

CAYMAN ISLANDS



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THE GRAND COURT (AMENDMENT) RULES, 2009

GRAND COURT LAW (2008 REVISION)

THE GRAND COURT (AMENDMENT) RULES 2009

These Rules are made by the Rules Committee pursuant to Section 19(3) of the Grand Court Law (2008 Revision)

1. Citation, Commencement and Interpretation.

- (1) These Rules shall be cited as the Grand Court (Amendment) Rules 2009.
- (2)
 - (a) These Rules shall come into operation on the 1st day of November 2009 referred to in this rule as the "Commencement Date".
 - (b) These rules shall apply to every proceeding which is commenced in or pending in the Court on or after the Commencement Date.
- (3) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 (Revised Edition) shall have the same meaning in these Rules as in the Grand Court Rules 1995.

2. Establishment of separate divisions of the Court

- (1) The caseload of the Court shall be divided amongst five divisions to be known as –
 - (a) the Civil Division;
 - (b) the Family Division;
 - (c) the Admiralty Division;
 - (d) the Financial Services Division; and
 - (e) the Criminal Division.
- (2) The Clerk of the Court shall perform the functions of the Registrar of the Civil Division, the Registrar of the Family Division, the Registrar of the Admiralty Division and the Registrar of the Financial Services Division of the Court unless and until separate officers are appointed pursuant to Section 7 of the Grand Court Law (2008 Revision).

3. Assignment of proceedings amongst the divisions of the Court

- (1) Every civil proceeding (including every civil appeal from the Summary Court) pending in the Court on the Commencement Date shall be treated as having been assigned to the Civil Division unless –

- (a) it is a family proceeding in which case it will be treated as having been transferred to the Family Division;
 - (b) it is an admiralty proceeding in which case it will be treated as having been transferred to the Admiralty Division; or
 - (c) it is transferred to the Financial Services Division in accordance with Order 72, rules 3 and 6.
- (2) Every civil proceeding commenced after the Commencement Date shall be commenced in the Civil Division of the Court unless –
- (a) it is a family proceeding, in which case it shall be commenced in the Family Division;
 - (b) it is an admiralty proceeding, in which case it shall be commenced in the Admiralty Division; or
 - (c) it is a financial services proceeding, in which case it shall be commenced in the Financial Services Division.
- (3) Every criminal proceeding (including every criminal appeal from the Summary Court) pending in the Court on or commenced after the Commencement Date shall be treated as having been assigned to the Criminal Division.
- (4) For the purposes of this rule –
- (a) "civil proceeding" shall mean any civil proceeding other than a family proceeding, an admiralty proceeding or a financial services proceeding;
 - (b) "family proceeding" shall have the meaning ascribed to it by Order 1, rule 7 (as amended by these Rules);
 - (c) "admiralty proceeding" shall have the meaning ascribed to it by Order 1, rule 7 (as amended by these Rules); and
 - (c) "financial services proceeding" shall have the meaning ascribed to it by Order 1, rule 7 (as amended by these Rules and incorporating the definition in Order 72, rule 1(2)).

4. Amendment of Orders 1, 4 and 5

- (1) The Grand Court Rules shall be amended by revoking Order 1 and substituting the new Order 1 contained in the Appendix.
- (2) The Grand Court Rules shall be amended by revoking Order 4 and substituting the new Order 4 contained in the Appendix.
- (3) The Grand Court Rules shall be amended by revoking Order 5 and substituting the new Order 5 contained in the Appendix).

5. Addition of Order 72 and new Court Forms

- (1) The Grand Court Rules shall be amended by adding the new Order 72 contained in the Appendix.
- (2) Appendix I of The Grand Court Rules shall be amended by adding Form No.71 (Registrar's Summons), Form No.72 (Registrar's Notice), Form No.73 (Transfer Application), Form No.74 (Transfer Order) and Form No.75 (Application for Review of a Transfer Order)

Made by the Rules Committee on the 14th day of September 2009.

The Honourable Anthony Smellie QC, Chief Justice
The Honourable Sam Bulgin QC, Attorney General
Andrew J. Jones QC, Legal Practitioner
Graham Ritchie QC, Legal Practitioner

Cayman Islands
Grand Court Rules
1995

(Revised Edition)

Volume 1

THE GRAND COURT LAW (1995 REVISION)

THE GRAND COURT RULES, 1995

(REVISED EDITION)

TABLE OF CONTENTS

THE GRAND COURT RULES 1995	49
EXPLANATORY MEMORANDUM	49
1 INTRODUCTION	49
2 COMMENCEMENT OF PROCEEDINGS	49
3 ASSIGNMENT AND TRANSFER OF EXISTING PROCEEDINGS	50
4 THE REGISTER OF WRITS AND OTHER ORIGINATING PROCESS	50
5 ISSUE AND SERVICE OF WRITS	51
6 ACKNOWLEDGMENT OF SERVICE.....	51
7 DEFAULT JUDGMENTS.....	51
8 SUMMARY JUDGMENT	52
9 CONSENT OF JUDGMENTS.....	52
10 DISCOVERY.....	52
11 INTERLOCUTORY SUMMONSES AND MOTIONS	53
12 AFFIDAVITS AND EXHIBITS	53
13 TRIALS AND FINAL HEARINGS.....	53
14 EXCHANGE OF WITNESS STATEMENTS	55
15 DRAWING UP AND FILING ORDERS AND JUDGMENTS	55
16 PAPER, PRINTING, BINDING AND COPIES.....	56
17 COURT FEES.....	56
18 COURT FUNDS OFFICE.....	57
19 EXECUTION GENERALLY	57
20 EXAMINATION OF JUDGMENT DEBTORS	58

21 IMPRISONMENT FOR NON-PAYMENT OF DEBTS	58
22 ATTACHMENT OF EARNINGS ORDERS	59
23 APPLICATIONS UNDER SECTION 45 OF THE TRUST LAW.....	60
ORDER 1	61
CITATION, APPLICATION, COMMENCEMENT, INTERPRETATION AND FORMS	61
CITATION (O.1, R.1).....	61
APPLICATION (O.1, R.2).....	61
COMMENCEMENT AND TRANSITIONAL PROVISIONS (O.1, R.3)	62
REVOCATIONS (O.1, R.4)	62
NON APPLICATION OF ENGLISH RULES (O.1, R.5).....	63
APPLICATION OF INTERPRETATION LAW (1995 REVISION) (O.1, R.6)	63
DEFINITIONS (O.1, R.7)	63
CONSTRUCTION OF REFERENCES TO ORDERS, RULES, ETC. (O.1, R.8).....	66
CONSTRUCTION OF REFERENCES TO ACTION, ETC. FOR POSSESSION OF LAND (O.1, R.9)	66
PRESCRIBED FORMS (O.1, R.10)	67
USE OF ENGLISH PRACTICE FORMS AS PRECEDENTS (O.1, R.11)	67
PRACTICE DIRECTIONS (O.1, R.12).....	67
ORDER 2	69
EFFECT OF NON-COMPLIANCE	69
NON-COMPLIANCE WITH RULES (O.2, R.1).....	69
APPLICATION TO SET ASIDE FOR IRREGULARITY (O.2, R.2)	69
ORDER 3	71
TIME	71
"MONTH" MEANS CALENDAR MONTH (O.3, R.1)	71
RECKONING PERIODS OF TIME (O.3, R.2)	71
NO RULE (O.3, R.3)	71

TIME EXPIRES ON SATURDAY, SUNDAY, ETC. (O.3, R.4)	71
EXTENSION, ETC. OF TIME (O.3, R.5)	71
NOTICE OF INTENTION TO PROCEED AFTER SIX MONTHS' DELAY (O.3, R.6)	72
ORDER 4	73
ASSIGNMENT, TRANSFER AND CONSOLIDATION OF PROCEEDINGS	73
ASSIGNMENT OF PROCEEDING AMONGST DIVISIONS OF THE COURT (O.4, R.1)	73
ASSIGNMENT OF PROCEEDINGS TO A PARTICULAR JUDGE (O.4, R.2)	73
TRANSFER OF PROCEEDINGS BETWEEN DIVISIONS (O.4, R.3).....	73
CONSOLIDATION OF CAUSES OR MATTERS (O.4, R.4)	74
ORDER 5	75
MODE OF BEGINNING CIVIL PROCEEDINGS	75
MODE OF BEGINNING CIVIL PROCEEDINGS (O.5, R.1)	75
PROCEEDINGS WHICH MUST BE BEGUN BY WRIT (O.5, R.2)	76
PROCEEDINGS WHICH MUST BE BEGUN BY ORIGINATING SUMMONS (O.5, R.3)	76
PROCEEDINGS WHICH MAY BE BEGUN BY WRIT OR ORIGINATING SUMMONS (O.5, R.4)	76
PROCEEDINGS TO BE BEGUN BY MOTION OR PETITION (O.5, R.5)	77
RIGHT TO SUE IN PERSON (O.5, R.6).....	77
ORDER 6	79
WRITS OF SUMMONS: GENERAL PROVISIONS	79
FORM OF WRIT (O.6, R.1).....	79
INDORSEMENT OF CLAIM (O.6, R.2)	79
INDORSEMENT AS TO CAPACITY (O.6, R.3).....	80
INDORSEMENT AS TO INSURERS OF MOTOR VEHICLES (O.6, R.4).....	80
INDORSEMENT AS TO ATTORNEY AND ADDRESS (O.6, R.5)	80
OFFICE COPIES OF WRITS (O.6, R.6)	81
NO RULES (O.6, RR.7-7A).....	81
DURATION AND RENEWAL OF WRIT (O.6, R.8)	81

ORDER 783

ORIGINATING SUMMONSES: GENERAL PROVISIONS.....83

 APPLICATION (O.7, R.1).....83

 FORM OF SUMMONS, ETC. (O.7, R.2).....83

 CONTENTS OF SUMMONS (O.7, R.3)83

 OFFICE COPY OF SUMMONS (O.7, R.4).....83

 NO RULE (O.7, R.5)NO RULE (O.7, R.5)83

 DURATION AND RENEWAL OF SUMMONS (O.7, R.6)83

ORDER 885

ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS.....85

 APPLICATION (O.8, R.1).....85

 NOTICE OF MOTION (O.8, R.2).....85

 FORM AND ISSUE OF NOTICE OF MOTION (O.8, R.3).....85

 SERVICE OF NOTICE OF MOTION WITH WRIT, ETC. (O.8, R.4).....85

 ADJOURNMENT OF HEARING (O.8, R.5).....86

ORDER 987

PETITIONS: GENERAL PROVISIONS.....87

 APPLICATION (O.9, R.1).....87

 CONTENTS OF PETITION (O.9, R.2)87

 NO RULE (O.9, R.3).....87

 FIXING TIME FOR HEARING PETITION (O.9, R.4)87

 CERTAIN APPLICATIONS NOT TO BE MADE BY PETITION (O.9, R.5).....87

ORDER 1089

SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS89

 GENERAL PROVISIONS (O.10, R.1)89

 SERVICE OF WRIT ON AGENT OF OVERSEAS PRINCIPAL (O.10, R.2).....89

 SERVICE OF WRIT IN PURSUANCE OF CONTRACT (O.10, R.3)90

SERVICE OF WRIT IN CERTAIN ACTIONS FOR POSSESSION OF LAND (O.10, R.4)	90
SERVICE OF ORIGINATING SUMMONS, NOTICE OF MOTION OR PETITION (O.10, R.5).....	91
ORDER 11	93
SERVICE OF PROCESS, ETC. OUT OF THE JURISDICTION	93
PRINCIPAL CASES IN WHICH SERVICE OF WRIT OUT OF JURISDICTION IS PERMISSIBLE (O.11, R.1).....	93
NO RULES (O.11, RR.2-3)	95
APPLICATION FOR, AND GRANT OF, LEAVE TO SERVE WRIT OUT OF JURISDICTION (O.11, R.4)	95
SERVICE OF WRIT ABROAD; GENERAL (O.11, R.5).....	95
SERVICE OF WRIT ABROAD THROUGH FOREIGN GOVERNMENTS, JUDICIAL AUTHORITIES AND BRITISH CONSULS (O.11, R.6)	96
SERVICE OF PROCESS ON A FOREIGN STATE (O.11, R.7)	98
UNDERTAKING TO PAY EXPENSES OF GOVERNOR (O.11, R.8)	99
SERVICE OF ORIGINATING SUMMONS, PETITION, NOTICE OF MOTION, ETC. (O.11, R.9)	99
ORDER 12	101
ACKNOWLEDGMENT OF SERVICE TO WRIT OR ORIGINATING SUMMONS.....	101
MODE OF ACKNOWLEDGING SERVICE (O.12, R.1)	101
NO RULE (O.12, R.2)	101
ACKNOWLEDGMENT OF SERVICE (O.12, R.3)	101
PROCEDURE ON RECEIPT OF ACKNOWLEDGMENT OF SERVICE (O.12, R.4)	102
TIME LIMITED FOR ACKNOWLEDGING SERVICE (O.12, R.5).....	102
LATE ACKNOWLEDGMENT OF SERVICE (O.12, R.6)	103
ACKNOWLEDGMENT NOT TO CONSTITUTE WAIVER (O.12, R.7)	103
DISPUTE AS TO JURISDICTION (O.12, R.8)	103
APPLICATION BY DEFENDANT WHERE WRIT NOT SERVED (O.12, R.8A)	104
ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS (O.12, R.9)	105
ACKNOWLEDGMENT OF SERVICE TO BE TREATED AS ENTRY OF APPEARANCE (O.12, R.10)....	105

ORDER 13	107
FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND.....	107
CLAIM FOR LIQUIDATED DEMAND (O.13, R.1).....	107
CLAIM FOR UNLIQUIDATED DAMAGES (O.13, R.2)	107
CLAIM IN DETINUE (O.13, R.3).....	107
CLAIM FOR POSSESSION OF LAND (O.13, R.4)	108
MIXED CLAIMS (O.13, R.5)	108
OTHER CLAIMS (O.13, R.6).....	108
PRESCRIBED TIME (O.13, R.6A)	108
PROOF OF SERVICE OF WRIT (O.13, R.7).....	109
JUDGMENT AGAINST A STATE (O.13, R.7A)	109
NO RULE (O.13, R.7B).....	110
STAY OF EXECUTION ON DEFAULT JUDGMENT (O.13, R.8)	110
SETTING ASIDE JUDGMENT (O.13, R.9)	110
ORDER 14	111
SUMMARY JUDGMENT	111
I. APPLICATION BY PLAINTIFF.....	111
APPLICATION BY PLAINTIFF FOR SUMMARY JUDGMENT (O.14, R.1)	111
MANNER IN WHICH APPLICATION UNDER RULE 1 MUST BE MADE (O.14, R.2)	111
JUDGMENT FOR PLAINTIFF (O.14, R.3]	111
LEAVE TO DEFEND (O.14, R.4)	112
APPLICATION FOR SUMMARY JUDGMENT ON COUNTERCLAIM (O.14, R.5)	112
DIRECTIONS (O.14, R.6).....	113
COSTS (O.14, R.7)	113
RIGHT TO PROCEED WITH RESIDUE OF ACTION OR COUNTERCLAIM (O.14, R.8)	113
JUDGMENT FOR DELIVERY UP OF CHATTEL (O.14, R.9)	114

RELIEF AGAINST FORFEITURE (O.14, R.10)	114
SETTING ASIDE JUDGMENT (O.14, R.11)	114
II. APPLICATION BY DEFENDANT.....	114
APPLICATION BY DEFENDANT FOR SUMMARY JUDGMENT (O.14, R.12).....	114
MANNER IN WHICH APPLICATION UNDER RULE 12 MUST BE MADE (O.14, R.13)	114
JUDGMENT FOR DEFENDANT (O.14, R.14).....	115
ORDER 14A	117
DISPOSAL OF CASE ON POINT OF LAW.....	117
DETERMINATION OF QUESTIONS OF LAW OR CONSTRUCTION (O.14A, R.1).....	117
MANNER IN WHICH APPLICATION UNDER RULE 1 MAY BE MADE (O.14A, R.2)	117
ORDER 15	119
CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES	119
JOINDER OF CAUSES OF ACTION (O.15, R.1)	119
COUNTERCLAIM AGAINST PLAINTIFF (O.15, R.2)	119
COUNTERCLAIM AGAINST ADDITIONAL PARTIES (O.15, R.3)	120
JOINDER OF PARTIES (O.15, R.4)	121
COURT MAY ORDER SEPARATE TRIALS, ETC. (O.15, R.5)	121
MISJOINDER AND NONJOINDER OF PARTIES (O.15, R.6)	121
PROCEEDINGS AGAINST ESTATES (O.15, R.6A)	123
CHANGE OF PARTIES BY REASON OF DEATH, ETC. (O.15, R.7).....	124
PROVISIONS CONSEQUENTIAL ON MAKING OF ORDER UNDER RULE 6 OR 7 (O.15, R8)	125
FAILURE TO PROCEED AFTER DEATH OF PARTY (O.15, R.9)	126
ACTIONS FOR POSSESSION OF LAND (O.15, R.10).....	126
ACTIONS IN DETINUE, CONVERSION OR FOR TRESPASS TO GOODS (O.15, R.10A)	127
RELATOR ACTIONS (O.15, R.11)	127
REPRESENTATIVE PROCEEDINGS (O.15, R.12)	127

DERIVATIVE ACTIONS (O.15, R.12A)	128
REPRESENTATION OF INTERESTED PERSON WHO CANNOT BE ASCERTAINED, ETC. (O.15, .13)	130
NOTICE OF ACTION TO NON-PARTIES (O.15, R.13A)	131
REPRESENTATION OF BENEFICIARIES BY TRUSTEES, ETC. (O.15, R.14)	132
REPRESENTATION OF DECEASED PERSON INTERESTED IN PROCEEDINGS (O.15, R.15)	132
DECLARATORY JUDGMENT (O.15, R16)	133
CONDUCT OF PROCEEDINGS (O.15, R.17)	133
ORDER 16	135
THIRD PARTY AND SIMILAR PROCEEDINGS.....	135
THIRD PARTY NOTICE (O.16, R.1)	135
APPLICATION FOR LEAVE TO ISSUE THIRD PARTY NOTICE (O.16, R.2)	135
ISSUE, SERVICE AND ACKNOWLEDGMENT OF SERVICE, OF THIRD PARTY NOTICE (O.16, R.3)...	136
THIRD PARTY DIRECTIONS (O.16, R.4)	136
DEFAULT OF THIRD PARTY, ETC. (O.16, R.5)	137
SETTING ASIDE THIRD PARTY PROCEEDINGS (O.16, R.6)	138
JUDGMENT BETWEEN DEFENDANT AND THIRD PARTY (O.16, R.7)	138
CLAIMS AND ISSUES BETWEEN A DEFENDANT AND SOME OTHER PARTY (O.16, R.8)	138
CLAIMS BY THIRD AND SUBSEQUENT PARTIES (O.16, R.9)	139
OFFER OF CONTRIBUTION (O.16, R.10)	140
COUNTERCLAIM BY DEFENDANT (O.16, R.11)	140
ORDER 17	141
INTERPLEADER.....	141
ENTITLEMENT TO RELIEF BY WAY OF INTERPLEADER (O.17, R.1)	141
CLAIM TO GOODS, ETC., TAKEN IN EXECUTION (O.17, R.2)	141
MODE OF APPLICATION (O.17, R.3)	142
NO RULE (O.17, R.4)	143

POWERS OF COURT HEARING SUMMONS (O.17, R.5)	143
POWER TO ORDER SALE OF GOODS TAKEN IN EXECUTION (O.17, R.6)	143
POWER TO STAY PROCEEDINGS (O.17, R.7).....	144
OTHER POWERS (O.17, R.8)	144
ONE ORDER IN SEVERAL CAUSES OR MATTERS (O.17, R.9)	144
DISCOVERY (O.17, R.10)	144
TRIAL OF INTERPLEADER ISSUE (O.17, R.11)	144
APPEAL FROM JUDGMENT ETC. OF JUDGE IN INTERPLEADER PROCEEDINGS (O.17, R.12).....	144
ORDER 18	147
PLEADINGS	147
SERVICE OF STATEMENT OF CLAIM (O.18, R.1)	147
SERVICE OF DEFENCE (O.18, R.2)	147
SERVICE OF REPLY AND DEFENCE TO COUNTERCLAIM (O.18, R.3)	147
PLEADINGS SUBSEQUENT TO REPLY (O.18, R.4)	148
NO RULE (O.18, R.5)	148
PLEADINGS: FORMAL REQUIREMENTS (O.18, R.6)	148
FACTS, NOT EVIDENCE, TO BE PLEADED (O.18, R.7)	148
CONVICTION, ETC. TO BE ADDUCED IN EVIDENCE: MATTERS TO BE PLEADED (O.18, R.7A)	149
MATTERS WHICH MUST BE SPECIFICALLY PLEADED (O.18, R.8)	150
MATTER MAY BE PLEADED WHENEVER ARISING (O.18, R.9)	150
DEPARTURE (O. 18, R.10)	151
POINTS OF LAW MAY BE PLEADED (O.18, R.11)	151
PARTICULARS OF PLEADING (O.18, R.12)	151
ADMISSIONS AND DENIALS (O.18, R.13)	152
DENIAL BY JOINDER OF ISSUE (O.18, R.14)	152
STATEMENT OF CLAIM (O.18, R.15)	153

DEFENCE OF TENDER (O.18, R.16)	153
DEFENCE OF SET-OFF (O.18, R.17).....	153
COUNTERCLAIM AND DEFENCE TO COUNTERCLAIM (O. 18, R.18)	153
STRIKING OUT PLEADINGS AND INDORSEMENTS (O.18, R.19)	154
CLOSE OF PLEADINGS (O.18, R.20)	154
TRIAL WITHOUT PLEADINGS (O.18, R.21)	154
ORDER 19	157
DEFAULT OF PLEADINGS	157
DEFAULT OF SERVICE OF STATEMENT OF CLAIM (O.19, R.1)	157
DEFAULT OF DEFENCE: CLAIM FOR LIQUIDATED DEMAND (O.19, R.2)	157
DEFAULT OF DEFENCE: CLAIM FOR UNLIQUIDATED DAMAGES (O.19, R.3)	157
DEFAULT OF DEFENCE: CLAIM IN DETINUE (O.19, R.4)	157
DEFAULT OF DEFENCE: CLAIM FOR POSSESSION OF LAND (O.19, R.5)	158
DEFAULT OF DEFENCE: MIXED CLAIMS (O.19, R.6)	158
DEFAULT OF DEFENCE: OTHER CLAIMS (O.19, R.7).....	158
DEFAULT OF DEFENCE TO COUNTERCLAIM (O.19, R.8)	159
SETTING ASIDE JUDGMENT (O.19, R.9)	159
ORDER 20	161
AMENDMENT	161
AMENDMENT OF WRIT WITHOUT LEAVE (O.20, R.1)	161
AMENDMENT OF ACKNOWLEDGMENT OF SERVICE (O.20, R.2)	161
AMENDMENT OF PLEADINGS WITHOUT LEAVE (O.20, R.3)	162
APPLICATION FOR DISALLOWANCE OF AMENDMENT MADE WITHOUT LEAVE (O.20, R.4).....	163
AMENDMENT OF WRIT OR PLEADING WITH LEAVE (O.20, R.5)	163
NO RULE (O.20, R.6)	163
AMENDMENT OF OTHER ORIGINATING PROCESS (O.20, R.7)	164

AMENDMENT OF CERTAIN OTHER DOCUMENTS (O.20, R.8)	164
FAILURE TO AMEND AFTER ORDER (O.20, R.9)	164
MODE OF AMENDMENT OF WRIT, ETC. (O.20, R.10).....	164
AMENDMENT OF JUDGMENT AND ORDERS (O.20, R.11)	164
AMENDMENT OF PLEADINGS BY AGREEMENT (O.20, R.12)	165
MANNER IN WHICH AMENDMENTS SHOULD BE SHOWN (O.20, R.13).....	165
ORDER 21	167
WITHDRAWAL AND DISCONTINUANCE	167
WITHDRAWAL OF ACKNOWLEDGMENT OF SERVICE (O.21, R.1)	167
DISCONTINUANCE OF ACTION, ETC., WITHOUT LEAVE (O.21, R.2)	167
DISCONTINUANCE OF ACTION, ETC., WITH LEAVE (O.21, R.3)	168
EFFECT OF DISCONTINUANCE (O.21, R.4)	168
STAY OF SUBSEQUENT ACTION UNTIL COSTS PAID (O.21, R.5)	168
WITHDRAWAL OF SUMMONS (O.21, R.6)	169
ORDER 22	171
PAYMENT INTO AND OUT OF COURT	171
PAYMENT INTO COURT (O.22, R.1)	171
PAYMENT IN BY DEFENDANT WHO HAS COUNTERCLAIMED (O.22, R.2)	172
ACCEPTANCE OF MONEY PAID INTO COURT (O.22, R.3).....	172
ORDER FOR PAYMENT OUT OF MONEY ACCEPTED REQUIRED IN CERTAIN CASES (O.22, R.4)...	173
MONEY REMAINING IN COURT (O.22, R.5).....	174
COUNTERCLAIM (O. 22, R.6)	174
NON-DISCLOSURE OF PAYMENT INTO COURT (O.22, R.7)	174
MONEY PAID INTO COURT UNDER ORDER (O.22, R.8).....	175
NO RULES (O.22, RR.9-12)	175
INVESTMENT OF MONEY IN COURT (O.22, R.13)	175

WRITTEN OFFERS "WITHOUT PREJUDICE SAVE AS TO COSTS" (O.22, R.14)	175
ORDER 23	177
SECURITY FOR COSTS	177
SECURITY FOR COSTS OF ACTION, ETC. (O.23, R.1).....	177
MANNER OF GIVING SECURITY (O.23, R.2)	177
SAVING FOR ENACTMENTS (O.23, R.3).....	178
ORDER 24	179
DISCOVERY	179
I. DOCUMENTARY DISCOVERY	179
MUTUAL DISCOVERY OF DOCUMENTS (O.24, R.1).....	179
DISCOVERY BY PARTIES WITHOUT ORDER (O.24, R.2).....	179
ORDER FOR DISCOVERY (O.24, R.3)	180
ORDERS FOR DETERMINATION OF ISSUE, ETC., BEFORE DISCOVERY (O.24, R.4).....	181
FORM OF LIST AND AFFIDAVIT (O.24, R.5)	181
DEFENDANT ENTITLED TO COPY OF CO-DEFENDANT'S LIST (O.24, R.6)	181
ORDER FOR DISCOVERY OF PARTICULAR DOCUMENTS (O.24, R.7)	182
DISCOVERY TO BE ORDERED ONLY IF NECESSARY (O.24, R.8)	182
INSPECTION OF DOCUMENTS REFERRED TO IN LIST (O.24, R.9)	182
INSPECTION OF DOCUMENTS REFERRED TO IN PLEADINGS AND AFFIDAVITS (O.24, R.10).....	183
ORDER FOR PRODUCTION FOR INSPECTION (O.24, R.11)	183
PROVISION OF COPIES OF DOCUMENTS (O.24, R.12).....	183
ORDER FOR PRODUCTION TO COURT (O.24, R.13)	184
PRODUCTION TO BE ORDERED ONLY IF NECESSARY, ETC. (O.24, R.14).....	184
PRODUCTION OF BUSINESS BOOKS (O.24, R.15)	184
II. DISCOVERY BY ORAL EXAMINATION	185
ORDER FOR DISCOVERY BY ORAL EXAMINATION (O.24, R.16)	185

CONDUCT OF EXAMINATION (O.24, R.17).....	185
USE OF TRANSCRIPTS (O.24, R.18).....	186
III. GENERAL PROVISIONS	187
DISCLOSURE WHICH WOULD BE INJURIOUS TO PUBLIC INTEREST: SAVING (O.24, R.19).....	187
FAILURE TO COMPLY WITH AN ORDER FOR DISCOVERY. (O.24, R.20)	187
REVOCATION AND VARIATION OF ORDERS (O.24, R.21).....	187
USE OF DOCUMENTS AND TRANSCRIPTS (O.24, R.22).....	187
ORDER 25	189
SUMMONS FOR DIRECTIONS.....	189
SUMMONS FOR DIRECTIONS (O.25, R.1).....	189
DUTY TO CONSIDER ALL MATTERS (O.25, R.2)	190
PARTICULAR MATTERS FOR CONSIDERATION (O.25, R.3)	191
ADMISSIONS AND AGREEMENTS TO BE MADE (O.25, R.4)	192
LIMITATION OF RIGHT OF APPEAL (O.25, R.5).....	192
DUTY TO GIVE ALL INFORMATION AT HEARING (O.25, R.6)	192
DUTY TO MAKE ALL INTERLOCUTORY APPLICATIONS ON SUMMONS FOR DIRECTIONS (O.25, R.7)	193
AUTOMATIC DIRECTIONS IN PERSONAL INJURY ACTIONS (O.25, R.8).....	193
ORDER 26	197
INTERROGATORIES.....	197
DISCOVERY BY INTERROGATORIES (O.26, R.1)	197
FORM AND NATURE OF INTERROGATORIES (O.26, R.2)	197
INTERROGATORIES WITHOUT ORDER (O.26, R.3)	198
ORDERED INTERROGATORIES (O.26, R.4)	198
OBJECTIONS AND INSUFFICIENT ANSWERS (O.26, R.5)	198
FAILURE TO COMPLY WITH ORDER (O.26, R.6).....	199

USE OF ANSWERS TO INTERROGATORIES AT TRIAL (O.26, R.7)	199
REVOCATION AND VARIATION OF ORDERS (O.26, R.8).....	200
ORDER 27	201
ADMISSIONS	201
ADMISSION OF CASE OF OTHER PARTY (O.27, R.1)	201
NOTICE TO ADMIT (O.27, R.2).....	201
JUDGMENT ON ADMISSIONS (O.27, R.3).....	201
ADMISSION AND PRODUCTION OF DOCUMENTS SPECIFIED IN LIST OF DOCUMENTS (O.27, R.4)	201
NOTICES TO ADMIT OR PRODUCE DOCUMENTS (O.27, R.5).....	202
ORDER 28	203
ORIGINATING SUMMONS PROCEDURE	203
APPLICATION (O.28, R.1)	203
AFFIDAVIT EVIDENCE (O.28, R.1A)	203
FIXING TIME FOR ATTENDANCE OF PARTIES BEFORE COURT (O.28, R.2).....	204
NOTICE OF HEARING (O.28, R.3)	204
DIRECTIONS, ETC., BY COURT (O.28, R.4)	205
ADJOURNMENT OF SUMMONS (O.28, R.5)	206
APPLICATIONS AFFECTING PARTY WHO HAS NOT ACKNOWLEDGED SERVICE (O.28, R.6)	206
COUNTERCLAIM BY DEFENDANT (O.28, R.7)	206
CONTINUATION OF PROCEEDINGS AS IF CAUSE OR MATTER BEGUN BY WRIT (O.28, R.8)...	206
ORDER FOR HEARING OR TRIAL (O.28, R.9)	207
FAILURE TO COMPLY WITH RULES OF COURT ORDERS (O.28, R.10)	207
NO RULE (O.28, R.11).....	208
ORDER 29	209
INTERLOCUTORY INJUNCTIONS, INTERIM	209
PRESERVATION OF PROPERTY,	209
INTERIM PAYMENTS, ETC	209

I. INTERLOCUTORY INJUNCTIONS, INTERIM	209
PRESERVATION OF PROPERTY, ETC	209
APPLICATION FOR INJUNCTION (O.29, R.1)	209
NO RULE (O.29, 1A).....	209
DETENTION, PRESERVATION, ETC., OF SUBJECT MATTER OF CAUSE OR MATTER (O.29, R.2)...	209
NO RULE (O.29, 2A).....	210
POWER TO ORDER SAMPLES TO BE TAKEN, ETC. (O.29, R.3)	210
SALE OF PERISHABLE PROPERTY, ETC. (O.29, R.4)	210
ORDER FOR EARLY TRIAL (O.29, R.5)	211
RECOVERY OF PERSONAL PROPERTY SUBJECT TO LIEN, ETC. (O.29, R.6)	211
DIRECTIONS (O.29, R.7).....	211
NO RULE (O.29, R.7A)	211
ALLOWANCE OF INCOME OF PROPERTY PENDING SUIT (O.29, R.8).....	211
II. INTERIM PAYMENTS	212
INTERPRETATION OF PART II (O.29, R.9)	212
APPLICATION FOR INTERIM PAYMENT (O.29, R.10)	212
ORDER FOR INTERIM PAYMENT IN RESPECT OF DAMAGES (O.29, R.11)	212
ORDER FOR INTERIM PAYMENT IN RESPECT OF SUMS OTHER THAN DAMAGES (O.29, R.12)	213
MANNER OF PAYMENT (O.29, R.13)	214
DIRECTIONS ON APPLICATION UNDER RULE 10 (O.29, R.14)	214
NON-DISCLOSURE OF INTERIM PAYMENT (O.29, R.15).....	214
PAYMENT INTO COURT IN SATISFACTION (O.29, R.16)	214
ADJUSTMENT ON FINAL JUDGMENT OR ORDER OR ON DISCONTINUANCE (O.29, R.17)	215
COUNTERCLAIMS AND OTHER PROCEEDINGS (O.29, R.18).....	215
ORDER 30	217
RECEIVERS	217

APPLICATION FOR RECEIVER AND INJUNCTION (O.30, R.1)	217
GIVING OF SECURITY BY RECEIVER (O.30, R.2).....	217
REMUNERATION OF RECEIVER (O.30, R.3)	217
SERVICE OF ORDER AND NOTICE (O.30, R.4)	218
RECEIVER'S ACCOUNTS (O.30, R.5).....	218
PAYMENT INTO COURT BY RECEIVER (O.30, R.6)	218
DEFAULT BY RECEIVER (O.30, R.7).....	218
DIRECTIONS TO RECEIVERS (O.30, R.8).....	219
ORDER 31	221
SALES, ETC., OF LAND BY ORDER OF COURT	221
POWER TO ORDER SALE OF LAND (O.31, R.1)	221
MANNER OF CARRYING OUT SALE (O.31, R.2)	221
CERTIFYING RESULT OF SALE (O.31, R.3)	222
CHARGE, EXCHANGE OR PARTITION UNDER ORDER OF THE COURT (O.31, R.4)	222
NO RULES (O.31, RR.5-8).....	222
ORDER 32	223
APPLICATIONS AND PROCEEDINGS IN CHAMBERS.....	223
MODE OF MAKING APPLICATION (O.32, R.1)	223
ISSUE OF SUMMONS (O.32, R.2)	223
SERVICE OF SUMMONS (O.32, R.3)	223
ADJOURNMENT OF HEARING (O.32, R.4)	223
PROCEEDING IN ABSENCE OF PARTY FAILING TO ATTEND (O.32, R.5)	224
ORDER MADE EX PARTE MAY BE SET ASIDE (O.32, R.6)	224
SUBPOENA FOR ATTENDANCE OF WITNESS (O.32, R.7)	224
OFFICERS MAY ADMINISTER OATHS (O.32, R.8)	224
NO RULE (O.32, R.9)	224

APPLICATIONS FOR A DIRECTION UNDER THE LIMITATION LAW (1996 REVISION) (O.32, R.9A).....	225
NO RULES (O.32, RR.10-12)	225
POWER TO DIRECT HEARING IN COURT (O.32, R.13).....	225
NO RULES (O.32, RR.14-15)	225
OBTAINING ASSISTANCE OF EXPERTS (O.32, R.16)	225
SERVICE AND NOTICE OF AFFIDAVIT (O.32, R.17)	225
NO RULE (O.32, R.18).....	225
DISPOSAL OF MATTERS IN CHAMBERS (O.32, R.19)	225
NO RULE (O.32, R.20).....	226
PAPERS FOR USE OF COURT, ETC. (O.32, R.21)	226
NOTES OF PROCEEDINGS IN CHAMBERS (O.32, R.22).....	226
NO RULES (O.32, RR.23-26)	226
JUDGMENTS AND ORDERS IN CHAMBERS (O.32, R.27)	226
APPLICATION IN CASE OF EMERGENCY, ETC. (O.32, R.28)	226
ORDER 33	227
PLACE AND MODE OF TRIAL	227
PLACE OF TRIAL (O.33, R.1).....	227
MODE OF TRIAL (O.33, R.2)	227
TIME, ETC. OF TRIAL OF QUESTIONS OR ISSUES (O.33, R.3)	227
DETERMINING THE PLACE AND MODE OF TRIAL (O.33, R.4).....	227
SPLIT TRIAL: OFFER ON LIABILITY (O.33, R.4A)	228
NO RULES (O.33, RR.5-6).....	228
DISMISSAL OF ACTION, ETC. AFTER DECISION OF PRELIMINARY ISSUE (O.33, R.7)	228
ORDER 34	229
FIXING A TRIAL DATE FOR ACTIONS BEGUN BY WRIT	229

APPLICATION AND INTERPRETATION (O.34, R.1)	229
ORDER FOR ACTION TO BE TRIED (O.34, R.2)	229
NOTICE TO FIX A TRIAL DATE (O.34, R.3)	229
DIRECTIONS RELATING TO FIXING A TRIAL DATE (O.34, R.4).....	230
FURTHER PROVISIONS FIXING A TRIAL DATE (O.34, R.5)	230
NO RULE (O.34, RR.6-7)	230
NOTIFICATION OF RELEVANT INFORMATION (O.34 R.8)	230
NO RULE (O.34, R.9)	230
DELIVERY OF BUNDLES TO THE COURT (O.34, R.10)	230
ORDER 35	233
PROCEEDINGS AT TRIAL.....	233
FAILURE TO APPEAR BY BOTH PARTIES OR ONE OF THEM (O.35, R.1)	233
JUDGMENT ETC. GIVEN IN ABSENCE OF PARTY MAY BE SET ASIDE (O.35, R.2)	233
ADJOURNMENT OF TRIAL (O.35, R.3)	233
NO RULES (O.35, RR.4-6).....	233
ORDER OF SPEECHES (O.35, R.7)	233
INSPECTION BY JUDGE OR JURY (O.35, R.8)	234
DEATH OF PARTY BEFORE GIVING OF JUDGMENT (O.35, R.9).....	234
NO RULES (O.35, RR.10-10A)	235
LIST OF EXHIBITS (O.35, R.11)	235
CUSTODY OF EXHIBIT AFTER TRIAL (O.35, R.12)	235
IMPOUNDED DOCUMENTS (O.35, R.13)	235
OFFICERS MAY ADMINISTER OATHS (O.35, R.14)	235
ORDER 36	237
NO ORDER	237
ORDER 37	239

DAMAGES: ASSESSMENT AFTER JUDGMENT	239
ASSESSMENT OF DAMAGES BY A JUDGE (O.37, R.1)	239
CERTIFICATE OF AMOUNT OF DAMAGES (O.37, R.2)	239
DEFAULT JUDGMENT AGAINST SOME BUT NOT ALL DEFENDANTS (O.37, R.3)	239
NO RULE (O.37, R.4)	239
ASSESSMENT OF VALUE (O.37, R.5).....	239
ASSESSMENT OF DAMAGES TO TIME OF ASSESSMENT (O.37, R.6)	239
ORDER 38	241
EVIDENCE	241
I. GENERAL RULES.....	241
GENERAL RULE: WITNESSES TO BE EXAMINED ORALLY (O.38, R.1)	241
INTERPRETATION (O.38, R.1A).....	241
EVIDENCE BY AFFIDAVIT (O.38, R.2).....	241
EXCHANGE OF WITNESSES' STATEMENTS (O.38, R.2A).....	241
EVIDENCE OF PARTICULAR FACTS (O.38, R.3).....	245
LIMITATION OF EXPERT EVIDENCE (O.38, R.4).....	245
LIMITATION OF PLANS, ETC. IN EVIDENCE (O.38, R.5)	245
REVOCATION OR VARIATION OF ORDERS UNDER RULES 2 TO 5 (O.38, R.6)	245
EVIDENCE OF FINDING ON FOREIGN LAW (O.38, R.7)	245
APPLICATION TO TRIALS OF ISSUES, REFERENCES, ETC. (O.38, R.8).....	246
DEPOSITIONS: WHEN RECEIVABLE IN EVIDENCE AT TRIAL (O.38, R.9)	246
COURT DOCUMENTS ADMISSIBLE OR RECEIVABLE IN EVIDENCE (O.38, R.10)	246
EVIDENCE OF CONSENT OF NEW TRUSTEE TO ACT (O.38, R.11).....	247
EVIDENCE AT TRIAL MAY BE USED IN SUBSEQUENT PROCEEDINGS (O.38, R.12)	247
ORDER TO PRODUCE DOCUMENT AT PROCEEDING OTHER THAN TRIAL (O.38, R.13)	247
II. WRITS OF SUBPOENA.....	247

FORM AND ISSUE OF WRIT OF SUBPOENA (O. 38, R.14)	247
MORE THAN ONE NAME MAY BE INCLUDED IN ONE WRIT OF SUBPOENA (O.38, R.15).....	248
AMENDMENT OF WRIT OF SUBPOENA (O.38, R.16).....	248
SERVICE OF WRIT OF SUBPOENA (O.38, R.17)	248
DURATION OF WRIT OF SUBPOENA (O.38, R.18).....	248
INSPECTION OF BANKER'S BOOKS (O.38, R.19)	248
III. HEARSAY EVIDENCE	249
APPLICATION (O.38, R.20).....	249
NOTICE OF INTENTION TO GIVE CERTAIN STATEMENTS IN EVIDENCE (O.38, R.21)	249
STATEMENT ADMISSIBLE BY VIRTUE OF SECTION 32 OF THE LAW: CONTENTS OF NOTICE (O.38, R.22)	250
STATEMENT ADMISSIBLE BY VIRTUE OF SECTION 34 OF THE LAW: CONTENTS OF NOTICE (O.38, R.23)	250
STATEMENT ADMISSIBLE BY VIRTUE OF SECTION 35 OF THE LAW: CONTENTS OF NOTICE (O.38, R.24)	251
REASONS FOR NOT CALLING A PERSON AS A WITNESS (O.38, R.25).....	252
COUNTER-NOTICE REQUIRING PERSON TO BE CALLED AS A WITNESS (O.38, R.26)	252
DETERMINATION OF QUESTION WHETHER PERSON CAN OR SHOULD BE CALLED AS A WITNESS (O.38, R.27)	252
DIRECTIONS WITH RESPECT TO STATEMENT MADE IN PREVIOUS PROCEEDINGS (O.38, R.28) ...	
253 POWER OF COURT TO ALLOW STATEMENT TO BE GIVEN IN EVIDENCE (O.38, R.29)	253
RESTRICTION ON ADDUCING EVIDENCE AS TO CREDIBILITY OF MAKER, ETC., OF CERTAIN STATEMENTS (O.38, R.30)	254
NOTICE REQUIRED OF INTENTION TO GIVE EVIDENCE OF CERTAIN INCONSISTENT STATEMENTS (O.38, R.31)	254
COSTS (O.38, R.32).....	255
CERTAIN POWERS EXERCISABLE IN CHAMBERS (O.38, R.33)	255
STATEMENTS OF OPINION (O.38, R.34)	255

IV. EXPERT EVIDENCE	255
INTERPRETATION (O.38, R.35)	255
RESTRICTIONS ON ADDUCING EXPERT EVIDENCE (O.38, R.36).....	255
DIRECTION THAT EXPERT REPORT BE DISCLOSED (O.38, R.37)	256
MEETING OF EXPERTS (O.38, R.38).....	256
DISCLOSURE OF PART OF EXPERT EVIDENCE (O.38, R.39).....	256
NO RULE (O.38 R.40).....	256
EXPERT EVIDENCE CONTAINED IN STATEMENT (O.38, R.41).....	256
PUTTING IN EVIDENCE EXPERT REPORT DISCLOSED BY ANOTHER PARTY (O.38, R.42)	256
TIME FOR PUTTING EXPERT REPORT IN EVIDENCE (O.38, R.43)	256
REVOCATION AND VARIATION OF DIRECTIONS (O.38, R.44)	257
ORDER 39	259
EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT.....	259
POWER TO ORDER DEPOSITIONS TO BE TAKEN (O.39, R.1)POWER TO ORDER DEPOSITIONS TO BE TAKEN.....	259
WHERE PERSON TO BE EXAMINED IS OUT OF THE JURISDICTION (O.39, R.2)	259
ORDER FOR ISSUE OF LETTER OF REQUEST (O.39, R.3).....	259
EXAMINATION OTHERWISE THAN ON OATH (O.39, R.3A).....	260
ENFORCING ATTENDANCE OF WITNESS AT EXAMINATION (O.39, R.4)	260
REFUSAL OF WITNESS TO ATTEND, BE SWORN, ETC. (O.39, R.5)	261
APPOINTMENT OF TIME AND PLACE FOR EXAMINATION (O.39, R.6)	261
EXAMINER TO HAVE CERTAIN DOCUMENTS (O.39, R.7)	261
CONDUCT OF EXAMINATION (O.39, R.8)	262
EXAMINATION OF ADDITIONAL WITNESSES (O.39, R.9).....	262
OBJECTION TO QUESTIONS (O.39, R.10).....	262
TAKING OF DEPOSITIONS (O.39, R.11)	262

TIME TAKEN BY EXAMINATION TO BE INDORSED ON DEPOSITIONS (O.39, R.12).....	263
SPECIAL REPORT BY EXAMINER (O.39, R.13)	263
ORDER FOR PAYMENT OF EXAMINER'S FEES (O.39, R.14)	263
PERPETUATION OF TESTIMONY (O.39, R.15)	263
EXAMINERS OF THE COURT (O.39, R.16)	264
NO RULES (O.39, RR.17-18)	264
FEES AND EXPENSES OF EXAMINERS OF THE COURT (O.39, R.19)	264
ORDER 40	265
COURT EXPERT	265
APPOINTMENT OF EXPERT TO REPORT ON CERTAIN QUESTIONS (O.40, R.1)	265
REPORT OF COURT EXPERT (O.40, R.2)	265
EXPERIMENTS AND TESTS (O.40, R.3)	265
CROSS-EXAMINATION OF COURT EXPERT (O.40, R.4)	266
REMUNERATION OF COURT EXPERT (O.40, R.5).....	266
CALLING OF EXPERT WITNESSES (O.40, R.6).....	266
ORDER 41	267
AFFIDAVITS	267
FORM OF AFFIDAVIT (O.41, R.1)	267
AFFIDAVIT BY TWO OR MORE DEponents (O.41, R.2)	268
AFFIDAVIT BY ILLITERATE OR BLIND PERSON (O.41, R.3)	268
USE OF DEFECTIVE AFFIDAVIT (O.41, R.4)	268
CONTENTS OF AFFIDAVIT (O.41, R.5).....	268
SCANDALOUS, ETC., MATTER IN AFFIDAVIT (O.41, R.6).....	269
ALTERATIONS IN AFFIDAVITS (O.41, R.7)	269
AFFIDAVITS TO BE SWORN (O.41, R.8).....	269
FILING OF AFFIDAVITS (O.41, R.9)	269

USE OF ORIGINAL AFFIDAVIT OR OFFICE COPY (O.41, R.10).....	269
DOCUMENT TO BE USED IN CONJUNCTION WITH AFFIDAVIT TO BE EXHIBITED TO IT (O.41, R.11)	270
FORM OF DOCUMENTARY EXHIBITS (O.41, R.12)	270
EXHIBITS OTHER THAN DOCUMENTS (O.41, R.13)	271
COURT DOCUMENTS NOT TO BE EXHIBITED (O.41, R.14)	271
REFERENCE TO EXHIBITS (O.41, R.15)	271
ORDER 42	273
JUDGMENTS AND ORDERS	273
FORM OF JUDGMENT, ETC. (O.42, R.1).....	273
NO RULE (O.42, R.1A)	274
JUDGMENT, ETC., REQUIRING ACT TO BE DONE: TIME FOR DOING IT (O.42, R.2)	274
DATE FROM WHICH JUDGMENT OR ORDER TAKES EFFECT (O.42, R.3).....	274
JUDGMENT AGAINST A STATE (O.42, R.3A).....	274
ORDERS REQUIRED TO BE DRAWN UP (O.42, R.4)	275
DRAWING UP AND FILING OF JUDGMENTS AND ORDERS (O.42, R.5)	275
CONSENT JUDGMENTS AND ORDERS (O.42, R.5A)	276
DEFAULT JUDGMENTS (O.42, R.6)	278
ORIGINAL AND OFFICE COPIES OF JUDGMENTS ETC. (O.42, R.7)	279
JUDGMENTS GIVEN IN FOREIGN CURRENCIES (O.42, R.8)	279
APPLICATION IN RESPECT OF ORDERS OF THE PRIVY COUNCIL (O.42, R.9)	279
ORDER 43	281
ACCOUNTS AND INQUIRIES	281
SUMMARY ORDER FOR ACCOUNT (O.43, R.1)	281
COURT MAY DIRECT TAKING OF ACCOUNTS, ETC. (O.43, R.2)	281
DIRECTIONS AS TO MANNER OF TAKING ACCOUNT OR MAKING INQUIRY (O.43, R.3)	282

ACCOUNT TO BE MADE, VERIFIED ETC. (O.43, R.4)	282
NOTICE TO BE GIVEN OF ALLEGED OMISSIONS, ETC. IN ACCOUNT (O.43, R.5)	282
ALLOWANCES (O.43, R.6).....	282
DELAY IN PROSECUTION OF ACCOUNTS, ETC. (O.43, R.7)	282
DISTRIBUTION OF FUND BEFORE ALL PERSONS ENTITLED ARE ASCERTAINED (O.43, R.8)	283
NO RULE (O.43, R.9)	283
ORDER 44	285
PROCEEDINGS UNDER JUDGMENTS AND ORDERS	285
APPLICATION TO ORDERS (O.44, R.1)	285
SERVICE OF NOTICE OF JUDGMENT ON PERSON NOT A PARTY (O.44, R.2)	285
DIRECTIONS BY THE COURT (O.44, R.3)	286
APPLICATION OF RR.5 TO 8 (O.44, R.4).....	286
ADVERTISEMENTS FOR CREDITORS AND OTHER CLAIMANTS (O.44, R.5)	287
EXAMINATION OF CLAIMS (O.44, R.6)	287
ADJUDICATION ON CLAIMS (O.44, R.7)	287
NOTICE OF ADJUDICATION (O.44, R.8)	288
INTEREST ON DEBTS (O.44, R.9)	288
INTEREST ON LEGACIES (O.44, R.10)	288
NO RULES (O.44, RR.11-12)	288
ORDER 45	289
ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL	289
ENFORCEMENT OF JUDGMENT, ETC., FOR PAYMENT OF MONEY (O.45, R.1).....	289
NO RULE (O.45, R.2)	289
ENFORCEMENT OF JUDGMENT FOR POSSESSION OF LAND (O.45, R.3).....	290
ENFORCEMENT OF JUDGMENT FOR DELIVERY OF GOODS (O.45, R.4)	290
ENFORCEMENT OF JUDGMENT TO DO OR ABSTAIN FROM DOING ANY ACT (O.45, R.5)	291

JUDGMENT, ETC. REQUIRING ACT TO BE DONE: ORDER FIXING TIME FOR DOING (O.45, R.6)	292
SERVICE OF COPY OF JUDGMENT, ETC., PREREQUISITE TO ENFORCEMENT UNDER R.5 (O.45, R.7)	292
COURT MAY ORDER ACT TO BE DONE AT EXPENSE OF DISOBEDIENT PARTY (O.45, R.8)	293
EXECUTION BY OR AGAINST PERSON NOT BEING A PARTY (O.45, R.9)	294
CONDITIONAL JUDGMENT: WAIVER (O.45, R.10)	294
MATTERS OCCURRING AFTER JUDGMENT: STAY OF EXECUTION, ETC. (O.45, R.11)	294
FORMS OF WRITS (O.45, R.12)	294
ENFORCEMENT OF JUDGMENTS AND ORDERS FOR RECOVERY OF MONEY, ETC. (O.45, R.13)	294
NO RULES (O.45, RR.14-15)	295
ORDER 46	297
WRITS OF EXECUTION: GENERAL	297
DEFINITION (O.46, R.1)	297
WHEN LEAVE TO ISSUE ANY WRIT OF EXECUTION IS NECESSARY (O.46, R.2)	297
LEAVE REQUIRED FOR ISSUE OF WRIT IN AID OF OTHER WRIT (O.46, R.3)	297
APPLICATION FOR LEAVE TO ISSUE WRIT (O.46, R.4)	298
APPLICATION FOR LEAVE TO ISSUE WRIT OF SEQUESTRATION (O.46, R.5)	298
ISSUE OF WRIT OF EXECUTION (O.46, R.6)	299
NO RULE (O.46, R.7)	299
DURATION AND RENEWAL OF EXECUTION (O.46, R.8)	299
RETURN OF WRIT OF EXECUTION (O.46, R.9)	300
ORDER 47	301
WRITS OF FIERI FACIAS	301
POWER TO STAY EXECUTION BY WRIT OF FIERI FACIAS (O.47, R.1)	301
NO RULE (O.47, R.2)	301
SEPARATE WRITS TO ENFORCE PAYMENT OF COSTS, ETC. (O.47, R.3)	302

ORDER 48	303
EXAMINATION OF JUDGMENT DEBTOR, ETC.....	303
ORDER FOR EXAMINATION OF JUDGMENT DEBTOR (O.48, R.1)	303
EXAMINATION OF PARTY LIABLE TO SATISFY OTHER JUDGMENT (O.48, R.2)	304
EXAMINER TO MAKE RECORD OF DEBTOR'S STATEMENT (O.48, R.3)	304
ORDER 49	305
GARNISHEE PROCEEDINGS	305
ATTACHMENT OF DEBT DUE TO JUDGMENT DEBTOR (O.49, R.1)	305
APPLICATION FOR ORDER (O.49, R.2)	305
SERVICE AND EFFECT OF ORDER TO SHOW CAUSE (O.49, R.3)	305
NO APPEARANCE OR DISPUTE OF LIABILITY BY GARNISHEE (O.49, R.4)	306
DISPUTE OF LIABILITY BY GARNISHEE (O.49, R.5)	306
CLAIMS OF THIRD PERSONS (O.49, R.6)	306
NO RULE (O.49, R.7)	306
DISCHARGE OF GARNISHEE (O.49, R.8).....	306
MONEY IN COURT (O.49, R.9)	307
COSTS (O.49, R.10).....	307
ORDER 50	309
CHARGING ORDERS, STOP ORDERS, ETC	309
ORDER IMPOSING A CHARGE ON A BENEFICIAL INTEREST (O.50, R.1)	309
INTERPRETATION (O.50, R.1A)	310
SERVICE OF NOTICE OF ORDER TO SHOW CAUSE (O.50, R.2)	310
ORDER MADE ON FURTHER CONSIDERATION (O.50, R.3)	311
ORDER IMPOSING A CHARGE ON AN INTEREST HELD BY A TRUSTEE (O.50, R.4)	311
REGISTRATION OF ORDER IMPOSING A CHARGE ON AN INTEREST IN LAND (O.50, R.4A).....	311

EFFECT OF ORDER IN RELATION TO SECURITIES OUT OF COURT (O.50, R.5).....	312
EFFECT OF ORDER IN RELATION TO FUNDS IN COURT (O.50, R.6).....	313
DISCHARGE, ETC., OF CHARGING ORDER (O.50, R.7)	313
ENFORCEMENT OF ORDER CHARGING AN INTEREST IN LAND (O.50, R.8)	313
ENFORCEMENT OF ORDER CHARGING PROPERTY OTHER THAN LAND (O.50, R.9).....	314
FUNDS IN COURT: STOP ORDER (O.50, R.10).....	314
SECURITIES NOT IN COURT: STOP NOTICE (O.50, R.11)	315
EFFECT OF STOP NOTICE (O.50, R.12)	315
AMENDMENT OF STOP NOTICE (O.50, R.13)	316
WITHDRAWAL ETC. OF STOP NOTICE (O.50, R.14)	316
ORDER PROHIBITING TRANSFER, ETC. OF SECURITIES (O.50, R.15).....	316
ORDER 50A	317
ATTACHMENT OF EARNINGS ORDERS.....	317
INTERPRETATION (O.50A, R.1).....	317
REGISTER OF ORDERS (O.50A, R.2)	317
NON-RESIDENT DEBTORS (O.50A, R.3)	317
MODE OF APPLYING (O.50A, R.4).....	317
SERVICE AND REPLY (O.50A, R.5)	318
NOTICE TO EMPLOYER (O.50A, R.6)	318
ATTACHMENT OF EARNINGS ORDER (O.50A, R.7).....	318
FAILURE BY DEBTOR (O.50A, R.8).....	319
COSTS (O.50A, R.9).....	320
CONTENTS AND SERVICE OF ORDER (O.50A, R.10).....	320
APPLICATION TO DETERMINE WHETHER PARTICULAR PAYMENTS ARE EARNINGS (O.50A, R.11)	320
NOTICE OF CESSATION (O.50A, R.12).....	320
VARIATION AND DISCHARGE BY COURT OF OWN MOTION (O.50A, R.13)	321

EXERCISE OF POWER TO OBTAIN STATEMENT OF EARNINGS (O.50A, R.14)	321
OFFENSES (O.50A, R.15)	322
MAINTENANCE ORDERS (O.50A, R.16)	322
CASES IN WHICH CONSOLIDATED ORDER MAY BE MADE (O.50A, R.17)	323
APPLICATION FOR CONSOLIDATED ORDER (O.50A, R.18)	323
MAKING OF CONSOLIDATED ORDER BY COURT OF ITS OWN MOTION (O.50A, R.19)	324
EXTENSION OF CONSOLIDATED ORDER (O.50A, R.20)	324
PAYMENTS UNDER CONSOLIDATED ORDER (O.50A, R.21)	325
ORDER 51	327
RECEIVERS: EQUITABLE EXECUTION	327
APPOINTMENT OF RECEIVER BY WAY OF EQUITABLE EXECUTION (O.51, R.1)	327
NO RULE (O.51, R.2)	327
APPLICATION OF RULES AS TO APPOINTMENT OF RECEIVER, ETC. (O.51, R.3).....	327
ORDER 52	329
COMMITTAL	329
I. GENERAL PROVISIONS	329
COMMITTAL FOR CONTEMPT OF COURT (O.52, R.1)	329
NO RULES (O.52, RR.2-3).....	329
APPLICATION FOR COMMITTAL (O.52, R.4).....	329
COMMITTAL BY THE COURT OF ITS OWN MOTION (O.52, R.5).....	329
PROVISIONS AS TO HEARING (O.52, R.6).....	329
POWER TO SUSPEND EXECUTION OF COMMITTAL ORDER (O.52, R.7)	330
DISCHARGE OF PERSON COMMITTED (O.52, R.8)	330
SAVING FOR OTHER POWERS (O.52, R.9).....	331
WARRANT OF COMMITTAL (O.52, R.10)	331
II. IMPRISONMENT FOR NON-PAYMENT OF JUDGMENT DEBTS	331

NO RULE (O.52, R.11)	331
APPLICATION FOR COMMITTAL (O.52, R.12).....	331
ATTENDANCE OF DEBTOR (O.52, R.13).....	332
PAYMENT OF THE JUDGMENT DEBT (O.52, R.14).....	332
ORDER FOR COMMITTAL (O.52, R.15)	332
DISCHARGE OF DEBTOR (O.52, R.16)	333
ORDER 53	335
APPLICATIONS FOR JUDICIAL REVIEW	335
CASES APPROPRIATE FOR APPLICATION FOR JUDICIAL REVIEW (O.53, R.1)	335
JOINDER OF CLAIMS FOR RELIEF (O.53, R.2)	335
GRANT OF LEAVE TO APPLY FOR JUDICIAL REVIEW (O.53, R.3)	335
DELAY IN APPLYING FOR RELIEF (O.53, R.4).....	337
MODE OF APPLYING FOR JUDICIAL REVIEW (O.53, R.5).....	337
STATEMENTS AND AFFIDAVITS (O.53, R.6)	338
CLAIM FOR DAMAGES (O.53, R.7).....	339
INTERLOCUTORY APPLICATIONS (O.53, R.8)	339
HEARING OF APPLICATION FOR JUDICIAL REVIEW (O.53, R.9)	339
SAVING FOR PERSON ACTING IN OBEDIENCE TO MANDAMUS (O.53, R.10)	340
NO RULE (O.53, R.11).....	340
CONSOLIDATION OF APPLICATIONS (O.53, R.12)	340
APPEAL FROM COURT'S ORDER (O.53, R.13)	340
ORDER 54	341
APPLICATIONS FOR WRIT OF HABEAS CORPUS	341
APPLICATION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM (O.54, R.1)	341
POWER OF COURT TO WHOM EX PARTE APPLICATION IS MADE (O.54, R.2)	341
COPIES OF AFFIDAVITS TO BE SUPPLIED (O.54, R.3)	341

POWER TO ORDER RELEASE OF PERSON RESTRAINED (O.54, R.4)	342
DIRECTIONS AS TO RETURN TO WRIT (O.54, R.5)	342
SERVICE OF WRIT AND NOTICE (O.54, R.6).....	342
RETURN TO THE WRIT (O.54, R.7)	342
PROCEDURE AT HEARING OF WRIT (O.54, R.8).....	342
BRINGING UP PRISONER TO GIVE EVIDENCE, ETC. (O.54, R.9).....	343
FORM OF WRIT (O.54, R.10).....	343
ORDER 55	345
APPEALS TO GRAND COURT FROM GOVERNOR-IN-COUNCIL, REGISTRAR OF LANDS,	
TRIBUNAL OR OTHER PERSON: GENERAL.....	345
APPLICATION (O.55, R.1)	345
COURT TO HEAR APPEAL (O.55, R.2).....	345
BRINGING OF APPEAL (O.55, R.3)	345
SERVICE OF NOTICE OF MOTION AND ENTRY OF APPEAL (O.55, R.4)	346
DATE OF HEARING OF APPEAL (O.55, R.5)	346
AMENDMENT OF GROUNDS OF APPEAL, ETC. (O.55, R.6)	346
POWERS OF COURT HEARING APPEAL (O.55, R.7)	347
RIGHT OF GOVERNOR-IN-COUNCIL TO APPEAR AND BE HEARD (O.55, R.8)	347
ORDER 56	349
APPEALS TO COURT BY CASE STATED: GENERAL	349
NO RULES (O.56, RR.1-6).....	349
CASE STATED BY GOVERNOR-IN-COUNCIL, THE REGISTRAR OF LANDS, TRIBUNAL OR OTHER PERSON (O.56, R.7).....	349
APPLICATION FOR ORDER TO STATE A CASE (O.56, R.8).....	349
SIGNING AND SERVICE OF CASE (O.56, R.9)	350
PROCEEDINGS FOR DETERMINATION OF CASE (O.56, R.10)	350

AMENDMENT OF CASE (O.56, R.11)	351
RIGHT OF GOVERNOR-IN-COUNCIL, ETC. TO APPEAR AND BE HEARD (O.56, R.12)	351
ORDERS 57-61	353
NO ORDERS	353
ORDER 62	355
COSTS	355
PART I: PRELIMINARY	355
APPLICATION (O.62, R.1)	355
TRANSITIONAL PROVISIONS (O.62, R.2).....	355
DEFINITIONS (O.62, R.3)	356
PART II: ENTITLEMENT TO COSTS	357
GENERAL PRINCIPLES (O.62, R.4)	357
CASES WHERE ORDER FOR COSTS DEEMED TO HAVE BEEN MADE (O.62, R.5).....	360
CASES WHERE COSTS DO NOT FOLLOW THE EVENT (O.62, R.6)	361
CLAIM FOR FIXED COSTS (O.62, R.7)	362
ASSESSMENT OF COSTS (O.62, R.8)	362
STAGE OF PROCEEDINGS AT WHICH COSTS TO BE TAXED (O.62, R.9)	363
MATTERS TO BE TAKEN INTO ACCOUNT IN EXERCISING DISCRETION (O.62, R.10)	363
PART III: WASTED COSTS ORDERS.....	364
PERSONAL LIABILITY OF ATTORNEY FOR COSTS (O.62, R.11)	364
APPLICATION FOR WASTED COSTS ORDERS (O. 62, R.12).....	364
PART IV: TAXATION OF COSTS.....	365
BASIS OF TAXATION (O.62, R.13).....	365
COSTS PAYABLE TO A TRUSTEE, PERSONAL REPRESENTATIVE OR OFFICIAL LIQUIDATOR OUT OF ANY FUND (O.62, R.14)	366
COSTS PAYABLE TO AN ATTORNEY WHERE MONEY CLAIMED BY OR ON BEHALF OF A PERSON UNDER DISABILITY (O.62, R.15)	366
AMOUNT OF COSTS (O.62, R.16)	368

ALLOWANCE OR DISALLOWANCE OF ITEMS AND ALLOWANCE OF INCREASED SUMS (O.62, R.17)	368
FOREIGN LAWYERS (O.62, R.18)	368
LITIGANTS IN PERSON (O.62, R.19)	369
PART V: POWERS OF TAXING OFFICERS	370
POWERS OF TAXING OFFICERS (O.62, R.20)	370
EXTENSIONS OF TIME (O.62, R.21)	370
COSTS CERTIFICATES (O.62, R.22)	370
POWER OF TAXING OFFICER TO EFFECT SET OFFS (O.62, R.23)	371
TAXATION OF BILL OF COSTS COMPRISED IN AN ACCOUNT (O.62, R.24)	372
POWERS OF TAXING OFFICERS ON TAXATION OF COSTS OUT OF A FUND (O.62, R.25)	372
POWERS OF TAXING OFFICERS IN RELATION TO COSTS OF TAXATION PROCEEDINGS (O.62, R.26)	372
PART VI: PROCEDURE ON TAXATION	373
SERVICE OF A BILL OF COSTS (O.62, R.27)	373
COMMENCEMENT OF TAXATION PROCEEDINGS (O.62, R.28)	373
SUBSEQUENT PROCEDURE (O.62, R.29)	374
PART VII: REVIEW OF TAXATION AND APPEAL ON POINTS OF CONSTRUCTION	376
REVIEW BY THE JUDGE (O.62, R.30)	376
APPEAL TO THE COURT OF APPEAL ON POINTS OF CONSTRUCTION (O.62, R.31)	377
ORDER 63	379
OFFICE OF THE GRAND COURT	379
DISTRIBUTION OF BUSINESS IN THE COURT (O.63, R.1)	379
COURT FILES (O.63, R.2)	379
FILING OF DOCUMENTS (O.63, R.3)	379
RESTRICTION ON REMOVAL OF DOCUMENTS (O.63, R.4)	380
IDENTITY OF PARTY FILING DOCUMENTS (O.63, R.5)	380

DEPOSIT OF DOCUMENTS (O.63, R.6)	380
REGISTER OF JUDGMENTS (O.63, R.7).....	380
REGISTER OF WRITS AND OTHER ORIGINATING PROCESS (O.63, R.8)	381
OFFICE HOURS (O.63, R.9).....	381
ORDER 64	383
NO ORDER	383
ORDER 65	385
SERVICE OF DOCUMENTS	385
WHEN PERSONAL SERVICE REQUIRED (O.65, R.1)	385
PERSONAL SERVICE: HOW EFFECTED (O.65, R.2)	385
SERVICE ON BODY CORPORATE (O.65, R.3).....	385
SUBSTITUTED SERVICE (O.65, R.4)	385
ORDINARY SERVICE: HOW EFFECTED (O.65, R.5).....	385
SERVICE ON GOVERNOR-IN-COUNCIL, ETC., IN PROCEEDINGS WHICH ARE NOT BY OR AGAINST THE CROWN (O.65, R.6).....	387
EFFECT OF SERVICE AFTER CERTAIN HOURS (O.65, R.7)	387
AFFIDAVIT OF SERVICE (O.65, R.8).....	387
NO SERVICE REQUIRED IN CERTAIN CASES (O.65, R.9).....	387
SERVICE OF PROCESS ON SUNDAY (O.65, R.10)	388
ORDER 66	389
PAPER, PRINTING, BINDING AND COPIES	389
QUALITY AND SIZE OF PAPER (O.66, R.1)	389
REGULATIONS AS TO PRINTING, ETC. (O.66, R.2).....	389
COPIES OF DOCUMENTS FOR OTHER PARTY (O.66, R.3)	389
REQUIREMENTS AS TO COPIES (O.66, R.4).....	390
REQUIREMENTS AS TO BINDING (O.66, R.5).....	390
ORDER 67	391

CHANGE OF ATTORNEY.....	391
NOTICE OF CHANGE OF ATTORNEY (O.67, R.1)	391
NO RULE (O.67, R.2)	391
NOTICE OF APPOINTMENT OF ATTORNEY (O.67, R.3)	391
NOTICE OF INTENTION TO ACT IN PERSON (O.67, R.4).....	391
REMOVAL OF ATTORNEY FROM RECORD AT INSTANCE OF ANOTHER PARTY (O.67, R.5)	391
WITHDRAWAL OF ATTORNEY WHO HAS CEASED TO ACT FOR PARTY (O.67, R.6).....	392
ADDRESS FOR SERVICE OF PARTY WHOSE ATTORNEY IS REMOVED, ETC. (O.67, R.7)	393
COPY OF NOTICE TO BE FILED (O.67, R.8)	393
ORDER 68	395
NO ORDER	395
ORDER 69	397
PROVISIONS AS TO FOREIGN PROCEEDINGS;	397
SERVICE OF FOREIGN PROCESS	397
DEFINITIONS (O.69, R.1)	397
APPLICATIONS (O.69, R.2).....	397
SERVICE OF PROCESS (O.69, R.3).....	397
SERVICE OF PROCESS BY PRIVATE PROCESS SERVER (O.69, R.4)	398
ORDER 70	399
OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC	399
INTERPRETATION (O.70, R.1).....	399
APPLICATION FOR ORDER (O.70, R.2)	399
APPLICATION BY ATTORNEY GENERAL IN CERTAIN CASES (O.70, R.3)	399
PERSON TO TAKE AND MANNER OF TAKING EXAMINATION (O.70, R.4)	399
DEALING WITH DEPOSITION (O.70, R.5).....	400
CLAIM TO PRIVILEGE (O.70, R.6)	400
ORDER 71	403

FOREIGN JUDGMENT RECIPROCAL ENFORCEMENT LAW (REVISED)	403
INTERPRETATION (O.71, R.1)	403
APPLICATION FOR REGISTRATION (O.71, R.2)	403
EVIDENCE IN SUPPORT OF APPLICATION (O.71, R.3)	403
SECURITY FOR COSTS (O.71, R.4)	403
ORDER FOR REGISTRATION (O.71, R.5)	404
FILING OF JUDGMENTS (O.71, R.6)	404
NOTICE OF REGISTRATION (O.71, R.7)	404
NO RULE (O.71, R.8)	404
APPLICATION TO SET ASIDE REGISTRATION (O.71, R.9)	405
ISSUE OF EXECUTION (O.71, R.10)	405
NO RULES (O.71, RR.11-12)	405
CERTIFIED COPY OF GRAND COURT JUDGMENT (O.71, R.13)	405
ORDER 72	407 -1
FINANCIAL SERVICES PROCEEDINGS	407 -1
APPLICATION AND INTERPRETATION (O.72, R.1)	407- 1
COMMENCEMENT OF FINANCIAL SERVICES PROCEEDINGS (O.72, R.2)	407- 2
TRANSFER OF PROCEEDINGS (O.72, R.3)	407- 3
CASE MANAGEMENT AND SUMMONSES FOR DIRECTIONS (O.72, R.4)	407- 4
LISTING INTERLOCUTORY HEARINGS AND TRIALS (O.72, R.5)	407- 5
TRANSITIONAL PROVISIONS (O.72, R.6)	407- 5
ORDER 73	409
ARBITRATION PROCEEDINGS	409
INTERPRETATION (O.73, R.1)	409
APPLICATIONS BY ORIGINATING MOTION (O.73, R.2).....	409
APPLICATIONS BY ORIGINATING SUMMONS (O.73, R.3)	409
ENFORCEMENT OF ARBITRAL AWARDS (O.73, R.4)	410
APPLICATION TO STAY ENFORCEMENT OF AWARD UNDER 1988 ORDER (O.73, R.4A)	411
SERVICE OUT OF THE JURISDICTION OF SUMMONS, NOTICE, ETC. (O.73, R.5).....	411

ORDER 74	413
APPLICATIONS AND APPEALS UNDER THE	413
MERCHANT SHIPPING ACTS.....	413
INTERPRETATION (O.74, R.1).....	413

REHEARING OF AND APPEAL FROM INQUIRIES AND INVESTIGATIONS (O.74, R.2).....	413
ORDER FOR SALE ON TRANSMISSION OF A SHIP TO AN UNQUALIFIED PERSON (O.74, R.3) .	413
PROCEEDINGS ON FORFEITURE OF SHIP (O.74, R.4)PROCEEDINGS ON FORFEITURE OF SHIP (O.74, R.4)	413
PROCEEDINGS BEFORE COURTS OF SURVEY (O.74, R.5)	414
AWARDS OF WRECK COMMISSIONERS (O.74, R.6).....	414
ORDER 75	415
ADMIRALTY PROCEEDINGS	415
APPLICATION AND INTERPRETATION (O.75, R.1)	415
FORMS (O.75, R.2).....	416
PROCEEDINGS AGAINST, OR CONCERNING, THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND (O.75, R.2A)	416
ISSUE OF WRIT AND ACKNOWLEDGMENT OF SERVICE (O.75, R.3)	417
SERVICE OF WRIT OUT OF JURISDICTION (O.75, R.4)	417
WARRANT OF ARREST (O.75, R.5)	418
CAVEAT AGAINST ARREST (O.75, R.6)	419
REMEDY WHERE PROPERTY PROTECTED BY CAVEAT IS ARRESTED WITHOUT GOOD AND SUFFICIENT REASON (O.75, R.7).....	420
SERVICE OF WRIT IN ACTION IN REM (O.75, R.8).....	420
COMMITTAL OF ATTORNEY FAILING TO COMPLY WITH UNDERTAKING (O.75, R.9)	421
EXECUTION, ETC., OF WARRANT OF ARREST (O.75, R.10).....	421
SERVICE ON SHIPS, ETC.: HOW EFFECTED (O.75, R.11)	422
DIRECTIONS WITH RESPECT TO PROPERTY UNDER ARREST (O.75, R.12)	422
RELEASE OF PROPERTY UNDER ARREST (O.75, R.13)	423
CAVEAT AGAINST RELEASE, ETC. (O.75, R.14)	423
DURATION OF CAVEATS (O.75, R.15)	424
BAIL (O.75, R.16)	424

INTERVENERS (O.75, R.17)	424
PRELIMINARY ACTS (O.75, R.18)	425
FAILURE TO FILE PRELIMINARY ACT: PROCEEDINGS AGAINST PARTY IN DEFAULT (O.75, R.19)	426
SPECIAL PROVISIONS AS TO PLEADINGS IN COLLISION, ETC., ACTIONS (O.75, R.20)	427
JUDGMENT BY DEFAULT (O.75, R.21)	428
ORDER FOR SALE OF SHIP: DETERMINATION OF PRIORITY OF CLAIMS (O.75, R.22)	429
APPRAISEMENT AND SALE OF PROPERTY (O.75, R.23)	430
UNDERTAKINGS AS TO EXPENSES, ETC. (O.75, R.23A)	431
PAYMENT INTO AND OUT OF COURT (O.75, R.24)	431
SUMMONS FOR DIRECTIONS (O.75, R.25).....	431
FIXING DATE FOR TRIAL, ETC. (O.75, R.26)	432
STAY OF PROCEEDINGS IN COLLISION, ETC., ACTIONS UNTIL SECURITY GIVEN (O.75, R.27)	432
INSPECTION OF SHIP, ETC. (O.75, R.28).....	433
NO RULE (O.75, R.29)	433
EXAMINATION OF WITNESSES AND OTHER PERSONS (O.75, R.30)	433
TRIAL WITHOUT PLEADINGS (O.75, R.31)	434
FURTHER PROVISIONS WITH RESPECT TO EVIDENCE (O.75, R.32)	434
PROCEEDINGS FOR APPORTIONMENT OF SALVAGE (O.75, R.33).....	434
NO RULE (O.75, R.33A)	434
NOTICE OF MOTION IN ACTIONS IN REM (O.75, R.34)	435
AGREEMENT BETWEEN ATTORNEYS MAY BE MADE AN ORDER OF COURT (O.75, R.35)	435
NO RULE (O.75, R.36)	435
LIMITATION ACTION: PARTIES (O.75, R.37)	435
LIMITATION ACTION: PAYMENT INTO COURT (O.75, R.37A)	435
LIMITATION ACTION: SUMMONS FOR DECREE OR DIRECTIONS (O.75, R.38)	436

LIMITATION ACTION: PROCEEDINGS UNDER DECREE (O.75, R.39)	438
LIMITATION ACTION: PROCEEDINGS TO SET ASIDE DECREE (O.75, R.40).....	439
NO RULES (O.75, RR.41-44)	439
DRAWING UP AND FILING JUDGMENTS AND ORDERS (O.75, R.45).....	439
ORDER 76	441
CONTENTIOUS PROBATE PROCEEDINGS	441
APPLICATION AND INTERPRETATION (O.76, R.1)	441
REQUIREMENTS IN CONNECTION WITH ISSUE OF WRIT (O.76, R.2)	441
PARTIES TO ACTION TO REVOCATION OF GRANT (O.76, R.3)	441
NO RULE (O.76, R.4)	441
AFFIDAVIT OF TESTAMENTARY SCRIPTS (O.76, R.5)	442
FAILURE TO ACKNOWLEDGE SERVICE (O.76, R.6)	442
SERVICE OF STATEMENT OF CLAIM (O.76, R.7)	443
COUNTERCLAIM (O.76, R.8)	443
CONTENTS OF PLEADINGS (O.76, R.9)	443
DEFAULT OF PLEADINGS (O.76, R.10).....	444
DISCONTINUANCE AND DISMISSAL (O.76, R.11)	444
COMPROMISE OF ACTION: TRIAL ON AFFIDAVIT EVIDENCE (O.76, R.12).....	444
APPLICATION FOR ORDER TO BRING WILL, ETC. (O.76, R.13)	444
ADMINISTRATION PENDING SUIT (O.76, R.14)	445
PROBATE COUNTERCLAIM IN OTHER PROCEEDINGS (O.76, R.15)	445
NO RULE (O.76, R.16)	445
ORDER 77	447
PROCEEDINGS BY AND AGAINST THE CROWN.....	447
APPLICATION AND INTERPRETATION (O.77, R.1)	447
NO RULE (O.77, R.2)	447

PARTICULARS TO BE INCLUDED IN INDORSEMENT OF CLAIM (O.77, R.3)	447
SERVICE ON THE CROWN (O.77, R.4).....	448
NO RULE (O.77, R.5)	448
COUNTERCLAIM AND SET-OFF (O.77, R.6)	448
SUMMARY JUDGMENT (O.77, R.7)	448
NO RULES (O.77, RR.8-8A).....	449
JUDGMENT IN DEFAULT (O.77, R.9)	449
THIRD PARTY NOTICES (O.77, R.10)	449
INTERPLEADER: APPLICATION FOR ORDER AGAINST CROWN (O.77, R.11).....	450
DISCOVERY AND INTERROGATORIES (O.77, R.12).....	450
NO RULE (O.77, R.13).....	450
EVIDENCE (O.77, R.14)	450
EXECUTION AND SATISFACTION OF ORDERS (O.77, R.15)	450
ATTACHMENT OF DEBTS (O.77, R.16)	451
NO RULE (O.77, R.17).....	451
APPLICATION UNDER SECTION 20 OF THE CROWN PROCEEDINGS LAW (O.77, R.18)	452
ORDERS 78-79	453
NO ORDERS	453
ORDER 80	455
DISABILITY	455
I. CONDUCT OF LITIGATION	455
INTERPRETATION (O.80, R.1)	455
PERSON UNDER DISABILITY MUST SUE, ETC., BY NEXT FRIEND OR GUARDIAN AD LITEM (O.80, R.2)	455
APPOINTMENT OF NEXT FRIEND OR GUARDIAN AD LITEM (O.80, R.3)	455
NO RULES (O.80, RR.4-5).....	457

APPOINTMENT OF GUARDIAN WHERE PERSON UNDER DISABILITY DOES NOT ACKNOWLEDGE SERVICE (O.80, R.6).....	457
APPLICATION TO DISCHARGE OR VARY CERTAIN ORDERS (O.80, R.7).....	458
ADMISSION NOT TO BE IMPLIED FROM PLEADING OF PERSON UNDER DISABILITY (O.80, R.8)..	459
DISCOVERY AND INTERROGATORIES (O.80, R.9).....	459
COMPROMISE, ETC. BY PERSON UNDER DISABILITY (O. 80, R.10).....	459
APPROVAL OF SETTLEMENT (O.80, R.11)	459
CONTROL OF MONEY RECOVERED BY PERSON UNDER DISABILITY (O.80, R.12)	460
APPOINTMENT OF GUARDIAN OF CHILD'S ESTATE (O.80, R.13)	460
NO RULE (O.80, R.14).....	461
PROCEEDINGS UNDER THE TORTS (REFORM) LAW - APPORTIONMENT BY COURT (O.80, R.15)	
.....	461
SERVICE OF CERTAIN DOCUMENTS ON PERSON UNDER DISABILITY (O.80, R.16)	462
II. ADMINISTRATION OF PATIENT'S PROPERTY	462
APPLICATION TO APPOINT RECEIVER, ETC. (O.80, R.17)	462
POWER TO DIRECT APPLICATION BY OFFICER OF COURT OR SOLICITOR GENERAL (O.80, R.18)	463
REPRESENTATION OF PATIENT BY SOLICITOR GENERAL (O.80, R.19)	463
EVIDENCE TO BE FILED ON APPLICATION UNDER RULE 17 (O.80, R.20)	463
SERVICE ON PATIENT (O.80, R.21)	464
APPOINTMENT OF RECEIVER (O.80, R.22)	464
RECEIVER'S ACCOUNTS (O.80, R.23)	465
DEFAULT BY RECEIVER (O.80, R.24)	466
DISCHARGE OF RECEIVER (O.80. R.25)	466
APPLICATION FOR SETTLEMENT OR GIFT OF PATIENT'S PROPERTY OR FOR EXECUTION OF WILL OF PATIENT (O.80, R.26).....	467
APPLICATION TO BE HEARD IN CHAMBERS (O.80, R.27)	467
III. APPOINTMENT OF GUARDIAN	467

APPLICATION FOR APPOINTMENT OF GUARDIAN (O.80, R.28)	467
EVIDENCE IN SUPPORT OF AN APPLICATION UNDER RULE 28 (O.80, R.29)	467
SERVICE (O.80, R.30)	468
ORDER APPOINTING GUARDIAN (O.80, R.31)	468
REMOVAL OF GUARDIAN (O.80, R.32)	468
ORDER 81	471
PARTNERS	471
I. GENERAL PARTNERSHIPS	471
ACTIONS BY AND AGAINST FIRMS WITHIN JURISDICTION (O.81, R.1)	471
DISCLOSURE OF PARTNERS' NAMES (O.81, R.2)	471
SERVICE OF WRIT (O.81, R.3)	471
ACKNOWLEDGMENT OF SERVICE IN ACTION AGAINST FIRM (O.81, R.4)	472
ENFORCING JUDGMENT OR ORDER AGAINST FIRM (O.81, R.5)	473
ENFORCING JUDGMENT OR ORDER IN ACTIONS BETWEEN PARTNERS, ETC. (O.81, R.6)	474
ATTACHMENT OF DEBTS OWED BY FIRM (O.81, R.7)	474
ACTIONS BEGUN BY ORIGINATING SUMMONS (O.81, R.8)	475
APPLICATION TO PERSON CARRYING ON BUSINESS IN ANOTHER NAME (O.81, R.9)	475
APPLICATIONS FOR ORDERS CHARGING PARTNER'S INTEREST IN PARTNERSHIP PROPERTY, ETC. (O.81, R.10)	475
II. LIMITED PARTNERSHIPS	475
DEFINITIONS (O.81, R.11)	475
ACTIONS BY AND AGAINST FIRMS WITHIN JURISDICTION (O.81, R.12)	476
SERVICE OF WRIT (O.81, R.13)	476
ACKNOWLEDGMENT OF SERVICE IN ACTION AGAINST FIRM (O.81, R.14)	476
ENFORCING JUDGMENT OR ORDER AGAINST FIRM (O.81, R.15)	476
ORDER 82	479
DEFAMATION ACTIONS	479

APPLICATION (O.82, R.1)	479
INDORSEMENT OF CLAIM IN LIBEL ACTION (O.82, R.2)	479
APPLICATION FOR LEAVE TO INSTITUTE DEFAMATION ACTION (O.82, R.2A)	479
OBLIGATION TO GIVE PARTICULARS (O.82, R.3)	479
RULING ON MEANING (O.82, R.3A)	480
PROVISIONS AS TO PAYMENT INTO COURT (O.82, R.4).....	480
STATEMENT IN OPEN COURT (O.82, R.5)	481
INTERROGATORIES NOT ALLOWED IN CERTAIN CASES (O.82, R.6)	481
NO RULE (O.82, R.7)	481
FULFILMENT OF OFFER OF AMENDS UNDER SECTION 4 OF THE DEFAMATION LAW (REVISED) (O.82, R.8)	481
ORDERS 83-84	483
NO ORDERS	483
ORDER 85	485
ADMINISTRATION AND SIMILAR ACTIONS.....	485
INTERPRETATION (O.85, R.1)	485
DETERMINATION OF QUESTIONS, ETC., WITHOUT ADMINISTRATION (O.85, R.2)	485
PARTIES (O.85, R.3)	486
GRANT OF RELIEF IN ACTION BEGUN BY ORIGINATING SUMMONS (O.85, R.4)	487
JUDGMENTS AND ORDERS IN ADMINISTRATION ACTIONS (O.85, R.5)	487
CONDUCT OF SALE OF TRUST PROPERTY (O.85, R.6).....	488
ORDINARY APPLICATION UNDER SECTION 48 OF THE TRUSTS LAW (2001 REVISION) (O.85, R.7).....	488
WRITTEN APPLICATION UNDER SECTION 48 OF THE TRUSTS LAW (2001 REVISION) (O.85, R.8).....	488
APPLICATION FOR REFORMATION OF A SPECIAL TRUST (O.85, R.9)	490
ORDER 86	491

ACTIONS FOR SPECIFIC PERFORMANCE, ETC.:	491
SUMMARY JUDGMENT	491
APPLICATION BY PLAINTIFF FOR SUMMARY JUDGMENT (O.86, R.1)	491
MANNER IN WHICH APPLICATION UNDER RULE 1 MUST BE MADE (O.86, R.2)	491
JUDGMENT FOR PLAINTIFF (O.86, R.3)	491
LEAVE TO DEFEND (O.86, R.4)	492
DIRECTIONS (O.86, R.5)	492
COSTS (O.86, R.6)	492
SETTING ASIDE JUDGMENT (O.86, R.7)	492
ORDERS 87-91	493
NO ORDERS	493
ORDER 92	495
LODGMET, INVESTMENT, ETC., OF FUNDS IN COURT	495
INTERPRETATION (O.92, R.1)	495
PAYMENT INTO COURT UNDER THE TRUSTS LAW (REVISED) (O.92, R.2)	495
NOTICE OF LODGMET (O.92, R.3)	496
APPLICATIONS WITH RESPECT TO FUNDS IN COURT (O.92, R.4)	496
COURT FUNDS OFFICE (O.92, R.5)	497
DISCHARGE OF THE ACCOUNTANT GENERAL'S FUNCTIONS (O.92, R.6)	497
BANK ACCOUNTS (O.92, R.7)	497
LODGMET SCHEDULE (O.92, R.8)	497
PAYMENT SCHEDULE (O.92, R.9)	498
PREPARATION OF SCHEDULES (O.92, R.10)	498
LODGMET OF MONEY IN COURT (O.92, R.11)	499
SECURITIES TRANSFERABLE BY DELIVERY AND DEPOSIT OF PROPERTY (O.92, R.12)	499
SECURITIES NOT TRANSFERABLE BY DELIVERY (O.92, R.13)	499

APPROPRIATION (O.92, R.14)	499
WITHDRAWAL OF MONEY FROM NOMINATED ACCOUNTS (O.92, R.15)	500
RANGE OF INVESTMENTS (O.92, R.16).....	500
TIME FOR INVESTMENT (O.92, R.17)	500
DESIGNATED MUTUAL FUNDS (O.92, R.18).....	500
PAYMENT, TRANSFER AND DELIVERY OF FUNDS OUT OF COURT (O.92, R.19).....	500
PAYMENT TO REPRESENTATIVES OF DECEASED PERSONS (O.92, R.20)	501
PAYMENT OUT WITHOUT ORDER OF MONEY LODGED IN SATISFACTION (O.92, R.21)	501
PAYMENT OUT OF INTEREST ON SECURITIES (O.92, R.22)	501
CHARGES ON PURCHASE OR SALE OF SECURITIES (O.92, R.23)	502
CERTIFICATES OF FUNDS IN COURT, COPIES OF ACCOUNTS, ETC. (O.92, R.24)	502
TRANSITIONAL PROVISIONS (O.92, R.25).....	502
ORDER 93	505
THE ELECTIONS LAW (2000 REVISION)	505
INTERPRETATION AND APPLICATION (O.93, R.1).....	505
FORM, PRESENTATION AND SERVICE OF ELECTION PETITIONS (O.93, R.2)	505
SECURITY FOR COSTS (O.93, R.3)	506
PUBLICATION OF ELECTION PETITION (O.93, R.4)	506
FIXING TIME FOR HEARING ELECTION PETITION (O.93, R.5).....	506
EVIDENCE TO BE FILED (O.93, R.6)	506
WITHDRAWAL OF ELECTION PETITION (O.93, R.7).....	507
SUMMARY DISMISSAL AND STAY OF ELECTION PETITION (O.93, R.8).....	508
DEATH OF PETITIONER (O.93, R.9).....	508
RESPONDENT'S NATURE OF NON-OPPOSITION (O.93, R.10)	508
ORDER 94	509
APPLICATIONS TO THE GRAND COURT UNDER VARIOUS STATUTES	509

APPLICATIONS UNDER THE BILLS OF SALE LAW (REVISED) (O.94, R.1)	509
APPLICATIONS UNDER THE BUILDING SOCIETY'S LAW (REVISED) (O. 94, R.2)	509
APPLICATION UNDER SECTION 96 OF THE REGISTERED LAND LAW (O.94, R.3)	510
APPLICATION UNDER SECTION 9 OF THE STRATA TITLES REGISTRATION LAW (REVISED) (O.94, R.4)	511
APPLICATION UNDER SECTION 17 OF THE STRATA TITLES REGISTRATION LAW (REVISED) (O.94, R.5)	511
APPLICATIONS UNDER THE MARRIED WOMEN'S PROPERTY LAW CAP. 94 (REVISED) (O.94, R.6)	512
ORDER 95	513
THE BANKS AND TRUST COMPANIES LAW	513
DEFINITIONS (O.95, R.1)	513
APPLICATION BY THE AUTHORITY (O.95, R.2)	513
APPLICATION BY THE AUTHORITY FOR A WINDING UP ORDER (O.95, R.3)	514
APPLICATION BY THE AUTHORITY FOR OTHER RELIEF (O.95, R.4)	514
APPLICATION FOR AN ORDER REQUIRING A PERSON TO PROVIDE INFORMATION, DOCUMENTS OR ASSISTANCE TO THE AUTHORITY (O.95, R.5)	515
ORDERS 96-98	517
NO ORDERS	517
ORDER 99	519
PRIZE	519
ORDERS 100-101	521
NO ORDERS	521
ORDER 102	523
APPLICATIONS PURSUANT TO THE COMPANIES LAW	523
DEFINITIONS AND APPLICATION (O.102, R.1)	523
APPLICATIONS TO BE MADE BY ORIGINATING SUMMONS (O.102, R.2)	523
APPLICATIONS TO BE MADE BY ORIGINATING MOTION (O.102, R.3)	524
APPLICATIONS TO BE MADE BY PETITION (O.102, R.4)	524

ENTITLEMENT OF PROCEEDINGS (O.102, R.5)	524
SUMMONS FOR DIRECTIONS (O.102, R.6)	524
INQUIRY AS TO DEBTS: COMPANY TO MAKE LIST OF CREDITORS (O.102, R.7)	525
INSPECTION OF LIST OF CREDITORS (O.102, R.8)	526
NOTICE TO CREDITORS (O.102, R.9)	526
ADVERTISEMENT OF PETITION AND LIST OF CREDITORS (O.102, R.10)	526
AFFIDAVIT AS TO CLAIMS MADE BY CREDITORS (O.102, R.11)	527
ADJUDICATION OF DISPUTED CLAIMS (O.102, R.12)	527
CERTIFYING LISTS OF CREDITORS ENTITLED TO OBJECT TO REDUCTION (O.102, R.13)	527
EVIDENCE OF CONSENT OF CREDITOR (O.102, R.14)	528
TIME, ETC., OF HEARING OF PETITION FOR CONFIRMATION OF REDUCTION (O.102, R.15).....	528
SERVICE OUT OF THE JURISDICTION WITHOUT LEAVE (O.102, R.16)	528
RESTORATION OF COMPANIES TO THE REGISTER: APPLICATION BY A COMPANY OR A MEMBER THEREOF (O.102, R.17).....	528
RESTORATION OF COMPANIES TO THE REGISTER - APPLICATION BY A CREDITOR (O.102, R.18)	529
APPLICATION TO RESTORE RIGHTS ATTACHING TO BEARER SHARES (O.102, R.19)	530
SCHEMES OF ARRANGEMENT (O.102, R.20)	531
ORDER 103	535
THE CONFIDENTIAL RELATIONSHIPS (PRESERVATION) LAW (1995 REVISION).....	535
DEFINITIONS (O.103, R.1)	535
APPLICATIONS UNDER SECTION 4 (O.103, R.2).....	535
SERVICE OF SUMMONS (O.103, R.3)	535
AFFIDAVIT EVIDENCE (O.103, R.4)	535

FILING AND SERVICE OF AFFIDAVITS (O.103, R.5)	536
HEARING OF SECTION 4 APPLICATIONS (O.103, R.6)	536
ORDERS 104-112	537
NO ORDERS	537
ORDER 113	539
SUMMARY PROCEEDINGS FOR POSSESSION OF LAND	539
PROCEEDINGS TO BE BROUGHT BY ORIGINATING SUMMONS (O.113, R.1)	539
NO RULE (O.113, R.1A)	539
FORMS OF ORIGINATING SUMMONS (O.113, R.2)	539
AFFIDAVIT IN SUPPORT (O.113, R.3).....	539
SERVICE OF ORIGINATING SUMMONS (O.113, R.4).....	539
APPLICATION BY OCCUPIER TO BE MADE A PARTY (O.113, R.5)	540
ORDER FOR POSSESSION (O.113, R.6)	540
WRIT OF POSSESSION (O.113, R.7).....	540
SETTING ASIDE ORDER (O.113, R.8)	541

**THE GRAND COURT RULES 1995
(REVISED EDITION)**

**EXPLANATORY MEMORANDUM
(2009 REVISION)**

1. Introduction

- 1.1 The purpose of this Memorandum was to draw to the attention of legal practitioners and court staff the key features of the Grand Court Rules 1995 ("the Rules") which originally came into force on the 1st June, 1995 and were published in revised form on 30th June, 2003.
- 1.2 The purpose of the 2009 Revision of the Memorandum is to draw attention to important changes in the way in which the Court's civil caseload is organized, with effect from 1st November 2009. The overall purpose and effect of the Grand Court (Amendment) Rules 2009 is to divide the Court's business amongst separate divisions, namely the Civil Division, the Family Division, the Admiralty Division, the Financial Services Division and the Criminal Division.
- 1.3 The Grand Court (Civil Procedure) Rules 1976 and the Rules of the Supreme Court 1965 ceased to apply to any proceeding commenced in the Grand Court on or after the 1st June, 1995 and ceased to apply in respect of any step taken or required to be taken after that date in every proceeding which was pending on that date.
- 1.4 The Rules follow the layout of the Rules of the Supreme Court and are designed so that the notes contained in the *Supreme Court Practice 1999* can be used as an aid to the interpretation and application of these Rules where they are the same or similar to the Rules of Supreme Court, as they existed prior to the enactment of the Civil Procedure Rules 1998.
- 1.5 This Memorandum is not intended to be a comprehensive guide. Nor is it to be regarded as a substitute for the Rules.

2. Commencement of Proceedings

- 2.1 With effect from 1st November 2009 every new proceeding must be commenced in the appropriate division of the Court. The fixed fee payable upon issuing the originating process will vary according to the division in which it is issued. In addition to the fixed fee, an *ad valorem* fee may be payable if the proceeding is commenced in the Civil Division.
- 2.2 All "family proceedings" (as defined in O.1, r.7) must be commenced in the Family Division. Every family proceeding which is pending on 1st November 2009 will be treated as having been transferred automatically to the Family Division.
- 2.3 All "admiralty proceedings" (as defined in O.1, r.7) must be commenced in the Admiralty Division. At present, this division exists in name only because there are no admiralty proceedings pending before the Court.

- 2.4 All "financial services proceedings" (as defined in O.72, r.1(2)) must be commenced in the Financial Services Division. Every proceeding commenced in or transferred to the Financial Services Division will be assigned to a specific Commercial Judge under O.4, r.2(2) and his initials will be added as a suffix to the cause number. The Commercial Judge assigned to a financial services proceeding is responsible for managing every aspect of the case, including the adjudication of all interlocutory applications and the trial of the matter.
- 2.5 All other "civil proceedings", which do not fall within the definition of family, admiralty or financial services proceedings, must be commenced in the Civil Division.

3. Assignment and Transfer of Existing Proceedings

- 3.1 Every proceeding (including every civil appeal from the Summary Court) which is pending before the Court immediately before the commencement of the Grand Court (Amendment) Rules 2009 on 1st November 2009, is treated as having been assigned to the Civil Division unless it is a family proceeding, in which case it will be assigned automatically to the Family Division.
- 3.2 The financial services proceedings which are pending before the Court on 1st November 2009 will not be assigned automatically to the Financial Services Division. Such proceedings may be transferred to the Financial Services Division only pursuant to an order which may be made by the Registrar -
- (a) upon the application of any party made in Form No.73; or
 - (b) on his own motion pursuant to O.72, r.6(3).
- 3.3 When a financial services proceeding is ordered to be transferred to the Financial Services Division, a transfer fee may be payable in accordance with Rule 3(5) of the Court Fees Rules 2009. In principle, the transfer fee is the difference between the fees actually paid when the proceeding was commenced and the fixed fee of CI\$15,000 which would have been paid had the proceeding been commenced in the Financial Services Division. It follows that no transfer fee will be payable if the maximum *ad valorem* fee has already been paid.

4. The Register of Writs and Other Originating Process

- 4.1 The Grand Court Cause Book was abolished in 1995.
- 4.2 It was replaced by the Register of Writs and other Originating Process ("Register of Writs") (O.63, r.8). With effect from 1st November 2009, the Register will be divided into separate sections, one for each division of the Court. The section relating to each division will have its own numbering sequence.
- 4.3 The Register of Writs takes the form of a series of ring binders into which an office copy of every originating process (i.e. every writ, petition, originating summons or originating motion) is to be placed in numerical cause number order with the exception of any originating process filed in the Family Division. There is to be an index at the front of each binder containing summarised details of the title of each proceeding in similar form to that previously entered into the Cause Book.
- 4.4 In order to issue any originating process the Clerk of the Court must be presented with at least three copies, i.e. one to be placed in the Court File; one to be placed on the Register of Writs; and a service copy for use of the party issuing it (O.5, r.1).

- 4.5 The Register of Writs is open to public inspection upon payment of the prescribed fee (O.63, r.8(3)) except for the section relating to the Family Division.

5. Issue and Service of Writs

- 5.1 Writs must be in Form No. 1 of Appendix 1 to the Rules. Since the writ no longer takes the form of a command by Her Majesty, it may be served out of the jurisdiction subject to obtaining the leave of the Court in accordance with O.11.
- 5.2 Writs must be endorsed with the information contained in O.6, r.2, r.3 and r.4. Failure to comply with these Rules will prevent a plaintiff from obtaining a default judgment either at all or for the full extent of the relief to which he might otherwise be entitled.
- 5.3 A writ is not validly served unless it is accompanied by an *acknowledgment of service form* in Form No.8.
- 5.4 With effect from 1st November 2009, the title of every proceeding must identify the division of the Court in which it is pending.

6. Acknowledgment of Service

- 6.1 The concept of entering an appearance was abolished in 1995.
- 6.2 The defendant to a proceeding commenced by writ must be served with an acknowledgment of service in Form No. 8. The defendant to a proceeding commenced by originating summons must be served with an acknowledgment of service in Form No.9. Delivery to the defendant of a writ or originating summons alone does not constitute good service. It must be accompanied by an acknowledgment of service in Form No.8 or Form No.9, as appropriate.
- 6.3 The defendant to a proceeding commenced by writ or originating summons must complete and file the acknowledgment of service within 14 days calculated from the date of service.
- 6.4 Filing a completed *acknowledgment of service* does not constitute a waiver of the defendant's right to challenge the jurisdiction or apply to set aside the writ or originating summons on grounds of irregularity.
- 6.5 A defendant wishing to challenge the jurisdiction must take out a summons or motion within the period for serving a defence.
- 6.6 An *acknowledgment of service form* in Form No.8 or Form No.9 must be served on every person against whom a counterclaim is made or against whom a third party claim is made, unless that person is already a party to the action.
- 6.7 A copy of every *acknowledgment of service* filed in the Court Office will be sent by the Clerk of the Court to the plaintiff or other claimant, as the case may be.

7. Default Judgments

- 7.1 Applications for default judgments under O.13 or O.19 are made to the Clerk of the Court in Form No. 20 and must be accompanied by a draft order in Form No.21 or Form No.22.

- 7.2 Upon filing an application for a default judgment, the Court file is deemed to be closed (O.42, r.6) until the application is either granted or rejected. During the period when the Court file is closed, no step may be taken in the action by either party.
- 7.3 Applications for default judgments are processed administratively without the need for any appearance by or on behalf of the plaintiff.
- 7.4 Default judgments may be final (i.e. in Form No.21) or interlocutory (i.e. in Form No.22).
- 7.5 A plaintiff seeking a default judgment may also seek interest provided that his writ has been endorsed with a claim in compliance with O.6, r.2(e) (i.e. contractual interest) or r.2(f) (i.e. statutory interest) calculated in accordance with the rates prescribed by the Judgment Debts (Rates of Interest) Rules 1995. The prescribed rates are varied from time to time in line with changes in the published LIBOR rates for the relevant currencies.
- 7.6 A default judgment may include fixed costs calculated in accordance with O.62, r.7, provided that the writ has been endorsed with a claim in accordance with O.6, r.2(g).
- 7.7 Failure to endorse a writ in accordance with O.6, r.2 will prevent the plaintiff from obtaining a default judgment.

8. Summary Judgment

- 8.1 Application for summary judgment may be made by a plaintiff pursuant to O.14 only if a statement of claim has been served. It matters not that the statement of claim is endorsed on the writ or served separately.
- 8.2 An application for summary judgment may also be made by defendants, but only if a defence has been served.
- 8.3 In either case, an application for summary judgment must be supported by an affidavit complying with the requirements of r.2 or r.13, as the case may be.

9. Consent Judgments

- 9.1 Consent judgments and orders (i.e. final orders) to which the parties are entitled as of right are obtained administratively in accordance with O.42, r.5A, without the need for any party to appear before a Judge.
- 9.2 Most interlocutory orders involve the exercise of a judicial discretion and are therefore excluded from O.42 r.5A.

10. Discovery

- 10.1 With effect from 8th September 2003, discovery has encompassed two elements. GCR O.24, Part I deals with documentary discovery which occurs automatically in every action begun by writ unless the Court orders otherwise. In addition, the Court may order discovery by oral examination pursuant to Part II of GCR O.24.

- 10.2 If a party wishes to claim that any discoverable document in his possession, custody or control contains confidential information in respect of which the relevant principal is someone other than an opposing party, the claim must be made in paragraph 3 and Schedule 1, Part III of the List.
- 10.3 Where such a claim is made, the party making it may be required by the opposing party to make a "Section 4 application". See O.24, r.5(4).
- 10.4 Interrogatories may be served without first obtaining the leave of the Court. See O.26, r.3.

11. Interlocutory Summonses and Motions

- 11.1 Every interlocutory summons must be in Form No.17. Every interlocutory summons issued in the Financial Services Division must specify the Commercial Judge to which the cause or matter has been assigned.
- 11.2 Every interlocutory summons must be endorsed with a realistic time estimate in compliance with O.32, r.4(4).
- 11.3 Every interlocutory summons will be heard in Chambers, but the Judge may adjourn the hearing or the delivery of his ruling into open court if it is considered to be of some general importance (O.32, r.13).
- 11.4 Every interlocutory motion will be heard in open court, the listing of which requires a special appointment to be arranged with the Clerk of the Court.

12. Affidavits and Exhibits

- 12.1 O.41 applies to all proceedings, including matrimonial proceedings, winding up proceedings, bankruptcy proceedings and civil appeals from the summary court.
- 12.2 Every affidavit must comply with the formal requirements of O.41, r.1 and O.66, r.1.
- 12.3 Documents for use in conjunction with affidavits must be exhibited, not annexed, i.e. United States procedure is not acceptable. See O.41, r.11.
- 12.4 Documentary exhibits must be prepared in accordance with the formal requirements of O.41, r.12.
- 12.5 Copies of the same document shall not be exhibited twice in any one proceeding. See O.41, r.15.
- 12.6 Where a deponent swears more than one affidavit to which there are exhibits, the numbering of such exhibits shall run consecutively throughout and shall not begin again with each affidavit. See O.41, r.12(3).
- 12.7 The rule that affidavits may only be sworn before Justices of the Peace is abolished. Affidavits may now be sworn either before a Justice of the Peace (including the Clerk of the Court and other ex-officio justices) or a Notary Public (except one who is the party's attorney) as may be convenient.

13. Trials and Final Hearings

A. Actions Begun by Writ (O.34)

- 13.1 An application to the Clerk of the Court to fix a date for the trial of an action commenced by writ must be in Form No.63 and must be supported by an agreed statement, or in the absence of agreement, two statements containing reasoned time estimates (O.34, r.3).
- 13.2 This procedure does not apply to the Financial Services Division, in which a trial date will be fixed by the Commercial Judge at a case management conference convened in accordance with O.72, r.4(5).
- 13.3 Trial bundles containing the documents, and only the documents, specified in O.34, r.10, must be delivered to the Clerk of the Court between 2 and 14 days prior to the trial. Trial bundles which constitute a photocopy of the Court file are unacceptable.
- 13.4 The trial of every action begun by writ will take place in open court.

B. Actions Begun by Originating Summons (O.28)

- 13.5 An application to the Clerk of the Court to fix a date for the trial of an originating summons in Form No.2 must be made in Form No.63 (as in paragraph 13.1 above). Notice of hearing in Form No. 5 must be served. In the case of an originating summons pending in the Financial Services Division, the hearing date will be fixed by the Commercial Judge at a case management conference.
- 13.6 An application to the Clerk of the Court to fix a date for the hearing of an ex parte originating summons or one in Form No. 3 should be made informally at the time of issuing the summons.
- 13.7 It is only necessary to prepare indexes and trial bundles in cases in which the Court will be referred to large numbers of affidavits, exhibits, orders, etc.
- 13.8 The hearing of originating summonses in Form No.3 (i.e. expedited form) or ex parte originating summons will take place in Chambers unless the Court directs otherwise. Trials of contested originating summonses in Form No.2 will take place in open court unless the Court directs otherwise. All uncontested originating summonses will usually be heard in Chambers or adjourned into Chambers.

C. Proceedings Begun by Originating Motion

- 13.9 Proceedings may only be begun by originating motion if required or authorised by the Rules (O.5, r.5). For example, O.103, r.3 requires that certain applications under the Companies Law be commenced by originating motion.
- 13.10 An application to fix a date for the hearing of an originating notice of motion should be made informally at the time of issuing it.
- 13.11 The hearing of every notice of motion must take place in open court.

D. Proceedings Begun by Petition

- 13.12 Proceedings may only be begun by petition if required or authorised by the Rules (O.5, r.5), for example winding up petitions (which are governed by the Companies Winding Up Rules); certain other applications under the Companies Law (O.102, r.4); and applications under certain other

statutes (O.94, r3 and r.5). In principle, applications are made by petition if the resulting order will be binding upon "the whole world" or upon a substantial class of persons, whether or not they were aware of the petition or participated in the hearing. It is for this reason that the Rules generally require that notice of the hearing of a petition must be advertised.

- 13.13 The procedure relating to divorce petitions is governed by the Matrimonial Causes Rules (2003 Revision) as amended by the Matrimonial Causes (Amendment) Rules 2009. Divorce petitions are served without specifying any hearing date.
- 13.14 The procedure relating to winding up petitions is governed by The Companies Winding Up Rules 2008 which came into force on 1st March 2009. Part II deals with creditor's petitions; Part III deals with contributory's petitions; and Part IV deals with petitions presented by the Monetary Authority.
- 13.15 In the case a creditor's winding up petition, the hearing date must be fixed with the Registrar of the Financial Services Division upon issuing the petition. A creditor's petition may not be served unless the hearing date is endorsed upon it or stated in a notice of hearing served with it (CWR O.3, r.5). The hearing date also requires to be advertised (See CWR O.3, r.6).
- 13.16 In the case of a contributory's petition and a petition issued by the Monetary Authority, a summons for directions must be issued at the same time as the petition and served with it. The date for the hearing of the petition will be fixed by the Commercial Judge to whom the matter is assigned, either upon hearing the summons for directions or upon a subsequent application made after the parties have complied with the order for directions.

14. Exchange of Witness Statements

On every summons for directions in actions commenced by writ the Court will consider whether or not it is appropriate to order the exchange of witness statements in advance of the trial in accordance with O.38, r.2(a).

15. Drawing Up and Filing Orders and Judgments

- 15.1 O.42 applies to all civil proceedings pending in the Civil, Family, Admiralty and Financial Services Divisions of the Court.
- 15.2 Every order or judgment must comply with the formal requirements of O.42, r.1. See Form Nos. 22, 24, 24A, 25 and 30 for examples.
- 15.3 The procedure for drawing up, signing and filing orders and judgments is contained in O.42, r.5.
- 15.4 The procedure for obtaining default judgments is contained in O.42, r.6. This is done administratively without the need for any appearance by the plaintiff before the Court.
- 15.5 Consent orders or judgments of a kind which do not involve the exercise of judicial discretion should also be obtained administratively in accordance with O.42, r.5(A). See paragraph 7 above.
- 15.6 Note that money judgments may continue to be made in foreign currencies. O.42, r.8.

- 15.7 Judgments or orders of a kind which are or can be made in open court are placed on the Register of Judgments which is open to public inspection upon payment of the prescribed fee. See O.42, r.8(7) and O.63, r.7.

16. Paper, Printing, Binding and Copies

- 16.1 Legal size and fools-cap paper may not be used.
- 16.2 All documents requiring to be filed in Court must be produced on letter size paper, 11" long and 8-1/2" wide.
- 16.3 A-4 paper (which is not generally available in the United States or Cayman Islands) may be used only if unavoidable and then only if the document is produced with sufficient margins at the top and bottom of each page to enable it to be photocopied on to letter size paper.
- 16.4 Ring binders must be used for all documents of more than 50 pages.

17. Court Fees

- 17.1 The Court Fees Rules 2009 came into effect on the 1st November 2009. There are three types of fees, namely fixed fees, ad valorem fees and court hearing fees. The incidence and amount of these fees depends upon the division of the Court in which the proceeding is pending. The transfer of a proceeding from the Civil Division to the Financial Services Division may result in liability for payment of a transfer fee.
- 17.2 Fixed fees are payable in all the divisions of the Court.
- 17.3 The fixed fees payable in the Civil and Family Divisions are specified in Part A of the First Schedule to the Rules. A fixed fee of CI\$200 is payable upon issuing the originating process by which every proceeding is commenced. Additional fixed fees are payable upon issuing interlocutory applications and filing pleadings, affidavits and orders.
- 17.4 The fixed fees payable in the Financial Services and Admiralty Divisions are specified in Part B of the First Schedule to the Rules. Subject to certain exceptions, a fixed fee of CI\$15,000 is payable upon issuing the originating process by which the proceeding is commenced. No other fixed fees are payable.
- 17.5 *Ad valorem* fees are payable only in the Civil Division. The amount payable is a percentage of (a) the amount claimed in the writ and (b) the amount awarded in the final judgement, subject to a maximum of CI\$15,000. The percentage amounts payable and the method of calculation is set out in rule 4 and the Second Schedule to the Rules.
- 17.6 Court hearing fees are payable in respect of proceedings pending in the Civil, Admiralty and Financial Services Divisions. No court hearing fees are payable in respect of any proceedings pending in the Family Division.
- 17.7 A court hearing fee of CI\$250 per day or part of a day is payable in the Civil Division after the first 3 days. If a proceeding involves a single hearing lasting more than 3 days, a court hearing fee is payable in respect of the 4th and every subsequent day of the hearing. If a proceeding involves a series of interlocutory hearings, each of which lasts one day or less, a court hearing fee of CI\$250 will become payable in respect of the 4th hearing and every subsequent day in court.

- 17.8 A court hearing fee of CI\$750 per day or part of a day is payable in the Admiralty and Financial Services Divisions after the first 20 days. The method of calculation is the same as in the Civil Division.

18. Court Funds Office

- 18.1 All payments into Court must be made to the Accountant General of the Grand Court whose office is at the Law Courts, George Town. See O.22 and O.92.
- 18.2 All payments into Court should be made using the forms contained in Appendix II to the Rules. These forms may be photocopied and completed in ink.

19. Execution Generally

- 19.1 Since 1995 the jurisdiction of the Grand Court to enforce judgments has been substantially, but not exactly, the same as that of the English High Court and County Courts.
- 19.2 A money judgment may be enforced by -
- (a) a writ of fieri facias (O.47 and Form No. 26) resulting in the sale of the judgment debtor's goods and chattels;
 - (b) garnishee proceedings (O.49 and Form Nos. 31 and 32) resulting in the attachment of bank account balances and other debts;
 - (c) a charging order (O.50 and Form Nos. 33 and 34) resulting in the imposition of a statutory charge over the debtor's land or securities which can then be enforced by an order for sale;
 - (d) the appointment of a receiver (O.30);
 - (e) an order for committal (O.52, Part II and Form Nos. 49, 50, 51 and 52) resulting in the debtor being sentenced to a term of imprisonment (or successive terms of imprisonment) not exceeding 6 weeks;
 - (f) a writ of sequestration (Form No. 29) which empowers a sequestrator to seize all the debtor's real and personal property; and
 - (g) an attachment of earnings order (O.50A and Form Nos. 35 to 47) resulting in the debtor's employer being required to deduct specific amounts from his wages each week or month and pay it over to the Accountant General of the Grand Court for the credit of the judgment creditor.
- 19.3 Judgments requiring a person to do or refrain from doing something other than pay money may be enforced by -
- (a) a writ of possession (O.45, r.3 and Form No. 28) requiring a person to deliver up possession of land;
 - (b) a writ of delivery (O.45, r.4) requiring a person to deliver up goods or, in the alternative, pay their assessed value;
 - (c) a writ of specific delivery (O.45, r.4) requiring a person to deliver up goods without the alternative of paying their assessed value;
 - (d) a writ of sequestration (O.46, r.5);
 - (e) an order for committal (O.52, Part I and Form No. 48); and
 - (f) the appointment of a receiver by way of equitable execution (O.51).

- 19.4 Note that all these remedies are available to enforce orders made in matrimonial proceedings.
- 19.5 Note that a receiver may be appointed for the purposes of collecting money (e.g. rents) or to carry out some other act (e.g. the execution of a contract or document of title).
- 19.6 Note that judgments given on orders made by the Summary Court by means which are not available in the Summary Court (e.g. orders for committal, sequestration orders or the appointment of a receiver).
- 19.7 The only means of enforcement available in the Summary Court are:-
- (a) an attachment of earnings order pursuant to GCR O.50A which is applied in the Summary Court by virtue of SCR rule 12(1);
 - (b) a writ of fieri facias pursuant to GCR O.46 and O.47 which are applied in the Summary Court pursuant to SCR rule 12(2); or
 - (c) a garnishee order pursuant to GCR O.39 which is applied in the Summary Court pursuant to SCR rule 12(3).
- 19.8 The Summary Court only has power to commit a person to prison by virtue of specific statutory provisions, e.g. the Second Schedule of the Judicature Law (1995 Revision) and GCR O.50A (i.e. in connection with attachment of earnings orders); under the Summary Jurisdiction (Domestic Violence) Law 1992; but not otherwise.
- 19.9 An application to the Grand Court pursuant to Section 47 of the Summary Jurisdiction Law 1975, as amended, for enforcement of a judgment given or order made by the Summary Court must be made in accordance with SCR rule 12(4).

20. Examination of Judgment Debtors

- 20.1 The commitment summons procedure was abolished in both the Grand Court and the Summary Court in 1995.
- 20.2 A judgment creditor wishing to conduct post judgment discovery must make application under O.48 for an order for the examination of the judgment debtor in Form No. 30.
- 20.3 Orders for examination will not normally be made against individuals if the Court considers that an attachment of earnings order is likely to be an appropriate and effective remedy.
- 20.4 In the case of corporate judgment debtors, orders for examination may be made against any officer.

21. Imprisonment for Non-Payment of Debts

- 21.1 An application to commit a judgment debtor to prison is considered to be an extraordinary remedy which is only available if it can be demonstrated that the judgment debtor has the means to pay but is refusing to do so.
- 21.2 A judgment creditor who has reasonable grounds for believing that a judgment debtor can pay but is willfully refusing to do so, may apply to the Grand Court (but not the Summary Court) for an order that he be sentenced to a term of imprisonment not exceeding 6 weeks. See O.52, Part II.

- 21.3 Applications must be made by notice of motion in Form No. 50, supported by an affidavit. Like all other notices of motion, it must be heard in open court.
- 21.4 The notice of motion will not be validly served unless it is accompanied by a statement of means form in Form No. 30. This form is designed to be photocopied. The judgment creditor's attorney should insert the Cause No.; the title (or abbreviated title) of the action; and the judgment debtor's name. The judgment debtor must complete the form and return it to the Court Office within 8 days of the date of service.
- 21.5 Since such applications involve the liberty of the subject, the Court will insist upon strict adherence to the Rules and Forms.

22. Attachment of Earnings Orders

- 22.1 Attachment of earnings orders may be made pursuant to the Second Schedule of the Judicature Law by both the Grand Court and the Summary Court. The procedure applicable in the Summary Court is the same as that applicable in the Grand Court.
- 22.2 Applications for attachment of earnings orders in respect of judgments or maintenance orders made by the Summary Court must be made in accordance with O.50A and the relevant forms contained in Appendix II.
- 22.3 Applications for attachment of earnings orders to enforce money judgments of CI\$500 or more are made in Form No. 35 and must be accompanied by an affidavit in accordance with O.50A, r.4.
- 22.4 Applications for attachment of earnings orders to enforce maintenance orders which are in arrears are made in Form No. 44 and must be supported by an affidavit proving the amount of the arrears.
- 22.5 The applications must be served on the debtor together with a statement of means form in Form No. 36 of Appendix I.
- 22.6 Upon receipt of a completed statement of means form the Clerk of the Court will place the file before a Judge or Magistrate, as the case may be, who will normally make an attachment of earnings order in accordance with O.50A, r.7, without the need for the parties to attend before the Court. If either party is dissatisfied with an order made in his absence, he may ask the Clerk of the Court to issue a notice of hearing in Form No. 39 for a reconsideration of the order.
- 22.7 If the judgment debtor fails to deliver a completed statement of means form to the Court Office within 8 days of service, the Clerk of the Court will of his own motion issue a notice in Form No. 41 requiring the judgment debtor to attend court in person and explain why he should not be committed to prison for contempt of court. In addition to sentencing the judgment debtor to a term of imprisonment, the court may make an attachment of earnings order.
- 22.8 Attachment of earnings orders will be made in Form No. 38 (Judgment Debts) or Form No. 45 (Maintenance Orders). In the case of judgment debts, the installments shall be deemed to include interest calculated in accordance with Grand Court Practice Direction No. 2/95.

- 22.9 In cases where the judgment creditor is legally represented his attorney will be expected to serve the attachment of earnings order upon the employer and the judgment debtor. In addition to the order, the employer must also be served with a book of preprinted carbonised lodgment/receipt forms which will be issued by the Clerk of the Court in accordance with Grand Court Practice Direction No. 3/95. In cases where the judgment creditor is not legally represented, the Clerk of the Court will serve the order.
- 22.10 Before applying for an attachment of earnings order, the applicant should check the Register of Attachment of Earnings Orders to ascertain whether or not the judgment debtor is already the subject of an order, in which case it will be appropriate to apply in Form No. 46 for a consolidated order pursuant to O.50A, r.18. For this purpose Summary Court proceedings and Grand Court proceedings may be consolidated.

23. Applications Under Section 45 of the Trust Law

- 23.1 O.85, r.7 and r.8 create two alternative methods by which an executor, administrator or trustee may make application under Section 45 of the Trust Law (Revised) for the opinion, advice or direction of the Court upon any question respecting the management or administration of the estate or trust fund.
- 23.2 An ordinary application under r.7 is made by an inter partes originating summons in Form No. 3 or an ex parte originating summons in Form No. 4, as may be appropriate and the originating summons procedure contained in O.28 will apply.
- 23.3 A written application under r.8 is made by an ex parte originating application in Form No. 57. O.26 shall not apply to such applications.
- 23.4 Written applications under r.7 are intended as an expeditious and economical means by which executors, administrators or trustees may obtain the opinion, advice or direction of the Court in non-contentious cases.

Dated this 1st day of November, 2009

The Honourable Anthony Smellie QC, Chief Justice
 The Honourable Sam Bulgin, Acting Attorney General
 Andrew J. Jones QC, Legal Practitioner
 Graham Ritchie QC, Legal Practitioner

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), these Rules shall not apply to any criminal proceedings.
- (3) The Probate Registry established pursuant to Rule 3 of the Probate and Administration Rules (2008 Revision) shall continue as part of the Civil Division of the Grand Court but these Rules shall not apply to any application made under the Probate and Administration Rules (2008 Revision).
- (4) Except for Orders 3 (Time), 4 (Assignment, Transfer and Consolidation of Proceedings), 5 (Mode of Beginning Proceedings), 38 Part II (Writs of Subpoena), 39 (Evidence by Deposition), 62 (Costs), 67 (Change of Attorney), 45-51 (Enforcement) and 52 (Committal) these Rules shall not apply to any proceedings which are –
 - (a) governed by the Matrimonial Causes Rules (2005 Revision),
 - (b) governed by the Grand Court (Bankruptcy) Rules 1977, as amended,
 - (c) governed by the Companies Winding Up Rules 2008; or
 - (d) on appeal from civil proceedings in the Summary Court.
- (5) Notwithstanding the provisions of paragraphs (2) to (4) of this rule -
 - (a) every affidavit or other document filed in the Court office shall comply with the requirements of Orders 41 and 66;

- (b) every judgment and order made by the Court shall comply with the requirements of Order 42;
 - (c) except in the case of petitions in proceedings governed by the Matrimonial Causes Rules (2005 Revision), 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;
 - (d) Part I of Order 80 shall apply to every proceeding to which a person under disability is a party; and
 - (e) every interlocutory summons issued by the Court, including summonses issued in proceedings governed by the Matrimonial Causes Rules (2005 Revision) and those issued in proceedings under the Companies Winding Up Rules 2008, 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.
- (6) 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 came 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 1999* 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;

"Admiralty Judge" means a Judge who is appointed to try admiralty proceedings commenced in or transferred to the Admiralty Division of the Court;

"admiralty proceeding" shall mean any admiralty action, limitation action or other proceeding governed by Orders 74 or 75;

"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, 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 under Section 7(1) of the Grand Court Law 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, and includes any deputies;

"Commercial Judge" means a Judge who is appointed to try financial services proceedings commenced in or transferred to the Financial Services Division of the Court;

"the Court" means the Grand Court of the Cayman Islands constituted pursuant to the Constitution and Section 3 of the Grand Court Law 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;

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

"family proceeding" shall mean –

- (a) any petition for divorce, judicial separation or nullity of marriage presented pursuant to the Matrimonial Causes Law (2005 Revision) and any ancillary proceeding arising thereunder;
- (b) any application under the Guardianship and Custody of Children Law (1996 Revision) or the Adoption of Children Law (2003 Revision); or
- (c) any appeal from an order of the Summary Court made under the Summary Jurisdiction (Domestic Violence) (1998 Revision), the Affiliation Law (1995 Revision), the Child Abduction and Custody (Cayman Islands) Order 1997 or the Maintenance Law (1996 Revision);

"financial services proceeding" shall have the meaning ascribed to it by Order 72, rule 1(2)

"Grand Court Law" means the Grand Court Law (2008 Revision) as amended from time to time;

"The Judicature Law" means The Judicature Law (2007 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;

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

"prescribed fee" means the fee prescribed by the Court Fees Rules 2009;

"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); and

"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 1999* are not incorporated in these Rules, but they shall be regarded as approved precedents to be used, with all necessary variations, whenever it is practical and appropriate to do so.

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) The Rules Committee shall from time to time issue practice directions containing guidelines relating to the matters referred to in Order 62, rule 17
- (3) 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.
- (4) All practice directions and practice forms issued pursuant to this rule shall be gazetted.
- (5) 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.
- (6) Any practice direction or practice form may be revoked by the Rules Committee.

ORDER 4**ASSIGNMENT, TRANSFER AND CONSOLIDATION OF PROCEEDINGS****Assignment of proceedings amongst divisions of the Court (O.4, r.1)**

1. Every civil proceeding (including every civil appeal from the Summary Court) shall be commenced in the Civil Division unless –
 - (a) it is a family proceeding in which case it shall be commenced in the Family Division;
 - (b) it is an admiralty proceeding, in which case it shall be commenced in the Admiralty Division; or
 - (c) it is a financial services proceeding, in which case it shall be commenced in the Financial Services Division.

Assignment of proceedings to a particular Judge (O.4, r.2)

2.
 - (1) Any proceeding pending in the Civil Division or Family Division may be reserved to a particular Judge of that division if the Judge trying the matter is satisfied that the interests of justice require that it be reserved to him.
 - (2) Every proceeding commenced in or transferred to the Financial Services Division shall be assigned to a Commercial Judge who shall adjudicate the trial of the matter and every interlocutory application arising before or after the trial of the matter.
 - (3) Every proceeding commenced in or transferred to the Admiralty Division shall be assigned to an Admiralty Judge who shall adjudicate the trial of the matter and every interlocutory application arising before or after the trial of the matter.
 - (4)
 - (a) In the event that the Judge to whom a cause or matter is reserved or assigned –
 - (i) dies;
 - (ii) ceases to be a Judge; or
 - (iii) is unable to adjudicate upon the matter in a timely manner by reason of his ill health or absence from the Islands; or
 - (b) In the event that the administration of justice otherwise requires, the Chief Justice shall nominate some other Judge to whom the application shall be made or by whom the jurisdiction shall be exercised.

Transfer of proceedings between divisions (O.4, r.3)

3.
 - (1) Any civil proceeding pending in the Court (including proceedings commenced prior to the establishment of the Divisions of the Court) may be transferred from one Division to another by order of the Court on the grounds that –

- (a) the proceeding has been commenced in the wrong Division and ought properly to be transferred; or
 - (b) the Court is satisfied that it would be appropriate in all the circumstances for the cause or matter to be tried by a Commercial Judge or an Admiralty Judge.
- (2) When a proceeding is ordered to be transferred to the Financial Services Division or the Admiralty Division, the Court shall determine the amount of the transfer fee payable in accordance with Rule 3(5) of the Court Fees Rules, 2009.

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

4. (1) Where two or more causes or matters are pending in the same Division of the Court and it appears to the Court that –
- (a) some common question of law or fact arises in both or all of them; or
 - (b) the rights or relief claimed are in respect of or arise out of the same transaction or series of transactions; or
 - (c) for some other reason it is desirable to make an order under this Rule,
- the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.
- (2) When the Court makes an order under paragraph (1) that two or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then, a party to one of those causes or matters may be treated as if he were a party to any other of those causes or matters for the purpose of making an order for costs against him or in his favour.
- (3) Nothing in this rule shall prevent two or more causes or matters being consolidated pursuant to Order 50, rule 1(6).

ORDER 5**MODE OF BEGINNING PROCEEDINGS****Mode of beginning civil proceedings (O.5, r.1)**

1. (1) Subject to the provision of any Law and of these Rules, civil proceedings in the Court may be begun by writ, originating summons, originating motion, petition or written application, which are referred to collectively in this rule as "originating process".
- (2) A "written application" means –
 - (a) a stop notice under Order 50, rule 11;
 - (b) an application under Order 85, rule 8;
 - (c) an application under Order 102, rule 18; and
 - (d) any other application which is required by the Rules to be made and determined in writing without any oral hearing.
- (3) Every originating process must be issued.
- (4) The issue of an originating process takes place upon it being –
 - (a) sealed by the Clerk of the Court with a seal indicating the date upon which it was sealed; and
 - (b) filed in accordance with paragraph (5).
- (5) Upon issuing an originating process the Clerk of the Court shall –
 - (a) assign it to the appropriate Division of the Court;
 - (b) assign to it a cause number, using chronological sequences for each Division, commencing on the 1st January each year;
 - (c) determine the amount of the fixed fee payable in accordance with the First Schedule of the Court Fees Rules;
 - (d) establish a court file in respect of the cause or matter in accordance with Order 63, rule 2;
 - (e) place an office copy of the originating process on the Court file;
 - (f) place a second office copy of the originating process (except in the case of divorce petitions and other proceedings commenced in the Family Division) on the Register of Writs maintained in accordance with Order 63, rule 8; and
 - (g) scan it into the computerized case record.
- (6) A person seeking to issue an originating process shall present to the Clerk of the Court

at least three copies thereof, each signed by or on behalf of the plaintiff, applicant or petitioner, as the case may be.

- (7) In the event that an originating process constitutes a financial services proceeding which is issued in the Financial Services Division, the Registrar of the Division, acting in consultation with the Chief Justice, shall assign the matter to a particular Commercial Judge whose initials shall be included in the title of the proceeding.
- (8) The Clerk of the Court shall not issue any originating process without first being satisfied that the prescribed fee has been paid.

Proceedings which must be begun by writ (O.5, r.2)

2. Subject to any provisions of a Law, or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings -
 - (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
 - (b) in which any claim by the plaintiff is based on an allegation of fraud;
 - (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any Law or independently of any contract or any such provision) where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
 - (d) in which a claim is made by the plaintiff in respect of the infringement of a patent; and
 - (e) which are a probate action.

Proceedings which must be begun by originating summons (O.5, r.3)

3. (1) Proceedings by which an application is to be made to the Court or a Judge thereof under any Law must be begun by originating summons except where by these Rules or by or under any Law the application in question is expressly required or authorised to be made by some other means.
- (2) This rule does not apply to an application made in pending proceedings.

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

4. (1) Except in the case of proceedings which by these Rules or by or under any Law are

required to be begun by originating motion or petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

(2) Proceedings -

(a) in which the sole or principal question at issue is, or is likely to be, one of the construction of any Law or of any deed, will, contract or other document, or some other question of law; or

(b) in which there is unlikely to be any substantial dispute of fact,

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

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

5. Proceedings may be begun by originating motion or petition if, but only if, by these Rules or by or under any Law the proceedings in question are required or authorised to be so begun.

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

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

(2) Except as expressly provided by or under any Law, a body corporate may not begin or carry on or defend any such proceedings otherwise than by an attorney.

ORDER 72**FINANCIAL SERVICES PROCEEDINGS****Application and Interpretation (O.72, r.1)**

1. (1) This Order applies to financial services proceedings and the other provisions of these Rules apply to those proceedings subject to the provisions of this Order.
- (2) In these Rules "financial services proceeding" means –
 - (a) any proceeding relating to a mutual fund, including an action by or against its directors (in the case of a corporate fund), its trustee (in the case of a unit trust), its general partner (in the case of a limited partnership), its investment manager or adviser, its administrator, its prime broker or its auditor;
 - (b) any proceeding relating to an exempted insurer, including an action by or against its directors, insurance manager or auditor;
 - (c) any action for breach of a contract of insurance (including an application for a declaration) where the amount claimed exceeds \$1 million;
 - (d) any application (including an appeal by a licensee) made to the Court under any of the regulatory laws;
 - (e) any administration action or application under the Trusts Law (to which Order 85 applies) except those relating to the estates of deceased persons who died domiciled in the Islands and the net asset value of the estate is less than \$1 million;
 - (f) any action against a trustee or protector of a trust or the executor or administrator of an estate for breach of trust or breach of fiduciary duty, except those actions relating to a trust or estate whose net asset value is less than \$1 million;
 - (g) any application made to the Court under the Companies Law (to which Order 102 applies), including any application made in a winding up proceeding (to which the Companies Winding Up Rules 2009 apply);
 - (h) any application for an order for the dissolution of a partnership which carries on business as a mutual fund, including any application made in the dissolution proceeding;
 - (i) any action for breach of contract or breach of duty by or against a professional service provider, except for actions relating to the non-payment or over-payment of fees where the amount claimed is less than \$250,000;

- (j) any application for an order for evidence pursuant to a letter of request to which Order 70 applies, including any related application for directions to which Order 103 applies;
 - (k) any application to which the Grand Court (Bankruptcy) Rules, 1977 or the Foreign Bankruptcy Proceedings (International Co-Operation) Rules 2008 apply;
 - (l) any action for the enforcement of a foreign judgment, whether at common law or pursuant to the Foreign Judgments Reciprocal Enforcement Law; and
 - (m) any action for the enforcement of a foreign arbitral award pursuant to the Foreign Arbitral Awards Enforcement Law.
- (2) In this Order –
- (a) "the Registrar" means the Registrar of the Financial Services Division of the Court;
 - (b) "mutual fund" has the meaning ascribed to it in Section 2 of the Mutual Funds Law (2007 Revision);
 - (c) "exempted insurer" has the meaning ascribed to it in Section 2 of the Insurance Law (2008 Revision);
 - (d) "the regulatory laws" has the meaning ascribed to it in Section 2 of the Monetary Authority Law (2008 Revision); and
 - (e) "professional services provider" has the meaning ascribed to it in Section 89(1) of the Companies Law (2009 Revision).

Commencement of Financial Services Proceedings (O.72, r.2)

- 2.
- (1) Every financial services proceeding shall be commenced in the Financial Services Division.
 - (2) Every financial services proceeding shall be commenced by writ, originating summons, originating motion or petition in accordance with Order 5 and entered into the Register of Writs and other Originating Process in accordance with Order 63, rule 8.
 - (3) The title of every proceeding commenced in or transferred to the Financial Services Division shall include the words *In the Grand Court of the Cayman Islands, Financial Services Division*.
 - (4) In addition to establishing and maintaining a Court file in accordance with Order 63, rule 2, the Registrar shall create and maintain a computerized record for each financial services proceeding which shall comprise the following documents and/or produce reports comprising the following information :-
 - (a) a chronological index of all the pleadings, affidavits and orders;
 - (b) a copy of each pleading, affidavit (without its exhibits) and order;

- (c) a copy of each skeleton argument (without copy authorities); and
- (d) a schedule containing details of –
 - (i) the fixed court fee paid;
 - (ii) the date and length of each hearing;
 - (iii) the court hearing fees paid (if any); and
 - (iv) the identity of the party or parties by whom the fixed fee and any court hearing fees have been paid.
- (5) The computerised record (created and maintained in accordance with paragraph (4) above) shall enable the Registrar to produce reports in respect of each proceeding which is commenced in or transferred to the Financial Services Division containing the following information –
 - (a) the date on which the proceeding was commenced or transferred to the Financial Services Division;
 - (b) the title of the proceeding;
 - (c) the name of the Commercial Judge to which it has been assigned;
 - (d) particulars of the parties' attorneys and any foreign lawyers;
 - (e) the date and a brief description of each hearing;
 - (f) the date and estimated length of future hearings;
 - (g) particulars of the date and manner in which the proceeding was concluded.
- (6) The Registrar, acting in consultation with the Chief Justice, shall assign every financial services proceeding to one of the Commercial Judges and the cause number assigned to it in accordance with Order 5, rule 1(4)(a) shall include the judge's initials.
- (7) The trial of every financial services proceeding shall be heard by the Commercial Judge assigned to it.
- (8) Every interlocutory application made in a financial services proceeding (including every application made in a winding up proceeding) shall be heard or determined by the Commercial Judge assigned to it, except that another Commercial Judge may hear or determine an urgent application if the Judge assigned to the proceeding is not available.

Transfer of Proceedings (O.72, r.3)

- 3. (1) Any cause or matter pending in the Court, including matters commenced prior to the Commencement Date, may be transferred to the Financial Services Division on the ground that -
 - (a) it is a financial services proceeding which ought properly to have been commenced in the Financial Services Division; or

- (b) the Court is satisfied upon the application of any party that it would be appropriate in all the circumstances for the cause or matter to be tried by a Commercial Judge.

Case management and summonses for directions (O.72, r.4)

4. (1) Order 25 shall apply to proceedings pending in the Financial Services Division subject to the following modifications.
- (2) The Registrar shall issue an initial summons for directions in Form No.71 in every financial services proceeding within 3 months of the date on which it was commenced or transferred to the Financial Services Division unless in the meantime:-
- (a) the cause or matter has been finally determined;
 - (b) the Registrar has received notice that the cause or matter has been discontinued or settled;
 - (c) the Court has already made an order for directions; or
 - (d) one or other of the parties has taken out a summons for directions.
- (3) In order that the Court may be informed of the general nature of the case and the issues which are expected to arise, the attorneys for each party shall prepare and file an agreed case memorandum (within such period as the Registrar shall direct) which should contain –
- (a) a short and uncontroversial description of what the case is about;
 - (b) a list of issues, including both issues of fact and law, to the extent that it is practical to do so having regard to the state of the pleadings; and
 - (c) a procedural history
- (4) The attorneys for the plaintiff shall be responsible for filing the agreed case memorandum.
- (5) The Registrar may at any time issue a notice in Form No.72 requiring that the parties' attorneys and their foreign lawyers (if any) attend before the Judge for the purposes of a case management conference.
- (6) If a party has instructed or intends to instruct a foreign lawyer to appear at the trial or any interlocutory hearing the Registrar shall be so informed and such foreign lawyer may be required to appear on any summons for directions or case management conference.
- (7) If one or more of the parties have instructed a foreign lawyer, the Registrar may require that the hearing of any summons for directions or any case management conference be conducted via a video link, in which case the parties shall provide suitable conference room facilities for the use of the Judge.

Listing interlocutory hearings and trials (O.72, r.5)

5. (1) The Registrar shall be responsible for listing the hearing of all case management conferences, interlocutory applications and trials.
- (2) Order 34 shall not apply to proceedings pending in the Financial Services Division.
- (3) The Registrar shall maintain –
 - (a) a composite court diary for the Financial Services Division; and
 - (b) a individual court diary for each Commercial Judge.

Transitional Provisions (O.72, r.6)

6. (1) The Financial Services Division Court shall be established with effect from the first day of November 2009 (referred to in this Rule as "the Commencement Date") and this Rule shall apply to every financial services proceeding commenced prior to the Commencement Date.
- (2) Any party or parties to a cause or matter commenced prior to the Commencement Date may apply to the Registrar in Form No.73 for an order that it be transferred to the Financial Services Division and the Registrar shall make a transfer order if he is satisfied that the cause or matter is a financial services proceeding within the meaning of Rule 1(2).
- (3) Whenever a party seeks to issue an interlocutory summons or an application is made to fix a hearing date for a trial and it appears to the Registrar that the cause or matter is a financial services proceeding, he shall -
 - (a) invite the parties to apply in Form No.73 for a transfer order; or
 - (b) if the parties or any of them fail to apply in Form No.73 within 14 days, the Registrar shall make a transfer order on his own motion.
- (4) Every transfer order made by the Registrar under this rule shall be in Form No.74 and shall specify –
 - (a) the Commercial Judge to whom the proceeding has been assigned;
 - (b) the amount of the transfer fee payable in accordance with Rule 3(5) of the Court Fees Rules 2009; and
 - (c) the party or parties liable to pay the transfer fee.
- (5) The liability for payment of the transfer fee shall be determined as follows –
 - (a) the parties may agree that any one of them shall be liable or that liability be divided amongst them in agreed proportions; and, in default of agreement -
 - (b) the party by whom a transfer application is made under paragraph (2) of this Rule shall be liable to pay the transfer fee; or

- (c) in the case of a transfer order made under paragraph (3)(b) of this Rule, the party seeking to issue the summons or fix the hearing date shall be liable to pay the transfer fee; or
 - (d) in the case of an application made in a winding up proceeding (to which the Companies Winding Up Rules 2009 apply), the official liquidator shall be liable to pay the transfer fee as an expense of the liquidation.
- (6) Every transfer order made by the Registrar shall be served by him upon the attorneys for all the parties by facsimile or e-mail and by placing an office copy in the attorneys' Court office post box .
 - (7) Any party who is dissatisfied with the decision to make a transfer order may apply within 7 days to the Chief Justice who shall review the matter de novo and may substitute his own decision for that of the Registrar.
 - (8) Any party who is dissatisfied with the terms of a transfer order may apply within 7 days to the Chief Justice who shall review the matter de novo and may vary the transfer order by assigning the matter to a different Commercial Judge and/or reducing the amount of the transfer fee and/or varying the paying party or parties.
 - (9) An application under paragraphs (7) or (8) of this Rule shall be made in writing in Form No.75 upon notice to the other parties who may submit their own reply or submission in writing within 3 days after receiving notice of the application.
 - (10) No step may be taken in any proceeding which has been transferred to the Financial Services Division under this Rule, except for any application under paragraphs (7) or (8) for a review of the transfer order, unless and until the transfer fee has been paid in full.

APPENDIX I

PRESCRIBED FORMS (O.1, r.10)

GENERAL

INDEX

1.	Writ of summons	(O.6, r.1)
2.	Originating summons - general form	(O.7, r.2)
3.	Originating summons - expedited form	(O.7, r.2)
4.	Ex Parte originating summons	(O.7, r.2)
5.	Notice of appointment to hear originating summons	(O.7, r.2)
6.	Notice of originating motion	(O.8, r.3)
7.	Petition	(O.9, r.2)
8.	Acknowledgment of service of writ of summons	(O.12, r.3)
9.	Acknowledgment of service of originating summons	(O.10, r.5)
10.	Notice to be indorsed on copy of counterclaim	(O.15, r.3(6))
11.	Notice of proceedings	(O.15, r.13A)
12.	Third party notice claiming contribution or indemnity or other relief or remedy	(O.16)
13.	Third party notice where question or issue to be determined	(O.16)
14.	Notice of payment into court	(O.22, rr.1,2)
15.	Notice of acceptance of money paid into court	(O.22, r.3)
16.	List of documents	(O.24, r.5)
17.	Interlocutory summons – general form	(O.32, r.2)
18.	Writ of subpoena	(O.38, r.14)
19.	Letter of request	(O.39, r.2)
20.	Application for default judgment	(O.42, r.6)
21.	Default judgment in action for liquidated damages	(O.13, r.1, O.19, r.2, O.42, r.1)
22.	Default interlocutory judgment for damages to be assessed	(O.13, r.2, O.19, r.3, O.42, r.1)
23.	Final judgment after assessment of damages, etc.	(O.42, r.1)
24.	Judgment for plaintiff under Order 14	(O.14, r.3)
24A.	Judgment for defendant under Order 14	(O.14, r.14)
25.	Judgment after trial before Judge without jury	(O.42, r.1)
26.	Writ of fieri facias	(O.45, r.12)
27.	Writ of fieri facias on order for costs	(O.45, r.12)
28.	Writ of possession	(O.45, r.12)
29.	Writ of sequestration	(O.45, r.12)
30.	Order for examination of judgment debtor or officer	(O.45, r.7(4))
30A.	Application for examination of judgment debtor	(O.48, r.1)
31.	Garnishee order to show cause	(O.49, r.1)
32.	Garnishee order absolute	(O.49, rr.1,4)
33.	Charging order - notice to show cause	(O.50, r.1)

34.	Charging order - absolute	(O.50, r.3)
34A.	Affidavit and Stop Notice	(O.50, r.11)
35.	Application for attachment of earnings order (judgment debt)	(O.50A, r.4)
36.	Statement of means	(O.50A, r.5; O.52, r.12)
37.	Notice to employer	(O.50A, r.6)
38.	Attachment of earnings order (judgment debt)	(O.50A, r.10(1))
39.	Notice of hearing (reconsideration)	(O.50A, r.7)
40.	Notice of hearing	(O.50A, r.7)
41.	Notice to show cause (failure to file statement of means)	(O.50A, r.8(1))
42.	Order to employer for production of statement of earnings	(O.50A, r.14(1))
43.	Notice to show cause (employer's failure to produce statement of earnings)	(O.50A, r.14)
44.	Application for attachment of earnings order (maintenance payments)	(O.50A, r.16)
45.	Attachment of earnings order (maintenance order)	(O.50A, r.16)
46.	Summons for consolidated attachment of earnings order	(O.50A, r.18)
47.	Consolidated attachment of earnings order	(O.50A, r.17)
48.	Notice of motion for committal (general)	(O.52, r.4)
49.	Warrant of committal	(O.52, r.10)
50.	Notice of motion for committal (non-payment of debt)	(O.52, r.12)
51.	Order for committal (non-payment of debt)	(O.52, r.15)
51A.	Suspended order for committal (non-payment of debt)	(O.52, r.15)
52.	Warrant of discharge	(O.52, r.16)
53.	Application for leave to apply for judicial review	(O.53, r.3)
54.	Notice of intention to renew application for judicial review	(O.53, r.3)
55.	Writ of habeus corpus ad subjiciendum	(O.54, r.10)
56.	Order under the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978	(O.70, r.2)
57.	Originating application	(O.85, r.8(2))
58.	Election petition	(O.93, r.2)
59.	Ex parte originating summons - Section 4 Application	(O.103, r.2)
60.	Originating summons - summary possession	(O.113, r.2)
61.	Summons for third party directions	(O.16, r.4)
62.	Order for third party directions	(O.16, r.4)
63.	Notice to fix trial date	(O.34, r.3)
64.	Mareva Injunction (Cayman Islands)	(O.29, r.1)
65.	Mareva Injunction (Worldwide)	(O.29, r.1)
66.	Originating Application	(O.102, r.18)
67.	Order	(O.102, r.18)
68.	Petition	(O.102, r.19)
69.	Order	(O.102, r.19)
70.	Order	(O.102, r.20)
71.	Registrar's Summons	(O.72, r.4)
72.	Registrar's Notice	(O.72 r.4)
73.	Written Transfer Application	(O.72 r.6)

- 74. Transfer Order (O.72 r.6)
- 75. Written Application for Review of a Transfer Order (O.72 r.6)

GCR Form No. 71

Registrar's Summons (0.72, r.4)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD____ OF 20__

[TITLE OF PROCEEDING]

REGISTRAR'S SUMMONS FOR DIRECTIONS

LET the parties attend before the Honourable Mr Justice [*state name of assigned Commercial Judge*] in Chambers on the [*state date*] at [*state time*] upon the application of the Registrar pursuant GCR Order 72, rule 4(2) for an order for such directions as the Judge thinks fit.

AND the parties are hereby directed to prepare and file an agreed case memorandum within [*state time limit*]

Dated the day of 20__

Registrar

TO: (1) [*State name of attorneys*], attorneys for the Plaintiff

 (2) [*State name of attorneys*], attorneys for the Defendant

This Summons for Directions is issued by the Registrar of the Financial Services Division of the Grand Court, The Law Courts, George Town, Grand Cayman.

GCR Form No. 72

Registrar's Notice (0.72, r.4)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD_____OF 20__

[TITLE OF PROCEEDING]

NOTICE OF CASE CONFERENCE

TAKE NOTICE that the Registrar requires that the parties' attorney's to attend before the Honourable Mr Justice [state name of assigned Commercial Judge] in Chambers [or state address of the attorney's office if the conference is to be held by video link] on [state date] at [state time] for the purposes of a case conference.

[AND FURTHER TAKE NOTICE that the Registrar requires the parties' foreign lawyers to attend at [state the address of the foreign lawyer's office] at [state local time] for the purposes of participating in the case conference.]

Dated the day of 20__

Registrar

TO: (1) [State name of attorneys], attorneys for the Plaintiff
 (2) [State name of attorneys], attorneys for the Defendant

This Notice is issued by the Registrar of the Financial Services Division of the Grand Court, The Law Courts, George Town, Grand Cayman.

GCR Form No. 73

Written Transfer Application (0.72 r.6)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: OF 20__

[TITLE OF PROCEEDING]

APPLICATION TO TRANSFER PROCEEDING TO THE FINANCIAL SERVICES DIVISION

We, the attorneys for [*identify the applicant or applicants*] hereby apply to the Registrar of the Financial Services Division for an order that this proceeding be transferred to the Financial Services Division of the Court.

We hereby certify that –

- (1) this is a financial services proceeding within the meaning of GCR O.72, r.1(2)(*state applicable subparagraph or paragraphs*); and
- (2) the total amount of the fixed court fee and *ad valorem* court fee paid by the Plaintiff was CI\$[*state amount*]; and
- (3) the parties have agreed that the transfer fee shall be paid by [*state terms of any agreement*].

Dated the day of 20__

[*Signature of attorneys by whom application is made*]

TO: The Registrar of the Financial Services Division

AND TO (1) [*Unless the application is made jointly by all the parties, a copy must be served on the attorneys for those parties who have not joined in the application*]

THIS NOTICE was filed by [*state name, address and contact details of the attorneys acting on behalf of the Applicant(s)*].

GCR Form No. 74

Transfer Order (0.72, r.6)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD ____ OF 20__
(Originally Cause No. ____ of ____)

[TITLE OF PROCEEDING]

ORDER FOR TRANSFER TO FINANCIAL SERVICES DIVISION

UPON reading the written application of [*identify the applicant(s)*] dated [*state date*]

AND UPON being satisfied that the cause or matter is a financial services proceeding

IT IS ORDERED by the Registrar that –

- (1) the proceeding is hereby transferred to the Financial Services Division under Cause No. FSD __ [*state new number*];
- (2) the proceeding is assigned to Mr Justice [*state name of assigned Commercial Judge*];
- (3) a transfer fee of CI\$ [*state amount*] be paid by [*identify the paying party or parties*];
- (4) no further step may be taken in the proceeding unless and until the transfer has been paid in full.

Dated and filed the day of 20__

Registrar of the Financial Services Division

This Order was filed by the Registrar of the Financial Services Division of the Grand Court, the Law Courts, George Town, Grand Cayman.

GCR Form No. 75

Written Application for Review of a Transfer Order (0.72, r.6)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD ___ OF 20__
(Originally Cause No. ___ of ___)

[TITLE OF PROCEEDING]

APPLICATION FOR REVIEW OF TRANSFER ORDER

We, the attorneys for [*identify the applicant(s)*] hereby apply to the Honourable Chief Justice for a review of the Transfer Order dated [*state date*] and that it be [discharged on the grounds that] [*summarise the grounds on which the Chief Justice is asked to discharge the Transfer Order and transfer the proceeding back to the Civil Division*] OR

[varied on the grounds that] [*summarise the grounds upon which the Chief Justice is asked to vary the identity of the Commercial Judge to which it is assigned and/or the amount of the transfer fee and/or the identity of the paying party*]

And we further rely upon the [*identify the letter or written submission, if any, explaining the grounds more fully*] attached herewith.

Dated this day of 20__

[*Signature of attorneys by whom application is made*]

TO: The Registrar of the Financial Services Division

AND TO: [*Unless the application is made jointly by all the parties, a copy must be served on the attorneys for those parties who have not joined in the application*]

This Written Application was filed by [*state name, address and contact details of the attorneys acting on behalf of the Applicant(s)*] .

(Price \$19.20)