

**RULES OF THE SUPREME COURT AMENDMENT  
RULES 2005**

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**BR 55 / 2005**

**SUPREME COURT ACT 1905**

**1905 : 4**

**RULES OF THE SUPREME COURT AMENDMENT RULES 2005**

The Chief Justice, in exercise of the powers conferred upon him by section 62 of the Supreme Court Act 1905 and section 14 of the Administration of Justice (Prerogative Writs) Act 1978, makes the following Rules:

**Citation and Commencement**

1 These Rules may be cited as the Rules of the Supreme Court Amendment Rules 2005, and shall come into operation on the 1 January 2006.

**Amendment of Order 1, rule 2**

2 The Table in paragraph (2) of rule 2 of Order 1 of the Rules of the Supreme Court 1985 is amended by deleting item 13.

**Inserts new Order 1A**

3 After Order 1 of the Rules of the Supreme Court 1985 there shall be inserted:

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## **"ORDER 1A THE OVERRIDING OBJECTIVE**

### **1A/1 The Overriding Objective**

1 (1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable —

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate —
  - (i) to the amount of money involved;
  - (ii) to the importance of the case;
  - (iii) to the complexity of the issues; and
  - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

### **1A/2 Application by the Court of the Overriding Objective**

2 The court must seek to give effect to the overriding objective when it —

- (a) exercises any power given to it by the Rules; or
- (b) interprets any rule.

### **1A/3 Duty of the Parties**

3 The parties are required to help the court to further the overriding objective.

### **1A/4 Court's Duty to Manage Cases**

4 (1) The court must further the overriding objective by actively managing cases.

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- (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 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 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 it can 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.”.

### **Substitution of Order 11**

- 4 The Rules of the Supreme Court 1985 are amended by substituting the following for Order 11 —

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### **“ORDER 11 SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION**

#### **11/1 Principal cases in which service of writ out of jurisdiction is permissible**

1 (1) Provided that the writ does not contain any claim to which Order 75, r. 4 applies, and is not a writ to which paragraph (2) of this rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ —

- (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 the law of Bermuda, 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

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- 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 claim relates to property located within the jurisdiction;
  - (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 moveable property, or to obtain authority to dispose of moveable 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 the law of Bermuda and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;
  - (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
  - (l) the claim is brought in a probate action within the meaning of Order 76;
  - (m) the claim is brought to enforce any judgment or arbitral award;
  - (n) the claim is brought for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (1) (d) of this rule;
  - (o) and (p) [blank]

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- (q) the claim is made under the Drug Trafficking Suppression Act 1988;
- (r) [blank]
- (s) the claim is made under the Proceeds of Crime Act 1997;
- (t) 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;
- (u) the claim is brought under any one or more of the following United Kingdom Acts as applied to Bermuda, that is to say —
  - (i) the Carriage by Air Act 1961,
  - (ii) the Carriage by Air (Supplementary Provisions) Act 1962,
  - (iii) the Merchant Shipping (Oil Pollution) Act 1971.

(2) Service of a writ out of the jurisdiction on a defendant is permissible without the leave of the Court provided that each claim against that defendant made by the writ is a claim which by virtue of any enactment 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 enter an appearance shall be limited in accordance with the practice adopted under rule 4(4).

**11/2 and 11/3** *[blank]*

### **11/4 Application for, and grant of, leave to serve writ out of jurisdiction.**

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

- (a) the grounds on which the application is made,

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- (b) that in the deponent's belief the plaintiff has a good cause of action,
- (c) in what place or country 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.

(3) [blank]

(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 enter an appearance.

### **11/5 Service of writ abroad: general**

5 (1) Subject to the following provisions of this rule, Order 10 rule 1(1), (2), and (3) 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.

(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(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 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 6 or rule 7.

(4) [blank]

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

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

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- (b) by the government or judicial authorities of that country; or
- (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.

(6) An official certificate by the Deputy Governor 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

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

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

### **11/6 Service of writ abroad through foreign governments, judicial authorities and British Consuls**

6 (1) Save where a writ is to be served pursuant to paragraph (2A) this rule does not apply to service in any Commonwealth country, any colony, protectorate or protected state of the United Kingdom, or any trust territory administered by the Government of any Commonwealth 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 subsists a Civil Procedure Convention other than the Hague Convention providing for service in that country of process of the Court, the writ may be served —

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

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

- (a) through the authority designated under the Convention in respect of that country; or
- (b) if the law of that country permits —

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- (i) through the judicial authorities of that country, or
- (ii) through a British consular authority in that country.

(3) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Court, the writ may be served —

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

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

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

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

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

(7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Deputy Governor with a request that he arrange for the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative

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methods are indicated, by such one of those methods as is most convenient.

### **11/7 Service of writ in certain actions under certain Acts**

7 (1) Where a person to whom leave has been granted under rule 1 to serve a writ on a High Contracting Party to the convention set out in Schedule 1 to the Carriage by Air Act 1961 or the Schedule to the Carriage by Air (Supplementary Provisions) Act 1962, 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 with the Registrar —

- (a) a request for service to be arranged by the Deputy Governor; 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.

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

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Deputy Governor with a request that the Deputy Governor arrange for the writ to be served on the High Contracting Party or the government in question, as the case may be.

### **11/8 Undertaking to pay expenses of service by Deputy Governor**

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

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### **11/9 Service of originating summons, petition, notice of motion, etc.**

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

(2) and (3) *[blank]*

(4) 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 enactment be served out of the jurisdiction without leave.

(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 out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must enter an appearance.

(7) Rules 5, 6 and 8 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.”.

### **Inserts new rule 14 into Order 22**

5 After rule 13 of Order 22 of the Rules of the Supreme Court 1985 there shall be inserted —

#### **“22/14 Written offers “without prejudice save as to costs”**

14 (1) A party to proceedings may at any time make a written offer to any other party to those proceedings which is expressed to be “without prejudice save as to costs” and which relates to any issue in the proceedings.

(2) Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided.”.

### **Inserts new paragraph (2) into Order 25, rule 3**

6 Rule 3 of Order 25 of the Rules of the Supreme Court 1985 is amended by renumbering the existing paragraph (1), and adding the following new paragraph (2) —

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“(2) On the hearing of the summons for directions, the Court shall decide whether the bundle to be provided under Order 34, rule 10 is to include the documents mentioned in paragraph 2 (c) of that rule and direct the parties accordingly.”.

### **Amendment of Order 33**

7 (1) Rule 4 of Order 33 of the Rules of the Supreme Court 1985 is amended by inserting the following new paragraph immediately after the existing paragraph (2) –

“(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 fourteen days after service of the order upon him, the Court may confirm or vary the order or set it aside.”.

(2) Order 33 of the Rules of the Supreme Court 1985 is amended by inserting the following new rule immediately after the existing rule 4 –

### **“33/4 A Split trial: offer on liability**

4A (1) This rule applies where an order is made under rule 4(2A) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before.”.

### **Inserts new rule 10 into Order 34**

8 Order 34 of the Rules of the Supreme Court 1985 is amended by adding the following new rule after the existing rule 9 –

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### **“34/10 The Court bundle**

10 (1) At least fourteen days before the date fixed for the trial or, in the case of an action entered in any running list, within three weeks of the defendant’s receiving notice of such entry, the defendant shall identify to the plaintiff those documents central to his case which he wishes included in the bundle to be provided under paragraph (2).

(2) At least two clear days before the date fixed for the trial the plaintiff shall lodge two bundles consisting of one copy of each of the following documents –

- (a) witness statements which have been exchanged, and experts’ reports which have been disclosed, together with an indication of whether the contents of such documents are agreed;
- (b) those documents which the defendant wishes to have included in the bundle and those central to the plaintiff’s case, and
- (c) where a direction has been given under Order 25, rule 3(2), a note agreed by the parties or, failing agreement, a note by each party giving (in the following order) –
  - (i) a summary of the issues involved,
  - (ii) a summary of any propositions of law to be advanced together with a list of the authorities to be cited, and
  - (iii) a chronology of relevant events.

(3) Nothing in this rule shall prevent the Court from giving, whether before or after the documents have been lodged, such further or different directions as to the documents to be lodged as may, in the circumstance, be appropriate.

(4) Where an action is to be tried with the assistance of assessors, additional copies of the bundle to be lodged under paragraph (2) shall be provided for the use of the assessors.

(5) For the purposes of this rule, “plaintiff” includes a defendant where an action is proceeding on a counterclaim and “defendant” includes any other party who is entitled under any order of the Court or otherwise to be heard at the trial.”.

### **Inserts new rule 2A into Order 38**

9 After rule 2 of Order 38 of the Rules of the Supreme Court 1985 there shall be inserted –

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### **“38/2A Exchange of Witness Statements (O.38, r 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 summons for directions in an action commenced by writ the Court shall direct every party to serve on the other parties, within 14 weeks (or such other period as the Court may specify) of the hearing of the summons 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.

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.

Order 3, rule 5 (3) shall not apply to any period specified by the court under this paragraph.

(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.

(4) Statements served under this rule shall –

- (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief;
- (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),

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the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial —

(a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;

(b) the party may not without the consent of the other parties or the leave of the Court adduce evidence from that witness the substance of which is not included in the statement served, except —

(i) where the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;

(ii) in relation to new matters which have arisen since the statement was served on the other party;

(c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.

(8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

(9) Where any statement served is one to which Parts IIA and IIB of the Evidence Act 1905 apply, paragraphs (6) and (7) shall take effect subject to the provisions of those Parts of that Act 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 the said Act of 1905; and where a statement or any part thereof would be admissible in evidence by virtue only of the said Act of 1905 the appropriate notice under

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Part III or Part 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. Where such a notice is served a counter-notice shall be deemed to have been served under Order 38, rule 26 (1).

(10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.

(11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served —

- (a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or
- (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7) (a) or otherwise).

(12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct the associate 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 associate 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

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(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 seven 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.”.

### **Inserts new Orders 53 and 54**

10 The following new Orders are inserted immediately after Order 52 of the Rules of the Supreme Court 1985 —

### **“Order 53**

#### **APPLICATIONS FOR JUDICIAL REVIEW**

##### **53/1 Cases appropriate for application for judicial review**

1 (1) An application for an order of mandamus, prohibition or certiorari, shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to —

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,

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- (b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

### **53/2 Joinder of claims for relief**

2 On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

### **53/3 Grant of leave to apply for judicial review**

3 (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave must be made ex parte to a Judge by filing in the Registry —

- (a) a notice in Form No. 86A containing a statement of —
  - (i) the name and description of the applicant,
  - (ii) the relief sought and the grounds upon which it is sought,
  - (iii) the name and address of the applicant's attorney (if any) and
  - (iv) the applicant's address for service; and
- (b) an affidavit verifying the facts relied on.

(3) The Judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court.

(4) Where the application for leave is refused by the Judge, or is granted on terms, the applicant may renew it by applying to a Judge sitting in open Court:

Provided that no application for leave may be renewed in any non-criminal cause or matter in which the Judge has refused leave under paragraph (3) after a hearing.

(5) In order to renew his application for leave the applicant must, within ten days of being served with notice of the Judge's

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refusal, lodge in the Registry notice of his intention in Form No. 86B.

(6) Without prejudice to its powers under Order 20, rule 8 the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then —

- (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
- (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

### **53/4 Delay in applying for relief**

4 (1) An application for leave to apply for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

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(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

### **53/5 Mode of applying for judicial review**

5 (1) In any criminal cause or matter, where leave has been granted to make an application for judicial review, the application shall be made by originating motion to a Judge sitting in open Court.

(2) In any other such cause or matter, the application shall be made by originating motion to a judge sitting in open Court, unless the Court directs that it shall be made by originating summons to a Judge in Chambers.

Any such direction shall be without prejudice to the Judge's powers under Order 32, rule 13.

(3) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the Clerk or Registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Judge.

(4) Unless the Court granting leave has otherwise directed, there must be at least ten days between the service of the motion or summons and the hearing.

(5) A motion must be entered for hearing within fourteen days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

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### **53/6 Statements and affidavits**

6 (1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion or summons and, subject to paragraph (2) no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used by him.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry and give notice thereof to the applicant as soon as practicable and in any event, unless the Court otherwise directs, within fifty-six days after service upon him of the documents required to be served by paragraph (1).

(5) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

### **53/7 Claim for damages**

7 (1) On an application for judicial review the Court may, subject to paragraph (2) award damages to the applicant if—

- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

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### **53/8 Application for discovery, interrogatories, cross-examination, etc.**

8 (1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge or the Registrar.

In this paragraph “interlocutory application” includes an application for an order under Order 24 or 26 or Order 38, rule 2 (3) or for an order dismissing the proceedings by consent of the parties.

(2) In relation to an order made by the Registrar pursuant to paragraph (1), Order 58, rule 1, shall, where the application for judicial review is to be heard by a Judge in Court, have effect as if a reference to a Judge in Court were substituted for the reference to a Judge in Chambers.

(3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

### **53/9 Hearing of application for judicial review**

9 (1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has lodged in the Registry a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

(3) Where an order of certiorari is made in any such case as it referred to in paragraph (2) the order shall, subject to paragraph (4) direct that the proceedings shall be quashed forthwith on their removal into the Court.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction or reconsider it and reach a decision in accordance with the findings of the Court.

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(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply as if, in the case of an application made by motion, it had been made by summons.

### **53/10 Saving for person acting in obedience to mandamus**

10 No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

### **53/11 and 53/12 [blank]**

### **53/13 Appeal from Judge's order**

13 No appeal shall lie from an order made under paragraph (3) of rule 3 on an application for leave which may be renewed under paragraph (4) of that rule.

### **53/14 Meaning of "Court"**

14 In relation to the hearing by a Judge for an application for leave under rule 3 or of an application for judicial review, any reference in this Order to "the Court" shall, unless the context otherwise requires, be construed as a reference to the Judge.

## **ORDER 54**

### **APPLICATIONS FOR WRIT OF HABEAS CORPUS**

#### **54/1 Application for writ of habeas corpus ad subjiciendum**

1 (1) Subject to rule 11, an application for a writ of habeas corpus ad subjiciendum shall be made to a judge in Court, except that —

- (a) [blank];
- (b) it may be made to a judge otherwise than in court at any time when no judge is sitting in court; and
- (c) any application on behalf of a minor must be made in the first instance to a judge otherwise than in court.

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(2) An application for such writ may be made ex parte and, subject to paragraph (3) must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2) the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

### **54/2 Power of Court to whom ex parte application made**

2 (1) The Court or judge to whom an application under rule 1 is made ex parte may make an order forthwith for the writ to issue, or may —

- (a) where the application is made to a judge otherwise than in court, direct that an originating summons for the writ be issued, or that an application therefore be made to a judge in court;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given;
- (c) [blank].

(2) The summons or notice of the motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or judge may direct, and, unless the Court or judge otherwise directs, there must be at least eight clear days between the service of the summons or notice and the date named therein for the hearing of the application.

### **54/3 Copies of affidavits to be supplied**

3 Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

### **54/4 Power to order release of person restrained**

4 (1) Without prejudice to rule 2(1), the Court or judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be a sufficient warrant to the Commissioner of Prisons, any police officer or other person for the release of the person under restraint.

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(2) Where such an application in a criminal cause or matter is heard by a judge and the judge does not order the release of the person restrained, he shall direct that the application be made by originating motion to a judge in Court.

### **54/5 Directions as to return to writ**

5 Where a writ of habeas corpus ad subjiciendum is ordered to issue, the Court or judge by whom the order is made shall give directions as to the Court or judge before whom, and the date on which, the writ is returnable.

### **54/6 Service of writ and notice**

6 (1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to the Commissioner of Prisons or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form No. 90 in Appendix A) stating the Court or judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

### **54/7 Return to the writ**

7 (1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefore, by leave of the Court or judge before whom the writ is returnable.

### **54/8 Procedure at hearing of writ**

8 When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then

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the counsel for the Crown, and then one counsel for the person restrained in reply.

### **54/9 Bringing up prisoner to give evidence, etc.**

9 (1) [blank]

(2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any Court, tribunal or justice, must be made on affidavit to a Judge in Chambers.

### **54/10 Form of writ**

10 A writ of habeas corpus must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.”.

### **Substitution of Order 62**

11 (1) Order 62 is repealed and replaced by the following —

#### **“ORDER 62**

#### **COSTS**

##### *Part 1: Preliminary*

### **62/1 Interpretation**

1 (1) Except where it is otherwise expressly provided, or the context otherwise requires, the following provisions of this rule shall apply for the interpretation of this Order.

(2) In this Order "Certificate" includes allocatur —

"contentious business" means business done by an attorney in or for the purpose of proceedings begun before the Court or before an arbitrator appointed under the Arbitration Act 1986, not being non-contentious common form probate business;

"non-contentious business" means any business done by an attorney which is not contentious business;

"party", in relation to a cause or matter, includes a party who is treated as being a party to that cause or matter by virtue of Order 4, rule 10(2);

"patient" means a person who, by reason of mental disorder within the meaning of Part IV of the Mental Health Act 1968, is incapable of managing and administering his property and affairs;

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"the standard basis" and "the indemnity basis" have the meaning assigned to them by rule 12(1) and (2) respectively;

"taxed costs" means costs taxed in accordance with this Order;

(3) References to a fund, being a fund out of which costs are to be paid or which is held by a trustee or estate representative, include references to any estate or property, whether real or personal, held for the benefit of any person or class of persons; and references to a fund held by a trustee or estate 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.

(4) References to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration and, in relation to proceedings (including taxation proceedings), also include references to costs of or incidental to those proceedings.

### **62/2 Application**

2 (1) In addition to the civil proceedings to which this Order applies by virtue of Order 1, rule 2(1) and (2), this Order applies to any criminal proceedings in the Court in respect of which costs are awarded.

(2) This Order shall have effect, with such modifications as may be necessary, where by virtue of any Act the costs of any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Act, not being proceedings in the Court, are taxable in the Court.

(3) [blank]

(4) The costs of and incidental to proceedings in the Supreme Court (including any criminal proceedings to which this Order applies) shall be in the discretion of the Court, and that discretion shall be exercised subject to and in accordance with this Order.

### *Part II: Entitlement to Costs*

### **62/3 General principles**

3 (1) This rule shall have effect subject only to the following provisions of this Order.

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(2) No party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.

(3) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall 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.

(4) The amount of his costs which any party shall be entitled to recover is the amount allowed after taxation on the standard basis where —

- (a) an order is made that the costs of one party to proceedings be paid by another party to those proceedings, or
- (b) an order is made for the payment of costs out of any fund, or
- (c) no order is required,

unless it appears to the Court to be appropriate to order costs to be taxed on the indemnity basis.

(5) Paragraph (3) does not apply to proceedings under the Matrimonial Causes Act 1974.

(6) Subject to rule 8, a term mentioned in the first column of the table below, when used in an order for costs, shall have the effect indicated in the second column of that table.

<i>Term</i>	<i>Effect</i>
"Costs"	<p>(a) Where this order is made in interlocutory proceedings, the party in whose favour it is made shall be entitled to his costs in respect of those proceedings whatever the outcome of the cause or matter in which the proceedings arise; and</p> <p>(b) where this order is made at the conclusion of a cause or matter, the party in whose favour it is made shall be entitled to have his costs taxed forthwith;</p>

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"Costs reserved"	(Except in proceedings under the Matrimonial Causes Act 1974) the party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which this order is made unless the Court orders otherwise;
"Costs in any event"	This order has the same effect as an order for "costs" made in interlocutory proceedings;
"Costs here and below"	The party in whose favour this order is made shall be entitled not only to his costs in respect of the proceedings in which it is made but also to his costs of the same proceedings in any lower court;
"Costs in the cause" or "costs in application"	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which such an order is made;
"Plaintiff's costs in the cause" or "Defendant's costs in the cause"	The plaintiff or defendant, as the case may be, shall be entitled to his costs of the proceedings in respect of which such an order is made if judgment is given in his favour in the cause or matter in which the proceedings arise, but he shall not be liable to pay the costs of any other party in respect of those proceedings if judgment is given in favour of any other party or parties in the cause or matter in question;

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"Costs thrown away"                      Where proceedings or any part of them have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be entitled to his costs of those proceedings or that part of the proceedings in respect of which it is made.

### **62/4 Cases where no order for costs is to be made**

4 (1) [blank]

(2) No order shall be made for costs to be paid by or to any person (other than the Parliamentary Registrar) who is respondent to an appeal to the Court from a decision of the Parliamentary Registrar under section 23 of the Parliamentary Elections Act 1978, unless that person appears in support of the decision of the Parliamentary Registrar.

(3) In a probate action where a defendant has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will, no order for costs shall be made against him unless it appears to the Court that there was no reasonable ground for opposing the will.

### **62/5 Cases where order for costs deemed to have been made**

5 (1) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described and, for the purposes of section 9 of the Interest and Credit Charges (Regulation) Act 1975, 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.

(2) Where a summons is taken out to set aside any proceedings on the ground of irregularity and the summons is dismissed, the party who issued the summons shall pay the costs of every other party.

(3) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by him as against any other party, that other party shall be entitled to his costs of the action or counterclaim or his costs occasioned by the claim withdrawn, as

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the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(4) Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance.

(5) Where in an action for libel or slander against several defendants sued jointly a plaintiff, by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into court by one of the defendants he shall be entitled to his costs of the action against that defendant incurred up to the time of giving notice of acceptance.

(6) A defendant who has counterclaimed shall be entitled to the costs of the counterclaim if —

- (a) he pays money into court and his notice of payment in states that he has taken into account and satisfied the cause or causes of action in respect of which he counterclaims, and
- (b) the plaintiff accepts the money paid in,

but the costs of such counterclaim shall be limited to those incurred up to the time when the defendant receives notice of acceptance by the plaintiff of the money paid into court.

### **62/6 Cases where costs do not follow the event**

6 (1) The provisions of this rule shall apply in the circumstances mentioned in this rule unless the Court orders otherwise.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, estate representative or mortgagee, he shall 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 him in that capacity or out of the mortgaged property, as the case may be, and the Court may order otherwise only on the ground that he has acted unreasonably or, in the case of a trustee or estate representative, has in substance acted for his own benefit rather than for the benefit of the fund.

(3) Where any person claiming to be a creditor seeks to establish any claim to a debt under any judgment or order in

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accordance with Order 44, he shall, if his claim succeeds, be entitled to his costs incurred in establishing it: and, if his claim or any part of it fails, he may be ordered to pay the costs of any person incurred in opposing it.

(4) Where a claimant (other than a person claiming to be a creditor) has established a claim to be entitled under a judgment or order in accordance with Order 44 and 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; 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.

(5) The costs of any amendment made without leave in the writ or any pleadings shall be borne by the party making the amendment.

(6) The costs of any application to extend the time fixed by these rules or by any direction or order thereunder shall be borne by the party making the application.

(7) 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 fourteen 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 and the costs occasioned by and thrown away as a result of his failure to admit the facts shall be borne by him.

(8) If a party —

- (a) on whom a list of documents is served in pursuance of Order 24, or
- (b) on whom a notice to admit documents is served under Order 27, rule 5,

gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.

### **62/7 Special circumstances in which costs shall not or may not be taxed**

(1) The provisions of this rule shall apply in the circumstances mentioned in this rule.

(2) Costs which by or under any direction of the Court are to be paid to a receiver appointed by the Court under section

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19(c) of the Act, in respect of his remuneration, disbursements or expenses, shall be allowed in accordance with Order 30, rule 3 and shall not be taxed.

(3) Where a writ in an action is indorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), the plaintiff is not entitled to tax his 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 be entitled to have those costs taxed.

(4) In awarding costs to any person the Court may order that, instead of his taxed costs, that person shall be entitled to a proportion (specified in the order) of those costs from or up to a stage of the proceedings so specified.

(5) Where the court orders a party to pay costs to another party (other than fixed costs) it may make a summary assessment of the costs, unless any rule, practice direction or other enactment provides otherwise.

(6) Where the court makes a summary assessment under paragraph (4), the costs so assessed shall be payable forthwith, unless the court orders otherwise.

(7) Where a claimant is entitled to costs under rule 6(3) the amount of the costs shall be assessed by the Court unless it thinks fit to order taxation and the amount so assessed or taxed shall be added to the debt due to the claimant.

(8) Subject to paragraph (9), where a party is entitled to costs under rule 6(7) or (8) the amount of those costs may be assessed by the Court and be ordered to be paid forthwith.

(9) No order may be made under paragraph (8) in a case where the person against whom the order is made is an assisted person within the meaning of the statutory provisions relating to legal aid.

### **62/8 Stage of proceedings at which costs to be taxed**

8 (1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier

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stage it may, except in a case to which paragraph (3) applies, order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the order for costs is made is an assisted person within the meaning of the statutory provisions relating to legal aid.

(4) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.

(5) [blank]

(6) Notwithstanding anything in Part III of this Order, where the Court makes an order as to the costs of any proceedings before another court under paragraph (4), the order —

(a) shall specify the amount of the costs to be allowed;  
or

(b) shall direct that the costs be assessed by the court before which the proceedings took place or be taxed by an officer of that court; or

(c) may direct that the costs be taxed by the Registrar.

(7) and (8) [blank]

(9) Where it appears to the Registrar on application that there is no likelihood of any further order being made in a cause or matter, he may tax forthwith the costs of any interlocutory proceedings which have taken place.

### **62/9 Matters to be taken into account in exercising discretion**

9 The Court in exercising its discretion as to costs shall take into account —

(a) any offer of contribution brought to its attention in accordance with Order 16, rule 10;

(b) any payment of money into court and the amount of such payment;

(c) any written offer made under Order 33, rule 4A (2); and

(d) any written offer made under Order 22, rule 14, provided that the Court shall not take such an 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 payment into court under Order 22.

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### **62/10 Misconduct or neglect in the conduct of any proceedings**

10 (1) Where it appears to the Court in any proceedings that any thing has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.

(2) Instead of making an order under paragraph (1) the Court may refer the matter to the Registrar, in which case the Registrar shall deal with the matter under rule 28(1).

### **62/11 Personal liability of attorney for costs**

11 (1) Subject to the following provisions of this rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may —

(a) order —

- (i) the attorney whom it considers to be responsible (whether personally or through a servant or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; or
- (ii) the attorney personally to indemnify such other parties against costs payable by them; and
- (iii) the costs as between the attorney and his client to be disallowed;

or

- (b) direct the Registrar to inquire into the matter and report to the Court, and upon receiving such a report the Court may make such order under sub-paragraph (a) as it thinks fit.

(2) When conducting an inquiry pursuant to a direction under paragraph (1)(b) the Registrar shall have all the powers and duties of the Court under paragraphs (4), (5), (6) and (8) of this rule.

(3) Instead of proceeding under paragraph (1) of this rule the Court may refer the matter to the Registrar, in which case

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the Registrar shall deal with the matter under paragraphs (2) and (3) of rule 28.

(4) Subject to paragraph (5), before an order may be made under paragraph (1)(a) of this rule the Court shall give the attorney a reasonable opportunity to appear and show cause why an order should not be made.

(5) Without prejudice to Order 32, rule 5 (3), the Court shall not be obliged to give the attorney a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the attorney —

- (a) fails to attend in person or by a proper representative;
- (b) fails to deliver any document for the use of the Court, which ought to have been delivered or to be prepared with any proper evidence or account, or
- (c) otherwise fails to proceed.

(6) The Court may direct the Solicitor General to attend and take part in any proceedings or inquiry under this rule and the Court shall make such order as to the payment of the Solicitor General's costs as it thinks fit.

(7) If in any proceedings a party who is represented by an attorney fails to pay the fees or any part of the fees prescribed by the orders as to Court fees the Court may order the attorney personally to pay that amount in the manner so prescribed.

(8) The Court may direct that notice of any proceedings or order against an attorney under this rule be given to his client in such a manner as may be specified in the direction.

### *Part III: Taxation and Assessment of Costs*

#### **62/12 Basis of taxation**

12 (1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these rules the term "the standard basis" in relation to the taxation of costs shall be construed accordingly.

(2) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or

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have been unreasonably incurred and any doubts which the Registrar 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" in relation to the taxation of costs shall be construed accordingly.

(3) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on a basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis.

**62/13** *[blank]*

### **62/14 Costs payable to a trustee or estate representative out of any fund**

14 (1) This rule applies to every taxation of a trustee's or estate representative's costs where —

- (a) he is or has been a party to any proceedings in that capacity, and
- (b) he is entitled to be paid his costs out of any fund which he holds in that capacity.

(2) On a taxation to which this rule applies, costs shall be taxed on the indemnity basis but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or estate representative as such.

**62/15** *[blank]*

### **62/16 Costs payable to an attorney where money claimed by or on behalf of a minor or a patient**

16 (1) This rule applies to any proceedings in which —

- (a) 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 minor or a patient; or
- (b) money paid into court is accepted by or on behalf of a minor or patient.

(2) The costs of proceedings to which this rule applies which are payable by any plaintiff to his attorney shall, unless the Court otherwise orders, be taxed on the indemnity basis but shall be presumed —

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client, and

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- (b) to have been reasonable in amount if their amount was expressly or impliedly approved by the client, and
- (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature unless the attorney satisfies the Registrar that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs inter partes.

(3) On a taxation under paragraph (2), the Registrar shall also tax any costs payable to that plaintiff in those proceedings and shall certify —

- (a) the amount allowed on the taxation of the attorney's bill to his own client, and
- (b) the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings, and
- (c) the amount (if any) by which the amount mentioned in sub-paragraph (a) exceeds the amount mentioned in sub-paragraph (b), and
- (d) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a minor or patient and any other party.

(4) *[blank]*

(5) Nothing in the foregoing provisions of this rule shall prejudice an attorney's lien for costs.

(6) The foregoing provisions of this rule shall apply in relation to —

- (a) a counterclaim by or on behalf of a person who is a minor or a patient, and
- (b) a claim made by or on behalf of a person who is a minor or a patient in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894,

as if for references to a plaintiff there were substituted references to a defendant.

### **62/17 Provisions for ascertaining costs on a taxation**

17 (1) Subject to the following provisions of this rule, the provisions contained in Part II of the Schedule to this Order for

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ascertaining the amount of costs to be allowed on a taxation of costs shall apply to the taxation of all costs with respect to contentious business.

(2) *[blank]*

(3) Notwithstanding paragraph (1), costs shall be allowed in the cases to which Part III of the Schedule to this Order applies in accordance with the provisions of that Part unless the Court otherwise orders.

(4) This rule and the provisions contained in Part II of the Schedule to this Order shall not apply to the extent that regulations made under the Legal Aid Act 1980 determine the amount of costs payable to legal representatives in relation to proceedings to which this Order applies.

### **62/18 Litigants in person**

18 (1) Subject to the provisions of this rule, on any taxation of the costs of a litigant in person there may 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 an attorney on the litigant's behalf together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings.

(2) The amount allowed in respect of any item shall be such sum as the Registrar thinks fit but not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the Registrar would have been allowed in respect of that item if the litigant had been represented by an attorney.

(3) Where it appears to the Registrar that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item not more than \$50.00 per hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or in rule 17(3) of, or Part III of the Schedule to, this Order shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising attorney.

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(7) This rule shall apply, with the necessary modifications, to the summary assessment of costs by the court under paragraph 4A of rule 7.

### *Part IV: Powers of Registrar*

#### **62/19 Who may tax costs**

19 The Registrar shall have power to tax —

- (a) the cost of or arising out of any proceedings to which this Order applies,
- (b) the costs ordered by an award made on a reference to arbitration under any Act or payable pursuant to an arbitration agreement, and
- (c) any other costs the taxation of which is ordered by the Court.

#### **62/20 Supplementary powers of Registrar**

20 The Registrar may, in the discharge of his functions with respect to the taxation of costs —

- (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so orders;
- (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; and
- (d) order the production of any document which may be relevant in connection with those proceedings.

#### **62/21 Extensions of time**

21 (1) The Registrar may —

- (a) extend the period within which a party is required by or under this Order or by the Court to begin proceedings for taxation or to do any thing in or in connection with those proceedings on such terms (if any) as he thinks just; or
- (b) where no period is specified by or under this Order or by the Court for the doing of any thing in or in connection with such proceedings, specify the period within which the thing is to be done.

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

### **62/22 Certificates**

22 The Registrar —

- (a) shall, at the conclusion of taxation proceedings before him, issue a certificate for the costs allowed by him;
- (b) may from time to time in the course of the taxation issue an interim certificate for any part of the costs which have been taxed or for any part of the amount which is not in dispute;
- (c) may amend or cancel an interim certificate issued by him;
- (d) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission,
- (e) may set aside a certificate issued by him in order to enable him to extend the period provided by rule 33(2), and

### **62/23 Power of Registrar where party liable to be paid and to pay costs**

23 Where a party entitled to be paid costs is also liable to pay costs, the Registrar may —

- (a) tax the costs which the 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 the party is entitled to be paid until he has paid or tendered the amount he is liable to pay.

### **62/24 Taxation of bill of costs comprised in an account**

24 (1) Where the Court orders an account to be taken and the account consists in part of costs, the Court may direct the Registrar to tax those costs and the Registrar shall after taxation of the bill of costs return it, together with his report on it, to the Court.

(2) The Registrar taxing a bill of costs in accordance with a direction under paragraph (1) shall have the same powers, and the same fee shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

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### **62/25 Registrar to fix certain fees payable to conveyancing counsel**

25 (1) When the Court refers any matter to the conveyancing counsel of the Court or obtains the assistance of any other person under Order 32, rule 16, the fees payable to counsel or that other person in respect of work done by him in connection with the reference or, as the case may be, in assisting the Court shall be fixed by the Registrar.

(2) An appeal from a decision of the Registrar under paragraph (1) shall lie to the Court and the decision of the Court thereon shall be final.

### **62/26 Powers of Registrar on taxation of costs out of a fund**

26 (1) Where any costs are to be paid out of a fund the Registrar 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 on 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 Registrar may 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 the Registrar for taxation;
- (b) *[blank]*
- (c) the time appointed by the Registrar at which the taxation will be continued, and
- (d) such other information, if any, as the Registrar may direct.

### **62/27 Powers of Registrar in relation to costs of taxation proceedings**

27 (1) Subject to the provisions of any Act and this Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings.

(2) Where it appears to the Registrar that in the circumstances of the case some other order should be made as to the whole or any part of the costs, the Registrar shall have, in

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relation to the costs of taxation proceedings, the same powers as the Court has in relation to the costs of proceedings.

(3) Subject to paragraph (5), the party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of taxation" at any time before the expiration of fourteen days after the delivery to him of a copy of the bill of costs under rule 30(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the Registrar until the question of the costs of the taxation proceedings falls to be decided.

(4) The Registrar may take into account any offer made under paragraph (3) which has been brought to his attention.

(5) No offer to pay a specific sum in satisfaction of costs may be made in a case where the person entitled to recover his costs is an assisted person within the meaning of the statutory provisions relating to legal aid.

(6) In this rule any reference to the costs of taxation proceedings shall be construed as including a reference to any fee which is prescribed by the Orders as to Court fees for the taxation of a bill of costs.

### **62/28 Powers of Registrar in relation to misconduct, neglect, etc.**

28 (1) Where, whether or not on a reference by the Court under rule 10(2), it appears to the Registrar that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may exercise the powers conferred on the Court by rule 10(1).

(2) Where, whether or not on a reference by the Court under rule 11(3), it appears to the Registrar that costs have been wasted in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may, subject to paragraph (3) of this rule, exercise the powers conferred on the Court by rule 11.

(3) In relation to the exercise by the Registrar of the powers of the Court under rule 11, paragraphs (4) to (6) and (8) of rule 11 shall apply as if for reference to the Court there were substituted references to the Registrar.

(4) Where a party entitled to costs —

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- (a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with this Order or any direction, or
- (b) delays lodging a bill of costs for taxation,

the Registrar may —

- (i) disallow all or part of the costs of taxation that he would otherwise have awarded that party; and
- (ii) after taking into account all the circumstances (including any prejudice suffered by any other party as a result of such failure or delay, as the case may be, and any additional interest payable under section 9 of the Interest and Credit Charges (Regulations) Act 1975 because of the failure or delay), allow the party so entitled less than the amount he would otherwise have allowed on taxation of the bill or wholly disallow the costs.

(5) An appeal shall lie to a judge in chambers from the exercise by the Registrar of the powers conferred by this rule; and Order 58, rule 1 shall apply to such an appeal.

(6) In exercising his powers under this rule the Registrar shall have all the powers available to the Court in the exercise of its discretion under rules 10 and 11.

### *Part V: Procedure on Taxation*

#### **62/29 Commencement of proceedings**

29 (1) Where a party is entitled to recover taxed costs or to require any costs to be taxed by the Registrar by virtue of —

- (a) a judgment, direction or order given or made in proceedings in the Court; or
- (b) rule 5(3), (4) or (5); or
- (c) an award made on an arbitration under any Act or pursuant to an arbitration agreement; or
- (d) an order, award or other determination of a tribunal or other body constituted by or under any Act,

he must begin proceedings for the taxation of those costs within six months of conclusion of the cause or matter in which the

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proceedings arise unless the Court when making an order for costs orders that costs ought to be taxed at an earlier stage under rule 8(2). In cases to which sub paragraph (b) applies he must begin proceedings for the taxation of those costs within six months after service of the notice given under order 21 rule 2 or order 22 rule 3. Where there is an appeal of any judgment, direction, order, award or of any other determination that concludes the cause or matter in which the proceedings arise, a party entitled to recover taxed Supreme Court costs must begin proceedings for the taxation of those costs within six months after the final determination of the appeal.

(2) *[blank]*

(3) Where a party entitled to costs fails to begin proceedings for taxation within the time limit specified in paragraph (1), any other party to the proceedings which gave rise to the taxation proceedings may, with the leave of the Registrar, begin taxation proceedings.

(4) Where leave has been granted under paragraph (3), the party to whom it has been granted shall proceed as if he were the person entitled to begin taxation proceedings.

(5) A party entitled to require any costs to be taxed must begin proceedings for the taxation of those costs by lodging at the Registry —

(a) a statement containing the following particulars —

- (i) the name of every party, and the capacity in which he is a party to the proceedings, his position on the record of the proceedings which gave rise to the taxation proceedings and, if any costs to which taxation proceedings relate are to be paid out of a fund, the nature of his interest in the fund; and
- (ii) the address of any party to the proceedings who acknowledged service in person or who at the conclusion of the proceedings which gave rise to the taxation proceedings was acting in person and the name and address of the attorneys of any party who did not so enter an appearance or was not so acting in person.

(b) unless the Registrar otherwise orders, a bill of costs —

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- (i) in which the professional charges and the disbursement are set out in separate columns and each column is cast, and
- (ii) which is endorsed with the name, or firm and business address of the attorney whose bill it is, and
- (iii) which contains a certificate, signed by that attorney or, if the costs are due to a firm, by a partner of that firm, that the costs claimed therein do not exceed the costs which the receiving party is required to pay him or his firm.

(6) Where a party is entitled to require taxation by the Registrar of the costs directed to be paid by an award made on arbitration under any Act or pursuant to an arbitration agreement and no order of the Court for the enforcement of the award has been made, the party so entitled must begin proceedings for the taxation of those costs by producing the award at the Registry.

(7) Where a party is entitled to require taxation by the Registrar of any costs directed to be taxed or paid by an order, award or other determination of a tribunal or other body constituted by or under any Act, the party so entitled must begin proceedings for the taxation of those costs by producing at the Registry the order, award or other determination, as the case may be.

(8) Where a party has begun proceedings for taxation the Registrar shall as soon as practicable give notice to any other party whose costs are to be taxed in the proceedings of the period within which his bill of costs together with all necessary papers and vouchers supporting the bill of costs are to be sent to the Registrar.

(9) A party whose costs are to be taxed in any taxation proceedings must, within four days after beginning the proceedings or, as the case may be, receiving notice under paragraph (8), send a copy of his bill of costs to every other party entitled to be heard in the proceedings unless that party has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

(10) In this rule and in this Part of this Order —

"party entitled to be heard on the taxation" means —

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- (a) a person who has entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings and who is directly liable under an order for costs made against him, or
- (b) a person who had begun proceedings for taxation in accordance with this rule, or
- (c) a person who had given the party taxing 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 26.

### **62/30 Subsequent procedure**

30 (1) Subject to rule 32, where a party has begun proceedings for taxation in accordance with rule 29, the Registrar shall give to that party and to any other party entitled to be heard on the taxation not less than fourteen days' notice of the day, time and place appointed for the taxation.

(2) Where a party has begun proceedings for taxation in accordance with rule 29, the Registrar shall as soon as practicable give notice to any other party whose costs are to be taxed in the proceedings of the period within which his bill of costs (together with all necessary papers and vouchers) are to be sent to the Registrar.

(3) A party whose costs are to be taxed must within seven days after beginning the proceedings for taxation or, as the case may be, receiving notice under paragraph (2) —

- (a) send a copy of this bill of costs to every other party entitled to be heard on the taxation, and
- (b) notify the Registrar that he has done so.

(4) Where, in beginning or purporting to begin any taxation proceedings or at any stage in the course of or in connection with those proceedings, there has been a failure to comply with the requirements of this Order, whether in respect of time or in any other respect, the failure shall be treated as an irregularity and shall not nullify the taxation proceedings or any step taken in those proceedings.

(5) The Registrar may, on the ground that there has been such a failure as is mentioned in paragraph (4), and on such terms as he thinks just, set aside either wholly or in part the taxation proceedings or exercise his powers under this Order to

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make such order (if any) dealing with the taxation proceedings generally as he thinks fit.

(6) Order 3, rule 6 shall not apply to taxation proceedings.

**62/31** *[blank]*

### **62/32 Short and urgent taxations**

32 (1) Where a party entitled to require the taxation of any costs of or arising out of proceedings to which this Order applies begins proceedings for the taxation of those costs in accordance with rule 29 then if, when he begins such proceedings, he satisfies the Registrar —

- (a) that, in view of the amount of any bill of costs to be taxed, the time required for taxation is likely to be short; and
- (b) that the speedy completion of the taxation is necessary in the interests of any person concerned in the taxation,

the Registrar shall enter the proceedings for taxation in a list kept for the purposes of this rule and shall forthwith give notice of the day and time appointed for the taxation to the party whose costs are to be taxed.

(2) A party whose costs are to be taxed in proceedings entered in the list referred to in paragraph (1) must not less than four days before the day appointed for the taxation send a copy of his bill of costs to every other party entitled to be heard on the taxation with a notice of the day and time appointed for taxation.

**62/33 and 34** *[blank]*

### *Part VI: Review of Taxation*

### **62/35 Review of Registrar's decision by a judge**

35 (1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by him in respect of any item, may apply to the judge for an order to review the taxation as to that item or part of an item.

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(2) An application under this rule for review of the Registrar's decision may be made at any time within fourteen days after the Registrar's decision:

Provided that no application under this rule for review of a decision in respect of any item may be made until after the signing of the Registrar's certificate dealing finally with that item.

(3) An application under this rule shall be made by summons and shall specify the nature and grounds of the objection and the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which is objected to and shall, except where the Judge thinks fit to adjourn into court, be heard in chambers.

(4) On the hearing of an application under this rule, the judge may receive further evidence and may exercise all such powers and discretion as are vested in the Registrar on an original taxation, including the power to award costs of and incidental to the proceedings before him.

(5) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the Registrar'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 Registrar for taxation.

(6) An application under this rule for review of the Registrar's decision in respect of any item shall not prejudice the power of the Registrar under rule 22 to issue an interim certificate in respect of items his decision as to which is not objected to.”.

(2) The Schedule to Order 62 is amended by repealing Parts II and III and replacing them by the following —

### **“PART II**

### **COSTS**

#### **Division I**

#### **Amount of Costs**

1 (1) The amount of costs to be allowed shall (subject to rule 18 and to any of order of the Court fixing the costs to be allowed) be in the discretion of the Registrar.

(2) In exercising his discretion the Registrar shall have regard to all the relevant circumstances, and in particular to —

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- (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, specialised knowledge and responsibility required of, and the time and labour expended by, the attorney;
- (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 attorney 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.

(3) The bill of costs shall consist of such items specified in Part II as may be appropriate, set out, except for item 4, in chronological order. Each such item (other than an item relating only to time spent in travelling and waiting) may include an allowance for general care and conduct having regard to such of the circumstances referred to in paragraph (2) above as may be relevant to that item. Where a claim is made for such an allowance in addition to an hourly rate or base fee, the amount of the increase must be shown separately.

### **Fees to counsel**

2 (1) No fee to overseas counsel who has been specially admitted as an attorney shall be allowed unless —

- (a) before taxation its amount has been agreed by the attorney instructing overseas counsel; and
- (b) before taxation a fee note signed by overseas counsel or his clerk is produced.

(2) Except in taxations under rule 14, no costs shall be allowed in respect of more than one counsel appearing before the court unless the Judge or Registrar hearing the matter has certified the attendance as being proper in the circumstances of the case.

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### **Items to be authorised, certified etc.**

3 (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 authorised the preparation of the plan, or
- (b) notwithstanding the absence of an authorisation under subparagraph (a), the taxing officer is satisfied that it is reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any questions as to which a court expert is appointed under Order 40, shall not be allowed on a taxation of costs on the standard basis, unless the Court at the trial has certified that the calling of the witness was reasonable.

### **Division II**

1 Interlocutory Attendances —

- (a) Attending the hearing of any summons or other application at Court or appointment in chambers or elsewhere.
- (b) Travelling and waiting

2 Conferences and Overseas Counsel —

- (a) Attending counsel in conference.
- (b) Travelling and waiting.

3 Attendance at Trial or Hearing

- (a) Attending the trial or hearing of a cause or matter, or an appeal or to hear a deferred judgment.
- (b) Travelling and waiting.

4 Preparation

- (a) The doing of any work which was reasonably done arising out of or incidental to the proceedings, including —
  - (i) The Client: taking instructions to sue, defend, counterclaim, appeal or oppose etc., attending upon and corresponding with client; taking and preparing proofs of evidence;

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- (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 Enquiries: making searches at offices or public records and elsewhere for relevant documents: searched in the Companies Registry and similar matters;
  - (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 attorneys;
  - (vii) 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: preparation and consideration of pleadings and affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents including collating and service;
  - (x) Negotiations: work done in connection with negotiations with a view to settlement;
  - (xi) Interest: where relevant, the calculation of interest;
  - (xii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court.
- (b) Travelling and waiting time in connection with the above matters

### 5 Taxation

- (a) Taxation of Costs —

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- (i) preparing the bill (where allowable) and preparing for and attending the taxation;
  - (ii) Travelling and waiting.
- (b) Review
- (i) preparing and delivering objections to decision of taxing officer on taxation or answers to objections, and considering opponent's answers or objections, as the case may be; attending hearing of review.
  - (ii) Travelling and waiting.

### **PART III**

#### **FIXED COSTS**

##### **Costs on the recovery of a liquidated sum without trial**

1 The scale of costs following paragraph 2 of this Part of this Schedule shall apply in relation to the following cases if the writ was indorsed in accordance with Order 6, rule 2(1)(b), 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 judgment for failure to enter an appearance under Order 13, rule 1, or judgment in default of defence under Order 19, rule 2.

2 There shall be added to the basic costs set out in the said scale the appropriate court fees.

#### **Division I**

##### **Fourteen-Day Costs in Writ Actions**

The amount of costs indorsed on a Writ of Summons under Order 6, Rule 2(1)(b).

1	Where the amount claimed is less than \$25,000	\$200.00
2	Where the amount claimed is not less than \$25,000 but does not exceed \$50,000	\$500.00
3	Where the amount claimed is not less	\$700.00

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	than \$50,000 but does not exceed \$100,000	
4	Where the amount claimed is not less than \$100,000 but does not exceed \$250,000	\$900.00
5	Where the amount claimed exceeds \$250,000	\$1,000.00

The above apply to all writs for service within the jurisdiction, indorsed with a liquidated demand only, whether indorsed with a statement of claim or not.

**Additional Allowances**

(1)	Where there is more than one defendant, in respect of each additional defendant Served	\$50.00
(2)	For the Contingency of Substitute Service:	\$200.00
(3)	For service in any other place out of the jurisdiction	\$400.00

**Division II**

**Judgment in default of Appearance or of Defence for a Debt or Liquidated Demand only or for Possession of Land**

**The following sums apply whether the statement of claim is indorsed on the Writ or not**

1	Where the amount recovered is less than \$25,000	\$275.00
2	Where the amount recovered is not less than \$25,000 but is less than \$50,000	\$650.00
3	Where the amount recovered is not less than \$50,000 but is less than \$100,000	\$850.00
4	Where the amount recovered is not less than \$100,000	\$1,150.00
5	Where the amount recovered	\$1,300.00

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exceeds \$250,000	
6 Delivery up of Specific Goods Judgment for delivery of specific goods where the stated value of the goods —	
(a) is not less than \$25,000 but is less than \$50,000	\$650.00
(b) is not less than \$50,000 but is less than \$100,000	\$850.00
(c) is not less than \$100,000 but is less than \$250,000	\$1,150.00
(d) is in excess of \$250,000	\$1,300.00
7 Possession of land other than premises specified in order 13, r. 4(2) or Order 19, r. 5(2). Costs on judgment without trial - Judgment for possession with or without a money claim	\$600.00

**Additional Allowances where Applicable unless Taxation is  
Ordered**

(1) Where the substituted service ordered and effected:	\$200.00
(2) In the case of judgment in default of defence or judgment (where appearance is entered after the time limited therefore and the Plaintiff makes an affidavit of service for the purpose of a judgment on failure to enter an appearance) (the allowance to include the search fee)	\$40.00
(3) Where service ordered and effected out of jurisdiction	\$400.00.”

**Inserts new Order 72**

12 After Order 70 of the Rules of the Supreme Court 1985 there  
shall be inserted —

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## **“ORDER 72**

### **COMMERCIAL ACTIONS**

#### **72/1 Application and Interpretation**

1 (1) This Order applies to commercial actions in the Supreme Court, and the other provisions of these Rules apply to those actions subject to the provisions of this Order.

(2) In this Order "commercial action" means any claim or counterclaim arising out of the transaction of trade and commerce and —

- (a) includes any claim or counterclaim relating to —
  - (i) a business document or contract;
  - (ii) the export or import of goods;
  - (iii) the carriage of goods by land, sea, air or pipeline;
  - (iv) the exploitation of oil and gas reserves or other natural resources;
  - (v) insurance and re-insurance;
  - (vi) banking and financial services;
  - (vii) the operation of markets and exchanges;
  - (viii) the purchase and sale of commodities;
  - (ix) the construction of ships;
  - (x) business agency; and
  - (xi) arbitration.
- (b) includes any application under the Companies Act 1981.

(3) There is hereby established, as part of the Supreme Court, a Commercial Division (to be known as the Commercial Court) to take such causes and matters as may in accordance with this Order be entered in the commercial list.

(4) The judges of the Commercial Court shall be known as Commercial Judges and shall be such of the judges of the Supreme Court as the Chief Justice may from time to time designate to be Commercial Judges.

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### **72/2 The Commercial List**

2 (1) There shall be a list, which shall be called "the commercial list", in which commercial actions in the Supreme Court may be entered in accordance with the provisions of this Order, for trial in the Commercial Court, and the Chief Justice or one of the Commercial Judges nominated by the Chief Justice shall be in charge of that list.

(2) All proceedings in the commercial list will be heard or determined by a Commercial Judge, except that —

- (a) another judge of the Supreme Court may hear urgent applications if no Commercial Judge is available; and
- (b) unless a Commercial Judge otherwise orders, any application relating to the enforcement of a Commercial Court judgment or order for the payment of money may be dealt with by any judge of the Supreme Court.

### **72/3** *[blank]*

### **72/4 Entry of action in commercial list when action begun**

4 (1) Before a writ or originating summons by which a commercial action in the Supreme Court is to be begun is issued it may be marked in the heading "In the Supreme Court of Bermuda (Commercial Court)" and on the issue of a writ or summons so marked the action begun thereby shall be entered in the commercial list.

(2) If the plaintiff intends to issue a writ or originating summons by which a commercial action in the Supreme Court is to be begun and to mark it in accordance with paragraph (1) and the writ or the originating summons, as the case may be, is to be served out of the jurisdiction, an application for leave to issue the writ or summons and to serve the writ or the summons out of the jurisdiction may be made to a Commercial Judge.

(3) The affidavit in support of an application made to a Commercial Judge by virtue of paragraph (2) must, in addition to the matters required by Order 11, rule 4 (1) to be stated, state that the plaintiff intends to mark the writ or originating summons in accordance with paragraph (1) of this rule.

(4) If the judge hearing an application made to him by virtue of paragraph (2) is of opinion that the action in question should not be entered in the commercial list, he may adjourn the application to be heard by any judge.

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### **72/5 Transfer of action to commercial list after action begun**

5 (1) At any stage of the proceedings in a commercial action in the Supreme Court any party to the action may apply by summons to a Commercial Judge to transfer the action to the commercial list.

(2) If, at any stage of the proceedings in a commercial action in the Supreme Court, it appears to the Court that the action may be one suitable for trial in the Commercial Court and any party wishes the action to be transferred to the commercial list, then the Court may adjourn any hearing so that it can proceed before a Commercial Judge and be treated by him as a summons to transfer the action to that list.

### **72/6 Removal of action from commercial list**

6 (1) A Commercial Judge may, of his own motion or on the application of any party, order an action in the commercial list to be removed from that list.

(2) Where an action is in the commercial 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 the action.

### **72/7 Pleadings in commercial list actions**

7 (1) The pleadings in an action in the commercial list must be in the form of points of claim, or of defence, counterclaim, defence to counterclaim or reply, as the case may be and must be as brief as possible.

(2) Without prejudice to Order 18, rule 12 (1) no particulars shall be applied for or ordered in an action in the commercial list except such particulars as are necessary to enable the party applying to be informed of the case he has to meet or as are for some other reason necessary to secure the just, expeditious and economical disposal of any question at issue in the action.

(3) The foregoing provisions are without prejudice to the power of a Commercial Judge to order that an action in the commercial list shall be tried without pleadings or further pleadings, as the case may be.

### **72/8 Directions in commercial list actions**

8 (1) Notwithstanding anything in Order 25, rule 1 (1) any party to an action in the commercial list may take out a summons for directions in the action before the pleadings in the action are deemed to be closed.

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(2) Where an application is made to transfer an action to the commercial list, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7 (1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions.

**72/9** *[blank]*

### **72/10 Production of certain documents in marine insurance actions**

10 (1) Where in an action in the commercial 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 94 in Appendix A or in such form as it thinks fit, for the production of such documents as are therein specified or described.

(2) An order under this rule may be made on such terms, if any, as to staying proceedings in the action or otherwise, as the Court thinks fit.”.

### **Substitution of Order 73**

13 Order 73 of the Rules of the Supreme Court 1985 is repealed and replaced by the following —

### **“ORDER 73**

#### **ARBITRATION PROCEEDINGS**

**73/1** *[blank]*

### **73/2 Matters for a judge in court**

2 (1) Every application to the Court —

- (a) to remit an award under section 33 of the Arbitration Act 1986, or
- (b) to remove an arbitrator or umpire under section 34(1) of that Act, or
- (c) to set aside an award under section 34(2) of that Act, or

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- (e) to determine, under section 30 of that Act, any question of law arising in the course of a reference, or
- (f) to appoint an arbitrator under article 11(3) or secure the appointment of arbitrators under article 11(4) of the Second Schedule to the Bermuda International Conciliation and Arbitration Act 1993, or
- (g) to decide, under article 13(3) of the Second Schedule to that Act, on a challenge to an arbitrator, or
- (h) to decide, under article 14(1) of the Second Schedule to that Act, on the termination of an arbitrator's mandate, or
- (i) to decide, under article 16(3) of the Second Schedule to that Act, on whether the arbitral tribunal has jurisdiction,

must be made by originating motion to a judge in court.

(2) *[blank]*

(3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion to a judge in court, but the foregoing provision shall not be taken as affecting the judge's power to refuse to make such a declaration in proceedings begun by motion.

### **73/3 Matters for judge in chambers**

3 (1) Subject to the foregoing provisions of this Order and the provisions of this rule, the jurisdiction of the Court or a judge thereof under the Arbitration Act 1986 and the Bermuda International Conciliation and Arbitration Act 1993, may be exercised by a judge in chambers.

(2) Any application —

- (a) for leave to appeal to the Court of Appeal under section 29(3) of the Arbitration Act 1986, or
- (b) under section 29(5) of that Act (including any application for leave), or
- (c) under section 32 of that Act,

shall be made to a judge in chambers.

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(3) Any application to which this rule applies shall, where an action is pending, be made by summons in the action, and in any other case by an originating summons which shall be in Form No. 10 in Appendix A.

(4) Where an application is made under section 29(3) of the Arbitration Act 1986 the summons must be served on the arbitrator or umpire and on any other party to the reference.

**73/4** *[blank]*

### **73/5 Time limits and other special provisions as to appeals and applications under the Arbitration Acts**

5 (1) An application to the Court —

- (a) to remit an award under section 33 of the Arbitration Act 1986, or
- (b) to set aside an award under section 34(2) of that Act or otherwise, or
- (c) to direct an arbitrator or umpire to state the reasons for an award under section 29(5) of that Act,

must be made, and the summons or notice must be served, within twenty-one days after the award has been made and published to the parties.

(2) In the case of an application for leave to appeal to the Court of Appeal under section 29(3)(b) of the Arbitration Act 1986, the originating summons for leave to appeal and the notice of originating motion must be served and the appeal entered, within twenty-one days after the award has been made and published to the parties —

Provided that, where reasons material to the appeal are given on a date subsequent to the publication of the award, the period of twenty-one days shall run from the date on which the reasons are given.

(3) An application, under section 30 of the Arbitration Act 1986, to determine any question of law arising in the course of a reference, must be made, and notice thereof served, within fourteen days after the arbitrator or umpire has consented to the application being made, or the other parties have so consented.

(4) For the purpose of paragraph (3) the consent must be given in writing.

(5) In the case for every application to which this rule applies, the notice of originating motion, the originating

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summons or the summons, as the case may be, must state the grounds of the application and, where the application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or, as the case may be, of every consent given in writing, must be served with that notice.

(6) *[blank]*

(7) Without prejudice to paragraph (5), in an application for leave to appeal under section 29(3)(b) of the Arbitration Act 1986, any affidavit verifying the facts in support of a contention that the question of law concerns a term of a contract or an event which is not a one-off term or event must be lodged with the court and served with the notice of originating motion.

(8) Any affidavit in reply to an affidavit under paragraph (7) shall be lodged with the court and served on the applicant not less than two clear days before the hearing of the application.

(9) A respondent to an application for leave to appeal under section 29(3)(b) of the Arbitration Act 1986 who desires to contend that the award should not be upheld on grounds not expressed or not fully expressed in the award and reasons shall not less than two clear days before the hearing of the application file with the court and serve on the applicant a notice specifying the grounds of his contention.

### **73/6 Applications to be entered on commercial list**

6 Every application referred to in rule 2 or 3 shall be entered on the commercial list.

### **73/7 Service out of the jurisdiction of summons, notice, etc.**

7 (1) Subject to paragraph (1A), service out of the jurisdiction of —

- (a) any originating summons or notice of originating motion under the Arbitration Act 1986 or the Bermuda International Conciliation and Arbitration Act 1993, or
- (b) any order made on such a summons or motion as aforesaid,

is permissible with the leave of the Court provided that the arbitration to which the summons, motion or order relates is governed by the law of Bermuda or has been, is being, or is to be held within the jurisdiction.

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(1A) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by the law of Bermuda.

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and 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 rule.

(3) Order 11, rules 5, 6 and 8, shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to a writ.

### **73/8 Registration in court of foreign awards**

8 Where an award is made in proceedings on an arbitration in the United Kingdom or in any part of Her Majesty's dominions outside the United Kingdom to which the Judgments (Reciprocal Enforcement) Act 1958 extends, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, the Judgments (Reciprocal Enforcement) Act 1958 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications —

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the Judgments (Reciprocal Enforcement) Rules 1976 must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

### **73/9 Registration of awards under the United Kingdom Arbitration (International Investment Disputes) Act 1966 as extended to Bermuda**

9 (1) In this rule and in any provision of these rules as applied by this rule —

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"the Act of 1966" means the United Kingdom Arbitration (International Investment Disputes) Act 1966 as extended to Bermuda;

"the Convention" means the Convention referred to in section 1(1) of the Act of 1966;

"judgment creditor" and "judgment debtor" means respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the Judgments (Reciprocal Enforcement) Act 1958 shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment.

(3) An application to have an award registered in the Court under section 1 of the Act of 1966 shall be made by originating summons which shall be in Form No. 10 in Appendix A.

(4) The affidavit required by rule 3 of the Judgments (Reciprocal Enforcement) Rules 1976 in support of an application for registration shall —

- (a) in lieu of exhibiting the judgment or a copy thereof, exhibit a copy of the award certified pursuant to the Convention, and
- (b) in addition to stating the matters mentioned in the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention, which, if granted, might result in a stay of the award.

(5) There shall be kept in the Registry under the direction of the Registrar a register of the awards ordered to be registered under the Act of 1966 and particulars shall be entered in the register of any execution issued on such an award.

(6) Where it appears to the court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered —

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention, or

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- (b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award,

the Court shall, or, in the case referred to in sub-paragraph (b) may, stay execution of the award for such time as it considers appropriate in the circumstances.

- (7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.

### **73/10 Enforcement of arbitration awards**

10 (1) An application for leave under section 37 of the Arbitration Act 1986 or under section 48 of the Bermuda International Conciliation and Arbitration Act 1993 to enforce an award, irrespective of the country in which the award was made, on an arbitration agreement in the same manner as a judgment or order may be made ex parte but the Court hearing the application may direct a summons to be issued.

(2) If the Court directs a summons to be issued, the summons shall be an originating summons which shall be in Form No. 10 in Appendix A.

(3) An application for leave must be supported by affidavit —

- (a) exhibiting the arbitration agreement and the original award or, in either case, a copy thereof;
- (b) stating the name and the usual or last known place of abode or business of the applicant (hereinafter referred to as "the creditor") and the person against whom it is sought to enforce the award (hereinafter referred to as "the debtor") respectively,
- (c) stating as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

(4) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(5) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such an order as they apply in relation to a writ.

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(6) Within fourteen days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.

(7) The copy of that order served on the debtor shall state the effect of paragraph (6).

(8) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.”.

### **Amendment of Appendix A**

14 After Form No. 85 in Appendix A of the Rules of the Supreme Court 1985 there shall be inserted the following new Forms:

#### **“No. 86**

#### **Notice of motion for judicial review (O.53, r.5)**

[Royal Arms]

In the Supreme Court of Bermuda

Civil Jurisdiction

In the matter of an application for judicial review

and

In the matter of *[blank]*

Take Notice that pursuant to the leave of a Judge of the Supreme Court [or the Honourable Mr. Justice *[blank]* given on *[blank]* the Court will be moved as soon as counsel can be heard on the applicant’s behalf for an order for relief in the terms, and on the grounds, set out in Form 86A, herewith.

And that the costs of and occasioned by this motion be *[blank]*

And take notice that on the hearing of this motion the applicant will use the affidavit and exhibits copies of which accompany this notice.

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[And also take notice that the Supreme Court [or the Honourable Mr. Justice [blank] by order dated [blank] directed that all proceedings in [or on] the said [blank] be stayed until after the hearing of this motion or further order].

Dated the [blank] day of [blank] 20[blank].

(Signed)

of

To

Attorney for

Attorney for

**IMPORTANT**

Any respondent who intends to use an affidavit at the hearing should inform the Registry of his intention within ten days of the service of this notice. Any such affidavit must be filed in the Registry as soon as practicable and in any event within fifty-six days of service.

**No. 86A**

**In the Supreme Court of Bermuda**

[Royal Arms]

Applicant's Ref. No	Notice of APPLICATION for leave to apply for Judicial Review (O.53, r.5)	Supreme Court Ref. No.
This form must be read together with Notes for Guidance obtainable from the Registry.		
To the Registrar of the Supreme Court, Supreme Court Registry, Hamilton, HM 12		
Name, address and description of applicant (s)		

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Judgment, order, decision or other proceeding in respect of which relief is sought	
Relief Sought	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	
Signed	Dated

(Second page)

GROUND ON WHICH RELIEF IS SOUGHT

(If there has been any delay, include reasons here)

Note – Grounds must be supported by an affidavit which verifies the facts relied on.

**No. 86B (O.53, r.3 (5))**

**In the Supreme Court of Bermuda**

Applicant's Ref No.	Notice of RENEWAL of application for leave to apply for Judicial Review	Supreme Court Ref. No.
To the Registrar of the Supreme Court Supreme Court Registry, Hamilton, HM 12		
The applicant intends to renew his application for leave to apply for Judicial Review.		
Signed:		Date:
Received in the Registry	NOTE: This notice must be lodged in the Registry within 10 days of the service on the applicant or his solicitor of notice that	

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	the original application for leave has been refused.
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**No. 87**

**Notice of motion for writ of habeas corpus ad subjiciendum  
(O.54, r.2)**

[Royal Arms]

In the Supreme Court of Bermuda  
Criminal Jurisdiction [or Civil Jurisdiction as the case may be]  
20 . No.

In the Matter of A.B.

and

In the Matter of an application for a writ of habeas corpus ad subjiciendum

Take notice that pursuant to the direction of the Honourable Mr. Justice [blank] [or the Supreme Court], the Supreme Court will be moved on the [blank] day of [blank] 20[blank],, or so soon thereafter as counsel can be heard on behalf of A.B. for an order that the writ of habeas corpus do issue directed court at such time as the Court or judge may direct upon the grounds set out in the affidavits of the said A.B. and [blank] and the exhibits therein respectively referred to used on the application to the Honourable Mr. Justice [blank] [or the Supreme Court] for such order, copies of which affidavits and exhibits are served herewith.

And that the costs of and occasioned by this motion be the applicant's to be taxed and paid by the respondents to the applicant.

And take notice that on the hearing of this motion the said A.B. will use the affidavits for himself and the said [blank] and the exhibits therein referred to.

Dated the [blank] day of [blank] 20[blank].

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(Signed)  
of  
Attorney for

To  
Attorney for

**No. 88**

**Notice directed by Court of adjourned application for writ of  
habeas corpus (O.54, r.2)**

[Heading as in No. 2]

Take notice that an application for the above writ was made to the Supreme Court [or to the Honourable Mr. Justice *[blank]* ] in the above matter on the *[blank]* day of *[blank]* 20*[blank]*, when the said application was adjourned so that notice could be given to you.

Notice is hereby given to you that the said application will be made to the Supreme Court [or the Honourable Mr. Justice *[blank]*] on *[blank]* the *[blank]* day of *[blank]* 20*[blank]* at *[blank]* o'clock.

Dated the *[blank]* day of *[blank]* 20*[blank]* .

(Signed)  
of

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Attorney for

To

Attorney for

**No. 89**

**Writ of habeas corpus ad subjiciendum (O.54, r.10)**

ELIZABETH THE SECOND [as in No. 53]

To the Commissioner of Prisons greeting:

We command you that you have in the Supreme Court [or before a judge in chambers] at Hamilton, on the day and at the time specified in the notice served with this writ, the body of A.B. being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that Our Court [or Judge] may then and there examine and determine whether such cause is legal, and have you there then this writ.

Witness *[blank]* Chief Justice of Bermuda the *[blank]* day of *[blank]* 20*[blank]*.

Indorsement

By order of court [or of Mr. Justice *[blank]*]

This writ was issued by *[blank]* of *[blank]* attorney for *[blank]*.

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**No. 90**

**Notice to be served with writ habeas corpus ad subjiciendum  
(O.54, r.6)**

In the Supreme Court of Bermuda

Criminal Jurisdiction [or Civil Jurisdiction as the case may be].

[If in a cause already begun, here insert the title, not otherwise]

Whereas this court [or the Honourable Mr. Justice *[blank]*] has granted a writ of habeas corpus directed to *[blank]* [or other person having the custody of *[blank]* if so] commanding him to have the body of A.B. before the said Court [or before a judge in chambers] at the Supreme Court, Hamilton, on the day and at the time specified in the notice together with the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said A.B. before this court [or before the judge aforesaid] on *[blank]* the *[blank]* day of *[blank]* 20 *[blank]* at *[blank]* o'clock and to make a return to the said writ. In default the said Court will then, or so soon thereafter as counsel can be heard, be moved to commit you to prison for your contempt in not obeying the said writ [or if in vacation application will then be made to one of the judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ].

Dated the *[blank]* day of *[blank]* 20 *[blank]*

(Signed)

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of  
Attorney for  
To  
Attorney for

**No. 91**

**Writ of habeas corpus ad testificandum (O.54, r.10)**

ELIZABETH THE SECOND [as in No. 53]

To the Commissioner of Prisons at *[blank]* greeting:

We command you that you have before the Supreme Court on *[blank]* the *[blank]* day *[blank]* of *[blank]* 20*[blank]*, at *[blank]* the body of *[blank]*, being committed and detained in Our prison under your custody, as is said, then and there to testify the truth and give evidence [on Our behalf against A.B. for (describe the offence) or otherwise describing the proceedings], and so from day to day until the said *[blank]* shall have given his evidence as aforesaid. And when he shall have given his evidence, then you take him back without delay to Our said prison under your custody and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of law.

Witness [as in No. 4]

Indorsement

By order of court [or of Mr. Justice *[blank]*].

**RULES OF THE SUPREME COURT AMENDMENT  
RULES 2005**

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This writ was issued *[blank]* of *[blank]* attorney for *[blank]*

**No. 92**

**Writ of habeas corpus ad respondendum (O.54, r.10)**

ELIZABETH THE SECOND [as in No. 53]

To the Commissioner of Prisons at *[blank]* greeting:

We command you that you have before the Supreme Court on *[blank]* the *[blank]* day of *[blank]* 20*[blank]*, at *[blank]* the body of *[blank]*, being committed and detained in Our prison under your custody, as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called, then and there to answer to a charge of *[blank]* to be then and there made against him, and so from day to day until he shall have answered the said charge, and to be dealt with according to law. And have you then and there this writ.

Witness [as in No. 4]

Indorsement

[As in No. 6]

**No. 94**

**Order for production of documents in marine insurance action  
(O.72, r.10)**

[Heading as in action]

## **RULES OF THE SUPREME COURT AMENDMENT RULES 2005**

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Upon hearing *[blank]* [and upon reading the affidavit of *[blank]* filed the *[blank]* day of *[blank]*19 *[blank]*]:

It is ordered that the plaintiff and all other persons interested in this action, and in the insurance the subject of this action, do produce and show to the defendant, his solicitors or agents on oath [or by oath of their proper officer] all insurance slips, policies, letters of instruction or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship *[blank]*, or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship, cargo or freight, and all correspondence with any person relating in any manner to the effecting of the insurance on the said ship, cargo or freight, or any other insurance whatsoever effected on the said ship, cargo or freight, on the voyage insured by the policy sued on in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the ship and any other person with the owner or any person before the commencement of or during the voyage on which the alleged loss happened. Also all books and documents, whatever their nature and whether originals, duplicates or copies, which in any way relate or refer to any matter in question in this action and which are now in the custody, possession or power of the plaintiff or any other person on his behalf, his or their, or any of their brokers, solicitors or agents, with liberty for the defendant, his solicitors or agents to inspect and take copies of, or extracts from, any of those books or documents. And that in the like manner the plaintiff and every other person interested as aforesaid do account for all other books and documents relating or referring to any matter in question in this action which were once but are not now in his custody, possession and power.

And that [in the meantime all further proceedings be stayed and that] the costs of and occasioned by this application be costs in the action.

Dated the *[blank]* day of *[blank]* 20*[blank]*.”.

### **Transitional, Savings & Repeals**

15 (1) Subject to paragraphs (2) and (3), these Rules shall apply forthwith to all existing proceedings.

## **RULES OF THE SUPREME COURT AMENDMENT RULES 2005**

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(2) The new Order 11, as substituted by rule 4 of these Rules, shall only apply to process issued after the commencement of these Rules.

(3) To the extent that the repeal and replacement of Order 62 changes the amount of costs which may be recoverable on a taxation, it shall not apply to costs incurred before the commencement of these Rules, and such costs shall be taxed under the pre-existing provisions.

(4) Notwithstanding the repeal and replacement of Order 62, and for the avoidance of doubt, Part 1 of the Schedule to Order 62 is not affected by these amendments.

(5) Form 6 in Appendix A to the Rules of the Supreme Court 1985 is repealed.

Made this 23<sup>rd</sup> day of December, 2005

Chief Justice