (O. 53 r. 3(2))

This form must be read together with notes for guidance obtainable from the Registry.

To the Registrar, High Court, Hong Kong.

Name, description and address of applicant	
---	--

Name and description of proposed respondent	
--	--

Judgment, order, decision or other proceeding in respect of which relief is sought	
--	--

Relief sought

Name, description and address of all interested parties (if any) known to the applicant	
---	--

Name and address of applicant's solicitors, or, if no solicitors acting, the address for service of the applicant	
---	--

Signed

Dated

*Grounds on which relief is sought*  
(if there has been any delay, include reasons here).

Note:-Grounds must be supported by an affidavit which verifies the facts relied on.

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 86A

**Originating summons-judicial review**

(O. 53 r. 5)

..... / 20 .....

IN THE HIGH COURT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST

NO. .... OF .....

Between *A.B.* Applicant

AND

*C.D.* Respondent

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

.....  
.....  
.....

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

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

.....  
.....).

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

.....  
.....

Dated the ..... day of ..... 20.....

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

This summons was taken out by ....., solicitor for the applicant whose address is at .....(or where the plaintiff acts in person:

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

To: .....

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

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 87

**Originating summons-for writ of habeas corpus ad subjiciendum**

(O. 54 r. 2)

..... / 20 .....

IN THE HIGH COURT OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST

NO. .... OF .....

Between

*A.B.*

Applicant

AND

*C.D.*

Respondent

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

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

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

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

.....  
.....

Dated the ..... day of ..... 20.....

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

This summons was taken out by ....., solicitor for the applicant whose address is at ..... (or where the plaintiff acts in person:

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

To: .....

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

(L.N. 152 of 2008)

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No. 88

**Notice directed by Court of adjourned application for writ of habeas corpus**

(O. 54 r. 2)

(Heading as in No. 87)

Take notice that an application for the above writ was made to the ..... in the above matter on the ..... day of ..... 19 ..... when the said application was adjourned so that notice could be given to you.

Notice is hereby given to you that the said application will be made to the ..... on ..... the ..... day of ..... 19 ..... at ..... o'clock.

(Signed) .....

of .....

Solicitor for .....

To .....

---

No. 89

**Writ of habeas corpus ad subjiciendum**

(O. 54 r. 10)

To ..... :

It is required that you have in our High Court at the High Court in Hong Kong, on the day at the time specified in the notice served with this writ, A.B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that Our Court may then and there examine and determine whether such cause is legal, and have you there then this writ.

Witness ..... Chief Justice of Hong Kong the ..... day of ..... 19 .....

Indorsement

By order of (Mr. Justice .....)

This writ was issued by ..... of ..... solicitor for .....  
(L.N. 313 of 1997; 25 of 1998 s. 2)

---

No. 90

**Notice to be served with writ of habeas corpus ad subjiciendum**

(O. 54 r. 6)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

(If in a cause already begun, here insert the title, not otherwise)

The Honourable Mr. Justice ..... has granted a writ of habeas corpus directed to ..... (or other person having the custody of ..... if so) requiring him to have A.B. before a judge at the High Court in Hong Kong on the day and at the time specified in the notice together with the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the said A.B. before the Honourable Mr. Justice ..... on ..... the ..... day of ..... 19 ..... at ..... o'clock and to make a return to the said writ. In default thereof the said Court will then, or so soon thereafter as counsel can be heard, be moved to commit you to prison for your contempt in not obeying the said writ.

Dated the ..... day of ..... 19 .....

(Signed) .....

of .....

Solicitor for .....

To .....

(L.N. 313 of 1997; 25 of 1998 s. 2)

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Nos. 91 and 92

(Repealed 95 of 1997 s. 7)

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No. 93

**Notice of sanctioned payment (Order 62A)**

(O. 62A r. 8(2))



(Heading as in action)

To the receiving party('s solicitor)

---

**Take notice** that the paying party \_\_\_\_\_ has paid \$ \_\_\_\_\_ (a further amount of \$ \_\_\_\_\_) into court in settlement of-  
(tick as appropriate)

- ☐ the whole of your costs including the costs of taxation (for the bill dated \_\_\_\_\_)
- ☐ part of your costs (*give details below*)
- ☐ It is in addition to the amount of \$ \_\_\_\_\_ already paid into court on \_\_\_\_\_ and the total amount in court now offered in settlement of your costs is \$ \_\_\_\_\_ (*give total of all payments in court to date*)
- ☐ It is not inclusive of interest and an additional amount of \$ \_\_\_\_\_ is offered for interest (*give details of the rate(s) and period(s) for which the amount of interest is offered*)
- ☐ It takes into account the interim payment(s) of costs made in the following amount(s) on the following date(s): (*give details*)
- ☐ It takes into account the following sum(s) of money that has (have) been paid into court as security for the costs of the action, cause or matter: (*give details*)

**Signed**

\_\_\_\_\_  
Paying party('s solicitor)

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

\_\_\_\_\_

**Date**

\_\_\_\_\_

**With company chop**  
(if applicable)

**Note: To the receiving party**

If you wish to accept the payment made into court and the Court's leave for acceptance is not required, you should complete Form No. 93B and file it in the Registry of the High Court, and send a copy to the paying party.  
(L.N. 152 of 2008)

\_\_\_\_\_  
No. 93A

**Notice of acceptance of sanctioned payment (Order 62A)**

(O. 62A r. 13(4))

(Heading as in action)

To the paying party('s solicitor)

---

**Take notice** that the receiving party accepts the payment(s) into court totalling \$ \_\_\_\_\_ in settlement of (the whole of)(part of) the receiving party's costs as set out in the notice of sanctioned payment received on \_\_\_\_\_ (and abandons the other part(s) of the costs).

\_\_\_\_\_

**Position or office held**

\_\_\_\_\_

**Signed**

Receiving party('s solicitor)

(If signing on behalf of a firm,  
company or corporation)

**Date**

**With company chop  
(if applicable)**

(L.N. 152 of 2008)

\_\_\_\_\_  
No. 93B

**Notice of request for payment (Order 62A)**

(O. 62A r. 15)

*(Heading as in action)*

On \_\_\_\_\_ I accepted the payment(s) into court totalling \$ \_\_\_\_\_ in settlement of  
(the whole of)(part of) my costs as set out in the notice of sanctioned payment received on  
\_\_\_\_\_.

**I declare that:**

- ☐ the sanctioned payment has been accepted [within 14 days][after 14 days but liability for and quantum of costs incurred after the 14-day period have been agreed]\*
- ☐ the offeree is not a person under disability
- ☐ [at no time has the offeree been on legal aid in these proceedings][the offeree has been on legal aid]\*
- ☐ there is no pending application to withdraw or diminish the sanctioned payment
- ☐ [there is only one paying party][the sanctioned payment is made by all paying parties][I have discontinued the proceedings for taxation against those paying parties who have not made the payment and they have given written consent to the acceptance of the sanctioned payment]\*  
*(If any of the above declarations has not been made, the money in court can only be paid out by order of the Court)*
- ☐ a copy of this notice has been served on the paying party('s solicitor) named below and I request payment of this money held in court to be made to:

Receiving party or solicitor's full name

Address and telephone number

**Signature**

**Note:** Before signing this form please read the notes for guidance overleaf. Incorrectly signed forms may be returned unactioned.

Signed

Date

DETAILS OF RECEIVING PARTY'S SOLICITOR

Name of firm	
Solicitor for	

Paying party or solicitor's full name/Director of Legal Aid*
--

Address and telephone number
------------------------------

<b>Signature</b>	
<b>Note:</b> The receiving party('s solicitor) should obtain the signature of the paying party('s solicitor) on the box below before serving a copy of this notice on him.	
Signed	Date
<b>DETAILS OF PAYING PARTY'S SOLICITOR</b>	
Name of firm	
Solicitor for	

\* Delete as appropriate

### Notes for guidance on completion of Form No. 93B

In order to request payment out of funds in court, file this form, signed and completed in accordance with these notes for guidance in the Registry of the High Court. A copy of this form should also be sent to the paying party's solicitors.

- When completing this form, please ensure that you tick all of the boxes under the heading: **'I declare that'**. If you do not tick all of the boxes, the Registry of the High Court will not be able to process your request for payment and will have to return the form to you.
- The form should be signed either by the receiving party or his solicitor.
- The Accounts Office of the High Court will only issue payment upon receipt of a properly completed Form No. 93B with an original signature. Faxed copies of the form and photocopies of signatures will not be accepted.
- A director of a company must obtain leave to represent the company from a Practice Master before he may sign on behalf of the company.

(L.N. 152 of 2008)

No. 94

### Order for production of documents in marine insurance action

(O. 72 r. 10)

(Heading as in action)

Upon hearing ..... (and upon reading the affidavit of ..... filed the ..... day of ..... 19 .....):

It is ordered that the plaintiff and all other persons interested in this action, and in the insurance the subject of this action, do produce and show to the defendant, his solicitors or agents on oath (or by oath of their proper officer) all insurance slips, policies, letters of instruction or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship ....., or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship, cargo or freight, and all correspondence with any person relating in any manner to the effecting of the insurance on the said ship, cargo or freight, or any other insurance whatsoever effected on the said ship, cargo or freight, on the voyage insured by the policy sued on in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the ship and any other person with the owner or any person before the commencement of or during the voyage on which the alleged loss happened. Also all books and documents, whatever their nature and whether originals, duplicates or copies, which in any way relate or refer to any matter in question in this action and which are now in the custody, possession or power of the plaintiff or any other person on his behalf, his or their, or any of their brokers, solicitors or agents, with liberty for the defendant, his solicitors or agents to inspect and take copies of, or extracts from, any of those books or documents. And that in the like manner the plaintiff and every other person interested as aforesaid do account for all other books and documents relating or referring to any matter in question in this action which were once but are not now in his custody, possession and power.

And that (in the meantime all further proceedings be stayed and that) the costs of and occasioned by this application be costs in the action.

Dated the ..... day of ..... 19 .....

---

No. 95

**Certificate of order against the Government**

(O. 77 r. 15(3))

(Heading as in cause or matter)

By a judgment (or order) of this Court dated the ..... day of ..... 19 ..... it was adjudged (or ordered) that (give particulars of the judgment or order).

I hereby certify that the amount payable to ..... by ..... in pursuance of the said judgment (or order) is \$ ..... (together with interest thereon at the rate of \$ ..... per cent per annum until payment and together with costs which have been taxed and certified by the taxing officer at \$ ..... Interest is payable on the said costs at the rate of \$ ..... per cent per annum from the ..... day of ..... 19 ..... until payment).

(This certificate does not include the amount payable under the said judgment or order in respect of costs).

Dated the ..... day of ..... 19 .....

(Signed) .....

(Note:-The final paragraph is to be included where a separate certificate with respect to costs has been directed to be issued).

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No. 96

**Certificate of order for costs against the Government**

(O. 77 r. 15)

(Heading as in cause or matter)

By a judgment (or order) of this Court dated the ..... day of ..... 19 ..... it was adjudged (or ordered) that (give particulars of the judgment or order).

I hereby certify that the costs payable to ..... by ..... in pursuance of the said judgment (or order) have been taxed and certified by the taxing officer at \$ ..... (and interest is payable thereon at the rate of \$ ..... per cent per annum from the ..... day of ..... 19 ..... until payment).

Dated the ..... day of ..... 19 .....

(Signed) .....  
(L.N. 313 of 1997)

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No. 99

**Order of Court of Appeal to admit prisoner to bail**

(O. 59 r. 20)

IN THE COURT OF APPEAL

On appeal from the ..... court

Dated the ..... day of ..... 19 .....

Whereas on the ..... day of ..... 19 ..... A.B. was ordered by (description of court) to be imprisoned for ..... for contempt of court and the said A.B. has appealed to this Honourable Court against the said order:-

And whereas the said A.B. has applied to this Honourable Court to be admitted to bail:

Upon reading the notice of motion on behalf of the said A.B. and upon hearing Mr. .... of counsel for the said A.B.

It is ordered that upon the said A.B. giving security (by his own recognizance) in the sum of \$ ..... with (two) sufficient sureties in the sum of \$ ..... each before the Registrar for the personal appearance of the said A.B. before the ..... court within ten days after the judgment of this Honourable Court on his said appeal shall have been given unless the order of the said court is reversed by that judgment, he, the said A.B. be discharged out of the custody of the Commissioner for Correctional Services ..... in respect of his commitment as aforesaid.

By the Court

(47 of 1997 s. 10; L.N. 39 of 1999)

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No. 100

**Notice of payment into court in connection with arbitration proceedings**

(O. 73 r. 11)

In the matter of arbitration proceedings

commenced between A.B. .... 1st party  
C.D. .... 2nd party  
E.F. .... 3rd party  
etc.

Take notice that-

The ..... party ..... has paid \$ ..... into court. The said \$ ..... is in satisfaction of (the matter in dispute) (All the matters in dispute) in respect of which the ..... party claims (and after taking into account and satisfying the above-named party's claim for ..... in respect of which he counterclaims).

or

The said \$ ..... is in satisfaction of the following matters in dispute in respect of which the ..... party claims (and after taking into account as above).

or

Of the said \$ .....; \$ ..... is in satisfaction of the following matter in dispute in respect of which the ..... party claims (and after taking into account as above) and \$ ..... is in satisfaction of the following matter in dispute in respect of which the ..... party claim (and after taking into account as above).

Dated the ..... day of ..... 19 .....

---

No. 101

**Notice of acceptance of money paid into court in connection with arbitration proceedings**

(O. 73 r. 11)

In the matter of arbitration proceedings

commenced between A.B. .... 1st party  
C.D. .... 2nd party  
E.F. .... 3rd party

Take notice that the ..... party ..... accepts the sum of \$ ..... paid in by the ..... party in satisfaction of the matter(s) in dispute in respect of which it was paid in and in respect of which the ..... party claims

(against that party) (and abandons his claim(s) against that party in respect of the other matter(s) in dispute in the arbitration proceedings).

Dated the ..... day of ..... 19 .....

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No. 102

**Order of issue of warrant of arrest for examination**

(O. 49B r. 1)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Between

A.B.  
AND  
C.D.

Judgment Creditor

Judgment Debtor

Upon the application of the Judgment Creditor A.B. and upon hearing the solicitor for the said Judgment Creditor, and upon reading the affidavit of ..... filed the ..... day of ..... 19 ..... :

It is ordered that a warrant do issue to the bailiff enjoining him to arrest the Judgment Debtor C.D. and to bring him before the Court before the expiry of the day after the day of arrest for examination; and it is further ordered that the bailiff be authorized to release the Judgment Debtor-

1. upon payment to him of the sum of \$ ....., being the amount of the judgment debt, together with the sum of \$ ..... for costs of this action and such costs as may be due for the obtaining and execution of this warrant;
2. upon payment to him of the sum of \$ ..... as security or the provision of bail in that sum by a surety or sureties;
3. upon the surrender to him of the judgment debtor's travel documents.

[Delete, amend or substitute conditions in accordance with the order of the Court.]

Dated the ..... day of ..... 19 .....

NOTE: The Judgment Debtor may apply to the Court to discharge this order.

(L.N. 251 of 1997; 25 of 1998 s. 2)

---

No. 103

**Order of imprisonment pending further examination**

(O. 49B r. 1A)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Between

A.B.  
AND  
C.D.

Judgment Creditor

Judgment Debtor

Whereas the examination being conducted under Order 49B rule 1A has been adjourned until ..... day of ..... 19 ..... :

It is ordered that a warrant do issue to the bailiff enjoining him to deliver the Judgment Debtor into the custody of the Commissioner of Correctional Services to be kept in a prison as a prisoner for debt until the ..... day of ..... 19 ..... and then to bring the Judgment Debtor before the Court for further examination. The Court has fixed the support and maintenance allowance at the rate of \$ ..... a day.

It is further ordered that the bailiff be authorized to release the Judgment Debtor-

1. upon payment to him of the sum of \$ ....., being the amount of the judgment debt, together with the sum of \$ ..... for costs of this action and such costs as may be due for the obtaining and execution of this warrant;
2. upon payment to him of the sum of \$ ..... as security or the provision of bail in that sum by a surety or sureties.

[Delete, amend or substitute conditions in accordance with the order of the Court.]

Dated the ..... day of ..... 19 .....

NOTE: The Judgment Debtor may apply to the Court to discharge this order.

(L.N. 251 of 1997; 25 of 1998 s. 2)

---

No. 104

**Order for imprisonment for debt**

(O. 49B r. 1B)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Between

A.B.  
AND  
C.D.

Judgment Creditor

Judgment Debtor

[Following examination of the Judgment Debtor under Order 49B rule 1A and upon the Court being satisfied as required by Order 49B rule 1B:] or [Upon the Court being satisfied that the Judgment Debtor has failed to comply with an order made under Order 49B rule 1B(3):]

It is ordered that the bailiff do take the Judgment Debtor and deliver him into the custody of the Commissioner of Correctional Services to be kept in prison as a prisoner for debt for a period of ..... unless he shall be sooner discharged in due course of law.

The Court has fixed the support and maintenance allowance at the rate of \$ ..... a day.



Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; 25 of 1998 s. 2)

---

No. 105

**Application for order for imprisonment in default of payment**

(O. 49B r. 1B)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Between

A.B.  
AND  
C.D.

Judgment Creditor

Judgment Debtor

TAKE NOTICE that the Judgment Creditor will apply to the Court on ..... day of ..... 19 ..... for an order for the imprisonment of the Judgment Debtor on the ground that the Judgment Debtor has failed to make payment of the sum of \$ ..... as ordered by the Court on ..... day of ..... 19 .....

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; 25 of 1998 s. 2)

---

No. 106

**Order prohibiting departure from Hong Kong**

(O. 44A r. 3)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Between

A.B.  
AND  
C.D.

Judgment Creditor/  
Plaintiff/Claimant

Judgment Debtor/  
Defendant/Person  
against whom  
claim is made

Upon the application of A.B. and upon hearing the solicitor for A.B., and upon reading the affidavit of ..... filed the ..... day of ..... 19..... :

It is ordered that C.D. is prohibited from leaving Hong Kong.

This order shall lapse after the expiry of one month (unless extended or renewed) and shall have no effect if-

1. C.D. makes payment of the sum of \$ ....., being the amount claimed by A.B., [together with the sum of \$ ..... for costs of this action] and such costs as may be due for the obtaining

2. C.D. makes payment of the sum of \$ ..... as security or provides bail in that sum by a surety or sureties.

Dated the ..... day of ..... 19 .....

(L.N. 251 of 1997; 25 of 1998 s. 2)

(Repealed L.N. 152 of 2008)

(O. 115 r. 25)

COURT OF FIRST INSTANCE

BETWEEN

[ ] and [ ]

Respondent

## ORDER

AND UPON READING the affidavit of [A.B.] made on .....

IT IS ORDERED THAT the sum of \$ ..... seized from [C.D.] of ..... (or, from person or persons unknown) at ..... Hong Kong on .....-day, the ..... day of ..... at ..... o'clock Hong Kong time by [E.F.] of the ..... be further detained for a period of ..... days from the date hereof or until further order of this Court.

Dated the ..... day of ..... 19 .....

Registrar.

**Important Notice:**

- (1) A party affected by this order may apply to the Court for its discharge.
- (2) The applicant may apply for an order for the further detention of this money.
- (3) Persons affected by this order will be notified in accordance with the Rules of the Court, or as directed by the Court, of any application made for the release of this money.

(L.N. 296 of 1996; 25 of 1998 s. 2)

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No. 109

(Repealed L.N. 152 of 2008)

(Enacted 1988)

Appendix:	B	<b>SPECIAL ADMIRALTY FORMS</b>	L.N. 313 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

No. 1

**Writ of summons in action in rem**

(O. 75 r. 3)

[Hong Kong Coat of Arms]

19 ....., Folio No. ....

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Admiralty action in rem against:

[The ship "X" or as may be describing the property against which the action is brought]

Between [The owners of the ship "A" or as may be describing the plaintiffs] Plaintiffs

[or name]

and

[The owners of the ship "X" or as may  
be describing the property against which  
the action is brought]

Defendants

TO THE DEFENDANTS and other persons interested in the ship "X" ..... registered at the port  
of ..... [or as may be]

THE WRIT OF SUMMONS has been issued by the Plaintiffs against the property described above in respect of  
the claim set out on the back. Within [14 days] after the service of this Writ, counting the day of service, you must  
either satisfy the claim or lodge in the Registry of the High Court mentioned below an ACKNOWLEDGMENT OF  
SERVICE.

If you fail to satisfy the claim or to lodge an Acknowledgment within the time stated, the Plaintiffs may proceed  
with the action and judgment may be given without further notice to you and if the property described in this Writ is  
under the arrest of the Court it may be sold by order of the Court.

Issued from the Registry of the High Court this ..... day of ..... 19 .....

Note:-This Writ may not be served later than 12 calendar months beginning with that date unless renewed by  
order of the Court.

#### IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

[Back of No. 1 ]

\*[STATEMENT OF CLAIM]

\*Where words appear between square brackets, delete if inapplicable

The Plaintiffs' claim is for

\*[Signed if statement of claim indorsed]

---

THIS WRIT was issued by .....  
of ..... Solicitor for the said Plaintiff  
whose address is .....

\*[or where the Plaintiff sues in person]

THIS WRIT was issued by the said Plaintiff who resides at ..... and (if the Plaintiff does not  
reside within the jurisdiction) whose address for service is .....  
.....]

[Indorsement as to service]

(To be completed only when the Writ has been served by the bailiff)

THIS WRIT was served by me at ..... on ..... , on .....  
day, the ..... day of ..... 19 ....., by (state the manner of service)

Signed

Name of bailiff

]  
(25 of 1998 s. 2)

\_\_\_\_\_  
No. 2

**Writ of summons in limitation action**

(O. 75 r. 3(3))

[Hong Kong Coat of Arms]

19 ....., Folio No. ....

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

Admiralty Jurisdiction

Between

Plaintiff

AND

Defendant

TO THE DEFENDANT [name] ..... of  
[address] .....

THIS WRIT OF SUMMONS has been issued against you by the abovenamed Plaintiff in respect of the claim set out on the back.

Unless you admit the claim you must within [14 days] after service of this writ on you, counting the day of service, return to the Registry of the High Court mentioned below the accompanying ACKNOWLEDGMENT OF SERVICE.

If you fail to return the Acknowledgment within the time stated, the Plaintiff may proceed with the action without further notice to you.

Issued from the Registry of the High Court this ..... day of ..... 19 .....

Note:-This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

[Back of No. 2]

The Plaintiff claims

---

THIS WRIT was issued by .....  
of ..... Solicitor for the said Plaintiff  
whose address is .....

\*[or where the Plaintiff sues in person

THIS WRIT was issued by the said Plaintiff who resides at ..... and (if the Plaintiff does not  
reside within the jurisdiction) whose address for service is .....  
.....]

\*Where words appear between square brackets, delete if inapplicable

(25 of 1998 s. 2)

---

No. 2A

**Notice of writ of summons in limitation action  
to be served out of jurisdiction**

(O. 75 r. 3(3))

[Heading as in action]

To C.D. of

Take notice that A.B. of ..... has begun an action against you, C.D., in  
the Court of First Instance in Hong Kong by writ of summons dated the ..... day  
of ..... 19 ....., which writ is indorsed as follows [copy the indorsement  
of claim] and unless you admit the Plaintiff's claim you are required within ..... days after receipt of  
this notice, counting the day of receipt, to return to the Registry of the High Court the accompanying  
Acknowledgment of Service.

And take notice that if you do not return the Acknowledgment within the time stated, the Plaintiff may proceed  
with the action without further notice to you.

(Signed) A.B. ....

or X. Y. of

Solicitors for A.B.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

(25 of 1998 s. 2)

---

No. 2B

**Acknowledgment of Service of Writ of Summons in**

## **Action in rem or Limitation Action**

(O. 75 r. 3(5))

### **Directions for Acknowledgment of Service**

1. The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court at the following address:-

2. If in an action in rem a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear at the top of the back), a Defence must be served within 14 days after the time for acknowledging service of the Writ.

If a Statement of Claim is not indorsed on the Writ, a Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If a Defendant fails to serve a defence within the appropriate time, the Plaintiff may apply to the Court for judgment against him and, if the property described in the Writ is under the arrest of the Court, for an order for the sale of that property.

(1)

[Back of page (1)]

### **Notes for Guidance**

1. Each Defendant (if there is more than one) is required to complete an Acknowledgment of Service and return it to the Registry of the High Court.

2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him and a writ served by post or by insertion through the Defendant's letter box is treated as having been served on the seventh day after the date of posting or insertion.

3. Where the Defendant is a FIRM and a Solicitor is not instructed, the form must be completed by a PARTNER by name, with the addition of the description "partner in the firm of (.....)" after his name.

4. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition of the description "trading as (.....)" after his name.

5. Where the Defendant is a LIMITED COMPANY the form must be completed by a Solicitor or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without a Solicitor acting on its behalf.

6. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by a Solicitor acting for a guardian ad litem.

7. A Defendant acting in person may obtain help in completing the form at the Registry of the High Court.

8. These notes deal only with the more usual cases. In case of difficulty a Defendant in person should refer to paragraph 7 above.

(2)

[Heading as in No. 1 or 2 to be completed by plaintiff]

ACKNOWLEDGMENT OF SERVICE  
OR WRIT OF SUMMONS IN  
ACTION IN REM OR LIMITATION ACTION

If you intend to instruct a Solicitor to act for you, give him this form

IMMEDIATELY

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

Delay may result in judgment being given against a defendant whereby he or his Solicitor may have to pay the costs of applying to set it aside. Furthermore, the property described in the Writ of Summons, if under arrest of the Court, may be sold by order of the Court.

(\*Where words appear between square brackets, delete if inapplicable)

1.   \*[In an action in rem  
State the description of the Defendant, as stated in the Writ of Summons, by whom or on whose behalf the service of the Writ is being acknowledged.]  
\* [In a limitation action  
          (a)                   If the Defendant by whom or on whose behalf service of the Writ is being acknowledged is named in the Writ, state his full name. If he is sued in a name different from his own, add "sued as (the name stated on the Writ of Summons)".  
          (b)                   If the Defendant by whom or on whose behalf service of the Writ is being acknowledged is one of a class of persons described in the Writ, state his full name.  
The Defendant should complete (a) or (b), whichever is appropriate, and delete the other.]

Service of the Writ is acknowledged accordingly  
\*(Signed) [Solicitor]

[Defendant in person]  
Address for Service

(3)

**Notes as to Address for Service**

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

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

[Back of Page (3)]

Indorsement by plaintiff's solicitor (or by plaintiff if suing in person) of his name, address and reference, if any.  
(L.N. 251 of 1997; 25 of 1998 s. 2)



---

No. 3

**Warrant of arrest**

(O. 75 r. 5(1))

(Heading as in action)

To the Bailiff :

You are hereby required to arrest the ship ..... of the port of ..... (and the cargo now or lately laden therein, together with the freight due for the transportation thereof,) or (and the freight due for the transportation of the cargo now or lately laden therein,) and to keep the same under safe arrest until you shall receive further orders from the High Court.

The plaintiff's claim is for (copy from the writ)

Taken out by ..... (solicitors for) the .....

Bailiff's indorsement as to service

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2)

---

No. 4

**Praecipe for warrant of arrest**

(O. 75 r. 5(4))

(Heading as in action)

We ..... of ..... (solicitors for) the plaintiffs request a warrant to arrest (description of property giving name, if a ship).

Dated the ..... day of ..... 19 .....

(Signed) .....

---

No. 5

**Praecipe for caveat against arrest**

(O. 75 r. 6)

(Description of property giving name, if a ship)

We ..... of ..... (solicitors for ..... of ..... ) request a caveat against the arrest of (description of property giving name, if a ship) and hereby undertake to enter an acknowledgment of issue or service (as may be appropriate) in any action that

may be begun in the High Court against the said ..... and, within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding ..... dollars or to pay that sum into court. We consent that the writ of summons and any other document in the action may be left for us at .....

Dated the ..... day of ..... 19 .....

(Signed) .....  
(L.N. 99 of 1993; 25 of 1998 s. 2)

---

No. 6

**Praecipe for service of writ in rem by Bailiff**

(O. 75 r. 8(3))

(Heading as in action)

We ..... of ..... (solicitors for) the plaintiffs request that the writ of summons left herewith be duly served on .....

Dated the ..... day of ..... 19 .....

(Signed) .....

---

No. 7

**Release**

(O. 75 r. 13(1))

(Heading as in action)

To the Bailiff :

Whereas in this action you were required to arrest the ..... and to keep the same under safe arrest until you should receive further orders from the High Court. You are hereby required to release the said ..... from the arrest effected by virtue of the warrant in this action.

Taken out by ..... (solicitors for) .....

Bailiff's indorsement

On ..... the ..... day of ..... 19 .....,  
the ..... was released from arrest pursuant to this Instrument.

(Signed) .....

Bailiff.  
(L.N. 313 of 1997; 25 of 1998 s. 2)

No. 8

**Praeceptum for issue of release**

(O. 75 r. 13(6))

(Heading as in action)

We ..... of ..... (solicitors for) the plaintiffs (or defendants) in this action against (description of property giving name, if a ship), now under arrest, request the issue of a release with respect to the said .....

Dated the ..... day of ..... 19 .....

(Signed) .....

No. 9

**Praeceptum for caveat against release and payment**

(O. 75 r. 14(1))

(Description of property giving name, if a ship)

We ..... of ..... (solicitors for) ..... of ..... request a caveat against the issue of a release with respect to (description of property giving name, if a ship) now under arrest and, should the said property be sold by order of the Court, a caveat against payment out of court of the proceeds of sale.

The intending caveator claims to have an interest [to the extent of approximately \$ ..... if known] in the above-mentioned property in respect of [state nature of claim, e.g. salvage, collision damage, etc.].

Dated the ..... day of ..... 19 .....

(Signed) .....

No. 10

**Praeceptum for withdrawal of caveat**

(O. 75 r. 15(1))

(Description of property giving name, if a ship)

We ..... of ..... (solicitors for) ..... of ..... request that the caveat (state nature of caveat) entered on the ..... day of ..... 19 ..... on behalf of ..... be withdrawn.

Dated the ..... day of ..... 19 .....

(Signed) .....

No. 11

**Bail bond**

(O. 75 r. 16(1))

(Heading as in action)

WHEREAS this Admiralty action in rem against the above-mentioned property is pending in the Supreme Court and the parties to the said action are the above-mentioned plaintiffs and defendants:

Now, THEREFORE, WE, A.B. of ..... and C.D. of ....., hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the above-mentioned defendants, (or plaintiffs, in the case of a counterclaim) do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, goods and chattels, for the amount unpaid or an amount of ..... dollars whichever is the less.

A.B.

(Signed) .....

C.D.

(Signed) .....

This bail bond was signed by the said A.B. and C.D., the sureties, the ..... day of ..... 19 .....  
Before me

a Commissioner for Oaths.

\_\_\_\_\_

No. 12

**Praecipe for commission for appraisalment and sale**

(O. 75 r. 23(1))

(Heading as in action)

We ..... of ..... (solicitors for) the plaintiffs (or defendants) request a commission for the appraisalment and sale of (description of property giving name, if a ship) which was ordered by the Court on the ..... day of ..... 19 .....

Dated the ..... day of ..... 19 .....

(Signed) .....

\_\_\_\_\_

No. 13

## Commission for Appraisement and Sale

(O. 75 r. 23(2))

(Heading as in action)

To the Bailiff :

WHEREAS in this action the Court has ordered (description of property giving name, if a ship) to be appraised and sold.

You are hereby authorized and required to choose one or more experienced persons and to swear him or them to appraise the said ..... according to the true value thereof, and such value having been certified in writing by him or them to cause the said ..... to be sold by (private treaty) (public auction) for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

And you are further required, immediately upon the sale being completed, to pay the proceeds thereof into court and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Taken out by ..... (solicitors for) the .....

(L.N. 313 of 1997)

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No. 14

## Release and Warrant of Possession

(O. 75)

(Heading as in action)

To the Bailiff :

WHEREAS in this action the Court has ordered possession of the ship (name to be stated), her tackle, apparel and furniture to be delivered up to ..... or to his solicitor for his use, .....

You are hereby required to release the said ship, her tackle, apparel and furniture from the arrest made by virtue of the warrant in that behalf and to deliver possession thereof to the said ..... or to his solicitor for his use.

Taken out by ..... (solicitors for) the .....

Bailiff's Indorsement

On the ..... day of ..... 19 ....., the ship ..... was released from arrest pursuant to this warrant.

(Signed) .....

Bailiff.

Receipt

Received from the Bailiff on the ..... day of ..... 19 ....., the ship ..... and everything on board belonging to her.

(Signed) .....

(L.N. 313 of 1997)

No. 15

**Notice to Consular Officer of Intention to Apply for Warrant of Arrest**

(O. 75 r. 5(7))

(Heading as in action)

To the Consular Officer of (name of State)

The (state nationality) ship (name)

TAKE NOTICE that as solicitors for (name or description of Plaintiff as in writ) we did on the ..... day of ..... 19 ..... (or we intend to) institute proceedings in the High Court of Hong Kong against the ..... above-mentioned ship in respect of a claim by (name or description of plaintiff) for (state nature of claim as indorsed on writ) and that we intend to apply to the Court to arrest the said ship.

Dated the ..... day of ..... 19 .....

(Signed) .....

Solicitors for the Plaintiff.

(25 of 1998 s. 2)

(Enacted 1988)

Appendix:	C		L.N. 313 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

No. 5

**Warrant for bailiff to call upon defendant to give security to produce property**

(O. 44A r. 8)

Action No. .... of 19 .....

IN THE HIGH COURT OF HONG KONG,

COURT OF FIRST INSTANCE

Between

A.B.

Plaintiff

AND

C.D.

Defendant

To the Bailiff of the said Court:

You are required forthwith to call upon the defendant C.D. either by ..... day, the ..... day of ....., 19 ....., to furnish security in the sum of \$ ..... to produce and place at the disposal of the said Court, when required, his property or the value of the same, or such portion thereof as may be sufficient to answer any judgment that may be given against him in this action, or by the said day to appear before the said Court and show cause why he should not furnish such security; and you are further required, in default

of such security being given, to attach all the movable and immovable property of the said defendant within Hong Kong until the further order of the said Court.

Witness The Honourable ....., Chief Justice of the said Court, the ..... day of ..... 19 .....

(Signed) .....  
Registrar.

Note:-This warrant is to be returned into the Registry immediately after the execution thereof, with a memorandum indorsed thereon of the date and mode of execution.

(L.N. 313 of 1997; 25 of 1998 s. 2)

Nos. 6 and 7  
(Repealed L.N. 343 of 1989)

(Enacted 1988)

Appendix:	D	<b>Code of conduct for expert witnesses</b>	L.N. 152 of 2008; L.N. 18 of 2009	02/04/2009
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(O. 38 rr. 35, 37B and 37C)

### **Application of code**

1. This code of conduct applies to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court.

### **General duty to Court**

2. An expert witness has an overriding duty to help the Court impartially and independently on matters relevant to the expert's area of expertise.
3. An expert witness's paramount duty is to the Court and not to the person from whom the expert has received instructions or by whom he is paid.
4. An expert witness is not an advocate for a party.

### **Declaration of duty to Court**

5. A report by an expert witness is not admissible in evidence unless the report contains a declaration by the expert witness that-
  - (a) he has read this code of conduct and agrees to be bound by it;
  - (b) he understands his duty to the Court; and
  - (c) he has complied with and will continue to comply with that duty.
6. Oral expert evidence is not admissible unless an expert witness has declared in writing, whether in a report or otherwise in relation to the proceedings, that-
  - (a) he has read this code of conduct and agrees to be bound by it;
  - (b) he understands his duty to the Court; and
  - (c) he has complied with and will continue to comply with that duty.

### **Expert report to be verified**

7. A report by an expert witness must be verified by a statement of truth in accordance with Order 41A of the Rules of the High Court (Cap 4 sub. leg. A).

### **Form of expert reports**

8. A report by an expert witness must (in the body of the report or in an annexure) specify-
- (a) the person's qualifications as an expert;
  - (b) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed);
  - (c) the reasons for each opinion expressed;
  - (d) if applicable, that a particular question or issue falls outside his field of expertise;
  - (e) any literature or other materials utilized in support of the opinions; and
  - (f) any examinations, tests or other investigations on which he has relied, and the identity and details of the qualifications of the person who carried them out.
9. If an expert witness who prepares a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.
10. If an expert witness considers that his opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.
11. An expert witness who, after communicating an opinion to the party instructing him (or that party's legal representative), changes his opinion on a material matter shall forthwith provide the party (or that party's legal representative) with a supplementary report to that effect which must contain such of the information referred to in section 8(b), (c), (d), (e) and (f) as is appropriate.

### **Experts' conference**

12. An expert witness shall abide by any direction of the Court to-
- (a) confer with any other expert witness;
  - (b) endeavour to reach agreement on material matters for expert opinion; and
  - (c) provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non-agreement.
13. An expert witness shall exercise his independent, professional judgment in relation to such a conference and joint report, and shall not act on any instruction or request to withhold or avoid agreement.

Note:-Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false declaration or a false statement in a document verified by a statement of truth without an honest belief in its truth.

(L.N. 152 of 2008)