

THE GRAND COURT LAW (1995 REVISION)

THE COURT OF APPEAL LAW (1996 REVISION)

THE COURT COSTS RULES 2001

These rules are made by the Rules Committee pursuant to Section 19(3)(d) of the Grand Court Law (1995 Revision) and by the Rules Committee of the Court of Appeal pursuant to Section 34 of the Court of Appeal Law (1996 Revision).

1. Citation, Commencement and Interpretation

- (1) These rules shall be cited as the Court Costs Rules 2001.
- (2)
 - (a) These rules shall come into operation on the 1st January, 2002, referred to in these rules as the "Commencement Date".
 - (b) These rules shall apply to every proceeding which is pending or commenced in the Grand Court or the Court of Appeal on or after the "Commencement Date".
 - (c) These rules shall apply to any order made on or after the Commencement Date by the Judicial Committee of the Privy Council in respect of costs incurred in the Cayman Islands.
- (3) Words and expressions in these rules which are used in the Grand Court Rules 1995 shall have the same meaning in these rules as in the Grand Court Rules 1995.

2. Revocation and Amendment of Rules relating to costs

- (1) The Grand Court (Taxation of Costs) Rules 1995 are hereby revoked with effect from the Commencement Date.
- (2) The Court of Appeal Rules (2001 Revision) are hereby amended by revoking rules 28-30 and substituting the following-
 - 28.- The powers and discretion of the Court under Section 24 of the Judicature Law (1995 Revision) as amended, shall be exercised subject to and in accordance with GCR Order 62.
- (3) GCR Orders 1 and 62 are hereby revoked and replaced by the rules contained in the Schedule hereto.

3. Addition of forms 301 to 314

The appendices to the rules are hereby amended by adding Appendix III containing prescribed forms for use in connection with GCR Order 62.

MADE by the Rules Committee on the 22nd day of October, 2001.

The Hon. Anthony Smellie, Q.C., Chief Justice

The Hon. David Ballantyne, Attorney General

Andrew J. Jones, Esq. Legal Practitioner

Alden M. McLaughlin, Esq., Legal Practitioner

AND MADE by the Rules Committee of the Court of Appeal on the 22nd day of October, 2001

The Rt. Hon. Mr. Justice Edward Zacca, O.J., President

The Hon. Mr Justice Gerald Collett, CBE, Q.C., Justice of Appeal

The Hon. Mr. Justice I. D. Rowe, QC, OJ, Justice of Appeal

Explanatory Notes

1. GCR Order 1 is amended to reflect changes consequent upon the introduction of the new GCR Order 62.
2. GCR Order 62 is comprehensively amended and a detailed explanatory memorandum is scheduled hereto. The new Order 62 should be read in conjunction with Practice Direction No. 1/2000.
3. GCR Forms 301 – 314 provide new forms pursuant to the new Order 62.
4. Subscribers to the Gazette should remove pages 1 – 36 (Index), 37 – 42 (Order 1), 277 (Order 62) from their binders and substitute the new pages contained in Schedule 1. In addition, subscribers should insert Appendix III (Forms 301 – 314) immediately after Appendix II.

SCHEDULE

INDEX

1. Revised Index
2. Order 1 – Citation, application, commencement, interpretation and forms
3. Order 62 – Costs
4. Appendix III (Forms 301 – 314)
5. Court Costs Rules – GCR Order 62 – Explanatory Memorandum

THE GRAND COURT LAW (1995 REVISION)

THE GRAND COURT RULES, 1995

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ORDER 1**CITATION, APPLICATION, COMMENCEMENT, INTERPRETATION AND FORMS****Citation (O.1, r.1)**

- 1.- (1) These Rules may be cited as the Grand Court Rules, 1995.
- (2) An individual rule may be cited using the abbreviation "GCR".

Application (O.1, r.2)

2. - (1) Subject to the following provisions of this rule, these Rules shall apply in relation to all proceedings in the Court.
- (2) Except for Part I of Order 52 (Committal), Order 53 (Applications for Judicial Review), Part III of Order 62 (Wasted Costs Orders) and Order 103 (Confidential Relationships (Preservation) Law (1995 Revision)), these Rules shall not apply to any criminal proceedings.
- (3) These Rules shall not apply to any application or proceedings governed by Parts I to III of the Succession Law (Probate and Administration) Rules 1977, as amended.
- (4) Except for Orders 3 (Time), 38 Part II (Writs of Subpoena), 39 (Evidence by Deposition), 62 (Costs), 67 (Change of Attorney), 45-51 (Enforcement) and 52 (Committal) 80, these Rules shall not apply to any proceedings which are -
 - (a) governed by the Matrimonial Causes Rules 1986, as amended,
 - (b) governed by the Grand Court (Bankruptcy) Rules 1977, as amended, or
 - (c) on appeal from civil proceedings in the Summary Court.

(5) Except for Order 62 (Costs) and Order 102 (Applications Pursuant to the Companies Law (1995 Revision) these Rules shall not apply to any proceedings under Part V of The Companies Law (1995 Revision).

(6) Notwithstanding the provisions of paragraphs (2) to (5) of this rule -

- (a) Order 38 shall apply to every civil proceeding except -
 - (i) a proceeding under Part V of the Companies Law (Revised); and
 - (ii) any appeal from civil proceedings in the Summary Court;
- (b) every affidavit or other document filed in the Court office shall comply with the requirements of Orders 41 and 66;
- (c) every judgment and order made by the Court shall comply with the requirements of Order 42;
- (d) except in the case of petitions in proceedings governed by the Matrimonial Causes Rules 1986, as amended, every originating process or other document required to be served by these Rules or any other rules in connection with any civil proceedings shall be served in accordance with Orders 10 and 65;
- (e) Part I of Order 80 shall apply to every proceeding to which a person under disability is a party; and
- (f) every interlocutory summons issued by the Court, including summonses issued in proceedings governed by the Matrimonial Causes Rules 1986 and those issued in proceedings under Part V of the Companies Law (Revised), shall be endorsed in accordance with Order 32, rule 2(4), and Order 32, rules 2 to 8 shall apply to the hearing of such summonses.

(7) All funds required to be paid into or out of Court, whether by order of the Court of Appeal, the Court, the Summary Court or otherwise, in both criminal and civil proceedings, shall be lodged, paid, invested and dealt with in accordance with the provisions of Order 92.

Commencement and transitional provisions (O.1, r.3)

3. -
- (1) These Rules shall come into operation on the 1st day of June, 1995, referred to in this Order as the "commencement date".
 - (2) These Rules shall apply to -
 - (a) every proceeding commenced on or after the commencement date; and

- (b) every step taken or required to be taken after the commencement date in any proceeding pending on that date.
- (3) No step taken or required to be taken before the commencement date shall be treated as a non-compliance with these Rules provided that it complied with the rules then in force.
- (4) Order 6, rule 8 shall have no application to writs issued prior to the commencement date.

Revocations (O.1, r.4)

4. - The following rules are hereby revoked with effect from the commencement date -

- (a) the Grand Court (Civil Procedure) Rules 1976, as amended;
- (b) the Grand Court (Admiralty) Rules 1977;
- (c) the Grand Court (Forms and Miscellaneous) Rules 1976;
- (d) the Civil Evidence Rules 1978;
- (e) the Grand Court (Proceedings by and against the Crown) Rules 1977;
- (f) Part IV of the Succession Law (Probate and Administration) Rules 1977, as amended;
- (g) the Grand Court (Applications for Orders of Mandamus, Prohibition, Certiorari and Habeas Corpus) Rules 1977;
- (h) the Grand Court (Foreign Process) Rules 1977; and
- (i) the Grand Court (Foreign Judgments) (Reciprocal Enforcement) Rules 1977.

Non application of English rules (O.1, r.5)

5. - (1) Except as provided in Order 75, r.2, the Rules of the Supreme Court 1965 shall cease to have any application to -
- (a) every proceeding commenced on or after the commencement date; and
 - (b) any step taken or required to be taken after the commencement date in any proceeding pending on that date.

(2) Notwithstanding paragraph (1), The Supreme Court Practice may be relied upon where appropriate as an aid to the interpretation and application of these Rules.

Application of Interpretation Law (1995 Revision) (O.1, r.6)

6. - The Interpretation Law (1995 Revision) shall apply to the interpretation of these Rules as it applies to the interpretation of a Law.

Definitions (O.1, r.7)

7. - (1) In these Rules, unless the context otherwise requires -

"Accountant General" means the Accountant General of the Grand Court appointed under paragraph 1 of the First Schedule of the Judicature Law or an officer appointed by him under Order 92, rule 6;

"an action for personal injuries" means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, and "personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"attorney" means a person admitted or otherwise entitled to practise as an attorney-at-law in the Cayman Islands either generally or in respect of a particular cause or matter and includes Crown Counsel;

"Bailiff" means the person appointed as such under Section 7(1) of the Grand Court Law (1995 Revision), and includes any assistant bailiffs;

"Chief Justice" means the Chief Justice of the Cayman Islands or any other Judge authorised to act as Chief Justice;

"Chief Marshall" means the person appointed as such by the Chief Justice and includes any deputies and assistants;

"Clerk of the Court" means the person appointed as such under Section 7(1) of the Grand Court Law (1995 Revision), and includes any deputies;

"the Court" means the Grand Court of the Cayman Islands constituted pursuant to Section 3 of the Grand Court Law (1995 Revision) whether sitting as the Grand Court or as the Chief Court of Bankruptcy or as a Colonial Court of Admiralty;

"Court Funds Office" means the office of the Accountant General or of an officer appointed by him under Order 92, rule 6;

"Court office" is the office established pursuant to Section 10 of the Grand Court Law (1995 Revision), as amended;

"Court file" means the file established in respect of every proceeding in accordance with Order 63, rule 2;

"Grand Court Law" means the Grand Court Law (1995 Revision) as amended from time to time;

"The Judicature Law" means The Judicature Law (1995 Revision), as amended from time to time;

"Judge" means any judge or acting judge of the Court;

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

"originating summons" means every summons other than a summons in a pending cause or matter;

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

"prescribed fee" means the fee prescribed by the Grand Court Fees Rules 1999;

"practice form" means a form contained in a practice direction issued pursuant to Order 1, rule 12;

"prescribed form" means a form prescribed by these Rules and contained in the Appendices;

"prescribed rate" means the applicable rate of interest prescribed from time to time by the Rules Committee pursuant to Section 34 of The Judicature Law;

"probate action" has the meaning assigned by Order 76;

"receiver" includes a manager;

"Register of Judgments" means the file maintained in accordance with Order 63, rule 7;

"Register of Writs" means the file maintained in accordance with Order 63, rule 8;

"State Immunity Act 1978" means the United Kingdom State Immunity Act 1978 as applied to the Cayman Islands by the State Immunity (Overseas Territories) Order 1979 (SI 1979/458);

"writ" means a writ of summons.

(2) In these Rules, unless the context otherwise requires, "the Court" means the Grand Court or any one or more Judges thereof, whether sitting in open Court or in chambers.

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

Construction of references to orders, rules, etc. (O.1, r.8)

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

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

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

Construction of references to action, etc. for possession of land (O.1, r.9)

9. - Except where the context otherwise requires, references in these Rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof.

Prescribed forms (O.1, r.10)

10. - The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case requires.

Use of English Practice Forms as precedents (O.1, r.11)

11. - The Queens Bench and Chancery Masters' Practice Forms contained in Part 2 of The Supreme Court Practice, as may be hereafter amended from time to time, are not incorporated in these Rules, but they shall be regarded as approved precedents to be used, with all necessary and appropriate variations, whenever possible.

Practice directions (O.1, r.12)

12. - (1) The Chief Justice may issue practice directions for the purpose of -

- (a) supplementing these Rules, provided that no practice direction shall revoke or vary any rule;
 - (b) establishing forms to be known as "practice forms" in respect of any matter in which no prescribed form is contained in Appendix I; and
 - (c) providing for the practice and procedure of the Court in respect of any matter not governed by these or any other rules.
- (2) All practice directions issued by or with the authority of the Chief Justice and all practice notes issued by the Clerk of the Court are hereby revoked with effect from the commencement date.
- (3) The Rules Committee shall from time to time issue practice directions containing guidelines relating to the matters referred to in Order 62, rule 17
- (4) The Accountant General may, with the concurrence of the Chief Justice, issue practice directions for the purpose of supplementing the provisions of Order 92 and establish practice forms in respect of any matter relating to Order 92 for which no prescribed form is contained in Appendix II.
- (5) All practice directions and practice forms issued pursuant to this rule shall be gazetted.
- (6) Any practice direction or practice form issued pursuant to this rule may be varied or revoked by the Chief Justice in the case of those issued by him or by the Accountant General in the case of those issued by him.
- (7) Any practice direction or practice form may be revoked by the Rules Committee.

ORDER 62

COSTS

PART I: PRELIMINARY

Application (O.62, r.1)

- 1.- (1) This Order shall have effect, with such modifications as may be necessary, where by virtue of any Law the costs of any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Law not being proceedings in the Court, are taxable in the Court.
- (2) The powers and discretion of the Court under Section 24 of the Judicature Law (1995 Revision) (as amended) (which relates to the costs of proceedings in the Court) shall be exercised subject to and in accordance with this Order.

Transitional provisions (O.62, r.2)

- 2.- (1) This Order shall come into operation on the first day of January, 2002, referred to in this Order as the "Commencement Date".
- (2) This Order shall apply to:-
 - (a) every proceeding commenced on or after the Commencement Date;
 - (b) every step taken or costs incurred after the Commencement Date in any proceeding pending on that date.
- (3) The parties' rights and liabilities under an order for costs made prior to the Commencement Date shall be determined in accordance with the Grand Court (Taxation of Costs) Rules 1995.
- (4) Where an order for costs made after the Commencement Date relates in part to steps taken prior to the Commencement Date, the parties' rights and liabilities shall be determined in accordance with the Grand Court (Taxation of Costs) Rules 1995 insofar as it relates to steps taken prior to the Commencement Date and in accordance with this Order insofar as it relates to steps taken after the Commencement Date.

- (5) Parts V and VI of this Order shall apply to –
- (a) every taxation commenced on or after the Commencement Date;
 - (b) every taxation pending on the Commencement Date, provided that nothing contained in this Order shall invalidate any step taken prior to the Commencement Date in respect of a pending taxation;
- (6) Part VII of this Order shall apply in respect of –
- (a) every decision of the taxing officer made on or after the Commencement Date; and
 - (b) every appeal against a decision of the taxing officer pending on the Commencement Date.
- (7) No appeal to a Judge (pursuant to the practice existing prior to the Commencement Date) and no application for review by a Judge (pursuant to Part VII of this Order) shall be entertained in respect of any decision of the taxing officer made prior to the Commencement Date unless such appeal or application was commenced within 14 days after the relevant decision was made.

Definitions (O.62, r.3)

- 3.- (1) In this Order, unless the context otherwise requires–

"assessed costs" means costs assessed by a Judge in accordance with rule 8 or by a taxing officer in accordance with rule 26(2);

"assisted person" means a person to whom a legal aid Certificate has been granted pursuant to the Poor Persons (Legal Aid) Law 1975 in respect of the relevant proceedings;

"Commencement Date" means 1st January 2002;

"Court" includes the Court of Appeal;

"foreign lawyer" means a person who is engaged in practice as a professional lawyer in any country outside the Islands;

"the Guidelines" means the guidelines made from time to time by the Rules Committee pursuant to rule 16;

"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 3(2) and an appellant or respondent to any appeal;

"paying party" includes, in the case of taxation of costs payable out of a fund, any person to whom the Court has directed that notice of the appointment for taxation be given;

"person under disability" has the same meaning as in Order 80, rule 1;

"proceedings" includes any cause or matter or any step in any cause or matter and any appeal and any step in any appeal;

"successful party" means a party in whose favour an order for costs is made or who is otherwise entitled to receive costs from another party or out of a fund.

"the standard basis" and "the indemnity basis" have the meanings assigned to them by rules 13(1) and (3), respectively;

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

"taxing officer" means any person appointed as a taxing officer by the Chief Justice and includes every Judge who shall be ex officio taxing officers.

(2) References to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to -

- (a) any estate or property, whether real or personal, held for the benefit of any person or class of persons; and
- (b) the assets of a company or partnership which is the subject of a winding up proceeding,

and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

(3) References to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration in relation to

proceedings (including taxation proceedings) and shall include references to costs of or incidental to those proceedings.

(4) References to \$ means Cayman Islands dollars but shall be interpreted to include the United States dollar equivalent.

(5) Bills of costs may be drawn up either in Cayman Islands dollars or United States dollars.

PART II: ENTITLEMENT TO COSTS

General principles (O.62, r.4)

4.- (1) This rule shall have effect unless otherwise provided by any Law.

(2) The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.

(3) A person who claims to be entitled pursuant to a contract to recover the legal fees and expenses incurred in enforcing that contract shall be entitled to judgment for the amount found due under the contract and such amount shall not be subject to taxation pursuant to this Order.

(4) Except as provided in paragraph (3), 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.

(5) 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.

(6) The amount of the costs which a successful party shall be entitled to recover from any other party is -

(a) the fixed costs prescribed in rule 7;

(b) the amount assessed by the Judge in accordance with rule 8;

(c) the amount allowed after taxation on the standard basis; or

(d) the amount allowed after taxation on the indemnity basis.

(7) The orders which the court may make under this rule include an order that a party must pay-

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct part of the proceedings; and
- (g) interest on costs (at the prescribed rate for Cayman Islands dollars) from or until a certain date, including a date before judgment.

(8) No order for costs shall be made against an assisted person.

(9) 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 the table.

Term	Effect
<i>Costs or Costs in any event</i>	The party in whose favour the order is made is entitled to the costs in respect of the part of the proceedings to which the order relates whatever other costs orders are made in the proceedings.
<i>Costs reserved</i>	The issue of costs will be determined on a subsequent application.
<i>Costs here and below</i>	The party in whose favour the costs 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,

save that where such an order is made by the Court of Appeal on an appeal from the Grand Court the party shall not be entitled by virtue of that order to any costs which he has incurred in any court below the Grand Court.

*Costs in the cause or
Costs in the application*

The party in whose favour the Court makes an order for costs at the end of the proceedings is entitled to his costs of the part of the proceedings to which the order relates.

*Plaintiff's costs in the cause or
Defendant's costs in the cause*

If the party in whose favour the costs order is made is awarded costs at the end of the proceedings, that party is entitled to his costs of the part of the proceedings to which the order relates. If any other party is awarded costs at the end of the proceedings, the party in whose favour the final costs order is made is not liable to pay the costs of any other party in respect of the part of the proceedings to which the order relates.

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.

No order for costs

Each party is to bear his own costs of the part of the proceedings to which the order relates whatever costs order the Court makes at the end of the proceedings.

(10) When used in an order of the Court, the expressions *Costs*, *Order for costs* and *Costs to be taxed if not agreed* shall mean costs to be taxed on the standard basis.

(11) The Court may make an inter partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently.

Cases where order for costs deemed to have been made (O.62, r.5)

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 in the following paragraphs of this rule.

(2) 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 (except for the purpose of obtaining a default judgment), that other party shall be entitled to his costs of the action or counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(3) 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.

(4) 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.

(5) 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 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.

Cases where costs do not follow the event (O.62, r.6)

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, personal representative, mortgagee, chargee or official liquidator he shall be entitled to the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the fund and the Court may order otherwise only on the ground that he has acted unreasonably or, in the case of a trustee, personal representative or official liquidator has in substance acted for his own benefit rather than for the benefit of the fund or the creditors as the case may be.

(3) Where any person claiming to be a creditor-

(a) seeks to establish any claim to a debt under any judgment or order in accordance with Order 44, or

(b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such procedure as is mentioned in Order 102, rule 13,

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 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 that 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 14 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 under 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.

Claim for fixed costs (O.62, r.7)

7.- (1) Where a writ is indorsed with a claim for a liquidated sum only, it may include a claim for fixed costs on the following scale-

- (a) the sum of \$50 where the principal sum claimed does not exceed \$2,000;
- (b) the sum of \$250 where the principal sum claimed exceeds \$2,000 but does not exceed \$10,000;
- (c) the sum of \$500 where the principal sum claimed exceeds \$10,000,

plus in each case the prescribed fee paid upon issue of the writ.

(2) Where a writ is indorsed with a claim of the kind mentioned in Order 13, rules 2, 3 or 4 and Order 19, rule 3, 4 or 5, it may include a claim for fixed costs in the sum of \$250.

(3) Nothing in this rule shall preclude a plaintiff from waiving his right to claim fixed costs and instead claiming costs to be assessed or taxed.

Assessment of Costs (O.62, r.8)

8.- (1) The amount of costs which a successful party is entitled to recover against another party shall be assessed if the order is made in respect of -

- (a) an appeal from the Summary Court; or

- (b) an action in which the Writ is indorsed only with a claim for a liquidated sum not exceeding \$25,000 (or where other relief claimed is abandoned).

(2) Except in a case to which paragraph (1) applies, whenever the Court makes an order for costs, the party entitled to the benefit of the order shall be entitled, at his option -

- (a) to an order that such costs shall be taxed if not agreed; or
- (b) to have the amount of such costs assessed by the Judge.

(3) Subject to paragraph (4), where the Court is required to assess costs the Judge shall make his own summary assessment of the amount of legal fees and disbursements which he considers that a reasonable litigant is likely to have incurred and award that amount.

(4) The amount of costs payable by any party pursuant to an order for costs to be assessed shall not exceed -

- (a) \$1,000 where the order relates to the costs of an interlocutory application; or
- (b) \$10,000 where the order relates to the costs of an entire proceeding,

together with the court fees which have been paid by the successful party.

Stage of proceedings at which costs to be taxed (O.62, r.9)

- 9.- (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 stage it may order accordingly.
- (3) 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.
- (4) Where it appears to the Court on application that there is no likelihood of any further order being made in a cause or matter, it may forthwith order the costs of any interlocutory proceedings which have taken place to be taxed.

Matters to be taken into account in exercising discretion (O.62, r.10)

10.- The Court in exercising its discretion to make an order for 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.

PART III: WASTED COSTS ORDERS**Personal liability of attorney for costs (O.62, r.11)**

11. (1) In Part III of this Order the expression "attorney" shall include a "foreign lawyer".

(2) Where it appears to the Court in any proceedings that anything has been done or that any omission has been made improperly, unreasonably or negligently 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.

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

- (a) the attorney whom it considers to be responsible (whether personally or through an employee or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; or
- (b) the attorney personally to indemnify such other parties against costs payable by them.

(4) The amount payable under a wasted costs order made under paragraph 3(b) of this rule shall be taxed on the indemnity basis.

Application for wasted costs orders (O. 62, r.12)

- (1) A wasted costs order may be made by the Court of its own motion if the attorney's liability is plain and obvious and can fairly be determined without the need for extensive evidence or any extensive investigation of the circumstances giving rise to that liability.
- (2) Subject to paragraph (3), before an order may be made under paragraph (1) of this rule the Court shall give the attorney a reasonable opportunity to appear and show cause why an order should not be made.
- (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.
- (4) In any other case, an application for a wasted costs order shall be made by summons setting out the grounds of the application which shall be supported by an affidavit containing full particulars of all the facts and matters relied upon by the applicant.
- (5) A copy of a summons issued under this rule and the supporting affidavit must be served-
 - (a) on the attorney personally; or
 - (b) in the case of an application against Crown Counsel or any other attorney acting on behalf of the Attorney General, on the Attorney General.
- (6) The Court may direct that notice of any proceedings or order against an attorney under this rule be given to his client in such manner as may be specified in the direction.
- (7) The Court shall direct that notice of any proceedings or order under this rule against Crown Counsel shall be given to the Attorney General.

PART IV: TAXATION OF COSTS

Basis of taxation (O.62, r.13)

13.- (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 taxing officer 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) Where the amount of costs is to be taxed on the standard basis, the taxing officer will only allow costs which are not only reasonable but are also proportionate to the matters in issue having regard to-

- (a) the amount of money involved;
- (b) the importance of the case; and
- (c) the complexity of the issues.

(3) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer 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.

(4) 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.

Costs payable to a trustee, personal representative or official liquidator out of any fund (O.62, r.14)

14.- (1) Unless the Court otherwise orders, every taxation of a trustee's, personal representative's or official liquidator'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, shall be on the indemnity basis.

(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 personal representative or official liquidator as such.

Costs payable to an attorney where money claimed by or on behalf of a person under disability (O.62, r.15)

15.- (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 person under disability, or

(b) money paid into court is accepted by or on behalf of a person under disability.

(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

(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 taxing officer that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs inter partes;

and for purposes of this rule "plaintiff" shall include any person acting on behalf of such person under disability.

(3) On a taxation under paragraph (2), the taxing officer shall also tax any costs payable to that client 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 person under disability or patient and any other party.
- (4) Nothing in the foregoing provisions of this rule shall prejudice any attorney's lien for costs.
- (5) The foregoing provisions of this rule shall apply in relation to-
- (a) a counterclaim by or on behalf of a person who is a person under disability; and
 - (b) a claim made by or on behalf of a person who is a person under disability 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.

Amount of costs (O.62, r.16)

- 16.- (1) The amount of costs to be allowed on taxation shall (subject to rule 17 and to any order of the Court fixing the costs to be allowed) be in the discretion of the taxing officer.
- (2) In exercising his discretion the taxing officer shall have regard the Guidelines issued by the Rules Committee pursuant to paragraph (3), to all the relevant circumstances, and in particular to-
- (a) the circumstances 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 relevant documents (however brief), properly prepared or perused;

- (d) where money or property is involved, its amount or value;
- (3) The Rules Committee may issue guidelines relating to: -
 - (a) the procedure in respect of taxation;
 - (b) the form and content of bills of costs; and
 - (c) the nature and amount of fees, charges, disbursements, expenses or remuneration which may be allowed on taxation;

Allowance or disallowance of items and allowance of increased sums (O.62, r.17)

- 17.- (1) Where the costs of any action or matter are to be taxed the Court may, if it thinks fit, direct that any item of work shall be allowed, disallowed, restricted or qualified on taxation.
- (2) An application for a direction under paragraph (1) may be made at the trial or hearing of the proceeding or on notice to be served on the party by whom the costs are payable within 14 days after the making of the order for their payment, provided that where an application which could have been made at the trial or hearing is made subsequent thereto, the Court may refuse the application on the ground that it ought to have been made at the trial or hearing.

Foreign lawyers (O.62, r.18)

- 18.- (1) Work done by foreign lawyers may be recovered on taxation under these rules on the standard basis provided that
- (a) the foreign lawyer has been temporarily admitted as an attorney; and
 - (b) the work was done after he was admitted.
- (2) Work done by foreign lawyers who are temporarily admitted must be fully itemised in the bill of costs and may not be treated as a disbursement.
- (3) Whenever a claim is made for work done by foreign lawyers, the taxing officer will investigate whether it has resulted in a duplication or increase in the cost of the proceedings and any such increase shall be disallowed.
- (4) Work done by local attorneys for the purpose of instructing foreign lawyers and vice versa shall be disallowed.

(5) The taxing officer shall disallow any item which appears to have been incurred, or the costs of which appears to have been increased, because the successful party has engaged both local attorneys and foreign attorneys.

(6) Time spent and disbursements incurred in respect of written and oral communication between foreign lawyers and local attorneys will be disallowed.

(7) The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than he would have been required to pay if the successful party had employed only local attorneys.

Litigants in person (O.62, r.19)

19.- (1) The costs of a litigant in person to be taxed on the standard basis shall be taxed subject to the provisions of this rule.

(2) Where it appears to the taxing officer that the litigant in person has suffered pecuniary loss in doing any item of work to which the costs relate, 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, provided that the amount allowed in respect of any such item of work shall be such sum as the taxing officer thinks fit but not exceeding, except in the case of a disbursement or expense, two-thirds of the sum which would have been allowed in respect of that item of work if an attorney had been employed or the actual amount of pecuniary loss suffered, whichever is the less.

(3) Where it appears to the taxing officer 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 an amount not exceeding \$15 per hour.

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

(5) For the purposes of this rule a litigant in person includes a litigant who is a practising attorney.

(6) For the purposes of this rule, a company acting without an attorney is to be treated as a litigant in person.

PART V: POWERS OF TAXING OFFICERS

Powers of taxing officers (O.62, r.20)

20.- A taxing officer shall have power to tax -

- (a) the costs 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 Law or payable pursuant to an arbitration agreement, and
- (c) any other costs the taxation of which is ordered by the Court.

Extensions of time (O.62, r.21)

- 21.- (1) The Court or the taxing officer may extend the period within which a party is required by or under this Order to commence proceedings for taxation or within which a party is required to do anything in or in connection with such proceedings on such terms (if any) as it thinks just and the Court or the taxing officer may do so although the application for such extension is not made until after the expiration of that period.
- (2) Where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with proceedings for taxation a taxing officer may specify the period within which the thing is to be done.

Costs Certificates (O.62, r.22)

22.- (1) The taxing officer:-

- (a) shall, at the conclusion of taxation proceedings before him, issue a certificate in Form 305 for the net amount of the costs allowed by him (after making such set-offs as may be required) ;
- (b) may from time to time in the course of the taxation issue an interim certificate in Form 308 for any part of the costs which have been taxed or agreed;
- (c) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission.

(2) If the successful party and paying party agree the amount of costs, either party may apply to the taxing officer for a costs certificate (either interim or final) for the amount agreed.

(3) The successful party may apply to the taxing officer for the issue of a default costs certificate in Form 309 if the paying party fails to comply with any time limit prescribed by the rules or the Guidelines or fixed by the taxing officer.

(4) A default costs certificate-

- (a) must be set aside by the taxing officer if it appears to him that the successful party was not entitled to it; and
- (b) in any other case, may be set aside by the taxing officer if it appears to him that there is some good reason why he should conduct a taxation.

(5) A paying party who seeks to set aside a default costs certificate shall within 14 days of service of the default costs certificate -

- (a) lodge an application in Form 313;
- (b) lodge the bill of costs signed and completed in accordance with rule 27(3);
- (c) lodge an affidavit explaining the reasons for his default; and
- (d) pay into Court the whole amount specified in the certificate.

(6) A costs certificate shall be enforceable as if it were a judgment or order of the Court.

Power of taxing officer to effect set offs (O.62, r.23)

23.- (1) Where a party entitled to be paid costs is also liable to pay costs, the taxing officer shall-

- (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 certify 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.

Taxation of bill of costs comprised in an account (O.62, r.24)

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

Powers of taxing officers on taxation of costs out of a fund (O.62, r.25)

- 25.- (1) Where any costs are to be paid out of a fund the Court may give directions as to the parties who are entitled to receive notice of the taxation of those costs.
- (2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund it may direct the party whose bill is to be taxed to send to any person entitled to notice of the taxation a copy of the bill, or of any part thereof, free of charge, together with the following information, that is to say-
- (a) that the bill of costs, a copy of which or of part of which is sent has been referred to a taxing officer for taxation;
 - (b) the time appointed by the taxing officer at which an oral hearing will take place or be continued; and
 - (c) such other information, if any, as the Court may direct.

Powers of taxing officers in relation to costs of taxation proceedings (O.62, r.26)

- 26.- (1) Subject to the provisions of this Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings which shall be assessed by the taxing officer.
- (2) Subject to paragraph (3) the taxing officer shall make his own assessment of the costs which he considers that a reasonable litigant is likely

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Commencement of taxation proceedings (O.62, r.28)

28.- (1) Proceedings for the taxation of costs shall be commenced by lodging the following documents with the taxing officer -

- (a) an application for taxation in such of Forms 301 to 304 as may be appropriate;
- (b) a bill of costs completed and signed by each of the paying parties in accordance with rule 27(3);
- (c) any statement of objections received from the paying party;
- (d) any reply to the Statement of Objections relied upon by the successful party;
- (e) where a party is entitled to require taxation of any costs directed to be paid by any award made on an arbitration under any Law or pursuant to any arbitration agreement and no order of the Court for enforcement of the award has been made, a true copy of the award; and
- (f) where a party is entitled to require taxation of any costs directed to be paid by any order, award or other determination of any tribunal or other body constituted by or under any Law or Regulation, a true copy of the order, award or determination, as the case may be.

(2) Where a party is entitled to recover taxed costs or to require any costs to be taxed by virtue of -

- (a) a judgment, direction or order given or made in proceedings in the Court; or
- (b) rule 5; or
- (c) an award made on an arbitration under any Law 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 Law,

he must commence proceedings for the taxation of those costs either within 3 months after the judgment, direction, or order was filed or the award or other determination was signed or otherwise perfected or, within 3 months after his right to taxation arose in accordance with rule 9, whichever is the later.

(3) The taxing officer may summarily dismiss any application for taxation which is made out of time.

Subsequent procedure (0.62, r.29)

29.- (1) A taxation shall be inquisitorial in nature.

(2) The taxing officer shall enquire into the bill of costs and determine the amount to be paid in accordance with this Order and the Guidelines for which purpose the taxing officer shall obtain such written explanations from the successful party and/or such written submissions on behalf of the paying party as may be appropriate to enable him to make such determination fairly.

(3) If the taxing officer considers that he cannot properly tax a bill of costs or complete his taxation of a bill of costs without hearing an oral submission from the successful party and/or the paying party, he shall fix a hearing date and send a notice of appointment to

(a) the successful party; and

(b) every paying party who has completed column 4 and signed the bill of costs;

(4) The taxing officer may require the successful party to produce the following documents-

(a) the engagement letters or other documents which evidence the terms upon which he engaged his attorneys and foreign lawyers;

(b) the invoices (and detailed versions of the invoices) rendered on him by his attorneys and foreign lawyers;

(c) an index and/or bundle of the pleadings, affidavits and orders relating to the proceeding before the Court;

(d) the invoice, account or other document evidencing the payment of any disbursement;

(e) time records relating to legal fees;

(f) instructions, briefs, opinions or reports;

- (g) the whole or any part of the correspondence files of his attorneys and foreign lawyers;
 - (h) any other documents which he considers relevant for the purpose of justifying the amounts claimed in the bill of costs.
- (5) The taxing officer may require that any document produced by the successful party is made available for inspection by the paying party, provided that the document in question is not privileged.
- (6) The taxing officer shall not give reasons for any of his decisions.
- (7) The taxing officer shall send an office copy of his costs certificate to each of the successful and paying parties.

PART VII: REVIEW OF TAXATION AND APPEAL ON POINTS OF CONSTRUCTION

Review by the Judge (O.62, r.30)

- 30.- (1) Any party who is dissatisfied with the amount of any costs certificate may apply to a Judge to review the taxing officer's decision.
- (2) In the event that the taxation was conducted by a Judge in his capacity as an ex officio taxing officer, the review shall be conducted by a different Judge.
- (3) An application under this rule for review of the taxing officer's decision must be made within 14 days after the decision to be reviewed or within such other period as may be fixed by the taxing officer.
- (4) Every applicant for review under this rule must at the time of making his application-
- (a) deliver to the Judge his objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case;
 - (b) deliver a copy of the objections to all parties affected by the application;
 - (c) if the applicant is the paying party, pay the amount as taxed into court; and

- (d) serve notice of payment into court on every party referred to in subparagraph (b) above.

(5) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such other period as may be fixed by the Judge, deliver to the Judge answers in writing to the objections stating concisely the grounds on which he will oppose the objections and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice under paragraph (4).

(6) A review under this rule shall be inquisitorial in nature and the Judge may receive further evidence and may exercise all the powers which he might have exercised on an original taxation, including the power to award costs of the proceedings before him.

(7) In the event that the Judge considers that he cannot properly review the taxing officer's decision without hearing oral submissions, he shall fix a hearing date and any party to whom a copy of the objections was delivered under paragraph (4) shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (5).

Appeal to the Court of Appeal on points of construction (O.62, r.31)

31.- (1) A party to any taxation proceeding who is dissatisfied with any decision of a Judge (whether or not such decision has been reviewed in accordance with rule 30) may apply to the Judge for leave to appeal to the Court of Appeal which shall be granted only if the Judge is satisfied that the proposed appeal involves a point of construction of general importance.

(2) There shall be no other right of appeal to the Court of Appeal in respect of a decision made by a Judge, whether acting as an ex officio taxing officer or conducting a review under rule 30.

COURT COSTS RULES

GCR ORDER 62

EXPLANATORY MEMORANDUM

(This memorandum is not part of the Order)

1. Introduction

The Court Costs Rules 2001 replaces the existing practice and procedure relating to inter partes costs and taxation and introduces an entirely new code contained in GCR Order 62. Subject to detailed transitional provisions, the new Rules come into effect on 1st January 2002.

2. Application of the New Rules

The new Rules will apply to:

- i) All civil proceedings in the Court of Appeal;
- ii) All civil proceedings in the Grand Court, including matrimonial proceedings, insolvency proceedings and appeals from the Summary Court;
- iii) Costs incurred in the Cayman Islands in connection with appeals to the Privy Council.
- iv) The Rules relating to taxation will also apply to orders for costs made by arbitrators and various statutory tribunals; and
- v) The new statutory provisions relating to wasted costs orders will apply to all proceedings in Court, both criminal and civil.

3. Structure of the New Rules

The Rules are divided into seven parts:

- i) Part I deals with various preliminary matters and includes the transitional provisions.
- ii) Part II sets out the circumstances in which a party to proceedings is entitled to an order for costs.
- iii) Part III regulates “wasted costs orders”, that is to say orders requiring that an attorney pay costs which have been incurred either by his own client or by an opposing party as a result of the attorney’s misconduct or negligence.

- iv) Part IV sets out the basic Rules relating to the taxation of costs. The detail is contained in the Guidelines.
- v) Part V sets out the powers of the taxing officer.
- vi) Part VI deals with the procedure on taxation and also has to be read in conjunction with the Guidelines.
- vii) Part VII deals with rights of appeal.

4. **Entitlement to Costs**

- i) Rule 4 (2) is the key provision. It states that the overriding objective is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.
- ii) Rule 4 (5) confirms the general principle that costs shall follow the event except when it appears to the Court that in the circumstances of the case some other order should be made.
- iii) Rule 4 (3) preserves the right to enforce a contractual entitlement to costs.
- iv) Rule 4 (8) provides that no order for costs should be made against an assisted person, ie a person to whom a legal aid certificate has been granted.
- v) Rule 4 (6) then defines the amount of costs which a successful party shall be entitled to recover from any other party. There are four different bases upon which costs may be awarded:
 - a) Fixed costs prescribed in Rule 7;
 - b) Costs assessed by the Judge in accordance with Rule 8;
 - c) Taxed costs on the standard basis; or
 - d) In exceptional circumstances, taxed costs on the indemnity basis.

5. **Inter Partes Order for Costs on the Indemnity Basis**

An inter partes order for costs to be taxed on the indemnity basis may only be made against a party if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently. It follows that the nature of the successful party's cause of action and the merits of the party's respective cases are not relevant considerations when determining whether or not to make an order for costs to be taxed on the indemnity basis.

6. Assessment of Costs

It is recognised that the process of taxing costs tends to be expensive. In the smallest cases the amount recoverable by the successful party will be summarily assessed by the Judge when he makes the order for costs. The successful party will need to be in a position to provide the Judge with a justification for the amount claimed which will be limited to CI\$1,000 in relation to an order for costs made on any interlocutory application or CI\$10,000 where the order relates to the costs of an entire proceeding.

Rule 8 provides for assessment (and therefore excludes the possibility of taxation) in respect of appeals from the Summary Court and claims for liquidated sums not exceeding CI\$25,000.

7. Taxation of Costs

i) Taxation on the Standard Basis

An inter-partes order for costs will be taxed on the standard basis unless the Court specifically awards costs on an indemnity basis.

Rule 13 (1) puts the onus on the successful party to establish the reasonableness of the amount claimed and any doubts are to be resolved in favour of the paying party.

Rule 13 (2) imposes the concept of "proportionality". The amount of costs recoverable must be proportionate to the amount of money involved, the importance of the case and the complexity of the issues.

The hourly rates recoverable on a standard basis taxation may not exceed the maximum rates specified in paragraph 6.3 of the Guidelines.

ii) Taxation on the Indemnity Basis

Where costs incurred by trustees personal representatives and liquidators are payable out of a fund, the amount payable will be subject to taxation on the indemnity basis.

The effect of Rule 13 (3) is that doubts as to the reasonableness of the amounts claimed are resolved in favour of the receiving party.

The hourly rate or scale of rates will be that agreed between the attorney and his client and will not be subject to the maximum rates prescribed by paragraph 6.3 of the Guidelines.

Otherwise, there is no distinction between taxations on the standard basis and those on the indemnity basis.

8. Procedure for Serving and Lodging Bills of Costs

The successful party must serve his Bill of Costs on the paying party. The paying party then completes it and returns it to the successful party. The successful party only lodges it for taxation in the event that the amount is not agreed. If the paying party fails to complete and return the Bill of Costs within the prescribed time limit, the successful party can apply for a "default costs certificate".

9. Structure of a Bill of Costs

A Bill of Costs will take the form of a spreadsheet divided into five columns. The successful party will set out a chronological description of the work done; the identity of the persons doing the work; the time spent; the applicable hourly rates; and the amount claimed.

The paying party will then insert his response into column four by saying whether or not the amount claimed is "agreed" or "not agreed". Where the amount claimed is not agreed, the paying party may insert the reason why it is not agreed. Alternatively, he may set out his reasoning in a separate written statement.

The final column is for use by the taxing officer.

It is intended that Bills of Costs will normally be served in the form of computer diskettes. What the taxing officer will receive is a composite document setting out the amount claimed by the successful party together with the objections of the paying party.

10. Procedure on Taxation

The present adversarial procedure will be abolished. Taxation will be an inquisitorial process which will normally be completed without any oral hearing. Neither the successful party nor the paying party will have any right to appear before the taxing officer. The taxing officer will convene an oral hearing only if he considers it necessary. If the taxing officer does consider that an oral hearing is necessary, he will determine the issues to be addressed orally and the parties will have no right to address him on any other matters.

The taxing officer may require the parties to put in written submissions in addition to the points which are contained in the Bill of Costs itself.

The taxing officer may, and in practice almost certainly will, require the successful party to produce a range of documents of the kind set out in Rule 30 (4). The intention is that the successful party should produce his original files and supporting documents which will then be returned to him after the taxing officer has reviewed them.

11. Attorney's Fees

The amount of attorney's fees allowable on taxation will be determined on the basis of time spent. Amounts claimed on the basis of brief fees, refreshers, lump sums, percentages etc will be disallowed.

In the case of taxations on the standard basis the hourly rates to be applied are subject to maximum rates stated in the Guidelines which will vary according to the post qualification experience of the persons engaged.

12. Work Done by Foreign Lawyers

Work done by foreign lawyers who have been temporarily admitted is recoverable on taxation.

The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than he would be required to pay if the successful party had employed only a local attorney. It follows, for example, that:

- i) travel expenses, hotel expenses and work permit fees will be disallowed; and
- ii) if the result of employing a foreign lawyer is that two lawyers appear in Court when the hearing could equally well have been conducted by one lawyer, one set of fees will be disallowed.

These guidelines apply equally to taxations on the indemnity basis and those on the standard basis.

13. Wasted Costs Orders

The Court's jurisdiction to make wasted costs orders has been enlarged by the Judicature (Amendment) (Costs) Law 2001. Part III of GCR Order 62 sets out new procedures in respect of such applications.

APPENDIX III

PRESCRIBED FORMS (01, r.10)

COSTS

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- 301 Application for Taxation (O.62, r.28)
- 302 Application for Default Costs Certificate (O.62, r.22(3))
- 303 Application for Costs Certificate (Agreed Amount) (O.62, r.22(2))
- 304 Application for Taxation and Interim Costs Certificate (O.62, r.22(1)(b))
- 305 Costs Certificate (O.62, r.22)
- 306 Costs Certificate (O.62, r.14)
- 307 Costs Certificate (O.62, r.15)
- 308 Interim Costs Certificate (O.62, r.22(1)(b))
- 309 Default Costs Certificate (O.62, r.22(3))
- 310 Application for Review by a Judge (O.62, r.30)
- 311 Application for Taxation (O.62, r.28)
- 312 Application for Taxation of Arbitrator's Fees (O.62, r.28)
- 313 Application to set aside Default Costs Certificate (O.62, r.22(5))
- 314 Bill of Costs (O.62, r.27)

No. 301

Application for Taxation (O.62,r.28)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

APPLICATION FOR TAXATION

TO: The Taxing Officer

I [*state name of successful party*] hereby apply for taxation on the standard basis of the costs payable by [*state name of paying party*] ("the Paying Party") pursuant to the Order for Costs made on [*state date*].

- I enclose:
- (a) the Bill of Costs completed and signed by the Paying Party pursuant to rule 28(3);
 - (b) the additional Statement of Objections of the Paying Party dated [*state date*];
 - (c) my reply to the Statement of Objections.

Dated the day of 20

Signature of paying party's attorney

The successful party's address for service is:

Fax:

The paying party's address for service is:

Fax:

Application for Default Costs Certificate (O.62, r.22(3))

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

APPLICATION FOR DEFAULT COSTS CERTIFICATE

TO: The Taxing Officer

I [state name of successful party] being the successful party under an Order for Costs made against [state name of paying party] ("the Paying Party") on [state date] hereby apply for a Default Costs Certificate in the sum of \$[state the amount] claimed in the Bill of Costs.

The grounds of my application are that:

- (a) a Bill of Costs was served on the Paying Party on [state date]; and
- (b) the Paying Party has failed to complete and return the Bill of Costs within the time limited by the rules;

Dated the day of 20

[Signature of successful party's attorney]

The successful party's address for service is:

Fax:

Fax:

The paying party's for service is:

Fax: _____

Fax:

Application for Costs Certificate (Agreed Amount) (O.62, r.22(2))

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

APPLICATION FOR COSTS CERTIFICATE (AGREED AMOUNT)

TO: The Taxing Officer

I [state name of successful party] being the successful party under an Order for Costs made against [state name of paying party] ("the Paying Party") on [state date] hereby apply for a Costs Certificate in the sum of \$[state amount] being the amount agreed to be paid by the Paying Party as evidenced by the completed Bill of Costs signed by the Paying Party and returned to me [the letter dated _____ and written on behalf of the Paying Party].

I agree to accept this amount in full and final satisfaction of the Paying Party's liability under the said Order for Costs

Dated the day of 20

[Signature of successful party's attorney]

The successful party's address for service is:

Fax:

The paying party's for service is:

Fax:

Application for Taxation and Interim Costs Certificate (O.62, r.22(1)(b))

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 200

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

APPLICATION FOR TAXATION AND INTERIM COSTS CERTIFICATE

TO: The Taxing Officer

I [*state name of successful party*] hereby apply for taxation on the standard basis of the costs payable by [*state name of paying party*] ("the Paying Party") pursuant to the Order for Costs made on [*state date*].

I enclose:

- (a) the Bill of Costs completed and signed by Paying Party pursuant to rule 28(3);
- (b) the additional Statement of Objections of the Paying Party *dated* [*state date*];
- (c) my reply to the Statement of Objections

Pending taxation of the Bill of Costs, I hereby apply for an Interim Costs Certificate in the sum of \$[] being the minimum amount which is agreed by the Paying Party to be payable in respect of the said Order for Costs.

Dated the day of 20

[*Signature of successful party's attorney*]

The successful party's address for service is:

The paying party's address for service is:

No. 305

Costs Certificate (O.62, r.22)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 200

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

COSTS CERTIFICATE

HAVING TAXED on the standard basis the Bill of Costs lodged by [*state name of successful party*] on [*state date of lodgement*]

IT IS HEREBY CERTIFIED that the net amount payable by [*state name of paying party*] pursuant to the Order for Costs made on [*state date*] is \$[*state amount*] including the costs of taxation.

Dated the day of 20

Taxing Officer

No. 306

Costs Certificate (O.62, r.14)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 200

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

COSTS CERTIFICATE

HAVING TAXED on the indemnity basis the Bill of Costs lodged by [*state name of successful party*].

IT IS HEREBY CERTIFIED that the amount payable by [*state name of paying party*] out of [*identify the estate or fund*] pursuant to the Order for Costs made on [*state date*] is \$[*state amount*].

Dated the day of 20

Taxing Officer

No. 307

Costs Certificate (O.62, r.15)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 200

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

COSTS CERTIFICATE

HAVING TAXED on the indemnity basis the Bill of Costs lodged by [*state name of attorneys*] on behalf of [*state name of person under disability*]..

IT IS HEREBY CERTIFIED that the amount payable to [*state name of attorneys*] by [*state name of person under disability*] pursuant to the Order for Costs made on [*state date*] is \$[*state amount*].

Dated the day of 20

Taxing Officer

No. 308

Interim Costs Certificate (O.62, r.22(1)(b))

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 200

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

INTERIM COSTS CERTIFICATE

A BILL OF COSTS having been lodged for taxation on the standard basis by [*state name of successful party*] on [*state date of lodgement*].

AND IT APPEARING to the taxing officer that [*state name of paying party*] has agreed that the amount payable pursuant to the Order for Costs made on [*state date*] is not less than \$[*state amount*].

IT IS HEREBY CERTIFIED that [*state name of paying party*] shall pay to [*state name of successful party*] the sum of \$[*state amount*] on account of his liability under the said Order for Costs made on [*state date*].

Dated the day of 20

Taxing Officer

No. 309

Default Costs Certificate (O.62, r.22(3))

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

DEFAULT COSTS CERTIFICATE

UPON reading the application made by [*state name of successful party*] on [*state date of lodgement*].

AND UPON reading the affidavit of service of [*state name*] sworn on [*state date*].

AND BEING SATISFIED that [*state name of paying party*] has failed to complete and return the Bill of Costs served on him in respect of the Order for Costs made against him on [*state date*].

IT IS HEREBY CERTIFIED that the amount payable to [*state name of successful party*] by [*state name of the paying party*] pursuant to the Order for Costs made on [*state date*] is the sum of \$[*state amount*].

Dated the day of 20

Taxing Officer

No. 310

Application for Review by a Judge (O.62, r.30)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

APPLICATION FOR REVIEW BY A JUDGE

TO: The Grand Court

I [*state name of dissatisfied party*] hereby apply to a Judge of the Grand Court for a review of the Taxing Officer's decision on [*state date*] whereby the net amount of \$[*state amount*] was certified to be payable by [*state paying party's name*] to [*state successful party's name*] pursuant to the Order for Costs made on [*state date*].

I certify having paid the sum of \$[state amount] into Court for the credit of this action.

This application is made on the grounds contained in the Statement of Objections filed and served herewith.

Dated the day of 20

[Signature of the dissatisfied party's attorneys]

The dissatisfied party's address for service is:

Fax:

The other party's address for service is:

Fax:

Application for Taxation (O.62, r.28)

IN THE MATTER OF SECTION 14 OF THE ARBITRATION LAW (2001 REVISION)

AND IN THE MATTER OR AN ARBITRAL AWARD MADE BY (*STATE ARBITRATOR'S NAME*) AND PUBLISHED ON [*STATE DATE*]

APPLICATION FOR TAXATION

TO: The Taxing Officer

I [*state name of successful party*] hereby apply for taxation on the standard basis of the costs payable by [*state name of paying party*] ("the Paying Party") pursuant to the Order for Costs contained in the arbitral award published on [*state date*].

I enclose:

- (a) a true copy of the arbitral award;
- (b) the Bill of Costs completed and signed by the Paying Party pursuant to rule 28(3);
- (c) the additional Statement of Objections of the Paying Party] dated [*state date*]; and
- (d) my reply to the Statement of Objections

Dated the day of 20

Signature of successful part's attorney

The successful party's address for service is:

Fax:

The paying party's for service is:

Fax:

Application for Taxation of Arbitrator's Fees (O.62, r.28)

IN THE MATTER OF SECTION 15 OF THE ARBITRATION LAW (2001 REVISION)

AND IN THE MATTER OF AN ARBITRATION CONDUCTED BY (STATE
ARBITRATOR'S NAME] ON [STATE DATE]

APPLICATION FOR TAXATION OF ARBITRATOR'S FEES

TO: The Taxing Officer

I [*state name of successful party*] being a party to an arbitration agreement contained in a contract made on [*state date*] between [*state party's name*] and [*state party's name*], in respect of which the Court has made an order pursuant to Section 15 of the Arbitration Law (2001 Revision) requiring the arbitrator, [*state arbitrator's name*] to publish his award, hereby apply for taxation of the amount of fees properly payable to the arbitrator.

I enclose:

- (a) the arbitrator's invoice;
- (b) the party's Statement of Objections [*state date*];
- (c) the arbitrator's reply to the Statement of Objections

I certify having paid the sum of \$[*state amount*] into Court pursuant to the Order made on [*state date*].

Dated the day of 20

[*Signature of the party's attorney*]

The party's address for service is:

The arbitrator's address for service is:

Application To Set Aside Default Costs Certificate (O.62, r.22(5))

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

APPLICATION TO SET ASIDE DEFAULT COSTS CERTIFICATE

TO: The Taxing Officer

I [state name of paying party] hereby apply for an order setting aside the Default Costs Certificate dated [state date] and for an order that [state successful party's name] Bill of Costs served pursuant to the Order for Costs made on [state date] be taxed on the standard basis.

I enclose:

- (a) an affidavit explaining the reasons for my default;
- (b) the Bill of Costs completed and signed pursuant to rule 28(3);
- (c) my additional Statement of Objections dated [state date];

And hereby certify having paid the sum of \$[state amount] into Court.

Dated the day of 20

Signature of paying party's attorney

The successful party's address for service is:

Fax:

The paying party's address for service is:

Fax:

Bill of Costs (O.62, r.27)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 200

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

BILL OF COSTS

PARTIES

This is *[state name of successful party]*'s Bill of Costs payable pursuant to the Order for Costs made on *[state date]*.

The paying party on whom it is intended to serve this Bill of Costs is *[state name]*.

INTRODUCTION

[Set out in narrative form a description of the nature of the proceedings sufficient to enable to the Taxing Officer to gain a proper understanding of it without necessarily having to read all the pleadings, evidence and judgements. A complete index of all the pleadings, affidavits and orders should be annexed to the Bill. Where the Order for Costs relates only to part of the proceedings, describe exactly those steps to which it relates.]

APPLICABLE ORDERS AND DIRECTIONS

[If the Court has made any orders or directions pursuant to GCR O.62, r.4(7) to the effect that specific items of expenditure should be allowed or disallowed on taxation, set out particulars of the relevant orders.]

PARTICULARS OF ATTORNEYS ENGAGED

[List the names of all the attorneys engaged and set out all information necessary to enable the Taxing Officer to determine the appropriate hourly rate recoverable in respect of each of them. In the case of foreign lawyers, set out both the date upon which he was first admitted to practice as a professional lawyer and the date upon which he was temporarily admitted as an attorney in the Cayman Islands.]

DETAILS OF WORK DONE

1	2	3	4		5
Item	Description of Work Done or Disbursement Incurred	Amount Claimed	Paying Party's Response		Amount Allowed
			Objections	Agreed Amount	
	Legal Fees	\$	Legal Fees	\$	
	Disbursements	\$	Disbursements	\$	
	TOTAL CLAIMED	\$	TOTAL AGREED	\$	

We *[state name of successful party's attorneys]* hereby certify that the amounts claimed in this Bill of Costs do not exceed the amounts (and rates) charged to and paid by *[state name of successful party]*.

[Signature of successful party's attorneys]

We *[state name of paying party's attorneys]* hereby certify that *[state name of paying party]* agrees to pay the sum of \$*[state amount]* pursuant to the Order for Costs made on *[state date]* and objects to the balance claimed for the reasons stated in column 4 above as supplemented by the Statement of Objections served herewith.

[Signature of paying party's attorneys]

We *[state name successful party's attorneys]* hereby certify for the purposes of the Court Costs Rules 2001 that the sum in issue is \$*[state amount]*.

[Signature of successful party's attorneys]

NOTE:

Bills of Costs should be laid out in landscape format using legal size paper (ie 14" wide by 8½" high).