

# RULES OF THE DISTRICT COURT

(CAP. 336H)

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## ORDER 1

### CITATION, ETC., APPLICATION, INTERPRETATION AND FORMS

#### Editorial Introduction

This Order of the Rules of the District Court is substantially the same, with minor modifications on difference in jurisdiction, as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.1, see Vol.1. P3/1

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

- 1.—**(1) These Rules may be cited as the Rules of the District Court. P3/1/1  
 (2–3) (Omitted as spent)

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

- 2.—**(1) Subject to this rule, these Rules shall have effect in relation to all proceedings in the Court. P3/1/2

(2) These Rules shall not have effect in relation to proceedings of the kinds specified in column 1 of the following Table (being proceedings in respect of which rules may be made under the enactments specified in column 2 of that Table).

TABLE	
<i>Proceedings</i>	<i>Enactments</i>
1.	(Repealed L.N. 221 of 2001)
2. Adoption proceedings.	Adoption Ordinance (Cap. 290), section 12.
3.	(Repealed L.N. 153 of 2008)
4.	(Repealed L.N. 221 of 2001)
5.	(Repealed L.N. 153 of 2008)

(2A) Subject to paragraph (2B), these Rules shall not have effect in relation to—  
(*L.N. 153 of 2008*)

- (a) proceedings under Part III of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);
- (b) matrimonial proceedings (except for an appeal against any judgment, order or decision of a judge to which Order 58 shall apply); (*L.N. 153 of 2008*)
- (ba) domestic violence proceedings (except for an appeal against any judgment, order or decision of a judge to which Order 58 applies); (*L.N. 153 of 2008*)
- (c) proceedings—
  - (i) for the recovery of employees' compensation; and
  - (ii) in respect of which rules are made under section 50 of the Employees' Compensation Ordinance (Cap. 282). (*L.N. 221 of 2001*)

(2B) Subject to section 85(1) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), Order 58 has effect in relation to an appeal against a judgment, order or decision of the Court made under Part III of that Ordinance. (*L.N. 153 of 2008*)

(3) These Rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 62 applies.

(4) In the case of the proceedings mentioned in paragraphs (2), (2A) 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 District Court or any provision thereof is applied in relation to any of those proceedings.

**P3/1/2A** For proceedings to recover employees' compensation, when rules are made under section 50 of the Employees' Compensation Ordinance, the Rules of District Court do not apply. Whilst Rule 20 of the Employees' Compensation (Rules of Court) Rules provides for payment into Court, it does not provide for acceptance of the payment in. It used to be a practice for the Applicant to apply by summons for accepting the payment. The Court of Appeal ruled in *Li Kwok Shing v. Law Ka Fu trading as Wing Fai Electrical Engineering* [2003] 3 H.K.L.R.D. 173, that the provision for payment out under the Rules of District Court does apply for employees' compensation proceedings. As a result, the Applicant has 28 days to consider whether to accept a payment in and may do so by serving a notice in terms of Form 24 of the Rules of District Court and to have costs up to the day of acceptance. Nevertheless, in *Wong Mei Na v. Genryoku Sushi Co. Ltd* [2003] 3 H.K.L.R.D. 370, another decision of the Court of Appeal appears to have come to a different conclusion where the Applicant had signed a consent summons with the Respondent to accept the payment. He was only allowed costs up to the date of payment in. In this latter case, the Applicant had not made use of the Order 22 procedure to accept the payment in. The court had a discretion as to whether to award costs after the date of the payment in. In this case, the trial judge's decision refusing to award costs after that date was upheld by the Court of Appeal. It seems that the better practice is to serve a Form 24 notice for accepting a payment in as approved in Li Kwok Shing's case.

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

**P3/1/3** 3. The Interpretation and General Clauses Ordinance (Cap. 1) shall apply to the interpretation of these Rules as it applies to subsidiary legislation made after the commencement of that Ordinance.

**Definition (O.1, r.4)**

4.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely—

“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; (L.N. 153 of 2008)

“aided person” (受助人) means an aided person within the meaning of the Legal Aid Ordinance (Cap. 91); (L.N. 153 of 2008)

“Amendment Rules 2008” (《2008 年修訂規則》) means the Rules of the District Court (Amendment) Rules 2008 (L.N. 153 of 2008); (L.N. 153 of 2008)

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

“cause book” (訟案登記冊) means the book or any computer record kept in the Registry in which the letter and number of, and other details relating to, a cause or matter are entered;

“judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 50(1)(b) of the Ordinance; (18 of 2003 s.22)

“master” (聆案官) means a master of the Court and includes the Registrar, and deputy and assistant registrars;

“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 Court;

“the Ordinance” (本條例) means the District Court Ordinance (Cap. 336);

“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 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. 153 of 2008)

“receiver” (接管人) includes a manager and consignee;

“Registrar” (司法常務官) means the Registrar of the Court; and includes a deputy registrar or an assistant registrar;

“Registry” (登記處) means the Registry of the Court;

“writ” (令狀) means a writ of summons;

“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. 153 of 2008)

(2) In these Rules, unless the context otherwise requires, “the Court” (區域法院) means the District Court or any judge 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 16 by virtue of which the authority and jurisdiction of the Registrar is defined and regulated.

(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.

(4) For the purposes of the definition “cause book”, the book kept in the Registry may be in written form or in such other form or medium which can be reproduced in written form.

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

**P3/1/5** 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 subparagraph is a reference to that rule of the Order, that paragraph of the rule or that subparagraph 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 under a rule of these Rules 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.

**Construction of references to action, etc., for possession of land**

(O.1, r.6)

**P3/1/6** 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.

**Construction of references to Registrar (O.1, r.6A)**

**P3/1/6A** 6A. Wherever the word “Registrar” appears in these Rules and forms, there may be substituted the word “master” when and where appropriate. *(L.N. 153 of 2008)*

*[The next paragraph is para.P3/1/9]*

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

**P3/1/9** 9. The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

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

**P3/1/10** 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.

## ORDER 1A

### OBJECTIVES

**Editorial Introduction**

**P3/1A** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.1A, see Vol.1.

**Underlying objectives (O.1A, r.1)**

**P3/1A/1**

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.

*(L.N. 153 of 2008)*

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

**P3/1A/2**

- 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.

*(L.N. 153 of 2008)*

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

**P3/1A/3**

- 3.—The parties to any proceedings and their legal representatives shall assist the Court to further the underlying objectives of these Rules.

*(L.N. 153 of 2008)*

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

**P3/1A/4**

- 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. 153 of 2008)*

## ORDER 1B

### CASE MANAGEMENT POWERS

#### **Editorial Introduction**

**P3/1B** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.1B, see Vol.1.

#### **Court's general powers of management (O.1B, r.1)**

- P3/1B/1** 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.

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

- P3/1B/2** 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.

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

(O.1B, r.3)

**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.

**P3/1B/3**

(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. 153 of 2008)*

## **ORDER 2**

### **EFFECT OF NON-COMPLIANCE**

#### **Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.2, see Vol.1.

**P3/2**

#### **Non-compliance with Rules (O.2, r.1)**

**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.

**P3/2/1**

(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. 153 of 2008)*



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

**P3/2/2** 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 and the grounds of application must be stated in the summons.

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

**P3/2/3** 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. 153 of 2008)*

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

**P3/2/4** 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. 153 of 2008)*

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

**P3/2/5** 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. 153 of 2008)*

## ORDER 3

### TIME

#### Editorial Introduction

This Order of the Rules of District Court is substantially the same, with minor modifications on r.3 of the RHC (Summer Vacation excluded from time for service, etc., of pleadings) omitted, as the corresponding rules in the Rules of High Court. For further discussion of the principles regarding O.3, see Vol.1.

P3/3

#### “Month” (月) means calendar month (O.3, r.1)

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 Court, means a calendar month unless the context otherwise requires.

P3/3/1

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

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 this rule.

P3/3/2

(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 specified day, that day shall be excluded. (18 of 2016 s. 21).

(6) In this rule—  
specified day (指明日子) means—

- (a) a Saturday;
- (b) a general holiday;
- (c) a gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1);
- (d) a black rainstorm warning day as defined by that section; or
- (e) (if the act in question is required to be done at an office of the Court) another day on which the office is closed. (18 of 2016 s. 21)

*[The next paragraph is para.P3/3/4]*

#### Time expires on day on which office is closed (O.3, r.4)

*(18 of 2016 s. 22)*

4.—(1) 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 specified day, 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. (18 of 2016 s. 22)

P3/3/4

(2) In this rule—  
specified day (指明日子), in relation to an office of the Court, means—

- (a) a Saturday;
- (b) a general holiday;
- (c) a gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1);

- (d) a black rainstorm warning day as defined by that section; or
- (e) another day on which the office is closed. (18 of 2016 s. 22)

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

**P3/3/5** 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.

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

**P3/3/6** 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.

## ORDER 4

### TRANSFER AND CONSOLIDATION OF PROCEEDINGS

**Editorial Introduction**

**P3/4** This Order of the Rules of the District Court is substantially the same, with minor modifications on r.1 to deal with application to transfer proceedings to the Court of First Instance or the Lands Tribunal, as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.4, see Vol.1.

**Transfer to the Court of First Instance or the Lands Tribunal**

(O.4, r.1)

**P3/4/1** 1. An application under section 41 or 42 of the Ordinance for an order transferring proceedings to the Court of First Instance or the Lands Tribunal shall be made by summons and shall be supported by an affidavit stating the grounds on which the application is made and verifying the facts relied on. (L.N. 153 of 2008)

*[The next paragraph is para.P3/4/9]*

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

**P3/4/9** 9.—(1) Where 2 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 2 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.

## ORDER 5

### MODE OF BEGINNING CIVIL PROCEEDINGS IN THE COURT

#### Editorial Introduction

This Order of the Rules of the District Court is substantially the same, with minor modifications on r.6 of RHC (right to sue in person) omitted, given O.5A of RDC and the transitional provision in r.7 (validity of proceedings previously commenced by originating motion and petition omitted in RDC as motions and petitions are not generally available in the District Court), as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.5, see Vol.1.

P3/5

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

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

P3/5/1

*[The next paragraph is para.P3/5/4]*

#### Proceedings which may be begun by writ or originating summons

(O.5, r.4)

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. 153 of 2008)

P3/5/4

(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.

*(L.N. 153 of 2008)*

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

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.

P3/5/5

## ORDER 5A

### RIGHT TO ACT IN PERSON

#### **Right to act in person (O.5A, r.1)**

**P3/5A/1** 1. Subject to rule 2 and to Order 80, rule 2, any person (whether or not he acts as a trustee or personal representative or in any other representative capacity) may begin or carry on proceedings in the Court in person or by a solicitor.

#### **Corporations acting by a director (O.5A, r.2)**

**P3/5A/2** 2.—(1) Subject to Order 12, rule 1(2), a corporation may not begin or carry on any such proceedings in the Court otherwise than by a solicitor except as expressly provided by or under any enactment or by this rule.

(2) A corporation may begin or carry on proceedings by one of its directors where—

- (a) a solicitor does not act for the corporation in the proceedings;
  - (b) the director has been duly authorized by the board of directors of the corporation to act on its behalf in the proceedings; and
  - (c) the director has made and filed at the Registry an affidavit stating that he has been duly authorized by the board of directors of the corporation to act on its behalf in the proceedings and exhibiting—
    - (i) the original of the resolution authorizing the director to act on behalf of the corporation; or
    - (ii) a copy of such resolution duly certified by another person who must either be a director or the secretary of the corporation.
- (L.N. 221 of 2001)

**P3/5A/2A** **Note**—A corporation may begin or carry on any proceedings by a solicitor. Under O.12, r.1(2), a corporation may file acknowledgement of service and give notice of intention to defend by a duly authorised person. Otherwise, the corporation can begin and carry on proceedings by one of its directors duly authorised by the board of directors to act on its behalf. The director has to make and file at the registry an affidavit stating that he was so authorised by the board to act on behalf of the corporation in the proceedings and exhibiting either the original of the resolution of the board of directors or a copy of such resolution duly certified by another person who must either be a director or the secretary of the corporation. No leave of the court is required for such representation.

Section 454 of the Companies Ordinance provides that “a *private company* must have at least *one* director”. The requirement for a company to have at least 2 directors is only applicable to public companies and companies limited by guarantee (s.453, Cap. 622). The number of directors is to be fixed by the memorandum and articles of the company and could be one. For a limited company with sole directorship, it is questionable if it has resolution by board of directors as required by O.5A.

Section 483 of the Companies Ordinance provides that “*if a private company has only one director and the director takes any decision that (a) may be taken in a meeting of the directors and (b) has effect as if agreed in a meeting of directors, the director must (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.*” It is arguable that the written resolution or record of the sole director in accordance with s.483 shall have effect as a resolution of the board of directors.

## ORDER 6

### WRITS OF SUMMONS: GENERAL PROVISIONS

#### **Editorial Introduction**

**P3/6** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.6, see Vol.1.

**Form of writ (O.6, r.1)**

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

P3/6/1

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

2. 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. 153 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. 153 of 2008)*

P3/6/2

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

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 issued.

P3/6/3

*[The next paragraph is para.P3/6/5]*

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

- 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 a business address of his principal;
  - (b) where the plaintiff other than a corporation 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;
  - (c) where the plaintiff which is a corporation sues in person, with the address of its registered or principal office and, if its registered or principal office is not within the jurisdiction, the address of a place within the jurisdiction at or to which documents for it 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.

P3/6/5

(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.

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

**P3/6/6** 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.

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

**P3/6/7** 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 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.

(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.

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

**P3/6/8** 8.—(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 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 12 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.



## ORDER 7

### ORIGINATING SUMMONSES: GENERAL PROVISIONS

#### Editorial Introduction

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.7, see Vol.1. **P3/7**

#### Application (O.7, r.1)

**1.** The provisions of this Order apply to all originating summonses subject, **P3/7/1**  
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.

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

**2.—(1)** Every originating summons (other than an ex parte summons) shall **P3/7/2**  
be in Form No. 8 in Appendix A 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. 153 of 2008)*

(1B) Form No. 10 in Appendix A is to be used if it is prescribed under a  
written law. *(L.N. 153 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. 153 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 121, rule 2. *(L.N. 4 of 2016)*

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

**3.—(1)** Every originating summons must include a statement of the ques- **P3/7/3**  
tions on which the plaintiff seeks the determination or direction of the Court  
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 particu-  
lars to identify the cause or causes of action in respect of which the plaintiff  
claims that relief or remedy.

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

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

**4.** Order 6, rule 6, shall apply in relation to an originating summons as it **P3/7/4**  
applies in relation to a writ.

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

**5.—(1)** An originating summons shall be issued out of the Registry. **P3/7/5**

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

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

**6.** Order 6, rule 8, shall apply in relation to an originating summons as it **P3/7/6**  
applies in relation to a writ.

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

**P3/7/7** 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. 153 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.

## ORDER 8

### ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

**Editorial Introduction**

**P3/8** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.8, see Vol.1.

**Application (O.8, r.1)**

**P3/8/1** 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. 153 of 2008)*

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

**P3/8/2** 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—

(a) on such terms as to costs or otherwise; and

(b) subject to such undertaking, if any, as it thinks just.

(2) Any party affected by an order made under paragraph (1) may apply to the Court to set it aside.

(3) 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.

**Form and issue of notice of motion (O.8, r.3)**

**P3/8/3** 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.

(2) Where leave has been given under rule 2(3) to serve short notice of motion, that fact must be stated in the notice.

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

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

(5) 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.

*(L.N. 153 of 2008)*

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

**P3/8/4** 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 the writ or summons, whether or not the defendant has

acknowledged service in the action. *(L.N. 153 of 2008)*

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

5. The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit. *(L.N. 153 of 2008)* **P3/8/5**

## ORDER 9

### PETITIONS: GENERAL PROVISIONS

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

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. 153 of 2008)* **P3/9/1**

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

2.—(1) A petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun by the petition. **P3/9/2**

(2) A petition must include at the end of it—

- (a) a statement of the names of the persons, if any, required to be served with the petition; or
- (b) if no person is required to be served, a statement to that effect.

(3) Order 6, rule 5, with the necessary modifications, applies in relation to a petition as it applies in relation to a writ. *(L.N. 153 of 2008)*

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

3. A petition may be presented by leaving it at the Registry. *(L.N. 153 of 2008)* **P3/9/3**

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

4.—(1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar. **P3/9/4**

(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. *(L.N. 153 of 2008)*

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

5. No application in any cause or matter may be made by petition. *(L.N. 153 of 2008)* **P3/9/5**

## ORDER 10

### SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

**Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.10, see Vol.1. **P3/10**

**General provisions (O.10, r.1)**

1.—(1) A writ must be served personally on each defendant by the plaintiff or his agent. **P3/10/1**

(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.
- (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 endorses 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 endorsement 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 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.

(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.

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

P3/10/2

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.

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

3.—(1) Where—

P3/10/3

- (a) a contract contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Court has jurisdiction to hear and determine any such action; and
- (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).

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

4.—(1) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, the Court may— P3/10/4

- (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.

(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.

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

5.—(1) The foregoing rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than an 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. 153 of 2008) P3/10/5

(2) Rule 1(1), (2), (3) and (4) applies, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ. (L.N. 153 of 2008)

# ORDER 11

## SERVICE OF PROCESS, ETC., OUT OF JURISDICTION

### Editorial Introduction

**P3/11** This Order of the Rules of the District Court is substantially the same, with minor modifications on fewer types of cases covered by the rule in RDC, as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.11, see Vol.1.

### Principal cases in which service of writ out of jurisdiction is permissible (O.11, r.1)

- P3/11/1** 1.—(1) Provided that the writ is not a writ to which paragraph (2) 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—
- (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 shall have jurisdiction to hear and determine any action in respect of the contract;
  - (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;
  - (n) the claim is brought under the Carriage by Air Ordinance (Cap. 500);
  - (o) the claim is for an order for the costs of and incidental to a dispute under section 53A(2) of the Ordinance; (*L.N. 153 of 2008*)
  - (oa) the claim is for a costs order under section 53(2) of the Ordinance against a person who is not a party to the relevant proceedings; (*L.N. 153 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.
- (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 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.
- (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).

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

**4.—**(1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating— **P3/11/4**

- (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.

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

**5.—**(1) Subject to the following provisions of this rule, Order 10, rule 1(1), (4), (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. **P3/11/5**



(2) Nothing in this rule or in 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.

(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, 6 or 7.

(5) An official certificate stating that a writ as regards which rule 5A or 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 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.

(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.

(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” (《海牙公約》) 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.

### **Service of writ in the Mainland of China through judicial authorities**

(O.11, r.5A)

P3/11/5A

**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 of the High Court 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.

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

**6.—**(1) 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— **P3/11/6**

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

(1A) 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 consular authority in that country.

(2) 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, the writ may be served—

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

(3) 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.

(4) 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 consular authority on a subject of the country of that consular authority, 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.

(5) 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 qualifications for making the translation.

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

**Service of process on a foreign State (O.11, r.7)**

**7.—**(1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a foreign State, wishes to have the writ served on that State, he must lodge in the Registry— **P3/11/7**

- (a) a request for service of the writ 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 State is, or the official languages of that State 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) 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 of the High Court to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arranges for the writ to be served on the foreign State or the government in question, as the case may be.
- (4) Where the foreign 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.

**Service of writ in certain actions under Carriage by Air Ordinance (O.11, r.7A)**

- P3/11/7A** 7A.—(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 the 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—
- (a) a request for service of the writ 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 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 High Contracting Party. (22 of 2005 s. 27)
- (2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) 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 of the High Court to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arranges for the writ to be served on the High Contracting Party or State Party, as may be appropriate. (22 of 2005 s. 27).

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

- P3/11/8** 8. Every request lodged under rule 6(4), 7 or 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 of the High Court.

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

- P3/11/8A** 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 of the High Court 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 of the High Court.

**Service of originating summons, etc. (O.11, r.9)**

**9.—**(1) Subject to paragraph (4A), rule 1 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. P3/11/9  
(*L.N. 153 of 2008; L.N. 4 of 2016*)

(4) Subject to paragraph (4A), 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.  
(*L.N. 153 of 2008; L.N. 4 of 2016*)

(4A) Service out of the jurisdiction of any originating summons issued under Order 121, rule 2 is permissible without the leave of the Court.  
(*L.N. 4 of 2016*)

(5) Rule 4(1) and (2) 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 an originating summons out of the jurisdiction 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.

## ORDER 12

### ACKNOWLEDGMENT OF SERVICE OF WRIT OR ORIGINATING SUMMONS

**Editorial Introduction**

This Order of the Rules of the District Court is substantially the same, with minor modifications on not adopting rr.1(2A)–(2D) of the RHC given O.5A of RDC, as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.12, see Vol.1.

P3/12

**Mode of acknowledging service (O.12, r.1)**

**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 give notice of intention to defend the action by a solicitor or in person. P3/12/1

(2) The defendant to such an action which 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.

(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 2 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.  
(*L.N. 153 of 2008*)

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

**P3/12/1A** In *Chan Hop Chuen v. Richday Group Ltd.*, (unrep., DCCJ 2773/2013, 8 November 2013), HH Judge Chow applied the case of *Dianor International Limited v. Aya Rambul Sabam Maniam* HCA 806/2008 which states that the intention of Order 12, Rules 3 and 4 are to ensure that a defendant contesting a claim should provide an address within this jurisdiction for service of documents on him. Therefore a defendant cannot acknowledge service through solicitors and then subsequently file a notice of intention to act in person without giving a local address for service.

*[The next paragraph is para.P3/12/3]*

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

**P3/12/3** 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. 153 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 subparagraph (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 subparagraph (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.

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

**P3/12/4** 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; and
- (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.

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

5. References in these Rules to the time limited for acknowledging service are references— **P3/12/5**

- (a) in the case of a writ served within the jurisdiction, to 14 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.

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

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. **P3/12/6**

(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.

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

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. **P3/12/7**

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

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— **P3/12/8**

- (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. 153 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. 153 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. 153 of 2008)*
- (3) An application under paragraph (1) or (2) must be made by summons which must state the grounds of the application.
- (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. 153 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. 153 of 2008)*

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

P3/12/8A

- 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.



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

**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) must acknowledge service of the summons as if it were a writ. **P3/12/9**

(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) 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).

**Acknowledgment of service to be treated as entry of appearance**

(O.12, r.10)

**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, 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. **P3/12/10**

**Transitional provision relating to rule 35 of Amendment Rules 2008**

(O.12, r.11)

**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 35 of the Amendment Rules 2008 had not been made. **P3/12/11**  
(*L.N. 153 of 2008*)

## ORDER 13

### FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND

**Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.13, see Vol.1. **P3/13**

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

**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 Appendix A, Form 39) **P3/13/1**

(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 49 of the Ordinance at a rate which is not higher than that applicable to judgment debts under section 50(1)(b) of the Ordinance at the date of the issue of the writ.

\* Commencement day: 2 April 2009.

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

**P3/13/2** 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 Appendix A, Form 40)

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

**P3/13/3** 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 Appendix 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.

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

**P3/13/4** 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 Appendix 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.

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

**P3/13/5** 5. Where a writ issued against any defendant is indorsed with 2 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. *(L.N. 153 of 2008)*

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

**P3/13/6** 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.

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

**6A.** In the foregoing rules of this Order, "the prescribed time" **P3/13/6A** (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.

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

**7.—(1)** Judgment shall not be entered against a defendant under this **P3/13/7** 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.

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

**7A.—(1)** Where the defendant is a foreign state, the plaintiff shall not be **P3/13/7A** entitled to enter judgment under this Order except with the leave of the Court.  
(*L.N. 217 of 2000*)

(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 immunity; and
- (c) verifying that the writ has been served by being transmitted to the Chief Secretary for Administration and by him to the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region 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 has expired.

(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 this rule shall be the same as for the service of the writ under Order 11, rule 7(1), except where the State has agreed to some other manner of service.

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

**P3/13/8** 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.

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

**P3/13/9** 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.

## **ORDER 13A**

### **ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY**

#### **Editorial Introduction**

**P3/13A/0** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.13A, see Vol.1.

**Interpretation (O.13A, r.1)**

1.—(1) In this Order —

P3/13A/1

“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.

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

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—

P3/13A/2

- (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.

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

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

P3/13A/3

- (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.

**Admission of whole of claim for liquidated amount of money**

(O.13A, r.4)

4.—(1) This rule applies where—

P3/13A/4

- (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.

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

(O.13A, r.5)

P3/13A/5

- 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.

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

**6.—**(1) This rule applies where—

**P3/13A/6**

- (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.

**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)**

**7.—**(1) This rule applies where—

**P3/13A/7**

- (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.

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

- P3/13A/8** 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.

**Request for time to pay (O.13A, r.9)**

- P3/13A/9** 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.

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

- P3/13A/10** 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.

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

**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. **P3/13A/11**

(2) An application for re-determination must be made within 14 days after the applicant is served with notice of the determination.

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

**12.—**(1) Judgment under rule 4, 5 or 7 must include the amount of interest claimed to the date of judgment if— **P3/13A/12**

(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 49 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.

### **Form for admission to be served with writ or originating summons**

(O.13A, r.13)

**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. **P3/13A/13**

(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.

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

**P3/13A/14**

**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. 153 of 2008)*

## ORDER 14

### SUMMARY JUDGMENT

**Application by plaintiff for summary judgment (O.14, r.1)**

**P3/14/1**

**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; or
- (b) an action which includes a claim by the plaintiff based on an allegation of fraud.

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

\* Commencement day: 2 April 2009.

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

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. **P3/14/2**

(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.

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

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. **P3/14/3**  
(See Appendix 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.

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

4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court. **P3/14/4**

(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.

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

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. **P3/14/5**

(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).

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

**P3/14/6** 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, Order 25, rules 5 to 10, with the omission of so much of rule 10(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. 153 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.

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

**P3/14/7** 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.

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

**P3/14/8** 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 a 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.

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

**P3/14/9** 9. Where the claim to which an application under rule 1 or 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.

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

**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. **P3/14/10**

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

**11.** Any judgment given against a party who does not appear at the hearing of an application under rule 1 or 5 may be set aside or varied by the Court on such terms as it thinks just. **P3/14/11**

## ORDER 14A

### DISPOSAL OF CASE ON POINT OF LAW

**Determination of questions of law or construction (O.14A, r.1)**

**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— **P3/14A/1**

(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.

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

**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. **P3/14A/2**

## ORDER 15

### CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

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

**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— **P3/15/1**

(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.

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

P3/15/2

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.

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

P3/15/3

3.—(1) Where a defendant in an action who makes a counterclaim 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 counterclaim 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) and Orders 10, 11, 12 and 13 shall, subject to paragraph (4), 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 from it as if the party against whom the counterclaim is made were the plaintiff in the action.

(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.

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

**4.—**(1) Subject to rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where— **P3/15/4**

- (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.

(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.

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

**5.—**(1) If claims in respect of 2 or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if 2 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. **P3/15/5**

(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.

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

P3/15/6

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.

(2) Subject to 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
- (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.

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

**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.

**P3/15/6A**

(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.

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

- (a) the plaintiff shall, and the defendant, the personal representative 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 to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

- (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 subparagraph (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.

(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.

**Change of parties by reason of death, etc. (O.15, r.7)****P3/15/7**

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.

(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.

**Provisions consequential on making of order under rule 6 or 7**

(O.15, r.8)

**P3/15/8**

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.

(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 this paragraph 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) This rule applies in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

**Failure to proceed after death of party (O.15, r.9)**

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.

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(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.

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

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.

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(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).

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

**P3/15/11** **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.

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

**P3/15/12** **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.

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

**P3/15/13** **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.

#### **Notice of action to non-parties (O.15, r.13A)**

**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.

**P3/15/13A**

(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.

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

**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

**P3/15/14**



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.

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

**P3/15/15** 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.

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

**P3/15/16** 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.

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

**P3/15/17** 17. The Court may give the conduct of any action, inquiry or other proceedings to such person as it thinks fit.

## ORDER 16

### THIRD PARTY AND SIMILAR PROCEEDINGS

**Third party notice** (O.16, r.1)

**P3/16/1** 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.

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

2.—(1) An application for leave to issue a third party notice may be made **P3/16/2** *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.

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

3.—(1) The order granting leave to issue a third party notice may contain **P3/16/3** 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 this rule, the following provisions of these Rules, namely, Order 6, rule 7(3) and (5), Order 10, Order 11 and Order 12, 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.

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

4.—(1) If the third party gives notice of intention to defend, the defendant **P3/16/4** 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.

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

**P3/16/5** 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 (2) on such terms (if any) as it thinks just.

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

**P3/16/6** 6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

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

**P3/16/7** 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.

(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.

**Claims and issues between a defendant and some other party**

(O.16, r.8)

8.—(1) Where in any action a defendant who has given notice of intention to defend— **P3/16/8**

- (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”.

**Claims by third and subsequent parties (O.16, r.9)**

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 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. **P3/16/9**

(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.

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

**P3/16/10** **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 attention 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.

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

**P3/16/11** **11.** Where in any action a counterclaim is made by a defendant, 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.

## ORDER 17

### INTERPLEADER

**Editorial Introduction**

**P3/17** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.17, see Vol.1.

**Entitlement to relief by way of interpleader (O.17, r.1)**

**P3/17/1** **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 2 or more persons making adverse claims thereto; or

(b) a 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 a liability as mentioned in subparagraph (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.

**Claim to goods, etc., taken in execution (O.17, r.2)**

**P3/17/2** **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.

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

**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. P3/17/3  
(*L.N. 153 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).

*[The next paragraph is para.P3/17/5]*

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

- P3/17/5** 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.

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

- P3/17/6** 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.

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

- P3/17/7** 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.

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

- P3/17/8** 8. Subject to 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.

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

- P3/17/9** 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.

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

- P3/17/10** 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.  
(*L.N. 153 of 2008*)

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

- P3/17/11** 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.

## ORDER 18

### PLEADINGS

#### Editorial Introduction

This Order of the Rules of the District Court is substantially the same, with minor modifications on r.5 of RHC (vacation business) omitted in RDC and specific power of DC to frame issue in r.22 of RDC, as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.18, see Vol.1.

P3/18

#### Service of statement of claim (O.18, r.1)

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 2 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.

P3/18/1

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

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. 217 of 2000)

P3/18/2

(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. 153 of 2008)

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

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.

P3/18/3

(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. 153 of 2008)

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

- P3/18/4** 4. No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

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

- P3/18/5A** 5A.—(1) Subject to Order 3, rule 5(3) and subject to 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.

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

- P3/18/6** 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.

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

- P3/18/7** 7.—(1) Subject to 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.

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

**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— **P3/18/7A**

- (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.

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

**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— **P3/18/8**

- (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 49 of the Ordinance or otherwise.

**Matter may be pleaded whenever arising** (O.18, r.9)

**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. **P3/18/9**

**Departure** (O.18, r.10)

**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. **P3/18/10**

(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.

**Points of law may be pleaded (O.18, r.11)**

**P3/18/11** 11. A party may by his pleading raise any point of law.

**Particulars of pleading (O.18, r.12)**

**P3/18/12** 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
- (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.

(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.

(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 requirements of paragraph (1A) or staying the proceedings).

(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).

(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. 153 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. 153 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.

In *Tsang Chi Chung v. Yu Kin San*, (unrep., DCEC 701/2015, [2016] H.K.E.C. 1308), the court held that O.18, r.12 does not apply to statutory claims. This is opposed to common-law claims where the claim is concerned with damages.

P3/18/12/1

### **Pleading with inconsistent alternatives (O.18, r.12A)**

**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—

P3/18/12A

(a) the party has reasonable grounds for so doing; and

(b) the allegations are made in the alternative. (*L.N. 153 of 2008*)

### **Admissions and denials (O.18, r.13)**

**13.—**(1) Subject to paragraph (5), 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.

P3/18/13

(2) Subject to paragraph (4), a traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(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.

(4) 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.

(5) 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. 153 of 2008*)

### **Non-admission by joinder of issue (O.18, r.14)**

**14.—**(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

P3/18/14

(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 express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a non-admission of every other such allegation.

*(L.N. 153 of 2008)*

**Statement of claim (O.18, r.15)**

**P3/18/15** 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.

**Defence of tender (O.18, r.16)**

**P3/18/16** 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.

**Defence of set-off (O.18, r.17)**

**P3/18/17** 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.

**Counterclaim and defence to counterclaim (O.18, r.18)**

**P3/18/18** 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;
- (b) rules 8(2), 16 and 17 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

**Striking out pleadings and indorsements (O.18, r.19)**

**P3/18/19** 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. 153 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. *(L.N. 153 of 2008)*

**Close of pleadings (O.18, r.20)**

**20.—**(1) The pleadings in an action are deemed to be closed—

**P3/18/20**

- (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. 153 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.

**Pleading, etc. to be verified by statement of truth (O.18, r.20A)**

**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.

**P3/18/20A**

(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 rule 12(3) or (4).

**Trial without pleadings (O.18, r.21)**

**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.

**P3/18/21**

(2) If, on the hearing of an application under this rule or at any stage of the proceedings of its own motion, 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 5 to 10—*(L.N. 153 of 2008)*

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and
- (b) with any other necessary modifications, apply as if the application under this rule were a case management summons.

*(L.N. 153 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
- (b) a claim by the plaintiff based on an allegation of fraud.

**Framing of issues (O.18, r.22)**

**P3/18/22** 22. At any stage of the proceedings the Court may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree the statement, may settle the statement itself.

**Transitional provision relating to rule 42 of Amendment Rules 2008 (O.18, r.23)**

**P3/18/23** 23. Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rule 42 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 42 of the Amendment Rules 2008 had not been made. *(L.N. 153 of 2008)*

**Transitional provision relating to rules 45 and 46 of Amendment Rules 2008 (O.18, r.24)**

**P3/18/24** 24. Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rules 45 and 46 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 45 and 46 of the Amendment Rules 2008 had not been made. *(L.N. 153 of 2008)*

## ORDER 19

### DEFAULT OF PLEADINGS

**Default in service of statement of claim (O.19, r.1)**

**P3/19/1** 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.

**Default of defence: claim for liquidated demand (O.19, r.2)**

**P3/19/2** 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 Appendix 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.

**Default of defence: claim for unliquidated damages (O.19, r.3)**

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 Appendix A, Form 40) **P3/19/3**

**Default of defence: claim in detinue (O.19, r.4)**

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— **P3/19/4**

(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 Appendix 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.

**Default of defence: claim for possession of land (O.19, r.5)**

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 Appendix A, Form 42) **P3/19/5**

(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.

**Default of defence: mixed claims (O.19, r.6)**

6. Where the plaintiff makes against a defendant 2 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. **P3/19/6**

**Default of defence: other claims (O.19, r.7)**

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 **P3/19/7**

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.

**Default of defence to counterclaim (O.19, r.8)**

**P3/19/8** 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 counterclaim, 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.

**Notice of intention to enter judgment (O.19, r.8A)**

**P3/19/8A** 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.

**P3/19/8A/1** In *Incorporated Owners of Kingland Apartments v. Eltron Development Ltd.*, (unrep., DCCJ 4545/2015, [2016] H.K.E.C. 797) it was held that a summons issued under O.19, r.7 does not constitute a notice of intention to enter judgment.

**Setting aside judgment (O.19, r.9)**

**P3/19/9** 9. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

## ORDER 20

### AMENDMENT

#### Editorial Introduction

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.20, see Vol.1.

P3/20

#### Amendment of writ without leave (O.20, r.1)

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.

P3/20/1

(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.

#### Amendment of acknowledgment of service (O.20, r.2)

2.—(1) Subject to paragraph (2), a party may not amend his acknowledgment of service without leave of the Court.

P3/20/2

(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 acknowledgment 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 subparagraph (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.

#### Amendment of pleadings without leave (O.20, r.3)

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.

P3/20/3

- (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 counterclaim 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.

**Application for disallowance of amendment made without leave**

(O.20, r.4)

P3/20/4

- 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 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.

**Amendment of writ or pleading with leave (O.20, r.5)**

P3/20/5

- 5.—(1) Subject to Order 15, rules 6, 7 and 8 and 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 those paragraphs 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.

[The next paragraph is para.P3/20/7]

**Amendment of originating summons, etc. (O.20, r.7)**

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. **P3/20/7**  
(*L.N. 153 of 2008*)

**Amendment of pleading and certain other documents (O.20, r.8)**

8.—(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. **P3/20/8**  
(*L.N. 153 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. 153 of 2008*)

(2) This rule shall not have effect in relation to a judgment or order.

**Failure to amend after order (O.20, r.9)**

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. **P3/20/9**  
(*L.N. 153 of 2008*)

(2) Paragraph (1) is subject to any directions given by the Court.  
(*L.N. 153 of 2008*)

**Mode of amendment of writ, etc. (O.20, r.10)**

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. **P3/20/10**

(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 or master 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.

**Amendment of judgment and orders (O.20, r.11)**

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. **P3/20/11**

**Amendment of pleadings by agreement (O.20, r.12)**

**P3/20/12** **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.

(1A) Order 18, rule 5A, shall apply to a pleading amended under this rule as if, for the period referred to in paragraph (1) of that rule, there were substituted the period of 7 days after the date of the written agreement referred to in paragraph (1) of this rule or the day immediately preceding the trial of the cause or matter, whichever be the earlier.

(2) This rule shall not have effect in relation to an amendment which consists of the addition, omission or substitution of a party.

**Amendment of pleadings or particulars of pleadings to be verified by statement of truth (O.20, r.13)**

**P3/20/13** **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. 153 of 2008)*

## ORDER 21

### WITHDRAWAL AND DISCONTINUANCE

**Editorial Introduction**

**P3/21** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.21, see Vol.1.

**Withdrawal of acknowledgment of service (O.21, r.1)**

**P3/21/1** **1.** A party who has acknowledged service in an action may withdraw the acknowledgment at any time with the leave of the Court.

**Discontinuance of action, etc., without leave (O.21, r.2)**

**P3/21/2** **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 2 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 2 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 2 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 2 or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(3B) When there are 2 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.

### **Discontinuance of action, etc., with leave (O.21, r.3)**

3.—(1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, 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. P3/21/3

(2) An application for the grant of leave under this rule may be made by summons or by notice under Order 25, rule 10. (L.N. 153 of 2008)

### **Effect of discontinuance (O.21, r.4)**

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. P3/21/4

### **Stay of subsequent action until costs paid (O.21, r.5)**

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 P3/21/5

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 10. *(L.N. 153 of 2008)*

**Withdrawal of summons (O.21, r.6)**

**P3/21/6** 6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.

## ORDER 22

### OFFERS TO SETTLE AND PAYMENTS INTO COURT

**Editorial Introduction**

**P3/22** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.22, see Vol.1.

#### I. PRELIMINARY

**Interpretation (O.22, r.1)**

**P3/22/1** 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.

**Offer to settle with specific consequences (O.22, r.2)**

**P3/22/2** 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 counter-claim 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

### **Defendant's offer to settle (O.22, r.3)**

**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. **P3/22/3**

(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.

### **Plaintiff's offer to settle (O.22, r.4)**

**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. **P3/22/4**

### **Form and content of sanctioned offer (O.22, r.5)**

**5.—**(1) A sanctioned offer must be in writing. **P3/22/5**

(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 setoff; 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.

### **Service of sanctioned offer (O.22, r.6)**

**6.** An offeror shall serve the sanctioned offer— **P3/22/6**

(a) on the offeree; and

(b) where the offeree is an aided person, on the Director of Legal Aid.

**Withdrawal or diminution of sanctioned offer (O.22, r.7)**

**P3/22/7** 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.

**Notice of sanctioned payment (O.22, r.8)**

**P3/22/8** 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.

**Service of sanctioned payment (O.22, r.9)**

**P3/22/9** 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.

**Withdrawal or diminution of sanctioned payment (O.22, r.10)**

**P3/22/10** 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.

**Offer to settle claim for provisional damages (O.22, r.11)**

**11.—**(1) A defendant may make a sanctioned payment in respect of a claim that includes a claim for provisional damages. P3/22/11

(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 72E of the Ordinance.

**Time when sanctioned offer or sanctioned payment is made and accepted (O.22, r.12)**

**12.—**(1) A sanctioned offer is made when it is served on the offeree. P3/22/12

(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.

**Service of notice of acceptance of plaintiff’s sanctioned offer (O.22, r.13)**

**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. P3/22/13

(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.

**Clarification of sanctioned offer or sanctioned payment notice**  
(O.22, r.14)

P3/22/14

**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**

**Time for acceptance of defendant's sanctioned offer or sanctioned payment** (O.22, r.15)

P3/22/15

**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.

**Time for acceptance of plaintiff's sanctioned offer** (O.22, r.16)

P3/22/16

**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.

**Payment out of a sum in court on acceptance of sanctioned payment (O.22, r.17)**

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. **P3/22/17**

**Acceptance of sanctioned offer or sanctioned payment made by one or more, but not all, defendants (O.22, r.18)**

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. **P3/22/18**

(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.

**Other cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment (O.22, r.19)**

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— **P3/22/19**

- (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

**Costs consequences of acceptance of defendant's sanctioned offer or sanctioned payment (O.22, r.20)**

**P3/22/20** 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.

**Costs consequences of acceptance of plaintiff's sanctioned offer (O.22, r.21)**

**P3/22/21** 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.

**Other consequences of acceptance of sanctioned offer or sanctioned payment (O.22, r.22)**

**P3/22/22** 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.

**Costs consequences where plaintiff fails to do better than sanctioned offer or sanctioned payment (O.22, r.23)**

**23.—**(1) This rule applies where a plaintiff—

**P3/22/23**

- (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 49 of the Ordinance on the whole or part of any sum of money awarded to the plaintiff for some or all of the period after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.

(3) The Court may order the plaintiff to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.

(4) The Court may also order that the defendant is entitled to—

- (a) his costs on the indemnity basis after the latest date on which the plaintiff could have accepted the payment or offer without requiring the leave of the Court; and
- (b) interest on the costs referred to in paragraph (3) or subparagraph (a) at a rate not exceeding 10% above judgment rate.

(5) Where this rule applies, the Court shall make the orders referred to in paragraphs (2), (3) and (4) unless it considers it unjust to do so.

(6) In considering whether it would be unjust to make the orders referred to in paragraphs (2), (3) and (4), the Court shall take into account all the circumstances of the case including—

- (a) the terms of any sanctioned payment or sanctioned offer;
- (b) the stage in the proceedings at which any sanctioned payment or sanctioned offer was made;
- (c) the information available to the parties at the time when the sanctioned payment or sanctioned offer was made; and
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the payment or offer to be made or evaluated.

(7) The power of the Court under this rule is in addition to any other power it may have to award or disallow interest.

**Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O.22, r.24)**

**24.—**(1) This rule applies where—

**P3/22/24**

- (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

### **Restriction on disclosure of sanctioned offer or sanctioned payment**

(O.22, r.25)

P3/22/25

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.

### **Interest (O.22, r.26)**

P3/22/26

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.

**Money paid into court under order (O.22, r.27)**

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.

P3/22/27

(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.

**Transitional provision relating to Part 9 of Amendment Rules 2008**

(O.22, r.28)

28. Where—

P3/22/28

- (a) a payment into court has been made in accordance with Order 22 (“the repealed Order”) repealed by rule 61 (“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. 153 of 2008)*

## ORDER 22A

### MISCELLANEOUS PROVISIONS ABOUT PAYMENTS INTO COURT

**Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.22A, see Vol.1.

P3/22A

**Money remaining in court (O.22A, r.1)**

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

P3/22A/1

\* Commencement day: 2 April 2009.

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.

**Person to whom payment to be made (O.22A, r.2)**

**P3/22A/2** 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.

**Payment out: small intestate estates (O.22A, r.3)**

**P3/22A/3** 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.

**Investment of money in court (O.22A, r.4)**

**P3/22A/4** 4. Cash under the control of or subject to the order of the Court may be invested in any manner specified in the District Court Suitors' Funds Rules (Cap. 336 sub. leg. E) and the Trustee Ordinance (Cap. 29).

*(L.N. 153 of 2008)*

## ORDER 23

### SECURITY FOR COSTS

**Security for costs of action, etc. (O.23, r.1)**

**P3/23/1** 1.—(1) Where, on the application of a defendant to an action or other proceeding in the Court, it appears to the Court—

- (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 this rule 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.

### **Manner of giving security (O.23, r.2)**

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. **P3/23/2**

### **Saving for enactments (O.23, r.3)**

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. **P3/23/3**

## **ORDER 24**

### **DISCOVERY AND INSPECTION OF DOCUMENTS**

#### **Editorial Introduction**

This Order of the Rules of the District Court is substantially the same, with minor modifications on r.17 of RHC which is omitted in RDC given the general power of DC to revoke and vary directions or orders under O.32, r.8 of RDC, as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.24, see Vol.1. **P3/24**

#### **Mutual discovery of documents (O.24, r.1)**

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. **P3/24/1**

(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. (*L.N. 153 of 2008*)

#### **Discovery by parties without order (O.24, r.2)**

2.—(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed shall make discovery by exchanging lists of documents. Accordingly, each party shall, 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. **P3/24/2**

(2) Without prejudice to any directions given by the Court under Order 16, rule 4, paragraph (1) does not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(3) 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).

(4) 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.

(5) Paragraphs (3) and (4) apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (3) to the plaintiff, of a reference to the party making the counterclaim.

(6) 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.

(7) The Court shall make an order under paragraph (6), 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.

(8) An application for an order under paragraph (6) 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.

(9) 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).

(10) The party on whom the notice is served shall, 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. 153 of 2008)*

### **Order for discovery (O.24, r.3)**

**P3/24/3**

**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 or 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. 153 of 2008)*

(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—

- (a) may make an order against the first-mentioned party under paragraph (1); or



- (b) 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. *(L.N. 153 of 2008)*
- (4) *(Repealed L.N. 153 of 2008)*

**Order for determination of issue, etc., before discovery (O.24, r.4)**

- 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. **P3/24/4**
- (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 5 to 10—
  - (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and
  - (b) with any other necessary modifications,
 apply as if the application on which the order was made were a case management summons. *(L.N. 153 of 2008)*

**Form of list and affidavit (O.24, r.5)**

- 5.—(1) A list of documents made in compliance with rule 2 or with an order 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. **P3/24/5**
- (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. *(L.N. 153 of 2008)*
- (3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 27 in Appendix A.

**Defendant entitled to copy of co-defendant's list (O.24, r.6)**

- 6.—(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served 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. **P3/24/6**
- (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 proceedings 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.

**Order for discovery of particular documents (O.24, r.7)**

- 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.

(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 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.

### **Application under section 47A or 47B(1) of the Ordinance**

(O.24, r.7A)

P3/24/7A

**7A.**—(1) An application for an order under section 47A 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.

(2) An application after the commencement of proceedings for an order under section 47B(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;
- (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. 153 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 47A of the Ordinance)”. (L.N. 153 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 47A or 47B(1) of the Ordinance 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. 153 of 2008*)

(8) For the purposes of rules 10 and 11 an application for an order under section 47A or 47B(1) of the Ordinance shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

(*L.N. 153 of 2008*)

**Discovery to be ordered only if necessary (O.24, r.8)**

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. 153 of 2008*)

P3/24/8

(2) No order for the disclosure of documents shall be made under section 47A or 47B 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. 153 of 2008*)

**Inspection of documents referred to in list (O.24, r.9)**

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.

(*L.N. 153 of 2008*)

P3/24/9

**Inspection of documents referred to in pleadings and affidavits (O.24, r.10)**

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.

P3/24/10

(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.

**Order for production for inspection (O.24, r.11)**

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)—

P3/24/11

- (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.

**Provision of copies of documents (O.24, r.11A)**

**P3/24/11A** **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.

**Order for production to Court (O.24, r.12)**

**P3/24/12** **12.** 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.

**Production to be ordered only if necessary, etc. (O.24, r.13)**

**P3/24/13** **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.

**Production of business books (O.24, r.14)**

**P3/24/14** **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.

**Use of documents (O.24, r.14A)**

**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.

P3/24/14A

**Document disclosure of which would be injurious to public interest: saving (O.24, r.15)**

**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.

P3/24/15

**Order for limiting discovery (O.24, r.15A)**

**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—

P3/24/15A

- (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. 153 of 2008)*

**Failure to comply with requirement for discovery, etc. (O.24, r.16)**

**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.

P3/24/16

*(L.N. 153 of 2008)*

(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.

**Transitional provision relating to rules 1 and 2 (O.24, r.17)**

**P3/24/17** 17.—(1) Where before the commencement of rule 2, the pleadings in an action are deemed to have been closed, rule 2(1) has effect as if for the words “within 14 days after the pleadings in the action are deemed to be closed as between him and any other party”, there were substituted the words “within 14 days of the commencement of this rule”.

(2) Rules 1 and 2 and paragraph (1) has effect subject to—

- (a) any direction relating to discovery of documents given by the Court before the commencement of those rules; and
- (b) any memorandum filed under Order 23A, rule 4 (“the repealed rule”) repealed by rule 78 of the Amendment Rules 2008 which sets out the directions and orders agreed between the parties and taking effect under the repealed rule. *(L.N. 153 of 2008)*

## ORDER 25

### CASE MANAGEMENT SUMMONS AND CONFERENCE

**Editorial Introduction**

**P3/25** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.25, see Vol.1.

**Case management summons and conference (O.25, r.1)**

**P3/25/1** 1.—(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 or file it with the Court in the manner specified in the practice direction.

(2) 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.

(3) Where there is no agreement on any of the matters specified in paragraph (2)(a) and (b)—

- (a) each party shall in the questionnaire make a proposal on the matter; and
- (b) the plaintiff shall, within the period 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.

(4) 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 a specialist list is pending; and
  - (g) actions for personal injuries for which automatic directions are provided by rule 11.
- (5) 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 (3)(b), the defendant or any defendant may—
- (a) take out a case management summons; or
  - (b) apply for an order to dismiss the action.
- (6) On an application by a defendant to dismiss the action under paragraph (5), 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.
- (7) In the case of an action which is proceeding only as respects a counterclaim, references in this rule and rule 2(1)(c) to the plaintiff and defendant are to be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.
- (8) Notwithstanding anything in paragraph (3), 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. 153 of 2008)*

### **Case management timetable (O.25, r.2)**

**2.—**(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(3)(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.

### **Variation of case management timetable (O.25, r.3)**

**P3/25/3** 3.—(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 2.

(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”.  
(*L.N. 153 of 2008*)

### **Failure to appear at case management conference or pre-trial review (O.25, r.4)**

**P3/25/4** 4.—(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 pretrial 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. (*L.N. 153 of 2008*)

**Duty to consider all matters (O.25, r.5)**

**5.—**(1) When the case management summons first comes to be determined, the Court shall consider whether— **P3/25/5**

- (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 matters referred to in paragraph (1), it shall—

- (a) deal with them forthwith; and
- (b) 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—

- (a) 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
- (b) 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 Court of First Instance or some other court, paragraph (4) does not apply and nothing in this Order shall be construed as requiring the Court to make any further order at the case management summons.

(6) 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. 153 of 2008*)

**Particular matters for consideration (O.25, r.6)**

**6.** At the determination of the case management summons, the Court shall in particular consider, if necessary of its own motion, whether any order **P3/25/6**

should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say—

- (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) sections 41 and 42 of the Ordinance. *(L.N. 153 of 2008)*

**Admissions and agreements to be made (O.25, r.7)**

- P3/25/7** 7. At the determination of the case management summons, the Court—
- (a) 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
  - (b) may cause the order on the summons to record—
    - (i) any admissions or agreements so made; and
    - (ii) (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. 153 of 2008)*

**Limitation of right of appeal (O.25, r.8)**

- P3/25/8** 8. Nothing in rule 7 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. 153 of 2008)*

**Duty to give all information at determination of case management summons (O.25, r.9)**

- P3/25/9** 9.—(1) Subject to paragraph (5), no affidavit shall be used at the determination of the case management summons except by the leave or directions of the Court.
- (2) Subject to paragraph (7), it is 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.
- (3) 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.
- (4) In the absence of such authority, any information or document given or produced under paragraph (2) shall be given or produced to all the parties as well as to the Court.
- (5) No leave is 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.
- (6) 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 (7), the Court may—
- (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—
    - (i) order the whole or any part of the pleadings of the party concerned to be struck out; or

- (ii) 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.

(7) Notwithstanding anything in this rule, no information or documents which are privileged from disclosure are 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. *(L.N. 153 of 2008)*

**Duty to make all interlocutory applications at case management summons (O.25, r.10)**

**10.—**(1) Any party to whom the case management summons is addressed **P3/25/10**  
must—

- (a) 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
  - (b) 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—
- (a) the determination of the case management summons is adjourned; and
  - (b) 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 notice given under paragraph (1).

(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. 153 of 2008)*

**Automatic directions in personal injury actions (O.25, r.11)**

**11.—**(1) When the pleadings in any action to which this rule applies are deemed to be closed, the following directions take effect automatically— **P3/25/11**

- (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) 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;
- (c) 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.

(2) Nothing in paragraph (1)—

- (a) prevents 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

- (b) prevents the making of an order for the transfer of the proceedings to the Court of First Instance.
  - (3) 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;
    - “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.
  - (4) 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.
- (L.N. 153 of 2008)*

**Application to action in specialist list (O.25, r.12)**

- P3/25/12** 12. 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. 153 of 2008)*

**Transitional (O.25, r.13)**

- P3/25/13** 13.—(1) Where immediately before the commencement\* of this Order, a summons for directions taken out under rule 7 of the repealed Order 23A is pending, then the summons for directions is deemed to be—
- (a) if it was taken out by the plaintiff, a case management summons taken out under rule 1(3)(b); or
  - (b) if it was taken out by the defendant, a case management summons taken out under rule 1(5).
- (2) Where before the commencement of this Order
- (a) the Court has given a direction requiring the plaintiff to apply for a pre-trial review under the repealed Order 34 or a memorandum setting out such a direction has been filed under rule 4 of the repealed Order 23A; and
  - (b) the plaintiff has not made the application in accordance with the direction, then the direction is deemed to be a direction requiring the plaintiff to take out a case management summons under rule 1(3)(b).
- (3) Where immediately before the commencement of this Order, an application for a pre-trial review made under the repealed Order 34 is pending, then the application is deemed to be a case management summons taken out under this Order, irrespective of whether a notice in response has been filed under the repealed Order 34.
- (4) Where before the commencement of this Order, the pleadings in an action to which this rule applies are deemed to have been closed and paragraphs (1), (2) and (3) are not applicable, then 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 this Order”.

\* Commencement day: 2 April 2009.

(5) In this rule—

“repealed Order 23A” (已廢除的第23 號命令) means Order 23A repealed by rule 78 of the Amendment Rules 2008;

“repealed Order 34” (已廢除的第34號命令) means Order 34 repealed by rule 151 of the Amendment Rules 2008. (*L.N. 153 of 2008*)

## ORDER 26

### INTERROGATORIES

#### **Discovery by interrogatories (O.26, r.1)**

1.—(1) A party to any cause or matter may apply to the Court for an order— **P3/26/1**

(a) 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; and

(b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) An application under this rule shall be made by summons or by notice under Order 25, rule 10 and a copy of the proposed interrogatories shall be served with the summons or notice. (*L.N. 153 of 2008*)

(2A) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for savings costs; and in deciding whether to give leave 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.

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

The Rules of District Court are different from the Rules of High Court in that all interrogatories must be served only upon leave being granted. **P3/26/1/1**

In *Leung Po Po v. Olympic Leader International Ltd* [2016] 2 H.K.L.R.D. 1178, the court held that O.26, r.1(1) should be read in conjunction with O.26, r.3A, and that “party” includes agents. **P3/26/1/2**

#### **Interrogatories where party is a body of persons (O.26, r.2)**

2. Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body 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 Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order. **P3/26/2**

*[The next paragraph is para.P3/26/3A]*

#### **Statement as to party, etc., required to answer (O.26, r.3A)**

3A. Where interrogatories are to be served on 2 or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state 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. **P3/26/3A**

*[The next paragraph is para.P3/26/5]*

**Objections and insufficient answers (O.26, r.5)**

**P3/26/5** 5.—(1) 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.

**Failure to comply with order (O.26, r.6)**

**P3/26/6** 6.—(1) If a party against whom an order is made under rule 1 or 5(2) fails to comply with it, 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 a party against whom an order is made under rule 1 or 5(2) 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 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.

**Use of answers to interrogatories at trial (O.26, r.7)**

**P3/26/7** 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.

**Revocation and variation of orders (O.26, r.8)**

**P3/26/8** 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.

## ORDER 27

### ADMISSIONS

**Editorial Introduction**

**P3/27** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.27, see Vol.1.

**Admission of case of other party (O.27, r.1)**

**P3/27/1** 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.



**Notice to admit (O.27, r.2)**

2.—(1) A party to a cause or matter may, not later than the expiration of 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. **P3/27/2**

(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.

**Judgment on admissions (O.27, r.3)**

3.—(1) 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. **P3/27/3**

(2) An application for an order under this rule may be made by summons.

**Admission and production of documents specified in list of documents (O.27, r.4)**

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— **P3/27/4**

(L.N. 153 of 2008)

(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. (L.N. 153 of 2008)

(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. (L.N. 153 of 2008)

**Notices to admit or produce documents (O.27, r.5)**

5.—(1) Except where rule 4(1) applies, a party to a cause or matter may, not later than the expiration of 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. (L.N. 153 of 2008) **P3/27/5**

(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. (L.N. 153 of 2008)

(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.

## ORDER 28

### ORIGINATING SUMMONS PROCEDURE

#### **Editorial Introduction**

**P3/28** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.28, see Vol.1.

#### **Application (O.28, r.1)**

**P3/28/1** 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.

#### **Affidavit evidence (O.28, r.1A)**

**P3/28/1A** 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 2 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 2 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.

**Fixing time for attendance of parties before Court (O.28, r.2)**

**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 sitting in chambers 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. P3/28/2

(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.

**Notice of hearing (O.28, r.3)**

**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. P3/28/3

(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 or 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.

(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.

(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.

**Originating summons to be heard in open court (O.28, r.3A)**

**P3/28/3A** 3A. An originating summons must be heard in open court unless the Court otherwise directs. *(L.N. 153 of 2008)*

**Directions, etc., by Court (O.28, r.4)**

**P3/28/4** 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 the Court of First Instance 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. 153 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.

**Adjournment of summons (O.28, r.5)**

**P3/28/5** 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.

**Applications affecting party who has failed to acknowledge service (O.28, r.6)**

**P3/28/6** 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.

**Counterclaim by defendant (O.28, r.7)**

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.

P3/28/7

(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 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.

**Continuation of proceedings as if cause or matter begun by writ**

(O.28, r.8)

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.

P3/28/8

(2) Where the Court decides to make such an order, Order 25, rules 5 to 10—

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and
- (b) 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. 153 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.

**Order for hearing or trial (O.28, r.9)**

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 the Court of First Instance 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 or trial of the cause or matter as may be appropriate.

P3/28/9

(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. *(L.N. 153 of 2008)*

(4) Order 33, rule 4(2) and Order 34, rules 1 to 5, 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 modifica-

tion 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. 153 of 2008)*

**Failure to prosecute proceedings with despatch (O.28, r.10)**

**P3/28/10** 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.

**Abatement, etc., of action (O.28, r.11)**

**P3/28/11** 11. Order 34, rule 6, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ. *(L.N. 153 of 2008)*

## ORDER 29

### INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

**Editorial Introduction**

**P3/29** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.29, see Vol.1.

**Application for injunction (O.29, r.1)**

**P3/29/1** 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.

(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.

**Detention, preservation, etc., of subject-matter of cause or matter  
(O.29, r.2)**

**P3/29/2** 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 10.

(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.

**Power to order samples to be taken, etc. (O.29, r.3)**

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. **P3/29/3**

(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.

**Sale of perishable property, etc. (O.29, r.4)**

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. **P3/29/4**

(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.

**Order for early trial (O.29, r.5)**

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 place and mode of trial. **P3/29/5**

**Recovery of personal property subject to lien, etc. (O.29, r.6)**

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 **P3/29/6**



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.

**Directions (O.29, r.7)**

**P3/29/7** 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 subparagraphs (a), (b), (c), (e) and (f) of Order 25, rule 1(4), the Court thinks fit to give directions under this rule before the case management summons, then rules 5 to 10 of that Order—

- (a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they desire; and
- (b) with any other necessary modifications, apply as if the application were a case management summons.

**Inspection, etc. of property under sections 47B(2) and 47D of the Ordinance (O.29, r.7A)**

**P3/29/7A** 7A.—(1) An application for an order under section 47D 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 47B(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 47B(2) or 47D of the Ordinance 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.

**Allowance of income of property pendente lite (O.29, r.8)**

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.

P3/29/8

II. INTERIM PAYMENTS

**Interpretation of Part II (O.29, r.9)**

9. In this Part of this Order—

P3/29/9

“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 the 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.

**Application for interim payment (O.29, r.10)**

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.

P3/29/10

(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) of 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.

**Order for interim payment in respect of damages (O.29, r.11)**

11.—(1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied—

P3/29/11

- (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 2 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);
  - (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;
- (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.

#### **Order for interim payment in respect of sums other than damages**

(O.29, r.12)

**P3/29/12** 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.

#### **Manner of payment (O.29, r.13)**

**P3/29/13** 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.

**Directions on application under rule 10 (O.29, r.14)**

**14.** Where an application is made under rule 10—

**P3/29/14**

- (a) the Court may give directions as to the further conduct of the action; and
- (b) so far as may be applicable, Order 25, rules 5 to 10—
  - (i) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they require; and
  - (ii) with any other necessary modifications, apply as if the application were a case management summons; and
- (c) in particular, the Court may order an early trial of the action. (L.N. 153 of 2008)

**Non-disclosure of interim payment (O.29, r.15)**

**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.

**P3/29/15**

**Payment into court in satisfaction (O.29, r.16)**

**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.

**P3/29/16**

**Adjustment on final judgment or order or on discontinuance (O.29, r.17)**

**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—

**P3/29/17**

- (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.

**Counterclaims and other proceedings (O.29, r.18)**

**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.

**P3/29/18**

## ORDER 30

### RECEIVERS

#### **Editorial Introduction**

**P3/30** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.30, see Vol.1.

#### **Application for receiver and injunction (O.30, r.1)**

**P3/30/1** 1.—(1) An application for the appointment of a receiver may be made by summons. *(L.N. 153 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.

#### **Giving of security by receiver (O.30, r.2)**

**P3/30/2** 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.

#### **Remuneration of receiver (O.30, r.3)**

**P3/30/3** 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.

#### **Service of order and notice (O.30, r.4)**

**P3/30/4** 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.

#### **Receiver's accounts (O.30, r.5)**

**P3/30/5** 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.

**Payment into Court by receiver (O.30, r.6)**

6. The Court may fix the amounts and frequency of payments into court to be made by a receiver. **P3/30/6**

**Default by receiver (O.30, r.7)**

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. **P3/30/7**

(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 on that sum while in his possession as receiver.

**Directions to receivers (O.30, r.8)**

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. **P3/30/8**

## ORDER 31

### SALES, ETC. OF LAND BY ORDER OF COURT

**Power to order sale of land (O.31, r.1)**

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. **P3/31/1**

**Manner of carrying out sale (O.31, r.2)**

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 **P3/31/2**

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 a 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.

**Certifying result of sale (O.31, r.3)**

**P3/31/3** 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.

**Mortgage, exchange or partition under order of the Court (O.31, r.4)**

**P3/31/4** 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.

## ORDER 32

### INTERLOCUTORY APPLICATIONS AND OTHER PROCEEDINGS IN CHAMBERS

#### I. INTERLOCUTORY APPLICATIONS

**Mode of making interlocutory applications (O.32, r.1)**

**P3/32/1** 1. Except as otherwise provided in these Rules, every interlocutory application 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.

**Issue of summons (O.32, r.2)**

**P3/32/2** 2.—(1) Issue of a summons by which an interlocutory application is 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.

**Service of summons (O.32, r.3)**

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. **P3/32/3**

**Adjournment of hearing (O.32, r.4)**

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. **P3/32/4**

(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.

**Proceeding in absence of party failing to attend (O.32, r.5)**

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. **P3/32/5**

(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.

**Order made ex parte may be set aside (O.32, r.6)**

6. The Court may set aside an order made ex parte. **P3/32/6**

**Interlocutory applications to be heard in chambers (O.32, r.7)**

7. Subject to rule 15, every interlocutory application shall be heard and determined in chambers. **P3/32/7**

**Revocation and variation of directions or orders (O.32, r.8)**

8. Any interlocutory direction or order made or taking effect under these Rules (including any order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent direction or order of the Court made at or before the trial of the action in connection with which the original direction or order was made. **P3/32/8**

**Application for a direction under the Limitation Ordinance (O.32, r.8A)**

8A. 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. **P3/32/8A**

(*L.N. 153 of 2008*)

II. PROCEEDINGS IN CHAMBERS

**Disposal of particular matters in chambers (O.32, r.9)**

- P3/32/9** 9. The judge may, by any judgment or order made in court in any proceedings, direct that such matters in the proceedings as he may specify shall be disposed of in chambers.

**Subpoena for attendance of witness (O.32, r.10)**

- P3/32/10** 10.—(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 any master 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.

**Obtaining assistance of experts (O.32, r.11)**

- P3/32/11** 11. 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.

**Notice of filing etc. of affidavit (O.32, r.12)**

- P3/32/12** 12. 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.

**Papers for use of Court, etc. (O.32, r.13)**

- P3/32/13** 13. 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.

**Notes of proceedings in chambers (O.32, r.14)**

- P3/32/14** 14. A note shall be kept of all proceedings in chambers 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.

**Adjournment into or from Court (O.32, r.15)**

- P3/32/15** 15. The hearing of any application or other matter in chambers may be adjourned from chambers into court and from court into chambers.

**Jurisdiction of the Registrar and master (O.32, r.16)**

- P3/32/16** 16.—(1) The Registrar and any master shall have power to hear and determine all interlocutory applications and 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; (*L.N. 153 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;
  - (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.
- (3) The Registrar and any master shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Court.

**Interlocutory applications (O.32, r.16A)**

- 16A.**—(1) A master may— **P3/32/16A**
- (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 subparagraph (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. 153 of 2008*)

**Court's power to specify consequences of failure to comply with court order on interlocutory application (O.32, r.16B)**

- 16B.**—(1) Where the Court makes an order on an interlocutory application before— **P3/32/16B**
- (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 2(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 2(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.

**Reference of matter to judge (O.32, r.17)**

**P3/32/17** 17.—(1) 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.

(2) No appeal shall lie from an order of the Registrar or any master made under paragraph (1).

**Power to direct hearing in Court (O.32, r.18)**

**P3/32/18** 18.—(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.

## ORDER 33

### PLACE AND MODE OF TRIAL

**Place of trial (O.33, r.1)**

**P3/33/1** 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 one of such courthouses or other place or places as are for the time being designated by the Chief Justice.

**Mode of trial (O.33, r.2)**

**P3/33/2** 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;
- (b) a judge with the assistance of assessors; or
- (c) the master.

**Time, etc. of trial of questions or issues (O.33, r.3)**

**P3/33/3** 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.

**Determining the place and mode of trial (O.33, r.4)**

4.—(1) In every action begun by writ, the Court shall by order determine the place and mode of the trial. P3/33/4  
(*L.N. 153 of 2008*)

(2) In any such action different questions or issues may be ordered to be tried at different places 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 it aside.

**Split trial: offer on liability (O.33, r.4A)**

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. P3/33/4A

(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.

*[The next paragraph is para.P3/33/6]*

**Trial with assistance of assessors (O.33, r.6)**

6. A trial of a cause or matter with the assistance of assessors under section 58 of the Ordinance shall take place in such manner and on such terms as the Court may direct. P3/33/6

**Dismissal of action, etc., after decision of preliminary issue (O.33, r.7)**

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 Appendix A, Form 48*) P3/33/7

## ORDER 34

### SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT

**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 are to be construed as references to an action so begun. P3/34/1

**Time for setting down action (O.34, r.2)**

P3/34/2

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 2(2)(b) or 3(b), an order made in an action which provides for trial before a judge must fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may—

(a) set the action down for trial; or

(b) apply to the Court to dismiss the action for want of prosecution.

(3) On the hearing of an application made under paragraph (2)(b), the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(4) An order made in an action which provides for trial before a judge (otherwise than in any list which may be specified for the purposes of this paragraph by directions under rule 4) must—

(a) contain an estimate of the length of the trial; and

(b) subject to any such directions, specify the list in which the action is to be put.

**Lodging documents when setting down (O.34, r.3)**

P3/34/3

3.—(1) In order to set down for trial an action which is to be tried before a judge, the party setting it down shall 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;

(d) the requisite legal aid documents, if any; and

(e) all witness statements served under the provisions of Order 38, rule 2A.

(2) The 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 must 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.

**Directions relating to lists (O.34, r.4)**

P3/34/4

4. Nothing in this Order prejudices 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.

**Notification of setting down (O.34, r.5)**

5.—(1) A party to an action who sets it down for trial shall, within 24 hours after doing so, notify the other parties to the action that he has done so. **P3/34/5**

(2) It is the duty of all parties to an action entered in any list to—

- (a) 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
- (b) if the action is settled or withdrawn, 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.

**Abatement, etc., of action (O.34, r.6)**

6.—(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 shall, as soon as practicable after becoming aware of it— **P3/34/6**

- (a) certify the abatement or change of interest or liability; and
- (b) send the certificate to the officer who keeps the list.

(2) That officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(3) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action must 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. *(L.N. 153 of 2008)*

## ORDER 35

### PROCEDURE AT TRIAL

**Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.35, see Vol.1. **P3/35**

**Failure to appear by both parties or one of them (O.35, r.1)**

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. **P3/35/1**

(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.

**Judgment, etc., given in absence of party may be set aside**

(O.35, r.2)

2.—(1) Any judgment or order 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. **P3/35/2**



(2) An application under this rule must be made within 7 days after the trial.

**Adjournment of trial (O.35, r.3)**

**P3/35/3** 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.

**Time, etc. limits at trial (O. 35, r.3A)**

**P3/35/3A** 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. 153 of 2008)*

*[The next paragraph is para.P3/35/7]*

**Order of speeches (O.35, r.7)**

**P3/35/7** 7.—(1) The judge before whom an action is tried 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 2 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.

#### **Inspection by judge (O.35, r.8)**

8. 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. **P3/35/8**

#### **Death of party before giving of judgment (O.35, r.9)**

9. Where a party to any action dies after the 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. **P3/35/9**

#### **Certificate of judicial clerk (O.35, r.10)**

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— **P3/35/10**

- (a) the time actually occupied by the trial;
- (b) any order made by the judge under Order 38, rule 5 or 6;  
*(L.N. 153 of 2008)*
- (d) the judgment given by the judge; and
- (e) any order made by the judge as to costs.

#### **List of exhibits (O.35, r.11)**

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. **P3/35/11**

(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.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

**Exhibits retained by Registrar pending appeal (O.35, r.12)**

**P3/35/12** 12.—(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 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.

**Impounded documents (O.35, r.13)**

**P3/35/13** 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. If the Secretary for Justice makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(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.

## ORDER 36

### TRIALS BEFORE AND INQUIRIES BY MASTER WITH CONSENT OF PARTIES

**Editorial Introduction**

**P3/36** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.36, see Vol.1.

**Trial before and inquiry by Master (O.36, r.1)**

**P3/36/1** 1. In any cause or matter other than a criminal proceeding by the Government, 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.

*[The next paragraph is para.P3/36/4]*

**Powers of Master (O.36, r.4)**

**4.—**(1) Subject to any directions contained in the order made pursuant to rule 1— **P3/36/4**

- (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.

*[The next paragraph is para.P3/36/9]*

**Report on reference (O.36, r.9)**

**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. **P3/36/9**

(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 *(L.N. 153 of 2008)*
- (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.

## ORDER 37

### DAMAGES: ASSESSMENT AFTER JUDGMENT AND ORDERS FOR PROVISIONAL DAMAGES

#### I. ASSESSMENT OF DAMAGES AFTER JUDGMENT

##### **Editorial Introduction**

**P3/37** This Order of the Rules of the District Court is substantially the same, with minor modifications as to how damages are assessed. The RHC provides that damages are to be assessed by a master if no provision is made by the judgment and the RDC provides that damages are to be assessed by a judge or master as directed by the court. For further discussion of the principles regarding O.37, see Vol.1.

##### **Assessment of damages (O.37, r.1)**

**P3/37/1** 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 judge, or master as directed by the Court, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment 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.

*(L.N. 153 of 2008)*

(1A) Upon judgment being given for damages to be assessed, the following directions shall, unless the Court directs otherwise, 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 in accordance with Order 24, rule 9;
- (b) 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;
- (c) photographs, plans and the contents of any police investigation report shall be receivable in evidence at the hearing and shall be agreed if possible;
- (d) 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;
- (e) 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. 153 of 2008)*

(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 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.

**Assessment of costs as damages (O.37, r.1A)**

**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. **P3/37/1A**

**Certificat of amount of damages (O.37, r.2)**

**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. *(L.N. 153 of 2008)* **P3/37/2**

**Default judgment against some but not all defendants (O.37, r.3)**

**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. **P3/37/3**

**Power to order assessment at trial (O.37, r.4)**

**4.—(1)** Where judgement is given for damages to be assessed, the Court may order that the action shall proceed to trial before a judge as respects the damages. **P3/37/4**

**(2)** Where the Court orders that the action shall proceed to trial, Order 25, rules 5 to 10—

- (a) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they desire; and
- (b) 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. 153 of 2008)*

**Assessment of value (O.37, r.5)**

**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. **P3/37/5**

**Assessment of damages to time of assessment (O.37, r.6)**

**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. **P3/37/6**

**II. ORDERS FOR PROVISIONAL DAMAGES FOR PERSONAL INJURIES**

**Application and interpretation (O.37, r.7)**

**7.—(1)** This Part of this Order applies to actions to which section 72E of the Ordinance (in this Part of this Order referred to as “section 72E”) applies. **P3/37/7**

**(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 72E; 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.

**Order for provisional damages (O.37, r.8)**

**P3/37/8** 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 72E 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 type of 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.

**Offer to submit to an award (O.37, r.9)**

**P3/37/9** 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 72E and identifying the disease or deterioration in question; and

- (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. 153 of 2008)*

**Application for award of further damages (O.37, r.10)**

**P3/37/10** 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 3 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, within 21 days after the expiration of the period of notice referred to in paragraph (3), take out a case management summons as to the future conduct of the action. *(L.N. 153 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. 153 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.

## ORDER 38

### EVIDENCE

#### I. GENERAL RULES

##### **General rule: witnesses to be examined orally (O.38, r.1)**

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. **P3/38/1**

##### **Evidence by affidavit (O.38, r.2)**

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. **P3/38/2**

(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. *(L.N. 153 of 2008)*

**Exchange of witness statements (O.38, r.2A)****P3/38/2A**

**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.

(2A) The Court may give a direction to any party under paragraph (2) at any other stage of the action and at any stage of any other cause or matter.

(2B) Order 3, rule 5(3) does not apply to any period specified by the Court under paragraph (2).

(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. 153 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. (L.N. 153 of 2008)

(7) Subject to paragraph (9) where the party serving the statement does call such a witness at the trial—(L.N. 153 of 2008)

- (a) the Court may, on such terms as it thinks fit, direct that the statement served, or any 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. 153 of 2008)
- (c) whether or not the statement served 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. 153 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.

(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 such direction related without the leave of the Court. (L.N. 153 of 2008)

(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 Chief Judicial Clerk 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 Chief Judicial Clerk 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. 153 of 2008)*

**Evidence of particular facts (O.38, r.3)**

**P3/38/3** 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.

**Limitation of expert evidence (O.38, r.4)**

**P3/38/4** 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.

**Evidence by single joint expert (O.38, r.4A)**

**P3/38/4A** 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. 153 of 2008)*

**Limitation of plans, etc., in evidence (O.38, r.5)**

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. **P3/38/5**

**Revocation or variation of orders under rules 2 to 5 (O.38, r.6)**

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. *(L.N. 153 of 2008)* **P3/38/6**

**Evidence of finding on foreign law (O.38, r.7)**

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— **P3/38/7**

- (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. 153 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.

**Application to trials of issues, references, etc. (O.38, r.8)**

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. **P3/38/8**

**Depositions: when receivable in evidence at trial (O.38, r.9)**

**P3/38/9** 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.

**Notarial instruments receivable in evidence in civil proceedings**

(O. 38, r. 9A)

**P3/38/9A** 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. 47)

**Court documents admissible or receivable in evidence (O.38, r.10)**

**P3/38/10** 10.—(1) Office copies of writs, records, pleadings and documents filed in the Court or 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 Court or 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.

**Evidence of consent of new trustee to act (O.38, r.11)**

**P3/38/11** 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.

**Evidence at trial may be used in subsequent proceedings**

(O.38, r.12)

**12.** Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter. **P3/38/12**

**Order to produce document at proceeding other than trial**

(O.38, r.13)

**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. **P3/38/13**

(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**

**Form and issue of writ of subpoena (O.38, r.14)**

**14.—**(1) A writ of subpoena must be in Form No. 28 or 29 in Appendix A, whichever is appropriate. **P3/38/14**

(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.

(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 the 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.

(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.

(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.

(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.

(9) The deposit (or such part of it as shall remain after payment to the witness under paragraph (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.



**More than one name may be included in one writ of subpoena**  
(O.38, r.15)

**P3/38/15** 15. The names of 2 or more persons may be included in one writ of subpoena ad testificandum.

**Amendment of writ of subpoena** (O.38, r.16)

**P3/38/16** 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".

**Service of writ of subpoena** (O.38, r.17)

**P3/38/17** 17. A writ of subpoena must be served personally and the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than 4 days, or such other period as the Court may fix, before the day on which attendance before the Court is required.

**Duration of writ of subpoena** (O.38, r.18)

**P3/38/18** 18. A writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

*[The next paragraph is para.P3/38/20]*

III. HEARSAY EVIDENCE

**Application and interpretation** (O.38, r.20)

**P3/38/20** 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" (傳聞條例) means evidence consisting of hearsay within the meaning of section 46 of the Ordinance.

**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)

**P3/38/21** 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.

**Powers exercisable in chambers (O.38, r.22)**

**22.** The jurisdiction of the Court under rules 20 and 21 may be exercised in chambers. **P3/38/22**

*[The next paragraph is para.P3/38/35]*

**IV. EXPERT EVIDENCE**

**Interpretation (O.38, r.35)**

**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. **P3/38/35**

(2) A reference to an expert witness in this Part or Appendix E 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. 153 of 2008)*

**Expert witness's overriding duty to Court (O.38, r.35A)**

**35A.**—(1) It is the duty of an expert witness to help the Court on the matters within his expertise. **P3/38/35A**

(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. 153 of 2008)*

**Restrictions on adducing expert evidence (O.38, r.36)**

**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— **P3/38/36**

(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. 153 of 2008)*

(b)-(c) *(Repealed L.N. 153 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.

**Direction that expert report be disclosed (O.38, r.37)**

**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. **P3/38/37**

(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).

**Expert report to be verified by statement of truth (O.38, r.37A)**

**P3/38/37A** 37A. An expert report disclosed under these Rules must be verified by a statement of truth in accordance with Order 41A. (*L.N. 153 of 2008*)

**Duty to provide expert witness with copy of code of conduct (O.38, r.37B)**

**P3/38/37B** 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 E.

(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 E.

**Expert witness’s declaration of duty to Court (O.38, r.37C)**

**P3/38/37C** 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 E 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 E 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.

**Meeting of experts (O.38, r.38)**

**P3/38/38** 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.

**Disclosure of part of expert evidence (O.38, r.39)**

**P3/38/39** 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.

*[The next paragraph is para.P3/38/41]*

\* Commencement day: 2 April 2009.

**Expert evidence contained in statement (O.38, r.41)**

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 shall apply with such modifications as the Court thinks fit. **P3/38/41**

**Putting in evidence expert report disclosed by another party**

(O.38, r.42)

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. **P3/38/42**

**Time for putting expert report in evidence (O.38, r.43)**

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. **P3/38/43**  
(*L.N. 153 or 2008*)

**Revocation and variation of directions (O.38, r.44)**

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. **P3/38/44**

## ORDER 39

### EVIDENCE BY DEPOSITION

**Power to order depositions to be taken (O.39, r.1)**

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 of any person at any place in Hong Kong by— **P3/39/1**

- (a) a judge;
- (b) the Registrar; or
- (c) any other person,

(in this Order both the Registrar and any other person are referred to as the “examiner”).

(*See also Appendix 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.

[*The next paragraph is para.P3/39/4*]

**Enforcing attendance of witness at examination (O.39, r.4)**

4. Where an order has been made under rule 1 for the examination of any person, the attendance of that person for examination 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. **P3/39/4**

**Refusal of witness to attend, be sworn, etc. before the examiner**  
(O.39, r.5)

**P3/39/5** 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.

**Appointment of time and place for examination** (O.39, r.6)

**P3/39/6** 6.—(1) The examiner, or, if the examination has been ordered to take place before a judge, the Registrar, must give the party on whose application the order for examination was made 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.

**Duty to supply certain documents** (O.39, r.7)

**P3/39/7** 7. The party on whose application the order for examination was made must supply the judge or the examiner before whom the examination has been ordered to take place with copies of such of the documents in the cause or matter as are necessary to inform him of the questions at issue in the cause or matter.

**Conduct of examination** (O.39, r.8)

**P3/39/8** 8.—(1) Subject to any directions contained in the order for examination—  
(a) any person ordered to be examined may be cross-examined and re-examined; and

(b) the examination, cross-examination and re-examination shall be conducted in like manner as at the trial of a cause or matter.

(2) The judge or examiner before whom the examination takes place 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 examination may, if necessary, be adjourned from time to time.

**Examination of additional witnesses** (O.39, r.9)

**P3/39/9** 9. The judge or examiner before whom the examination takes place 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.

**Objection to questions where examination is before an examiner**  
(O.39, r.10)

**10.—**(1) If any person being examined before an 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. **P3/39/10**

(2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by a judge 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 judge decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

**Taking of depositions (O.39, r.11)**

**11.—**(1) The deposition of any person must be taken down by the judge or the examiner before whom the examination takes place or a shorthand writer or some other person in his presence 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. **P3/39/11**

(2) The judge or the examiner before whom the examination takes place 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 judge or the examiner before whom the examination takes place must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the judge or the examiner before whom it was taken, must be sent by the judge or an examiner not being the Registrar to the Registry and shall be filed therein.

**Time taken by examination to be indorsed on depositions where examination is before an examiner (O.39, r.12)**

**12.** Before sending any deposition to the Registry under rule 11(4) the examiner not being the Registrar 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. **P3/39/12**

**Special report by examiner (O.39, r.13)**

**13.** The examiner may make a special report to a judge with regard to any examination taken before him and with regard to the absence or conduct of any person thereat, and the judge may direct such proceedings to be taken, or make such order, on the report as he thinks fit. **P3/39/13**

**Order for payment of examiner's fees (O.39, r.14)**

**14.—**(1) If the fees and expenses due to an examiner not being the Registrar 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. **P3/39/14**

(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.

## ORDER 40

### COURT EXPERT

#### **Appointment of expert to report on certain questions (O.40, r.1)**

P3/40/1

1.—(1) In any cause or matter 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.

#### **Report of Court expert (O.40, r.2)**

P3/40/2

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.

#### **Experiments and tests (O.40, r.3)**

P3/40/3

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.

#### **Cross-examination of Court expert (O.40, r.4)**

P3/40/4

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—

(a) at the trial; or

(b) before an examiner at such time and place as may be specified in the order.



**Remuneration of Court expert (O.40, r.5)**

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. **P3/40/5**

(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.

**Calling of expert witnesses (O.40, r.6)**

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. **P3/40/6**

## ORDER 41

### AFFIDAVITS

**Form of affidavit (O.41, r.1)**

1.—(1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter. **P3/41/1**

(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.

(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.

**Affidavit by 2 or more deponents (O.41, r.2)**

**P3/41/2** 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.

**Affidavit by illiterate or blind person (O.41, r.3)**

**P3/41/3** 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.

**Use of defective affidavit (O.41, r.4)**

**P3/41/4** 4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

**Contents of affidavit (O.41, r.5)**

**P3/41/5** 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.

**Scandalous, etc., matter in affidavit (O.41, r.6)**

**P3/41/6** 6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

**Alterations in affidavits (O.41, r.7)**

**P3/41/7** 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.

**Affidavit not to be sworn before solicitor of party, etc. (O.41, r.8)**

**P3/41/8** 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.

**Filing of affidavits (O.41, r.9)**

**9.—**(4) Every affidavit used in a cause or matter proceeding in the Court must be filed in the Registry. **P3/41/9**

(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.

**Use of original affidavit or office copy (O.41, r.10)**

**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. **P3/41/10**

(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.

**Document to be used in conjunction with affidavit to be exhibited to it (O.41, r.11)**

**11.—**(1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit. **P3/41/11**

(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.

**Affidavit taken outside Hong Kong admissible without proof of seal, etc. (O.41, r.12)**

**12.—**(1) Any affidavit sworn in any place 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. **P3/41/12**

(2) Any affidavit sworn in any place outside Hong Kong 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 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.

## ORDER 41A

### STATEMENT OF TRUTH

**Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.41A, see Vol.1. **P3/41A**

**Interpretation (O.41A, r.1)**

- P3/41A/1** 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.

**Documents to be verified by statement of truth (O.41A, r.2)**

- P3/41A/2** 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.

**Signing of statement of truth (O.41A, r.3)**

- P3/41A/3** 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 subparagraph.
- (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.

**Effect of statement of truth (O.41A, r.4)**

- 4.—(1) Subject to paragraph (2), a statement of truth is a statement that— **P3/41A/4**
  - (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.

*(L.N. 153 of 2008)*

**Form of statement of truth (O.41A, r.5)**

**P3/41A/5**

**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]”.

*(L.N. 153 of 2008)*

**Failure to verify pleading (O.41A, r.6)**

**P3/41A/6**

**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).

*(L.N. 153 of 2008)*

**Failure to verify witness statement or expert report (O.41A, r.7)**

**P3/41A/7**

**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.

*(L.N. 153 of 2008)*

**Power of Court to require document to be verified (O.41A, r.8)**

**P3/41A/8**

**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).

*(L.N. 153 of 2008)*

**False statements (O.41A, r.9)**

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.

**P3/41A/9**

(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. (*L.N. 153 of 2008*)

**Transitional (O.41A, r.10)**

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. 153 of 2008*)

**P3/41A/10**

\* Commencement day: 2 April 2009.

## ORDER 42

### JUDGMENTS AND ORDERS

**Form of judgment and interest thereon, etc. (O.42, r.1)**

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 Appendix A, Forms 39–45, 48, 49*)

**P3/42/1**

(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 the master by whom it was made and must be sealed.

**Judgment in favour of reversioner for detention of goods**

(O.42, r.1A)

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.

**P3/42/1A**

In this paragraph “partial owner” (部分擁有人) means one of 2 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.

**Judgment, etc. requiring act to be done: time for doing it (O.42, r.2)**

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.

**P3/42/2**

\* Commencement day: 2 April 2009.



(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.

**Date from which judgment or order takes effect (O.42, r.3)**

**P3/42/3** 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.

**Orders required to be drawn up (O.42, r.4)**

**P3/42/4** 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;

(e) the extension of the validity of a writ;

(f) the abridgement of time for service of a summons;

(g) the adjournment of the hearing of a summons;

(h) the adjournment of the trial of an action;

(i) an order made by a judge ordering that an application or summons shall be heard by the master or a similar order made by the master that an application or summons shall be heard by a judge;

(j) leave to inspect and take copies of documents filed in the Registry;

(k) the transfer of an action from one list to another; and

*(L.N. 153 of 2008)*

(l) the vacation or variation of the dates upon which an action has been set down to.

*(L.N. 153 of 2008)*

**Drawing up and entry of judgments and orders (O.42, r.5)**

**P3/42/5** 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.

(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.

### **Consent judgments and orders (O.42, r.5A)**

**5A.**—(1) Subject to paragraphs (2), (3) 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. **P3/42/5A**

(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 Court of First Instance or the Lands Tribunal pursuant to section 42 of the Ordinance; *(L.N. 153 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 provision for costs as may be agreed;

(c) any order, to be included in a judgment or order to which the preceding 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 being “By Consent” and it must be endorsed by solicitors acting for each of the parties.

(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.

**Handing down reasons for judgment or order (O.42, r.5B)**

P3/42/5B

**5B.**—(1) 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 given 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, hand down a copy thereof for each of the parties and endorse the record accordingly.

(2) Where a date has been fixed for handing down a judgment or order and reasons therefor or the reasons for a judgment or order previously pronounced, notice thereof shall be given to the parties, but it shall not be necessary for them to appear by counsel or solicitor or in person.

(3) Where a written judgment is handed down 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.

(4) 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) lodge a copy thereof in the High Court Library; and
- (b) make a copy thereof available for public inspection in the Registry.

**Certify copies of judgments (O. 42, r. 6)**

P3/42/6

**6.**—(1) An application under section 21 of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597) (in this rule referred to as “the Ordinance”) for a certified copy of a judgment given by the 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 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 and that it is issued in accordance with section 21 of the Ordinance.

(4) The certificate issued by the 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 Court.

(6) In this rule—

“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.

(9 of 2008 s. 27)

## ORDER 43

### ACCOUNTS AND INQUIRIES

#### Summary order for account (O.43, r.1)

**1.—**(1) Where a writ is endorsed 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. **P3/43/1**

(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.

**Court may direct taking of accounts, etc. (O.43, r.2)**

**P3/43/2** 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.

**Directions as to manner of taking account or making inquiry**

(O.43, r.3)

**P3/43/3** 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.

**Account to be made, verified etc. (O.43, r.4)**

**P3/43/4** 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.

**Notice to be given of alleged omissions, etc. in account (O.43, r.5)**

**P3/43/5** 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.

**Allowances (O.43, r.6)**

**P3/43/6** 6. In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

**Delay in prosecution of accounts, etc. (O.43, r.7)**

**P3/43/7** 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.

**Distribution of fund before all persons entitled are ascertained**

(O.43, r.8)

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. **P3/43/8**

**Guardian's accounts (O.43, r.9)**

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. **P3/43/9**

## ORDER 44

### PROCEEDINGS UNDER JUDGMENTS AND ORDERS

**Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.44, see Vol.1. **P3/44**

**Application to orders (O.44, r.1)**

1. In this Order references to a judgment include references to an order. **P3/44/1**

**Service of notice of judgment on person not a party (O.44, r.2)**

2.—(1) Where in an action for— **P3/44/2**

- (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.

(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, 3 and 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.

**Directions by the Court (O.44, r.3)**

- P3/44/3** 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.

**Application of rules 5 to 8 (O.44, r.4)**

- P3/44/4** 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.

**Advertisements for creditors and other claimants (O.44, r.5)**

- P3/44/5** 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.

**Examination of claims (O.44, r.6)**

- P3/44/6** 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 7 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 7 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.

**Adjudication on claims (O.44, r.7)**

7. For the purpose of adjudicating on claims the Court may—

P3/44/7

- (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.

**Notice of adjudication (O.44, r.8)**

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.

P3/44/8

**Interest on debts (O.44, r.9)**

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—

P3/44/9

- (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.

**Interest on legacies (O.44, r.10)**

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.

P3/44/10

**Master's Order (O.44, r.11)**

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.

P3/44/11

(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.

**Appeal against order of master (O.44, r.12)**

P3/44/12

**12.**—(1) Subject to paragraph (2), Order 58, rule 1 shall apply to an order under rule 11 as it applies to any judgment, order or decision of the master, save that the hearing shall be in open court unless the Court directs otherwise. *(L.N. 153 of 2008)*

(1A) The following provisions 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 has the same power to draw inferences of fact as has the Court of Appeal under Order 59, rule 10(3) of the Rules of the High Court (Cap. 4 sub. leg. A).

*(L.N. 153 of 2008)*

(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 2 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

### PROHIBITION ORDER BEFORE OR AFTER JUDGMENT AND ATTACHMENT OF PROPERTY BEFORE JUDGMENT

#### PROVISIONAL REMEDIES

#### I. PROHIBITION ORDER AGAINST DEBTOR

**Application of the order to an intended action (O.44A, r.1)**

P3/44A/1

**1.**—(1) Subject to paragraph (2), on the hearing of an application by a plaintiff, a 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.

**Application for an order prohibiting a debtor from leaving Hong Kong (O.44A, r.2)**

2. A plaintiff or judgment creditor may apply ex parte to the Court for an order prohibiting a debtor from leaving Hong Kong. **P3/44A/2**

**Making of prohibition order (O.44A, r.3)**

3.—(1) Subject to the provisions of section 52E of the Ordinance the Court may make an order prohibiting the debtor from leaving Hong Kong. **P3/44A/3**

(2) The order prohibiting a debtor from leaving Hong Kong shall be in Form No. 106 in Appendix A.

**Application to discharge order (O.44A, r.4)**

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 to the Court for the order to be discharged. **P3/44A/4**

(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 judge 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 judge that he has a substantial defence to the plaintiff's claim, 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 had appeared 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 he 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.

**Power to award compensation (O.44A, r.5)**

5.—(1) Where it appears to the Court that the order prohibiting a debtor from leaving Hong Kong— **P3/44A/5**

- (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 subparagraph (a) or (b).

(2) An award of compensation under this rule shall bar any action for damages in respect of the prohibition order.

*[The next paragraph is para.P3/44A/7]*

## II. INTERIM ATTACHMENT OF PROPERTY OF DEFENDANT

### **Application for taking security from defendant or for attachment of his property in certain cases (O.44A, r.7)**

P3/44A/7

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.

### **Issue of warrant requiring defendant to furnish security or to appear and show cause, and attaching his property (O.44A, r.8)**

P3/44A/8

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.

(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 Hong Kong. (See Appendix C, Form 1)

(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.

### **Showing cause, and procedure thereon (O.44A, r.9)**

P3/44A/9

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.

**Saving of rights of other persons under attachment (O.44A, r.10)**

**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. **P3/44A/10**

(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.

**Removal of attachment on furnishing of security (O.44A, r.11)**

**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. **P3/44A/11**

**Power to award compensation to defendant for unjustifiable attachment (O.44A, r.12)**

**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. **P3/44A/12**

(2) An award of compensation under this rule shall bar any action for damages in respect of the attachment.

## ORDER 45

### ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

**Enforcement of judgment, etc., for payment of money (O.45, r.1)**

**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— **P3/45/1**

- (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;
- (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.
- (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.

*[The next paragraph is para.P3/45/3]*

### **Enforcement of judgment for possession of land (O.45, r.3)**

- P3/45/3** 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.

### **Enforcement of judgment for delivery of goods (O.45, r.4)**

- P3/45/4** 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 subparagraph (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.

**Enforcement of judgment to do or abstain from doing any act**

(O.45, r.5)

5.—(1) Where—

P3/45/5

- (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 corporation, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the corporation;
  - (iii) an order of committal against that person or, where that person is a corporation, 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.

**Judgment, etc. requiring act to be done: order fixin time for doing it (O.45, r.6)**

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.

P3/45/6

(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.



**Service of copy of judgment, etc., prerequisite to enforcement under r.5 (O.45, r.7)**

**P3/45/7** 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—

- (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 corporation 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 corporation to do an act, the copy has been so served before the expiration of the time within which it 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 corporation neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if it disobeys the order, he is liable to process of execution to compel the corporation 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.

**Court may order act to be done at expense of disobedient party (O.45, r.8)**

**P3/45/8** 8. If 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.

**Execution by or against person not being a party (O.45, r.9)**

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.

P3/45/9

(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.

**Conditional judgment: waiver (O.45, r.10)**

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.

P3/45/10

**Matters occurring after judgment: stay of execution, etc. (O.45, r.11)**

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.

P3/45/11

**Forms of writs (O.45, r.12)**

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.

P3/45/12

(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.

**Enforcement of judgments and orders for recovery of money, etc. (O.45, r.13)**

13.—(1) Rule 1(1) of this Order, with the omission of subparagraphs (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.

P3/45/13

(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.

**Power of the Court to order immediate execution (O.45, r.14)**

**P3/45/14** 14.—(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.

**Judgment for money against representatives of deceased persons (O.45, r.15)**

**P3/45/15** 15. 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.

**Execution in case of cross-judgments for money (O.45, r.16)**

**P3/45/16** 16. 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.

**Application for leave to issue execution by one of several persons entitled (O.45, r.17)**

**P3/45/17** 17.—(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.

## ORDER 46

### WRITS OF EXECUTION: GENERAL

**Definitio (O.46, r.1)**

**P3/46/1** 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 Appendix A, Forms 68, 69)

**When leave to issue any writ of execution is necessary (O.46, r.2)**

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— **P3/46/2**

- (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.

**Leave required for issue of writ in aid of other writ (O.46, r.3)**

3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court. **P3/46/3**

**Application for leave to issue writ (O.46, r.4)**

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. **P3/46/4**

(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 judgment 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.

**Application for leave to issue writ of sequestration (O.46, r.5)**

**P3/46/5** 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.

**Issue of writ of execution (O.46, r.6)**

**P3/46/6** 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.

*[The next paragraph is para.P3/46/8]*

**Duration and renewal of writ of execution (O.46, r.8)**

**P3/46/8** 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.

(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).

(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.

### **Return to writ of execution (O.46, r.9)**

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. **P3/46/9**

(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.

## **ORDER 47**

### **WRITS OF FIERI FACIAS**

### **Power to stay execution by writ of fieri facias (O.47, r.1)**

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— **P3/47/1**

- (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.

*[The next paragraph is para.P3/47/3]*

**Separate writs to enforce payment of costs, etc. (O.47, r.3)**

**P3/47/3**

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.

*[The next paragraph is para.P3/47/6]*

**Order for sale in execution of judgment (O.47, r.6)**

**P3/47/6**

6.—(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.

(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.

**Special rules as to the sale of immovable property (O.47, r.7)**

**P3/47/7**

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 as 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 Office under the Land Registration Ordinance (Cap. 128).
- (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 3 months from the date of the order.

**Special rules as to the sale of movable property (O.47, r.8)**

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.

P3/47/8

- (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 endorsement 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.

## ORDER 48

### EXAMINATION OF JUDGMENT DEBTOR, ETC.

#### Editorial Introduction

**P3/48** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.48, see Vol.1.

#### Order for examination of judgment debtor (O.48, r.1)

**P3/48/1** 1.—(1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter Cap. 336H – THE RULES OF THE DISTRICT COURT 139 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 corporation, an officer thereof, to attend before a master 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 corporation ordered to attend for examination.

(3) Any difficulty arising in the course of an examination under this rule before a master may be referred to a judge and he may determine it or give such directions for determining it as he thinks fit.

### **Examination of party liable to satisfy other judgment (O.48, r.2)**

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. **P3/48/2**

### **Record of judgment debtor's evidence given at examination (O.48, r.3)**

3. A master 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. **P3/48/3**  
(*L.N. 153 of 2008*)

## **ORDER 49**

### **GARNISHEE PROCEEDINGS**

#### **Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.49, see Vol.1. **P3/49**

### **Attachment of debt due to judgment debtor (O.49, r.1)**

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 Appendix A, Forms 72–74) **P3/49/1**

(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.

**Application for order (O.49, r.2)**

**P3/49/2** 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.23)
- (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.

**Service and effect of order to show cause (O.49, r.3)**

**P3/49/3** 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.

**No appearance or dispute of liability by garnishee (O.49, r.4)**

**P3/49/4** 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.

(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.

**Dispute of liability by garnishee (O.49, r.5)**

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 the master the need for any consent by the parties. **P3/49/5**

**Claims of third persons (O.49, r.6)**

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. **P3/49/6**

(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.

*[The next paragraph is para.P3/49/8]*

**Discharge of garnishee (O.49, r.8)**

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. **P3/49/8**

**Money in Court (O.49, r.9)**

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. **P3/49/9**

(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) The Court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

**Costs (O.49, r.10)**

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. **P3/49/10**

## ORDER 49B

### EXECUTION AND ENFORCEMENT OF JUDGMENT FOR MONEY BY IMPRISONMENT

#### **Securing attendance at examination (O.49B, r.1)**

**P3/49B/1**

**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 subparagraph (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 under paragraph (3) shall be in Form No. 102 in Appendix A.

#### **Examination of judgment debtor (O.49B, r.1A)**

**P3/49B/1A**

**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 for imprisonment under paragraph (3)(b) shall be in Form No. 103 in Appendix A.

**Record of judgment debtor's evidence given at examination**  
(O.49B, r.1AA)

**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. **P3/49B/1AA**  
(*L.N. 153 of 2008*)

**Power of Court following examination** (O.49B, r.1B)

**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— **P3/49B/1B**

- (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 willfully 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, the Court 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 subparagraph (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 made under paragraph (2) or more than once in respect of a continuing failure to comply with an order made under that paragraph.
- (4) The order for imprisonment under paragraph (1) 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.

**Imprisonment not to satisfy debt** (O.49B, r.1C)

**1C.** An order for imprisonment under this Order shall not satisfy or extinguish any judgment debt. **P3/49B/1C**

**Support and maintenance allowance to prisoner for debt** (O.49B, r.2)

**2.** When a judgment debtor is committed to prison in execution of the judgment the Court shall fix whatever monthly allowance it may think **P3/49B/2**



sufficient for his support and maintenance, not exceeding \$660 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.

**Removal to hospital of prisoner for debt in case of serious illness**  
(O.49B, r.3)

**P3/49B/3** 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, to make an order for the removal of the judgment debtor to a hospital and for his treatment there under custody until further order.

(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.

**Release of prisoner for debt** (O.49B, r.4)

**P3/49B/4** 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.

**Recovery of amount of support and maintenance money** (O.49B, r.5)

**P3/49B/5** 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.

**Recovery of costs of execution** (O.49B, r.6)

**P3/49B/6** 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.

**Effect of discharge of prisoner for debt** (O.49B, r.7)

**P3/49B/7** 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.

**Meaning of “judgment creditor”** (O.49B, r.8)

**P3/49B/8** 8. In this Order “judgment creditor” (判定債權人) includes any person entitled to enforce the judgment.

## ORDER 50

### CHARGING ORDERS, STOP ORDERS, ETC.

**Editorial Introduction**

**P3/50** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.50, see Vol.1.

**Order imposing a charge on a beneficial interest (O.50, r.1)**

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. P3/50/1

(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 2003 s.24)
- (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 of more than one judgment or order against the judgment debtor.

**Service of notice of order to show cause (O.50, r.2)**

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— P3/50/2

- (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 7 days before the time specified for the further consideration of the matter.

**Order made on further consideration (O.50, r.3)**

- P3/50/3** 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 No. 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.

**Order imposing charge on interest held by trustee (O.50, r.4)**

- P3/50/4** 4.—(1) Save as provided by this rule, the provisions of rules 1 to 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 to 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 section 52AA(1)(b)(ii) or (iii) 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 judgment 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 judgment debtor beneficially.

**Effect of order in relation to securities out of Court (O.50, r.5)**

- P3/50/5** 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.

**Effect of order in relation to funds in Court (O.50, r.6)**

**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. P3/50/6

(2) If the Court makes the order absolute, a copy of the order shall be served on the Registrar at the Registry.

**Discharge, etc., of charging order (O.50, r.7)**

**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. P3/50/7

(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 a charging 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.

*[The next paragraph is para.P3/50/9]*

**Jurisdiction of master to grant injunction (O.50, r.9)**

**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. P3/50/9

**Enforcement of charging order by sale (O.50, r.9A)**

**9A.**—(1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by originating summons. P3/50/9A

(2) The provisions of Order 88 shall apply to all such proceedings.

**Funds in Court: stop order (O.50, r.10)**

**10.**—(1) The Court, on the application of any person— P3/50/10  
 (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 Appendix 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.

(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.

**Securities not in Court: stop notice (O.50, r.11)**

P3/50/11

**11.**—(1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in section 52AA(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 specified 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.

**Effect of stop notice (O.50, r.12)**

P3/50/12

**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 steps, after the expiry of that period.

**Amendment of stop notice (O.50, r.13)**

P3/50/13

**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.

**Withdrawal, etc., of stop notice (O.50, r.14)**

**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.

**P3/50/14**

(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.

**Order prohibiting transfer, etc., of securities (O.50, r.15)**

**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 52AA(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 steps to which section 72C(4) of the Ordinance applies. 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.

**P3/50/15**

(2) An application for an order under this rule must be made by summons.  
(*L.N. 153 of 2008*)

(2A) An originating summons under this rule must be in Form No. 10 in Appendix A. (*L.N. 153 of 2008*).

(3) The Court, on the application of any person claiming to be beneficially 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.

**Partner's interest in partnership property (O.50, r.16)**

**16.** Nothing in this Order shall affect the provisions of Order 81, rule 10.

**P3/50/16**

**Charging orders, stop orders, etc. See O.50, r.1, Rules of the High Court—**The District Court is empowered by s.52A of the District Court Ordinance to impose a charging order for securing the payment of any money due or to become due under a judgment or order of the Court on a judgment debtor's property specified in the order. The property that may be charged is set out in s.52AA of the District Court Ordinance.

**P3/50/16/1**

It was once held that the charging order must be enforced in the same court that granted the order. Hence, notwithstanding that the rateable value of the property may be within the jurisdiction of the District Court, if the charging order was granted by the High Court, it would have to be enforced at the High Court, per HH Judge Li in *Standard Chartered Bank v. Kwok Fat* [2001] H.K.C. 553. However, *Kwok Fat (supra)* was overruled by J Lam J in *Incorporated Owners of Creative Mansion v. Cheung Sai Mui* [2006] 4 H.K.L.R.D. 181 which held that the only criteria for determining the Court's jurisdiction over proceedings of enforcement of a charging order was the monetary jurisdictional limits set out in the relevant Ordinance. In that case, it was held by the Court of First Instance that the District Court had jurisdiction over an O.88 application for the enforcement of a charging order made by the Lands Tribunal.

## ORDER 51

### RECEIVERS: EQUITABLE EXECUTION

#### **Appointment of receiver by way of equitable execution (O.51, r.1)**

- P3/51/1** 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 Appendix A, Form 84)

#### **Masters may appoint receiver, etc. (O.51, r.2)**

- P3/51/2** 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.

#### **Application of rules as to appointment of receiver, etc. (O.51, r.3)**

- P3/51/3** 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 Appendix A, Forms 82, 83)

## ORDER 52

### COMMITTAL

#### **Committal for contempt of Court (O.52, r.1)**

- P3/52/1** 1. The power of the Court to punish for contempt of court may be exercised by an order of committal made by a judge.  
*(See Appendix A, Forms 85, 85A)*

#### **Grant of leave to apply for committal (O.52, r.2)**

- P3/52/2** 2.—(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.

(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.

(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.



(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.

(7) If the judge grants leave he may impose such terms as to costs and as to giving of security as he thinks fit.

**Application for order after leave to apply granted (O.52, r.3)**

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 judge 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. **P3/52/3**

(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. 153 of 2008)*

(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, and the notice of hearing of the originating summons 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 judge may dispense with service under this rule if he thinks it just to do so. *(L.N. 217 of 2000)*

*[The next paragraph is para.P3/52/5]*

**Saving for power to commit without application for purpose (O.52, r.5)**

5. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court. **P3/52/5**

**Provisions as to hearing (O.52, r.6)**

6.—(1) Subject to paragraph (2), the judge hearing an application for an order of committal may sit in private in the following cases, that is to say— **P3/52/6**

(a) where the application arises out of proceedings relating to the 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 judge 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 judge hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, he 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 judge 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. 153 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.

**Power to suspend execution of committal order (O.52, r.7)**

**P3/52/7** 7.—(1) The judge 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 he 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 judge 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.

**Discharge of person committed (O.52, r.8)**

**P3/52/8** 8.—(1) The judge 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 judge may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as he thinks fit.

**Saving for other powers (O.52, r.9)**

**P3/52/9** 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.

*[The next paragraph is para.P3/58/0]*

## ORDER 58

### APPEALS

**Editorial Introduction**

**P3/58** This Order of the Rules of the District Court is substantially the same, with minor modifications as leave is generally required to appeal against any decision made in the civil proceedings in District Court whereas leave to appeal is only required for interlocutory decisions in High Court, as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.58, see Vol.1.

**Appeals from master to judge in chambers (O.58, r.1)**

1.—(1) Except as provided by rule 2 and Order 32 rule 17, 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.

**P3/58/1**

(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.

(4) 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. 153 of 2008)*

**Appeals to Court of Appeal (O.58, r.2)**

2.—(1) Subject to the provisions of this rule, an appeal shall lie to the Court of Appeal from any judgment, order or decision of a judge.

**P3/58/2**

*(L.N. 153 of 2008)*

(2) Subject to the provisions of this rule, an appeal lies to the Court of Appeal from—

(a) a judgment, order or decision of a master on any cause, matter, question or issue tried or assessed before him under Order 14, rule 6(2), Order 36, rule 1, Order 37 or Order 84A, rule 3; *(L.N. 100 of 2014)*

(b) a judgment, order or decision (other than an interlocutory judgment, order or decision) of a master given or made under Order 49B. *(L.N. 153 of 2008; L.N. 100 of 2014)*

(c) a judgment of order of a master given or made under Order 17, rule 11(2). *(L.N. 100 of 2014)*

(2A) Notwithstanding paragraph (2)(b), an appeal lies to the Court of Appeal as of right from an order for imprisonment given or made by a master under Order 49B. *(L.N. 153 of 2008)*

(3) *(Repealed L.N. 153 of 2008)*

(4) An application for leave to appeal must be made to a judge, or to a master in the case of an appeal under paragraph (2), within—

(a) in the case of an appeal from a judgment, order or decision of a master under paragraph (2), 28 days from the date of the judgment, order or decision;

(b) in the case of an appeal from a judgment, order or decision (other than an interlocutory judgment, order or decision) of a judge, 28 days from the date of the judgment, order or decision;

(c) in the case of an appeal from an interlocutory judgment, order or decision of a judge, 14 days from the date of the interlocutory judgment, order or decision. *(L.N. 153 of 2008)*

(4A) If the judge or master (as the case may be) refuses an application for leave made under paragraph (4), a further application for leave may be made to the Court of Appeal within 14 days from the date of refusal.

*(L.N. 153 of 2008)*

(4B) An application under paragraph (4) or (4A) must be made inter partes if the proceedings to which the judgment, order or decision relates are inter partes. *(L.N. 153 of 2008)*

(5) So far as is practicable, every application for leave to appeal made to a judge or a master shall be made to the judge or the master against whose judgment, order or decision the appeal is sought.

(6) In any case in which the Court of Appeal may so allow, any such application may be made direct to the Court of Appeal.

(7) (*Repealed L.N. 153 of 2008*)

(8) Where leave to appeal is granted under paragraph (4) or (4A), the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap. 4 sub. leg. A), not later than 7 days after the date when leave is granted. (*L.N. 153 of 2008*)

(9) In the case of an appeal from an order specified in section 63(3) of the Ordinance or an order for imprisonment given or made under Order 49B, the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap. 4 sub. leg. A), not later than 28 days from the date of the order of the Court. (*L.N. 153 of 2008*)

(10) The Court or the Court of Appeal may, at any time, and notwithstanding that the time for an appeal or an application for leave to appeal may have already expired, extend the time for the appeal or for applying for leave to appeal.

### **Appeal not to operate as stay of proceedings (O.58, r.3)**

**P3/58/3** 3. Except so far as the Court may otherwise direct, an appeal under this Order shall not operate as a stay of the proceedings in which the appeal is brought.

**P3/58/3/1** **Effect of Order**—Save for a few exceptions mentioned below, appeal from any judgment, order or determination of a master lies to the district judge in chambers (O.58, r.1(1)). In such case, the appeal, like the practice in the High Court, is conducted by way of rehearing (see *Konnew Finance Ltd v. Wong Kai Ming* [2001] 4 H.K.C. 218, Lok D.J.). No appeal shall lie from any decision of a master to refer a matter to a judge for determination (O.32, r.17).

Appeal from any judgment, order or determination made by a master under O.14, r.6(2) (trial before a master by consent), O.36, r.1 (trial or inquiry by a master), O.37, (assessment of damages), O.49B (examination of debtor) or O.84A, r.3 (default judgment in hire purchase agreement action) lies to the Court of Appeal (O.58, r.2(2)).

Unlike the procedure in the High Court, s.63 of the District Court Ordinance provides that, with a few exceptions, appeal from any judgment, order or determination of a district judge lies to the Court of Appeal with leave. The exceptions relate to an order made in proceedings for contempt under s.20 or s.48B, and an order for imprisonment made under s.29 or s.52D. Appeal against such order lies to the Court of Appeal as of right.

So far as is practicable, application for leave shall be made in the first instance to the judge or the master who made the judgment, order or determination which is the subject of the appeal, but the Court of Appeal may also allow the application to be made directly to it (O.58, r.2(5) and (6)). Where leave is granted, a notice of appeal must be served no later than seven days after the date when such leave is granted (O.58, r.2(8)). For an appeal that does not require leave, notice of appeal must be served no later than 28 days from the date the order appealed against was sealed or otherwise perfected (O.58, r.2(8)).

When the Court decides whether to exercise its discretion to grant an application for leave to appeal out of time, relevant factors include: (1) whether there are adequate reasons supporting the delay; (2) the length of the delay; (3) the possible prejudice caused to the other side; and (4) the prospect of success of the appeal. See *Lee Po Wing v. See Wah Fan*, (unrep., DCMP 1741/2013, 12 May 2014) and *Chau Sen Kim alias Chow Sin Kin v. The Occupiers* (unrep., DCMP 855/2013, 4 April 2014).

There is power in the District Court and the Court of Appeal to enlarge the time for the appeal or for applying for leave to appeal, notwithstanding that the time for so doing has expired (O.58, r.2(9)).

### **Non-interlocutory judgments and orders (O.58, r.4)**

**P3/58/4** 4.—(1) For the purposes of rule 2(4)(b) and (c), the following judgments and orders are not interlocutory—

- (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 53(3) 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; and
- (f) 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.

(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) and (e) includes an order refusing, varying or discharging the order.

*(L.N. 153 of 2008)*

*[The next paragraph is para.P3/62/0]*

## ORDER 62

### COSTS

#### PRELIMINARY

#### Editorial Introduction

This Order of the Rules of the District Court is substantially the same to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.62, see Vol.1.

**P3/62**

#### Interpretation (O.62, r.1)

1.—(1) In this Order—

“certificate” (證明書) includes allocatur;

**P3/62/1**

“contentious business” (爭議事務) means any business done, whether as a barrister solicitor or advocate, in or for the purpose of proceedings begun before the Court;

“costs” (訟費) includes fees, charges, disbursements, expenses and remuneration;

“the Court” (區域法院) means the District Court or any one or more judges thereof, whether sitting in court or in chambers, the Registrar or master;

“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. 153 of 2008)*

“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;

“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. 153 of 2008)*

“taxed costs” (經評定的訟費) means costs taxed in accordance with this Order;

“taxing master” (訟費評定官) means the Registrar as taxing master. *(L.N. 153 of 2008)*

“wasted costs order” (耗訟費命令) means an order made under section 53(3) of the Ordinance. *(L.N. 153 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.

### **Application (O.62, r.2)**

**P3/62/2** 2.—(1) This Order shall apply to all proceedings in the Court.

(4) The powers and discretion of the Court as to costs under section 53 and 53A 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. 153 of 2008)*

## **ENTITLEMENT TO COSTS**

### **Order as to entitlement to costs (O.62, r.3)**

**P3/62/3** 3.—(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.

(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. 153 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 *(L.N. 153 of 2008)*

(b) on whom a notice to admit documents is served in accordance with 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.

*(L.N. 153 of 2008)*

(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. 153 of 2008)*

(9) Where any person claiming to be a creditor seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, 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 2 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 47A, 47B or 47D 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.

**Stage of proceedings at which costs to be dealt with (O.62, r.4)**

**P3/62/4** 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 any proceedings transferred to the Court from any other court or tribunal, the costs of the whole proceedings, both before and after the transfer, may (subject to any order of the court or tribunal ordering the transfer) be dealt with by the Court to which the proceedings are transferred.

(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 do not apply in relation to those costs, but, except in relation to costs of proceedings transferred from the Court of First Instance or the Lands Tribunal, the order shall specify the amount of the costs to be allowed. (*L.N. 153 of 2008*)

**Special matters to be taken into account in exercising discretion (O.62, r.5)**

**P3/62/5** 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—

- (a) the underlying objectives set out in Order 1A, rule 1;
- (aa) 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. 153 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. 153 of 2008*)
- (e) the conduct of all the parties; (*L.N. 153 of 2008*)
- (f) whether a party has succeeded on part of his case, even if he has not been wholly successful; and (*L.N. 153 of 2008*)
- (g) any admissible offer to settle made by a party, which is drawn to the Court’s attention. (*L.N. 153 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. 153 of 2008*)

**Restriction of discretion to order costs (O.62, r.6)**

6. 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. **P3/62/6**

**Costs orders in favour of or against non-parties (O.62, r.6A)**

6A.—(1) Where the Court is considering whether to exercise its power under section 53 or 53A of the Ordinance to make a costs order in favour of or against a person who is not a party to the relevant proceedings— **P3/62/6A**

(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 47A or 47B of the Ordinance.

*(L.N. 153 of 2008)*

**Costs arising from misconduct or neglect (O.62, r.7)**

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. **P3/62/7**

(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. 153 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. 153 of 2008)*

(5) *(Repealed L.N. 153 of 2008)*

**Personal liability of legal representative for costs-wasted costs order (O.62, r.8)**

8.—(1) The Court may make a wasted costs order against a legal representative, only if— **P3/62/8**

- (a) the legal representative, whether personally or through his employee or agent, has caused a party to incur wasted costs as defined in section 53(5) 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. 153 of 2008)*

**Court may make wasted costs order on its own motion or on application (O.62, r.8A)**

**P3/62/8A**

- 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. 153 of 2008)*

**Stages of considering whether to make a wasted costs order**

(O.62, r.8B)

**8B.**—(1) The Court shall consider whether to make a wasted costs order in 2 stages— **P3/62/8B**

- (a) in the first stage, the Court must be satisfied that—
  - (i) it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and
  - (ii) the wasted costs proceedings are justified notwithstanding the likely costs involved; and
- (b) in the second stage (even if the Court is satisfied under subparagraph (a)), the Court shall consider, after giving the legal representative an opportunity to give reasons why the Court should not make a wasted costs order, whether it is appropriate to make the order in accordance with rule 8.

(2) On an application for a wasted costs order, the Court may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the Court should not make a wasted costs order. In other cases the Court shall adjourn the hearing before proceeding to the second stage.

(3) On an application for a wasted costs order, any evidence in support must identify—

- (a) what the legal representative is alleged to have done or failed to do; and
- (b) the costs that he may be ordered to pay or which are sought against him. *(L.N. 153 of 2008)*

**Application for wasted costs order not to be used as means of intimidation (O.62, r.8C)**

**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. **P3/62/8C**

(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. 153 of 2008)*

**Personal liability of legal representative for costs—supplementary provisions (O.62, r.8D)**

**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. **P3/62/8D**

(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. 153 of 2008)*

### **Stages of considering whether to make direction under rule 8D(1)**

*(O.62, r.8E)*

**P3/62/8E**

**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 subparagraph (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. 153 of 2008)*

**Taxed costs, fractional taxed costs or costs summarily assessed for non-interlocutory applications (O.62, r.9)**

**9.**—(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. **P3/62/9**

(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 under section 52B of the Ordinance in respect of his remuneration, disbursements or expenses; or

(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(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. 153 of 2008)

(5) This rule does not apply to costs of an interlocutory application.

(L.N. 153 of 2008)

If a Plaintiff obtains a judgment of less than \$50,000, the trial Judge may assess the costs by reference to the costs that may be awarded in the Small Claim Tribunal. It is decided by Court of Appeal in *M. Beraha & Co. Ltd v. Ng Wai Lun* (unrep., CACV 256/2003, [2004] H.K.E.C. 737) that “O.62, r.3(2) combined with O.62, r.9(4)(b), ... are wide enough to entitle the District Court to order costs to be not more than a specified sum, or to be assessed on a basis, for want of a more certain term, similar to the scale applied in the Small Claims Tribunal.” **P3/62/9/1**

**Summary assessment of costs of interlocutory application**

(O.62, r.9A)

**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— **P3/62/9A**

(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. 153 of 2008)*

**Time for complying with direction or order for summary assessment**  
(O.62, r.9B)

- P3/62/9B** **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. 153 of 2008)*

**When summary assessment not allowed (O.62, r.9C)**

- P3/62/9C** **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. 153 of 2008)

**When to tax costs (O.62, r.9D)**

**9D.**—(1) Subject to paragraphs (2) and (4), the costs of any proceedings shall not be taxed until the conclusion of the action. **P3/62/9D**

(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. 153 of 2008)

**When a party may sign judgment for costs without order (O.62, r.10)**

**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 Appendix A, Form 50*) **P3/62/10**

(2)–(4) (*Repealed L.N. 153 of 2008*)

(5) In the circumstances mentioned in this rule, Order 22, rules 20 and 21 and Order 25, rule 4(6) an order for costs shall be deemed to have been made to the effect described and, for the purposes of section 50 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. 153 of 2008)

**When order for taxation of costs not required (O.62, r.11)**

**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. **P3/62/11**  
 (L.N. 153 of 2008)

(2) Where a summons is taken out to set aside with costs any proceedings 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.

**Commencement of costs-only proceedings (O.62, r.11A)**

**11A.**—(1) Proceedings under section 53A(2) of the Ordinance may be commenced by originating summons in Form No. 10 in Appendix A. **P3/62/11A**

(2) The originating summons must be accompanied by—

- (a) an affidavit exhibiting the agreement referred to in section 53A(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. 153 of 2008*)

#### POWERS OF TAXING OFFICERS

##### **Powers of taxing masters to tax costs (O.62, r.12)**

- P3/62/12** 12. A taxing master shall have power to tax—
- (a) the costs of or costs of or incidental to any proceedings in the Court;
  - (b) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1); and
  - (c) any other costs the taxation of which is directed by an order of the Court. (*L.N. 153 of 2008*)

##### **Powers of Chief Judicial Clerks to tax costs (O.62, r.13)**

- P3/62/13** 13.—(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 \$200,000. (*L.N. 153 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. 153 of 2008*)

##### **Taxing master may give directions (O.62, r.13A)**

- P3/62/13A** 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.

##### **Supplementary powers of taxing master (O.62, r.14)**

- P3/62/14** 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.

**Disposal of business by one taxing master for another (O.62, r.15)**

**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.

**P3/62/15**

(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.

**Extension, etc., of time (O.62, r.16)**

**16.**—(1) A taxing master may—

**P3/62/16**

- (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 such proceedings before that master;
- (b) extend the period provided by rule 33(2) beyond the signing of the taxing master'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.

**Interim certificate (O.62, r.17)**

**17.** 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.

**P3/62/17**

**Final certificat (O.62, r.17A)**

**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.

**P3/62/17A**

(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. 153 of 2008)*

**Taxing master may set aside his own decision (O.62, r.17B)**

**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

**P3/62/17B**

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.

**Power of taxing master where party liable to be paid and to pay costs (O.62, r.18)**

**P3/62/18** 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.

**Taxation of bill of costs comprised in account (O.62, r.19)**

**P3/62/19** 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.

*[The next paragraph is para.P3/62/21]*

PROCEDURE ON TAXATION

**Mode of commencing proceedings for taxation (O.62, r.21)**

**P3/62/21** 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) Subject to paragraphs (2) and (3), 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.

(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. 153 of 2008)*

**Application for taxation to be set down (O.62, r.21A)**

**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. **P3/62/21A**

(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. 153 of 2008)*

**Provisional taxation (O.62, r.21B)**

**21B.**—(1) Unless the taxation is set down for hearing under rule 21C(1), the taxing master may— **P3/62/21B**

- (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. 153 of 2008)*

**Taxation with a hearing (O.62, r.21C)**

**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. **P3/62/21C**

(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. 153 of 2008)*

**Withdrawal of bill of costs (O.62, r.21D)**

P3/62/21D

**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. 153 of 2008)*

**Delay in service of notice of commencement of taxation or in proceeding with taxation (O.62, r.22)**

P3/62/22

**22.**—(1) If, within 3 months after the completion date, the person entitled to payment of costs has neither—

(a) agreed the amount of those costs with the person liable to pay them; nor

(b) served upon such person a copy of a notice of commencement of taxation in accordance with rule 21(2), the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(2) If, after the proceedings for the taxation of a bill of costs have commenced in accordance with rule 21(1), the person entitled to payment of costs has neither—

(a) agreed the amount of those costs with the person liable to pay them; nor

(b) proceeded with the taxation, the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(3) The taxing master—

(a) may order that the person entitled to payment of the costs must commence taxation proceedings in accordance with rule 21 or proceed with the taxation, within such period as may be specified in the order; and

(b) may further order that that person shall not be entitled to commence those taxation proceedings or proceed with the taxation unless the person does commence those taxation proceedings or proceed with the taxation within the specified period or such extended period as may be allowed by the taxing master.

(4) The taxing master may make an order under paragraph (3) subject to such conditions as he thinks fit, including a condition that the person liable to pay the costs to be taxed shall pay a sum of money into court.

(5) On the taxation of a bill of costs, whether or not an order has been made under paragraph (3), the taxing master, if he is satisfied that there has been undue delay in commencing taxation proceedings or in proceeding with the taxation—

(a) may make such order as he thinks fit as to the costs of any application or as to the costs of the taxation;

(b) may disallow any part of the costs to be taxed pursuant to the costs order; and

(c) may, in relation to the taxed costs or any part of those costs, disallow interest or reduce the period for which interest is payable or the rate at which interest is payable.

(6) Where a party entitled to payment of costs fails to proceed with taxation after filing the notice of commencement of taxation under rule 21(1), the taxing master in order to prevent any other parties being prejudiced by that failure, may—

- (a) allow the party so entitled a nominal or other sum for costs; or
- (b) certify the failure and the costs of the other parties.

(7) A party is not entitled to commence taxation proceedings under rule 21—

- (a) after the expiry of 2 years from the completion date; or
- (b) where the Court has extended the period specified in subparagraph (a), after the expiry of the period as extended, whichever is the later.

(8) Where the completion date is before the commencement of this rule, paragraph (7)(a) has effect as if for the words “completion date”, there were substituted the words “commencement of this rule”.

(9) In this rule, “completion date” (完結日期) means—

- (a) the date of the judgment or order of the Court which disposes of the action;
- (b) the date on which the Court 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);
- (c) 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 to commence taxation proceedings; or
- (d) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court directing the taxation of them, the date on which he becomes entitled to tax those costs, whichever is the later. (L.N. 153 of 2008)

**23. (Repealed L.N. 153 of 2008)**

**P3/62/23**

### **Taxation (O.62, r.24)**

**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.

**P3/62/24**

(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. 153 of 2008)

**25. (Repealed L.N. 153 of 2008)**

**P3/62/25**



**Power to adjourn (O.62, r.26)**

**P3/62/26** 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. 153 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. 153 of 2008)

**Powers of taxing master taxing costs payable out of fund**

(O.62, r.27)

**P3/62/27** 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—

- (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**

**Costs payable to one party by another or out of fund (O.62, r.28)**

**P3/62/28** 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.

(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 in so far 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.

(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).

**Costs of a litigant in person (O.62, r.28A)**

**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. P3/62/28A

(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(b), or rule 32(4) of this Order or Schedule 2 to this Order shall, unless otherwise specified therein, apply to the costs of a litigant in person. (L.N. 153 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. 153 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. 153 of 2008).

*[The next paragraph is para.P3/62/30]*

**Costs payable to solicitor where money recovered by or on behalf of infant, etc. (O.62, r.30)**

**30.** Order 62, rule 30 of the Rules of the High Court (Cap. 4 sub. leg.) shall, where appropriate, apply to— P3/62/30

- (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.

**Costs payable to a trustee out of trust funds, etc. (O.62, r.31)**

**P3/62/31** 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.

**Scales of costs (O.62, r.32)**

**P3/62/32** 32.—(1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in Schedule 1 to 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.

(1A) The Court shall not, on taxation, allow as costs under items 5 and 6 of Schedule 1 to this Order an amount which exceeds two thirds of the amount which it would have allowed in respect of such items had the taxation been carried out by it in accordance with the scale applicable to a taxation of costs in the High Court.

(2) On a taxation in relation to which 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 Schedule 1 to this Order.

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which Schedule 2 to this Order applies in accordance with the provisions of that Schedule.

**Liability for costs of taxation (O.62, r.32A)**

**P3/62/32A** 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. 153 of 2008)*

**Reimbursement for taxing fees (O.62, r.32B)**

**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. 153 of 2008)*

**P3/62/32B**

**Court's powers in relation to misconduct (O.62, r.32C)**

**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.

**P3/62/32C**

(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. 153 of 2008)*

**Costs for witnesses (O.62, r.32D)**

**32D.** There may be allowed on taxation in respect of the attendance of witnesses such reasonable amounts as the taxing master thinks fit.

**P3/62/32D**

REVIEW

**Application to taxing master for review (O.62, r.33)**

**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—

**P3/62/33**

- (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. 153 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 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. 153 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.

(3A) If an applicant fails to comply with paragraph (3), the taxing master may dismiss the application. *(L.N. 153 of 2008)*

(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.

**P3/62/33/1 Procedure for challenging taxation in the District Court**—A party should first apply for a review of the taxation to the taxing master under O.62, rr.33 and 34. If he is dissatisfied after that review, he can apply to a District Court judge to review the taxation under O.62, r.35. There is no general right of appeal against an allocateur used by the master after taxation. Where the review mechanism cannot be invoked, because the challenge is to a decision by the taxing master on procedure, as distinct from quantification, the court still maintains the power under its inherent jurisdiction to consider the challenge, despite the absence of any provision for appeal: *CFK v. LLL* [2003] 2 H.K.L.R.D. E7.

### **Review by taxing master (O.62, r.34)**

**P3/62/34 34.**—(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.

**Procedure for challenging taxation in the District Court**—See para.P3/62/33/1.

**P3/62/34/1**

**Review of taxing master's certificat by judge (O.62, r.35)**

**35.**—(1) Any party who is dissatisfied with the decision of a taxing master to allow or to disallow in whole or in part of any item on review under rule 34, or with the amount allowed by a taxing master in respect of any item 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 him in accordance with rule 34(4) to state the reasons for his decision in respect of that item or part of an item on the review.

**P3/62/35**

(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 call assessors under section 58 of the Ordinance, the judge shall call 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.

**Procedure for challenging taxation in the District Court**—See para.P3/62/33/1.

**P3/62/35/1**

TRANSITIONAL

**Transitional provision relating to Part 14 of Amendment Rules 2008**

(O.62, r.36)

**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 14 had not been made. (*L.N. 153 of 2008*)

**P3/62/36**

**Transitional provisions relating to Part 21 of Amendment Rules 2008**

(O.62, r.37)

**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 21 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.

**P3/62/37**

- (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 Schedule 1 or Part III of Schedule 2 of this Order relate was undertaken before the commencement, then Schedule 1 or Part III of Schedule 2 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 21 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 Schedule 2 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 21 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. 153 of 2008)*

SCHEDULE 1

[r.32]

PART I

SCALE OF COSTS

**P3/62/38**

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	\$4 per page in respect of the first bundle, and \$1 per page in respect of each subsequent bundle
1A.	Copying of documents, per page of whatever size	\$1
		<i>(L.N. 153 of 2008)</i>
2.	Attendance suitable for unqualified staff, such as for filing of documents, delivery or collection of papers and to make appointments, whether such attendances are made by qualified or unqualified persons, for each attendance	\$72
3.	Attendance for necessary search and inquiries—such fee as the Registrar thinks proper but not less than \$25 for each attendance	
4.	Service of any documents—such fee as the Registrar thinks proper but not less than \$25 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.
6. Taxation of costs—obtaining the appointment, preparing bill of costs and copies and attending to lodge; attending taxation, paying taxing fee and lodging certificate or order Discretionary

PART II

GENERAL

**1. Discretionary costs**

P3/62/39

(2) In exercising his discretion 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.

**2. Fees to counsel**

(1) Except in the case of taxation under the Legal Aid Ordinance (Cap. 91) and taxation of fees payable by the Government, 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 the Court unless—

- (a) where counsel appears for a plaintiff, the amount recovered exceeds \$150000; (L.N. 94 of 2004)
- (b) where counsel appears for a defendant, the amount claimed by the plaintiff exceeds \$150000; (L.N. 94 of 2004)
- (c) where counsel appears for a party making a counterclaim, the amount recovered exceeds \$150000;  
(L.N. 94 of 2004)
- (d) where counsel appears for a party against whom a counterclaim is made, the amount of the counterclaim exceeds \$150000; (L.N. 94 of 2004)
- (e) where counsel appears for a party to third party proceedings who issues the third party notice, the amount recovered exceeds \$150000; (L.N. 94 of 2004)
- (f) where counsel appears for a party to third party proceedings against whom the third party notice is issued, the amount claimed in the third party notice exceeds \$150000; (L.N. 94 of 2004)
- (g) where counsel appears for a party to proceedings on a notice issued by that party under Order 16, rule 8, the amount recovered exceeds \$150000; (L.N. 94 of 2004)
- (h) where counsel appears for a party to proceedings on a notice issued against that party under Order 16, rule 8, the amount claimed in the notice exceeds \$150000; or (L.N. 94 of 2004)
- (i) the Court has certified the attendance of counsel as being proper in the circumstances of the case. (L.N. 94 of 2004)

(3A) Where a party appearing by counsel is awarded costs, but the costs of employing counsel are not allowed, the taxing master may, on taxation, allow such costs as may have been allowed if the party had appeared by a solicitor and not by counsel.

(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 5 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. 153 of 2008*)

**4. Items to be authorized, certified etc.**

(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 subparagraph (a) the taxing master 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 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.

## 5. Attendances in chambers—equity jurisdiction

(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.

**Certificate for counsel (para.2(3))**—To keep costs at a reasonable level proportional to the jurisdictional limit of the District Court, O.62, Sched. 1, Part II para.2(3) provides that no costs shall be allowed in respect of counsel appearing before the court unless:

- (a) where counsel appears for a plaintiff, the amount recovered exceeds \$150,000;
- (b) where counsel appears for a defendant, the amount claimed by the plaintiff exceeds \$150,000;
- (c) where counsel appears for a party making a counterclaim, the amount recovered exceeds \$150,000;
- (d) where counsel appears for a party against whom a counterclaim is made, the amount of the counterclaim exceeds \$150,000;
- (e) where counsel appears for a party to third party proceedings who issues the third party notice, the amount recovered exceeds \$150,000;
- (f) where counsel appears for a party to third party proceedings against whom the third party notice is issued, the amount claimed in the third party notice exceeds \$150,000;
- (g) where counsel appears for a party to third party proceedings on a notice issued by that party under O.16, r.8, the amount recovered exceeds \$150,000;
- (h) where counsel appears for a party to third party proceedings on a notice issued against that party under O.16, r.8, the amount claimed in the notice exceeds \$150,000; or
- (i) the Court has certified the attendance of counsel as being proper in the circumstances of the case.

Although no certificate for counsel is required if the receiving parties fall within one of the above categories, it seems that the taxing master still has residual discretion to disallow any fees for counsel in the taxation proceedings. It is a good practice to obtain a certificate from the trial judge.

P3/62/39/1

## SCHEDULE 2

[rr.28A & 32]

### PART I

P3/62/40

#### COSTS ON JUDGMENT WITHOUT TRIAL FOR LIQUIDATED SUM OR UNDER ORDER 13A

1. The scale of costs set out in Part II of this Schedule applies 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—
  - (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—
    - (i) judgment on failure to give notice of intention to defend under Order 13, rule 1; or
    - (ii) judgment in default of defence under Order 19, rule 2.
2. 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.
3. Notwithstanding anything in paragraph 1 or 2 of this Schedule or in the scale of costs set out in Part II of this Schedule, no costs shall be allowed in any case to which paragraph 1 or 2 of this Schedule applies unless—
  - (a) the Court orders costs to be allowed; or
  - (b) in a case to which subparagraph (b) of paragraph 1 of this Schedule applies, judgment or an order for judgment, as the case may be, is obtained—
    - (i) within 28 days after the service of the writ; or
    - (ii) within such further time as the Court may allow.
4. In a case to which the scale of costs set out in Part II of this Schedule applies, there shall be

## PART P – DISTRICT COURT

added to the basic costs set out in the scale the fee which would have been payable on the issue of a writ for the amount recovered.

*(L.N. 153 of 2008)*

\* Commencement day: 2 April 2009.

**P3/62/41**

### PART II

#### SCALE OF COSTS

Item	Scale
Basic Costs	\$
To be allowed in cases under— subparagraph (a) of paragraph 1	6,000 if the plaintiff is legally represented and 350 if the plaintiff is not legally represented
subparagraph (b) of paragraph 1	6,500 if the plaintiff is legally represented and 300 if the plaintiff is not legally represented
paragraph 2	6,500 if the plaintiff is legally represented and 300 if the plaintiff is not legally represented
Additional Costs	
1. For each additional defendant after the first	350
2. Where substituted service is ordered and effected, for each defendant served	650

*(L.N. 153 of 2008)*

**P3/62/42**

### PART III

#### MISCELLANEOUS

Item	Scale
	\$
1. Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed cost of the judgment	700
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 by or accruing from him to the debtor, the following costs shall be allowed to the garnishee, to be deducted by him from any debt owing by or accruing from him to the debtor before payments to the applicant—	
(a) if no affidavit used	70
(b) if affidavit used	200
3. 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	400

*(L.N. 153 of 2008)*

## ORDER 62A

### COSTS OFFER AND PAYMENTS INTO COURT

#### I. PRELIMINARY

##### Editorial Introduction

**P3/62A** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.62A, see Vol.1.

**Interpretation and application (O.62A, r.1)**

P3/62A/1

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.

**Offer to settle with specific consequences (O.62A, r.2)**

P3/62A/2

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**

**Paying party’s costs offer requires sanctioned payment (O.62A, r.3)**

P3/62A/3

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.

**Receiving party’s costs offer requires sanctioned offer (O.62A, r.4)**

P3/62A/4

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.

**Form and content of sanctioned offer (O.62A, r.5)**

P3/62A/5

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.

**Service of sanctioned offer (O.62A, r.6)**

**P3/62A/6** 6. A receiving party who makes a sanctioned offer shall serve the sanctioned offer on the paying party.

**Withdrawal or diminution of sanctioned offer (O.62A, r.7)**

**P3/62A/7** 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.

**Notice of sanctioned payment (O.62A, r.8)**

**P3/62A/8** 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.

**Service of sanctioned payment (O.62A, r.9)**

**P3/62A/9** 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.

**Withdrawal or diminution of sanctioned payment (O.62A, r.10)**

**P3/62A/10** 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.

**Time when sanctioned offer or sanctioned payment is made and accepted (O.62A, r.11)**

**11.—**(1) A sanctioned offer is made when it is served on the offeree. **P3/62A/11**

(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.

**Clarification of sanctioned offer or sanctioned payment notice**

(O.62A, r.12)

**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. **P3/62A/12**

(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**

**Time for acceptance of paying party's sanctioned payment**

(O.62A, r.13)

**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. **P3/62A/13**

(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.

**Time for acceptance of receiving party's sanctioned offer**

(O.62A, r.14)

**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 **P3/62A/14**



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.

**Payment out of a sum in court on acceptance of sanctioned payment (O.62A, r.15)**

**P3/62A/15** 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.

**Acceptance of sanctioned payment made by one or more, but not all, paying parties (O.62A, r.16)**

**P3/62A/16** 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.

**Cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment (O.62A, r.17)**

**P3/62A/17** 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

**Consequences of acceptance of sanctioned offer or sanctioned payment (O.62A, r.18)**

**18.—**(1) If a sanctioned offer or a sanctioned payment relates to the whole costs and is accepted, the taxation is stayed. **P3/62A/18**

(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.

**Costs consequences where receiving party fails to better sanctioned payment (O.62A, r.19)**

**19.—**(1) This rule applies where upon taxation a receiving party fails to better a sanctioned payment. **P3/62A/19**

(2) The taxing master may by order disallow all or part of any interest otherwise payable under section 50 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.

**Costs and other consequences where receiving party does better than he proposed in his sanctioned offer (O.62A, r.20)**

**P3/62A/20** 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**

**Restriction on disclosure of sanctioned offer or sanctioned payment (O.62A, r.21)**

**P3/62A/21** 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.

**Interest (O.62A, r.22)**

**P3/62A/22** 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.

*[The next paragraph is para.P3/63/2]*

## ORDER 63

### REGISTRY

#### **Practice master (O.63, r.2)**

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 direction which may be required on questions of practice and procedure. **P3/63/2**

#### **Date of filing to be marked, etc. (O.63, r.3)**

3.—(1) Any document filed in the Registry in any proceedings must be marked showing the date on which the document was filed. **P3/63/3**

(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 or any computer records kept in the Registry for the purpose.

(3) The books kept in the Registry may be in written form or in such other form or medium which can be reproduced in written form.

#### **Filing of documents in the Registry (O.63, r.3A)**

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. **P3/63/3A**

(2) When any document is to be filed by a litigant in person, not being a director representing a body corporate, 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.

#### **Right to inspect, etc. certain documents file in Registry (O.63, r.4)**

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— **P3/63/4**

- (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.

**Deposit of documents (O.63, r.5)**

- P3/63/5** 5. Where the Court orders any documents to be lodged in court, they must, unless otherwise directed, be deposited in the Registry.

*[The next paragraph is para.P3/63/9]*

**Restriction on removal of documents (O.63, r.9)**

- P3/63/9** 9. No document filed in or in the custody of the Registry shall be taken out of that Registry without the leave of the Court.

## ORDER 64

### COURT OFFICES

**Days on which Court offices open (O.64, r.1)**

- P3/64/1** 1.— (1) The offices of the Court shall be open on every day of the year except Saturdays and general holidays. (18 of 2016 s. 23)  
(2) However, the Registrar or the Chief Justice may from time to time direct an office of the Court to be open or closed on any day. (18 of 2016 s. 23)

**Hours when Court offices open (O.64, r.2)**

- P3/64/2** 2. The hours during which any office of the Court shall be open to the public shall be such as the Registrar or the Chief Justice may from time to time direct. (18 of 2016 s. 24)

## ORDER 65

### SERVICE OF DOCUMENTS

**When personal service required (O.65, r.1)**

- P3/65/1** 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.

**Personal service: how effected (O.65, r.2)**

- P3/65/2** 2. Personal service of a document is effected by leaving a copy of the document with the person to be served.

**Personal service on body corporate (O.65, r.3)**

- P3/65/3** 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).

**Substituted service (O.65, r.4)**

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. **P3/65/4**

(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.

**Ordinary service: how effected (O.65, r.5)**

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— **P3/65/5**

- (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 this rule “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.

(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.

**Service on Secretary for Justice in proceedings which are not by or against Government (O.65, r.6)**

**P3/65/6** 6. Where for the purpose of or in connection with any proceedings in the Court, not being civil proceedings by or against the Government 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 that 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 Government for the purpose of or in connection with any civil proceedings by or against the Government.

**Effect of service after certain hours (O.65, r.7)**

**P3/65/7** 7.—(1) This rule applies if a document (other than a writ of summons or other originating process) is served under rule 2 or 5(1)(a)—  
(a) on a specified day; or  
(b) after 4 p.m. on another day.  
(2) For computing a period of time after service of the document, the document is deemed to be served on the next following day, not being a specified day.  
(3) In this rule—  
specified day (指明日子) means—  
(a) a Saturday;  
(b) a general holiday;  
(c) a gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1); or  
(d) a black rainstorm warning day as defined by that section. (18 of 2016 s. 25)

**Affidavit of service (O.65, r.8)**

**P3/65/8** 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.

**No service required in certain cases (O.65, r.9)**

**P3/65/9** 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.

**Service of process on Sunday (O.65, r.10)**

**P3/65/10** 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, originating or other summons or warrant.



## ORDER 66

### PAPER, PRINTING, NOTICES AND COPIES

#### **Quality of paper (O.66, r.1)**

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. P3/66/1

#### **Regulations as to printing, etc. (O.66, r.2)**

2.—(1) Except where these Rules otherwise provide, every document prepared by a party for use in the 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. P3/66/2

(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.

(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.

#### **Copies of documents for other party (O.66, r.3)**

3.—(1) Where a document prepared by a party for use in the 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 10, as may be specified in the request. P3/66/3

(2) Where a document prepared by a party for use in the 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.

#### **Requirements as to copies (O.66, r.4)**

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. P3/66/4

(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.

## ORDER 67

### CHANGE OF SOLICITOR

#### **Notice of change of solicitor (O.67, r.1)**

**P3/67/1** 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.

(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.

*[The next paragraph is para.P3/67/3]*

#### **Notice of appointment of solicitor (O.67, r.3)**

**P3/67/3** 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.

#### **Notice of intention to act in person (O.67, r.4)**

**P3/67/4** 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.

#### **Removal of solicitor from record at instance of another party (O.67, r.5)**

**P3/67/5** 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 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 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 otherwise directs, be served on the party to whose solicitor the application relates.

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.

**Withdrawal of solicitor who has ceased to act for party (O.67, r.6)**

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 may make an order accordingly, but, unless and until the solicitor—

- (a) serves 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) 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.

(2) An application for an order under this rule must be made by summons which must, unless the Court 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.

(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 aided person within the meaning of the Legal Aid Ordinance (Cap. 91) is revoked or discharged, the solicitor who acted for the aided 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 aided 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.

**Leave required to inspect affidavits (O.67, r.6A)**

6A. Notwithstanding the provisions of Order 63, rule 4(2), the leave of the Court is required before inspection can be made, or any copy obtained, of any affidavit made or filed pursuant to rule 6(2).

**Address for service of party whose solicitor is removed, etc.**

(O.67, r.7)

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 aided 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

P3/67/6

P3/67/6A

P3/67/7

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.

*[The next paragraph is para.P3/67/9]*

**Order to apply to matrimonial causes and matters (O.67, r.9)**

**P3/67/9** 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).

## **ORDER 68**

### **OFFICIAL SHORTHAND NOTE**

**Official shorthand note of all evidence, etc. (O.68, r.1)**

**P3/68/1** 1.—(1) In every action or other proceeding in the Court 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 judgment delivered by the judge, 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.

(2) Nothing in this rule shall be construed as prohibiting the supply of transcripts to persons not parties to the proceedings.

**Evidence when not to be transcribed (O.68, r.2)**

**P3/68/2** 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.

**Payment for transcripts out of public funds: excepted proceedings (O.68, r.3)**

**P3/68/3** 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.

**Payment for transcripts for the Court of Appeal (O.68, r.4)**

**P3/68/4** 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 reasons for decision 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 reasons for decision 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.

#### **Payment for transcript for poor respondent (O.68, r.5)**

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.

**P3/68/5**

(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.

*[The next paragraph is para.P3/68/8]*

#### **Mechanical recording (O.68, r.8)**

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.

**P3/68/8**

#### **Definitio (O.68, r.8A)**

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.

**P3/68/8A**

## ORDER 72

### PARTICULAR PROCEEDINGS

#### **Editorial Introduction**

**P3/72** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.72, see Vol.1.

#### **Application and interpretation (O.72, r.1)**

**P3/72/1** 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.

#### **The various lists (O.72, r.2)**

**P3/72/2** 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.

(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.

*[The next paragraph is para.P3/72/4]*

#### **Entry of action in particular list when action begun (O.72, r.4)**

**P3/72/4** 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 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 the originating summons in accordance with paragraph (1).

(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.

**Transfer of action to particular list after action begun (O.72, r.5)**

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. **P3/72/5**

(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.

**Removal of action from particular list (O.72, r.6)**

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. **P3/72/6**

(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.

**Pleadings in particular proceedings (O.72, r.7)**

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. **P3/72/7**

(2)–(3) (*Repealed L.N. 153 of 2008*)

**Directions in particular proceedings (O.72, r.8)**

8.—(1) Notwithstanding anything in Order 25, rule 1(3)(b), any party to particular proceedings may take out a case management summons before the pleadings are deemed to be closed. **P3/72/8**

(2) Where an application is made to transfer an action to a particular list, Order 25, rules 5 to 10, shall, with the omission of so much of rule 10(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. 153 of 2008*)

[*The next paragraph is para.P3/72/10*]

**Production of certain documents in marine insurance actions (O.72, r.10)**

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. **P3/72/10**

(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” (區域法院) means the judge.

## ORDER 77

### PROCEEDINGS BY AND AGAINST GOVERNMENT

**Editorial Introduction**

This Order of the Rules of the District Court is substantially the same, with minor modifications on rr.14 and 18 of RHC omitted as they are not relevant to the District Court (relating to certain **P3/77**



proceedings involving the Government), as the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.77, see Vol.1.

**Application and interpretation (O.77, r.1)**

**P3/77/1** 1.—(1) These Rules apply to civil proceedings to which the Government is a party subject to the following rules of this Order.

(2) In this Order—

“civil proceedings by the Government” (由政府提出的民事法律程序) and “civil proceedings against the Government” (針對政府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 Government is a party” (以政府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” (命令) includes a judgment, decree, rule, award or declaration;

“order against the Government” (針對政府的命令) means any order (including an order for costs) made in any civil proceedings by or against the Government, or in connection with any arbitration to which the Government is a party, in favour of any person against the Government or against a government department or against an officer of the Government as such.

*[The next paragraph is para.P3/77/3]*

**Particulars to be included in indorsement of claim (O.77, r.3)**

**P3/77/3** 3.—(1) In the case of a writ which begins proceedings against the Government the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Government’s liability is alleged to have arisen and as to the government departments and officers of the Government concerned.

(2) If in civil proceedings against the Government 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.

**Service on Government (O.77, r.4)**

**P3/77/4** 4.—(1) Orders 10 and 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 Government are begun.

(2) Personal service of any document required to be served on the Government for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Government service on the Government must be effected by service on the Secretary for Justice.

(3) In relation to the service of any document required to be served on the Government for the purpose of or in connection with any civil proceedings by or against the Government, 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).

*[The next paragraph is para.P3/77/6]*

**Counterclaim and set-off (O.77, r.6)**

**6.—**(1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, **P3/77/6** a person may not in any proceedings by the Government 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 Government in proceedings against the Government, or by any person in proceedings by the Government—

- (a) if the Government 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 Government is sued or sues in the name of the Secretary for Justice.

(3) Any application for leave under this rule must be made by summons.

**Summary judgment (O.77, r.7)**

**7.—**(1) No application shall be made against the Government—

**P3/77/7**

- (a) under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Government;
- (b) under Order 14, rule 5, in any proceedings by the Government; or
- (c) under Order 14A, rule 1, in any proceedings by or against the Government.

(2) Where an application is made by the Government 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 Government; 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.

*[The next paragraph is para.P3/77/9]*

**Judgment in default (O.77, r.9)**

**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 Government in civil proceedings against the Government or in third party proceedings against the Government. **P3/77/9**

(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 Government.

(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.

**Third party notices (O.77, r.10)**

**P3/77/10** 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 Government 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 Government.

(2) Leave to issue such a notice for service on the Government shall not be granted unless the Court is satisfied that the Government is in possession of all such information as it reasonably requires as to the circumstances in which the Government's liability is alleged to have arisen and as to the government departments and officers of the Government concerned.

**Interpleader: application for order against Government (O.77, r.11)**

**P3/77/11** 11. No order shall be made against the Government under Order 17, rule 5(3), except upon an application by summons served not less than 7 days before the return day.

**Discovery and interrogatories (O.77, r.12)**

**P3/77/12** 12.—(1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Government is a party. *(L.N. 153 of 2008)*

(2) In any civil proceedings to which the Government 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.

(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 Government shall be verified by affidavit, the affidavit shall be made by such officer of the Government 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 Government, the Court shall direct by what officer of the Government the interrogatories are to be answered.

*[The next paragraph is para.P3/77/15]*

**Execution and satisfaction of orders (O.77, r.15)**

**P3/77/15** 15.—(1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Government.

(2) An application under the proviso to section 21(1) 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.

**Attachment of debts, etc. (O.77, r.16)**

**P3/77/16** 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 Government.

(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 Government 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 Government 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 Government 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 Government 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 Government 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 Government.

### **Proceedings relating to postal packets (O.77, r.17)**

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.

P3/77/17

(2) The Government 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.

## **ORDER 78**

### **PROCEEDINGS OF COURT OF FIRST INSTANCE TRANSFERRED TO THE COURT**

#### **Editorial Introduction**

This Order of the Rules of the District Court is substantially different, as the rules deal with proceedings transferred to the court from another court. For further discussion of the principles regarding O.78, see Vol.1.

P3/78

#### **Duties of Registrar of High Court and the Court after order for transfer to the Court (O.78, r.1)**

1.—(1) Where the Court of First Instance has made an order for the transfer of any action or proceedings to the Court pursuant to section 43 or 44 of the Ordinance (in this Order referred to as a “transfer order”), the Registrar of the High Court shall, as soon as practicable after the transfer order has been perfected, send to the Registrar of the Court—

P3/78/1

- (a) all documents issued out of or filed or lodged in the Court of First Instance; and

(b) any notes made by a judge of the Court of First Instance or master of the High Court, and any transcripts or other records, of any proceedings in court or in chambers, in the action or proceeding transferred.

(2) As soon as practicable after receipt of the documents pursuant to paragraph (1), the Registrar of the court shall notify all the parties to the action or proceeding of his receipt of the documents.

**Effects of transfer (O.78, r.2)**

**P3/78/2** 2.—(1) Upon the making of a transfer order the action or proceeding shall be deemed to be transferred to the Court.

(2) Subject to paragraph (4), upon transfer, the writ or other originating process by which the action or proceeding was commenced in the Court of First Instance and all pleadings, counterclaims, notices and other documents, issued, served, filed or lodged in the action or proceeding and all other steps taken by the parties therein before the transfer order was made shall have effect in the Court as if they had been issued, served, filed, lodged or taken in the Court on the dates they were issued, served, filed, lodged or taken in the Court of First Instance.

(3) Subject to paragraphs (4) and (5), upon transfer, all orders and directions, if any, made in the action or proceeding before the transfer order was made shall have effect in the Court as if they had been made by the Court on the dates they were made in the Court of First Instance.

(4) The Court may, at any stage of the proceedings in the action or proceeding transferred, either on its own motion or on the application of any party, order that any such document or step as is mentioned in paragraph (2) or any such order or direction as is mentioned in paragraph (3)—

(a) shall not have effect in the Court; or

(b) shall have effect in the Court subject to such modifications as the Court shall specify.

(5) A transfer order shall not affect—

(a) any right of appeal in the Court of First Instance or to the Court of Appeal from the transfer order itself or any judgment, order or direction made in the action or proceeding before the transfer order was made;

(b) the right to enforce in the Court of First Instance any judgment or order made in that Court before the transfer.

(6) Where, before the transfer order was made, an application had been issued but not yet determined in the action or proceeding, the application shall be deemed to have been issued out of the Court and shall be dealt with by the Court accordingly.

(7) Where any such application as is mentioned in paragraph (6) has been part-heard in the Court of First Instance, the Court may either—

(a) continue to hear the application as if the earlier proceedings in the application had taken place before the Court; or

(b) require the application to be heard de novo.

**Procedure in Court after transfer (O.78, r.3)**

**P3/78/3** 3.—(1) Subject to paragraph (2) and rule 2, after transfer, the action or proceeding shall proceed in the Court as if, before transfer, it had been commenced and had proceeded in the Court.

(2) Where the special circumstances of the case may require, as soon as practicable after the Registrar has given notice pursuant to rule 1(2), the Court of its own motion may, and on the application of any party shall, set the

action or proceeding down before a master who shall make such directions as he sees fit for the further conduct of the action or proceeding.

*(L.N. 153 of 2008)*

## ORDER 79

### TRIBUNAL PROCEEDINGS TRANSFERRED OR REMOVED TO THE COURT

**Tribunal proceedings: transfer or removal to the Court** (O.79, r.1)

1. Save as is otherwise provided by Ordinance or rules of Court when a matter is transferred or removed from a tribunal to the Court, it shall be set down before a master who shall make such directions as he sees fit for the further conduct of the proceedings. **P3/79/1**

## ORDER 80

### DISABILITY

**Interpretation** (O.80, r.1)

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;

“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.

**P3/80/1**

**Person under disability must sue, etc., by next friend or guardian ad litem** (O.80, r.2)

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. **P3/80/2**

(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.

**Appointment of next friend or guardian ad litem** (O.80, r.3)

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. **P3/80/3**

(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.

(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.

(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,

*(L.N. 153 of 2008)*

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 legal 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 that Part by virtue of which he is so authorized; and
- (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 subparagraph (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.

*[The next paragraph is para.P3/80/6]*



**Appointment of guardian where person under disability does not acknowledge service (O.80, r.6)**

P3/80/6

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—

- (a) appoint a guardian ad litem of that person in the proceedings; or
- (b) direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

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(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 must be supported by evidence proving the matters referred to in paragraph (5)(b).

**Application to discharge or vary certain orders (O.80, r.7)**

P3/80/7

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.

**Admission not to be implied from pleading of person under disability (O.80, r.8)**

- P3/80/8** 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.

**Discovery and interrogatories (O.80, r.9)**

- P3/80/9** 9. Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

**Compromise, etc., by person under disability (O.80, r.10)**

- P3/80/10** 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.

**Approval of settlement (O.80, r.11)**

- P3/80/11** 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—

(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 that Ordinance.

(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.

**Control of money recovered by person under disability (O.80, r.12)**

- P3/80/12** 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 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, 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 court 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.

(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.

*[The next paragraph is para.P3/80/15]*

**Proceedings under Fatal Accidents Ordinance: apportionment by Court (O.80, r.15)**

**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.

**P3/80/15**

*(L.N. 153 of 2008)*

(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, rule 1, is accepted in satisfaction of the cause of action under that Ordinance, then 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 those Ordinances.

**Service of certain documents on person under disability (O.80, r.16)**

**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.

**P3/80/16**

(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 legal proceedings in the name of the mentally incapacitated person or on his behalf 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.

(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.  
(*L.N. 153 of 2008*)

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

## ORDER 81

### PARTNERS

#### **Actions by and against firm within jurisdiction (O.81, r.1)**

**P3/81/1** 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.

#### **Disclosure of partners' names (O.81, r.2)**

**P3/81/2** 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.

#### **Service of writ (O.81, r.3)**

**P3/81/3** 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, 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.

**Acknowledgment of service in an action against firm (O.81, r.4)**

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. P3/81/4

(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 any 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.

**Enforcing judgment or order against firm (O.81, r.5)**

P3/81/5

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 paragraph (3) and rule 6, 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) Subject to paragraph (6), 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. L.N. 176 of 2015

(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.

**Enforcing judgment or order in actions between partners, etc.**

(O.81, r.6)

P3/81/6

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.

**Attachment of debts owed by firm (O.81, r.7)**

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. **P3/81/7**

(2) An order to show cause under Order 49, 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 Order 49, 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.

**Actions begun by originating summons (O.81, r.8)**

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. **P3/81/8**

**Application to person carrying on business in another name (O.81, r.9)**

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 or style in which he carries on business were the name of his firm. **P3/81/9**

**Applications for orders charging partner's interest in partnership property, etc. (O.81, r.10)**

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 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. **P3/81/10**

(2) A master may exercise the powers conferred on a judge by that section.

(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.



## ORDER 82

### DEFAMATION ACTIONS

#### **Application (O.82, r.1)**

**P3/82/1** 1. These Rules apply to actions for libel or slander subject to the following rules of this Order.

#### **Indorsement of claim in libel action (O.82, r.2)**

**P3/82/2** 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.

#### **Obligation to give particulars (O.82, r.3)**

**P3/82/3** 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.

#### **Provisions as to payment into Court (O.82, r.4)**

**P3/82/4** 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 Order 22, the action shall be stayed as against that defendant only, but—

- (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. 153 of 2008)*

**Statement in open Court (O.82, r.5)**

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. **P3/82/5**

(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.

**Interrogatories not allowed in certain cases (O.82, r.6)**

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. **P3/82/6**

**Evidence in mitigation of damages (O.82, r.7)**

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. **P3/82/7**

## ORDER 83A

### MONEY LENDERS' ACTIONS

**Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.83A, see Vol.1. **P3/83A**

**Application and interpretation (O.83A, r.1)**

1.—(1) These Rules apply to a money lender's action subject to the following rules of this Order. **P3/83A/1**

(2) In this Order—

“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.

**Commencement of money lender's action (O.83A, r.2)**

2.—(1) Every money lender's action may be begun by writ. **P3/83A/2**  
*(L.N. 153 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.

**Particulars to be included in statement of claim (O.83A, r.3)**

**P3/83A/3** 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.

**Judgment on failure to give notice of intention to defend or in default of defence (O.83A, r.4)**

**P3/83A/4** 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.

## ORDER 84A

### ACTIONS ARISING OUT OF HIRE-PURCHASE OR CONDITIONAL SALE AGREEMENTS

**Application and interpretation (O.84A, r.1)**

**P3/84A/1** 1.—(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—
- “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;
  - “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;
  - “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);
  - “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;
  - “hire-purchase price” (租購價), subject to subparagraph (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;
  - “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;
  - “total purchase price” (總買價), subject to subparagraph (b), means the total sum payable by the buyer under a conditional sale agreement, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement.
  - (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.

**Particulars to be included in statement of claim (O.84A, r.2)**

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. P3/84A/2

**Judgment on failure to give notice of intention to defend or in default of defence (O.84A, r.3)**

P3/84A/3

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 the Court of First Instance, it shall (whether or not the defendant appears on the hearing) try the action.

## ORDER 85

### ADMINISTRATION AND SIMILAR ACTIONS

**Interpretation (O.85, r.1)**

P3/85/1

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.

**Determination of questions, etc., without administration (O.85, r.2)**

P3/85/2

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.

**Parties (O.85, r.3)**

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. **P3/85/3**

(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.

**Grant of relief in action begun by originating summons (O.85, r.4)**

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. **P3/85/4**

**Judgments and orders in administration actions (O.85, r.5)**

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. **P3/85/5**

(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.

**Conduct of sale of trust property (O.85, r.6)**

**P3/85/6** 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.

## ORDER 86

### ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT

**Application by plaintiff for summary judgment (O.86, r.1)**

**P3/86/1** 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.

**Manner in which application under rule 1 must be made (O.86, r.2)**

**P3/86/2** 2.—(1) An application under rule 1 must 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.



**Judgment for plaintiff (O.86, r.3)**

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. **P3/86/3**

(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.

**Leave to defend (O.86, r.4)**

4.—(1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court. **P3/86/4**

(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.

**Directions (O.86, r.5)**

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 5 to 10—(L.N. 153 of 2008) **P3/86/5**

(a) with the omission of so much of rule 10(1) as requires the parties to serve a notice specifying the orders and directions which they require; and

(b) with any other necessary modifications, apply as if the application under rule 1 were a case management summons. *(L.N. 153 of 2008)*

**Costs (O.86, r.6)**

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. **P3/86/6**

**Setting aside judgment (O.86, r.7)**

7. Any judgment 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. **P3/86/7**

**Application for summary judgment on counterclaim (O.86, r.8)**

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 **P3/86/8**

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.

**Right to proceed with residue of action or counterclaim (O.86, r.9)**

**P3/86/9** 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 a 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.

## ORDER 88

### MORTGAGE ACTIONS

**Application and interpretation (O.88, r.1)**

**P3/88/1** 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 rules of this Order.

*[The next paragraph is para.P3/88/4]*

**Claim for possession: failure by a defendant to acknowledge service (O.88, r.4)**

4.—(1) Where in a mortgage action begun by originating summons, being **P3/88/4** 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 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).

**Action for possession or payment: evidence (O.88, r.5)**

5.—(1) The affidavit in support of the originating summons by which an **P3/88/5** 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.

**Action for the enforcement of charging order by sale (O.88, r.5A)**

P3/88/5A

- 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.

**Action by writ: judgment in default (O.88, r.6)**

P3/88/6

- 6.**—(1) Notwithstanding anything in Order 13 or 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.

**Foreclosure in redemption action (O.88, r.7)**

P3/88/7

- 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.

## ORDER 89

### PROCEEDINGS BETWEEN HUSBAND AND WIFE

#### **Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.89, see Vol.1. **P3/89**

#### **Determination of questions as to property (O.89, r.1)**

**1.—**(1) Proceedings under section 3 of the Separation and Maintenance Orders Ordinance (Cap. 16) and section 6 of the Married Persons Status Ordinance (Cap. 182) may be begun by originating summons. **P3/89/1**

#### **Provisions as to actions in tort (O.89, r.2)**

**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. **P3/89/2**

(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.

(3) Notwithstanding anything in Order 13 or 19, in an action to which this rule 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.

(4) An application for the 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.

## ORDER 90

### PROCEEDINGS CONCERNING MINORS

#### **Editorial Introduction**

This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.90, see Vol.1. **P3/90**

#### **Applications under Guardianship of Minors Ordinance and Parent and Child Ordinance (O.90, r.1)**

**1.—**(1) Any application under the Guardianship of Minors Ordinance (Cap. 13) and the Parent and Child Ordinance (Cap. 429) may be made by originating summons. **P3/90/1**

(2) Where the minor with respect to whom an application under the Guardianship of Minors Ordinance (Cap. 13) and the Parent and Child Ordinance (Cap. 429) is made is not the plaintiff he shall not, unless the Court otherwise directs, be made a defendant to the summons but, subject to paragraph (3), any other person appearing to be interested in, or affected by, the application shall be made a defendant.

(3) The Court may dispense with service of the summons on any person and may order it to be served on any person not originally served.

(4) Every application under paragraph (1) shall be heard by a judge who may dispose of the application in chambers.

**Verification and passing of guardians accounts (O.90, r.2)**

**P3/90/2** 2. 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.

**Application of Matrimonial Causes Rules (O.90, r.3)**

**P3/90/3** 3.—(1) The provisions of the Matrimonial Causes Rules (Cap. 179 sub. leg.) 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.) relating to the drawing up and service of orders shall apply to proceedings under this Order as if they were proceedings under those Rules.

**Further provisions as to orders for supervision or care of a child (O.90, r.4)**

**P3/90/4** 4. An application by the Director of Social Welfare under the Guardianship of Minors Ordinance (Cap. 13) for the variation or discharge of an order made under that Ordinance or for directions as to the exercise of the powers of the Director under that order may, in case of urgency or where the application is unlikely to be opposed, be made by letter addressed to the Court and the Director shall, whenever practicable, notify any interested party of his intention to make the application.

**Removal of a child out of Hong Kong (O.90, r.5)**

**P3/90/5** 5.—(1) This rule and rules 6 and 7 shall apply to proceedings under the Guardianship of Minors Ordinance (Cap. 13) and the Separation and Maintenance Orders Ordinance (Cap. 16).

(2) An application for leave to remove a child under 18 permanently out of Hong Kong must be made to a judge unless the application is unopposed, in which case it may be made to the Registrar.

(3) The father or mother of a child under 18 may apply ex parte to a judge for an injunction restraining the other of them or any other person from removing the said child out of Hong Kong or out of the custody, care or control of any person named in the application.

**Reference to the Director of Social Welfare (O.90, r.6)**

**P3/90/6** 6.—(1) A judge or the Registrar may at any time refer to the Director of Social Welfare for investigation and report any matter concerning the welfare of a child which may arise in proceedings in the Court.

(2) Where a reference is made under this rule—

(a) the Director may inspect and, with the approval of the judge or Registrar, copy from the Court file;

(b) after completing his investigation, the Director shall file his report and the Registrar shall thereupon notify the parties that they may inspect it and may bespeak copies on payment of the prescribed fee; and

- (c) the Registrar shall give notice to the Director of the date of hearing of the application or other proceedings.

**Statement of other proceedings on application relating to child**

(O.90, r.7)

7. If, at the time when an application to the Court relating to a child is made in any cause, any proceedings relating to the said child and brought after the cause was begun are pending in the High Court or the Court, the applicant must file a statement of the nature of those proceedings when he makes his application.

P3/90/7

## ORDER 90A

### PROCEEDINGS CONCERNING JUDGMENT SUMMONS

**Enforcement of order for payment of money, etc. (O.90A, r.1)**

1.—(1) This rule shall apply to proceedings under the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) and the Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188).

P3/90A/1

(2) Before any process is issued for the enforcement of an order for the payment of money to any person, an affidavit shall be filed verifying the amount due under the order and showing how that amount is arrived at.

**Judgment summons: general provisions (O.90A, r.2)**

2.—(1) In this Order, unless the context otherwise requires—

P3/90A/2

“interest” (利息) means interest in respect of arrears of maintenance payable 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; (18 of 2003 s.25)

“judgment creditor” (判定債權人) means a person entitled to enforce an order;

“judgment debtor” (判定債務人) means a person liable under an order;

“judgment summons” (判決傳票) means a summons issued under an order made under Order 48, rule 1(1) requiring a judgment debtor to appear and be examined on oath as to his means;

“order” (命令) means an order made in proceedings to which this rule applies for the payment of money, including an order for costs.

“surcharge” (附加費) means a surcharge in respect of arrears of maintenance payable 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.25)

(2) Where an order has been made, the Court may, on an application made ex parte by the judgment creditor, direct a summons to issue to the judgment debtor to attend before the Court 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 order, and the Court may also order the judgment debtor to produce any books or documents in his possession, custody or power relevant to the questions aforesaid at the time and place appointed for the examination.
- (3) An application for the issue of a judgment summons shall be in Form No. 1 in Appendix D and there shall be filed with the application the affidavit required by rule 1(2) which shall exhibit a copy of the order.
- (4) Every judgment summons shall be in Form No. 2 in Appendix D and shall be served on the judgment debtor personally not less than 5 clear days before the hearing and at the time of service there shall be paid or tendered to the judgment debtor a sum reasonably sufficient to cover his expenses in travelling to and from the Court at which he is summoned to appear.
- (5) On the hearing of the judgment summons the judge may—
- (a) where the order is for—
    - (i) the payment of a lump sum or costs; or
    - (ii) maintenance or other periodical payments, and it appears to him that the order would have been varied or suspended if the judgment debtor had made an application for that purpose, make a new order for payment of the amount due under the original order, together with the costs of the judgment summons, the interest and surcharge payable, either at a specified time or by instalments; (18 of 2003 s.25)
  - (b) where the judgment debtor fails to attend, adjourn the summons to a specified time on a specified day and order the judgment debtor to attend at that time on that day; or
  - (c) where the judgment debtor, having been ordered under subparagraph (b) to attend at a specified time on a specified day, fails to do so, or where the judgment debtor attends, but fails to show cause why an order of commitment should not be made against him, make an order for the commitment of the judgment debtor.
- (6) If the judge makes an order of commitment, he may direct its execution to be suspended on terms that the judgment debtor pays to the judgment creditor the amount due, together with the costs of the judgment summons, the interest and surcharge payable, either at a specified time or by instalments, in addition to any sums accruing due under the original order. (18 of 2003 s.25)
- (7) All payments under a new order or an order of commitment shall be made to the judgment creditor unless the judge otherwise directs.
- (8) Where an order of commitment is suspended on such terms as are mentioned in paragraph (6)—
- (a) all payments made after the date of the order of commitment by the judgment debtor to the judgment creditor in their respective capacities of judgment debtor and judgment creditor shall be deemed to be made in the following order in or towards the discharge of—
    - (i) interest;
    - (ii) surcharge;
    - (iii) the costs of the judgment summons;
    - (iv) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence of the dates on which payment is due (that is, the most recent arrears will be discharged first);

- (v) if the Court makes an order on a judgment summons, the amount of the maintenance in arrears, whether in one amount or by instalments, payable by the judgment debtor under the order; and (18 of 2003 s.25)
- (b) an order of commitment so suspended shall not be issued until the judgment creditor has filed an affidavit of default on the part of the judgment debtor.

**Special provisions as to judgment summons (O.90A, r.3)**

3.—(1) Order 38, rule 2(3) (which enables evidence to be given by affidavit in certain cases) shall apply to a judgment summons as if it were an originating summons.

P3/90A/3

(2) Witnesses may be summoned—

- (a) to prove the means of the judgment debtor; and
- (b) to provide information relevant to the Court's decision on interest and surcharge, in the same manner as witnesses are summoned to give evidence on the hearing of a cause, and writs of subpoena may, for the purpose of subparagraph (a) or (b), be issued out of the registry in which the judgment summons was issued. (18 of 2003 s.26)

(3) Where the judgment debtor appears at the hearing, the travelling expenses paid to him may, if the judge so directs, be allowed as expenses of a witness, but if the judgment debtor appears at the hearing and no order of commitment is made, the judge may allow to the judgment debtor, by way of set-off or otherwise, his proper costs, including compensation for loss of time, as upon an attendance by a defendant at a trial in court.

(4) Where a new order or an order of commitment is made, the Registrar shall send notice of the order to the judgment debtor.

(5) An order of commitment shall be directed to the bailiff, for execution by him.

(6) Unless the judge otherwise directs, the judgment creditor's costs of and incidental to the judgment summons shall be fixed without taxation in accordance with the following provisions—

- (a) subject to subparagraph (c), where the amount in respect of which the judgment summons is issued is paid before the hearing, there may be allowed—
  - (i) the court fees paid by the judgment creditor;
  - (ii) any travelling expenses paid to the judgment debtor; and
  - (iii) if the judgment creditor is represented by a solicitor, such sums as the Court may order in respect of the solicitor's charges;
- (b) where an order is made on the hearing and the judgment creditor is awarded costs, there may be allowed—
  - (i) the court fees paid by the judgment creditor;
  - (ii) subject to paragraph (3), any travelling expenses paid to the judgment debtor;
  - (iii) if the judgment creditor is represented by a solicitor without counsel, such sums as the Court may order in respect of the solicitor's charges; and
  - (iv) if the judgment creditor is represented by solicitor and counsel, such sums as the Court may order in respect of the solicitor's charges and counsel's fees;

- (c) where the amount in respect of which the judgment summons is issued is paid too late to prevent the attendance of the judgment creditor or, as the case may be, his solicitor or counsel, at the hearing, the sums specified in subparagraph (b) may, if the judge so orders, be allowed instead of the sums specified in subparagraph (a);
- (d) where the costs of and incidental to a judgment summons are directed to be taxed, Order 62 shall have effect in relation to the costs of proceedings pending in the Court, or as the Court may otherwise order.

*[The next paragraph is para.P/3/92]*

## ORDER 92

### LODGMET, INVESTMENT, ETC. OF FUNDS IN COURT

#### **Editorial Introduction**

**P3/92** This Order of the Rules of the District Court is identical to the corresponding rules in the Rules of the High Court. For further discussion of the principles regarding O.92, see Vol.1.

*[The next paragraph is para.P3/92/2]*

#### **Payment into Court under Trustee Ordinance (O.92, r.2)**

**P3/92/2** 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 District Court Suitors' Funds Rules (Cap. 336 sub. leg.) for the time being in force.

*[The next paragraph is para.P3/92/4]*

#### **Notice of lodgment (O.92, r.4)**

**P3/92/4** 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.

#### **Applications with respect to funds in Court (O.92, r.5)**

**P3/92/5** 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 subparagraph (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 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.

(4) This rule does not apply to any application for an order under Order 22A. (L.N. 153 of 2008)

*[The next paragraph is para.P3/93/6]*

## ORDER 93

### APPLICATIONS UNDER VARIATION OF TRUSTS ORDINANCE

#### **Applications under Variation of Trusts Ordinance (O.93, r.6)**

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.

P3/93/6

*[The next paragraph is para.P3/113/1]*

## ORDER 113

### SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

#### **Application for summary proceedings for possession of land**

(O.113, r.1)

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.

P3/113/1

**Jurisdiction of masters (O.113, r.1A)**

**P3/113/1A** 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.

**Form of originating summons (O.113, r.2)**

**P3/113/2** 2. The originating summons shall be in Form No. 11A in Appendix A and no acknowledgment of service of it shall be required.

**Affidavit in support (O.113, r.3)**

**P3/113/3** 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.

**Service of originating summons (O.113, r.4)**

**P3/113/4** 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
- (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 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 Court.

(3) Order 28, rule 3, shall not apply to proceedings under this Order.

**Application by occupier to be made a party (O.113, r.5)**

**P3/113/5** 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.

**Order for possession (O.113, r.6)**

**P3/113/6** 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.

(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.

**Writ of possession (O.113, r.7)**

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. **P3/113/7**

(2) The writ of possession shall be in Form No. 66A in Appendix A.

**Setting aside order (O.113, r.8)**

8. The judge may, on such terms as he thinks just, set aside or vary any order made in proceedings under this Order. **P3/113/8**

## ORDER 121

### PROCEEDINGS AND APPLICATIONS UNDER CHILD ABDUCTION AND CUSTODY ORDINANCE (CAP. 512)

**Interpretation (O.121, r.1)**

1.—(1) In this Order— **P3/121/1**  
Ordinance (《條例》) means the Child Abduction and Custody Ordinance (Cap. 512).  
(2) Expressions used in this Order that are used in the Ordinance have the same meanings in this Order as in the Ordinance.

**Mode of application (O.121, r.2)**

2. Except as provided in the Ordinance, an originating application under section 21(3) of the Ordinance may be made by originating summons in— **P3/121/2**  
(a) (subject to subparagraph (b)) Form No. 10A in Appendix A; or  
(b) (if the application is made ex parte as provided in this Order) Form No. 10B in Appendix A.

**Time for acknowledging service (O.121, r.6)**

6. The time limited for acknowledging service of an originating summons issued pursuant to rule 2 is— **P3/121/6**  
(a) (subject to subparagraph (b)) 7 days after the service of the originating summons, including the day of service; or  
(b) (if the service takes place out of the jurisdiction) 14 days after the service of the originating summons, including the day of service.

**Hearing of originating summons (O.121, r.6A)**

6A.—(1) A day and time for the attendance of the parties before the Court for the hearing of an originating summons may be fixed on the application of the applicant. **P3/121/6A**  
(2) If an originating summons is required to be served, the time limited for acknowledging service may, where appropriate, be abridged so as to expire on the 2nd day before the day so fixed.

(3) If an originating summons is required to be served and a day is fixed under paragraph (1) for the hearing of the originating summons, the applicant must, at least 4 clear days before that day, serve on the respondent—

- (a) the originating summons and the affidavit required under this Order; or
- (b) (if the respondent has been served with the originating summons and the affidavit required under this Order) a notice of the day fixed for the hearing.

(4) If the hearing of an originating summons required to be served is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, that party must, at least 2 clear days before the resumed hearing of the originating summons, serve on the other party a notice specifying those orders and directions.

**Further evidence (O.121, r.7)**

**P3/121/7** 7.—(1) Any respondent may within 5 days after acknowledging service of the originating summons file and serve on the other parties any affidavit on which the respondent intends to rely.

(2) The applicant may within 5 days thereafter file and serve on the respondent an affidavit in reply.

**Assignment of proceedings (O.121, r.8)**

**P3/121/8** 8. Every application must be heard and determined by a judge, except that applications to extend time and to join a respondent may be heard by a master, and must be dealt with in chambers unless the Court otherwise directs.

**Application for an order under section 21(3) of the Ordinance: for prohibiting removal of child out of Hong Kong (O.121, r.12C)**

**P3/121/12C** 12C.—(1) An application for an order under section 21(3) of the Ordinance must be supported by an affidavit sworn by—

- (a) the applicant; or
  - (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible—
- (a) provide the information set out in paragraph (3) about the following persons—
    - (i) the child;
    - (ii) the applicant;
    - (iii) the person believed to be intending to remove, or to be removing, the child out of Hong Kong; and
    - (iv) the person specified in section 21(2)(a) of the Ordinance who has the custody of the child under a court order or who is exercising the rights of that custody (other than the applicant);
  - (b) state the basis for believing that the person mentioned in subparagraph (a)(iii) may remove the child out of Hong Kong;
  - (c) provide any other relevant information; and
  - (d) exhibit all relevant documents.
- (3) The information includes—
- (a) the following in respect of the child—
    - (i) name (in both Chinese and English, if applicable);
    - (ii) date of birth (if available);
    - (iii) gender;



- (iv) birth certificate number (if available);
- (v) Hong Kong Identity Card number (if available);
- (vi) travel document number (if available); and
- (vii) address (if available);
- (b) the following in respect of the applicant—
  - (i) name (in both Chinese and English, if applicable);
  - (ii) gender;
  - (iii) Hong Kong Identity Card number or travel document number;
  - (iv) address;
  - (v) contact telephone number; and
  - (vi) relationship with the child;
- (c) the following in respect of the person mentioned in paragraph (2)(a)(iii)—
  - (i) name (in both Chinese and English, if applicable);
  - (ii) gender;
  - (iii) (if available) Hong Kong Identity Card number or travel document number;
  - (iv) address (if available);
  - (v) contact telephone number (if available); and
  - (vi) relationship with the child; and
- (d) the following in respect of the person mentioned in paragraph (2)(a)(iv)—
  - (i) name (in both Chinese and English, if applicable);
  - (ii) gender;
  - (iii) (if available) Hong Kong Identity Card number or travel document number;
  - (iv) address (if available);
  - (v) contact telephone number (if available); and
  - (vi) relationship with the child.
- (4) The affidavit must be filed at the same time as the application.
- (5) However, for an urgent case, the affidavit may be filed—
  - (a) within the time specified by the Court; or
  - (b) (if no time is specified by the Court) as soon as possible after the application.
- (6) The application may be made ex parte.

**Application for an order under section 21(4) of the Ordinance: for variation, discharge, suspension or revival (O.121, r.12D)**

**12D.**—(1) An application for an order under section 21(4) of the Ordinance must be supported by an affidavit sworn by— P3/121/12D

- (a) the applicant; or
- (b) a person duly authorized to swear it on behalf of the applicant.
- (2) The affidavit must, as far as possible—
  - (a) state the ground of the application;
  - (b) provide any other relevant information; and
  - (c) exhibit all relevant documents.
- (3) The affidavit must be filed at the same time as the application.
- (4) However, for an urgent case, the affidavit may be filed—
  - (a) within the time specified by the Court; or
  - (b) (if no time is specified by the Court) as soon as possible after the application.
- (5) The application may be made ex parte.

**Searching for, inspecting and obtaining copies of documents file  
in proceedings under the Ordinance (O.121, r.13)**

**P3/121/13** 13.—(1) Unless otherwise directed by the Court, a party to any proceedings under the Ordinance or the partys solicitor, or the Secretary for Justice, may do one or more of the following—

- (a) have a search in the Registry made for a document filed in the Registry in those proceedings;
  - (b) inspect or obtain a copy of the document.
- (2) Except as provided in paragraph (1), if a document is filed in the Registry in any proceedings under the Ordinance (other than an order made in open court)—

- (a) the document is not open to inspection by any person without leave of the Court; and
- (b) no copy of the document, or of an extract from the document, may be taken by, or issued to, any person without leave of the Court.(L.N. 4 of 2016)