

CAYMAN ISLANDS



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GRAND COURT LAW (2008 REVISION)
THE GRAND COURT (AMENDMENT) RULES 2011

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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 referred to as the Grand Court (Amendment) Rules 2011.
- (2) These Rules shall come into operation on the 1st day of June 2011 referred to in these Rules as the "Commencement Date".
- (3) These Rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.
- (4) 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 they have in the Grand Court Rules 1995 (Revised Edition).

2. Revocation and Replacement of Orders 11, 14 and 62

- (1) GCR Order 11 is hereby revoked and replaced by the Order contained in the Schedule hereto.
- (2) GCR Order 14 is hereby revoked and replaced by the Order contained in the Schedule hereto.
- (3) GCR Order 62 is hereby revoked and replaced by the Order contained in the Schedule hereto.

3. Revocation and Replacement of Form

- (1) Form 314 is hereby revoked and replaced by the Form contained in the Schedule hereto.

4. Amendment of Practice Direction No 1 of 2001

- (1) Practice Direction No 1 of 2011 contained in the Schedule hereto comes into effect on the Commencement Date. For taxation of costs on the standard basis in respect of work carried out by attorneys on or after the Commencement Date paragraph 7.3 of Practice Direction No 1 of 2001 shall no longer apply. For taxation of costs on the standard basis in respect of work carried out by attorneys before 1 June 2011 paragraph 7.3 of Practice Direction No 1 of 2001 shall continue to apply.

Made by the Rules Committee on the 14th day of April 2011.

The Honourable Anthony Smellie QC, Chief Justice
The Honourable Sam Bulgin QC, Attorney General
Graham Ritchie QC, Legal Practitioner
Colin D. McKie, Legal Practitioner

ORDER 11**SERVICE OF PROCESS, ETC. OUT OF THE JURISDICTION****Principal cases in which service of writ out of jurisdiction is permissible (O.11, r.1)**

1. (1) Provided that the writ does not contain any claim mentioned in Order 75, rule 1(3) service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ -
 - (a) relief is sought against a person who –
 - (i) has the right to reside permanently in the Islands; or
 - (ii) has a right to work in the Islands; or
 - (iii) resident in and the nature and circumstances of his residence indicate that he has a substantial connection with the Islands;
 - (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing) provided that a claim for an interlocutory injunction shall not of itself be a sufficient ground for service of a writ out of the jurisdiction;
 - (c) the claim is brought against a person who has been or will be duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
 - (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which -
 - (i) was made within the jurisdiction; or
 - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
 - (iii) is by its terms, or by implication, governed by the law of the Islands; or
 - (iv) contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract;

- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
 - (f) the claim is founded on a tort, fraud or breach of duty whether statutory at law or in equity and the damage was sustained, or resulted from an act committed, within the jurisdiction;
 - (ff) the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction or who is or was a partner of a partnership, whether general or limited, which is governed by the laws of the Islands and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto;
 - (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
 - (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
 - (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
 - (j) the claim is brought for any relief or remedy in respect of any trust, whether express, implied or constructive, that is governed by or ought to be executed according to the laws of the Islands or in respect of the status, rights or duties of any trustee thereof in relation thereto;
 - (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
 - (l) the claim is brought in a probate action within the meaning of Order 76; or
 - (m) the claim is brought to enforce any judgment or arbitral award.
- (2) Service of a writ out of the jurisdiction is permissible without the leave of the Court if every claim made in the action begun by the writ is one which by virtue of a Law the Court has power to hear and determine notwithstanding that the person

against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within the jurisdiction.

- (3) Where a writ is to be served out of the jurisdiction pursuant to an order under paragraph (1), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be such time as may be fixed by the Court.
- (4) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be 28 days.

No rules (O.11, rr.2-3)

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

4. (1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating -
 - (a) the grounds on which the application is made;
 - (b) that in the deponent's belief the plaintiff has a good cause of action;
 - (c) in what place or country the defendant is, or probably may be found;
 - (d) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try; and
 - (e) if service is not to be effected personally the method or methods of service which are in accordance with the law of the country in which service is to be effected.
- (2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.
- (3) An order granting leave to serve a writ out of the jurisdiction under rule 1 must limit a time within which the defendant to be served must acknowledge service.

Service of writ abroad; general (O.11, r.5)

5. (1) Subject to the following provisions of this rule, Order 10, rule 1(1), (2), (3) and (4) and Order 65, rule 4, shall apply in relation to the service of a writ, notwithstanding that the writ is to be served out of the jurisdiction, save that the

accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.

- (2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.
- (3) A writ which is to be served out of the jurisdiction -
 - (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
 - (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.
- (4) An official certificate stating that a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate -
 - (a) by a British consular authority in that country; or
 - (b) the government or judicial authorities of that country; or
 - (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.
- (5) An official certificate by the Secretary of State stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.
- (6) A document purporting to be such a certificate as is mentioned in paragraphs (4) and (5) shall, until the contrary is proved, be deemed to be such a certificate.
- (7) In this rule and rule 6 "the Hague Convention" means the convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

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

6. (1) Save where a writ is to be served pursuant to paragraph (3), this rule does not apply to service in -
 - (a) the United Kingdom, including the Isle of Man and the Channel Islands;

- (b) any independent Commonwealth country;
 - (c) any associated state;
 - (d) any dependent territory of the United Kingdom; or
 - (e) the Republic of Ireland.
- (2) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Court, the writ may be served -
- (a) through the judicial authorities of that country; or
 - (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).
- (3) Where in accordance with these Rules a writ is to be served on a defendant in any country which is party to the Hague Convention, the writ may be served -
- (a) through the authority designated under the Convention in respect of that country; or
 - (b) if the law of that country permits -
 - (i) through the judicial authorities of that country; or
 - (ii) through a British consular authority in that country.
- (4) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Court, the writ may be served -
- (a) through the government of that country, where the government is willing to effect service; or
 - (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.
- (5) A person who wishes to serve a writ by a method specified in paragraph (2), (3) or (4) must deliver to the Clerk of the Court a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

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

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

- (7) Every translation delivered under paragraph (6) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.
- (8) Documents duly delivered under paragraph (5) shall be sent by the Clerk of the Court to the Governor with a request that he forward them to the Secretary of State asking the Secretary of State to arrange for the writ to be served by the method indicated in the request delivered under paragraph (5) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

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

7. (1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in Section 14 of the State Immunity Act 1978, wishes to have the writ served on that State, he must deliver with the Clerk of the Court -
- (a) a request for service to be arranged by the Secretary of State;
 - (b) a copy of the writ; and
 - (c) except where the official language of the State is, or the official languages of that State include, English, a translation of the writ in the official language or one of the official languages of the State.
- (2) Rule 6(7) shall apply in relation to a translation delivered under paragraph (1) of this rule as it applies in relation to a translation delivered under paragraph (6) of that rule.
- (3) Documents duly delivered under this rule shall be sent by the Clerk of the Court to the Governor with a request that the Secretary of State be asked to arrange for the writ to be served on the State or the government in question, as the case may be.

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

Undertaking to pay expenses of Governor (O.11, r.8)

8. Every request delivered under rule 6(5) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Governor in respect of the service requested including the expenses incurred by him in making any request of the Secretary of State and, on receiving due notification of the amount of those expenses, to pay that amount to the Financial Secretary and to produce a receipt for such payment to the Clerk of the Court.

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

9. (1) Subject to Order 73, rule 5, and Order 102, rule 16, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to the service of a writ.
- (2) Service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these Rules or under any Law be served without leave.
- (3) Rule 4(1) and (2) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.
- (4) An order under this rule granting leave to serve an originating summons out of the jurisdiction must limit a time within which the defendant to be served with the summons must acknowledge service.
- (5) Rules 5, 6 and 8 shall apply in relation to any document in respect of which leave to serve out of the jurisdiction has been granted under this rule as they apply in relation to a writ.

ORDER 14

SUMMARY JUDGMENT

I. APPLICATION BY PLAINTIFF

Application by plaintiff for summary judgment (0.14, r.1)

1. (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against the defendant.
- (2) This rule applies to every action begun by writ in the Court other than —
 - (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment;
 - (b) an admiralty action in rem; or
 - (c) an action to which Order 86 applies.

Manner in which application under rule 1 must be made (0.14, r.2)

2. (1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of the claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.
- (2) Unless the Court otherwise directs, an affidavit for the purpose of this rule may contain statements of information or belief with the sources and grounds thereof.
- (3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

Judgment for plaintiff (0.14, r.3)

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

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

Leave to defend (0.14, r.4)

- 4. (1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.
- (2) Rule 2(2) applies for the purpose of this rule as it applies for the purposes of that rule.
- (3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.
- (4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity -
 - (a) to produce any document;
 - (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

Application for summary judgment on counterclaim (0.14, r.5)

- 5. (1) Where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.
- (2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say —
 - (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
 - (b) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted; and

- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.
- (3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

Directions (0.14, r.6)

6. Where the Court -

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

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

Costs (0.14, r.7)

- 7. (1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, the Court may dismiss the application with costs and may, if the plaintiff is not a legally aided person, require the costs to be paid by him forthwith.
- (2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

Right to proceed with residue of action or counterclaim (0.14, r.8)

- 8. (1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.
- (2) Where on an application under rule 5 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

- (3) Where on an application under 12A a defendant to counterclaim obtains judgment on a counterclaim or part of a counterclaim against any defendant, the defendant may proceed with the counterclaim as respects any other counterclaim or as respects the remainder of the counterclaim or against any other defendant to counterclaim.

Judgment for delivery up of chattel (0.14, r.9)

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

Relief against forfeiture (0.14, r.10)

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

Setting aside judgment (0.14, r.11)

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

II. APPLICATION BY DEFENDANT AND BY DEFENDANT TO COUNTERCLAIM

Application by defendant for summary judgment (0.14, r.12)

12. (1) Where in an action to which this rule applies a defence has been served by any defendant, that defendant may, on the ground that the whole or part of the plaintiff's claim has no prospect of success or, in respect of a claim for damages, that the plaintiff has no prospect of recovering more than nominal damages, apply to the Court for the plaintiff's claim to be dismissed and judgment entered for the defendant on the whole or part of the claim.
- (2) This rule applies to every action begun by writ in the Court other than one of a kind mentioned in rule 1(2).

Application by defendant to counterclaim for summary judgment (0.14, r.12A)

- 12A. (1) Where in an action to which this rule applies a counterclaim has been served by any defendant then, subject to paragraph (2) the defendant to counterclaim may, on the ground that the whole or part of the defendant's counterclaim has no prospect of success or, in respect of a counterclaim for damages, that the defendant has no prospect of recovering more than nominal damages, apply to the Court for the defendant's counterclaim to be dismissed and judgment entered for the defendant to counterclaim on the whole or part of the counterclaim.

- (2) This rule applies to every action begun by writ other than –
- (a) an action which includes a counterclaim by the defendant for libel, slander, malicious prosecution or false imprisonment;
 - (b) an admiralty action which includes a counterclaim by the defendant in rem; or
 - (c) an action which includes a counterclaim to which Order 86 applies.

Manner in which application under rule 12 or 12A must be made (0.14, r.13)

- 13.. (1) An application under rule 12 must be made by summons supported by an affidavit verifying the facts pleaded in the defence and stating the deponent's belief that the plaintiff's claim has no prospect of success or, in respect of a claim for damages, the plaintiff has no prospect of recovering more than nominal damages, as the case may be.
- (1A) An application under rule 12A must be made by summons supported by an affidavit verifying the facts pleaded in the defence to counterclaim and stating the deponent's belief that the defendant's counterclaim has no prospect of success or, in respect of a counter claim for damages, the defendant has no prospect of recovering more than nominal damages, as the case may be.
- (2) Rule 2(2) shall apply to applications under rule 12 or rule 12A.
- (3) A plaintiff may show cause against an application under rule 12 by —
- (a) filing and serving a reply; or
 - (b) filing and serving an affidavit in reply.
- (4) A defendant may show cause against an application under rule 12A by filing and serving an affidavit in reply.

Judgment for defendant (0.14, r.14)

14. (1) Unless on the hearing of an application under rule 12 or rule 12A
- (a) the Court dismisses the application or
 - (b) on an application under rule 12 the plaintiff satisfies the Court that he has a prospect of succeeding on the whole or part of his claim and, where the claim includes a claim for damages, that he has a prospect of recovering more than nominal damages, or
 - (c) on an application under rule 12A the defendant satisfies the Court that he has a prospect of succeeding on the whole or part of his counterclaim and, where the counterclaim includes a claim for damages, that he has a prospect of recovering

more than nominal damages,

the Court may dismiss the whole or part of a claim or counterclaim and give judgment for the defendant or defendant to counterclaim respectively.

- (2) Where the Court dismisses an application under rule 12 or rule 12A and allows the plaintiff to proceed with his claim or the defendant to proceed with his counterclaim as the case may be, it shall give directions as to the further conduct of the action and Order 25, rules 2 to 7 shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 12 or 12A, as the case may be, on which the order was made were a summons for directions.

ORDER 62**COSTS****PART I: PRELIMINARY****Application (O.62, r.1)**

1. (1) This Order shall have effect, with such modifications as may be necessary, where by virtue of any Law the costs of any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Law not being proceedings in the Court, are taxable in the Court.
- (2) The powers and discretion of the Court under Section 24 of the Judicature Law (2002 Revision) (which relates to the costs of proceedings in the Court) shall be exercised subject to and in accordance with this Order.

Transitional provisions (O.62, r.2)

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

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

Definitions (O.62, r.3)

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

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

"assisted person" means a person to whom a legal aid Certificate has been granted pursuant to the Legal Aid Law (1999 Revision) in respect of the relevant proceedings;

"Commencement Date" means 1st January 2002;

"Court" includes the Court of Appeal;

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

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

"party", in relation to a cause or matter, includes a party who is treated as being a party to that cause or matter by virtue of Order 4, rule 3(2) and an appellant or respondent to any appeal;

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

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

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

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

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

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

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

- (2) References to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to -
- (a) any estate or property, whether real or personal, held for the benefit of any person or class of persons; and
 - (b) the assets of a company or partnership which is the subject of a winding up proceeding,

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

- (3) References to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration in relation to proceedings (including taxation proceedings) and shall include references to costs of or incidental to those proceedings.
- (4) References to \$ means Cayman Islands dollars but shall be interpreted to include the United States dollar equivalent.
- (5) Bills of costs may be drawn up either in Cayman Islands dollars or United States dollars.

PART II: ENTITLEMENT TO COSTS

General principles (O.62, r.4)

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

- (2) The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.
- (3) A person who claims to be entitled pursuant to a contract to recover the legal fees and expenses incurred in enforcing that contract shall be entitled to judgment for the amount found due under the contract and such amount shall not be subject to taxation pursuant to this Order.
- (4) Except as provided in paragraph (3), no party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.
- (5) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.
- (6) The amount of the costs which a successful party shall be entitled to recover from any other party is –
 - (a) the fixed costs prescribed in rule 7;
 - (b) the amount assessed by the Judge in accordance with rule 8;
 - (c) the amount allowed after taxation on the standard basis; or
 - (d) the amount allowed after taxation on the indemnity basis.
- (7) The orders which the court may make under this rule include an order that a party must pay –
 - (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and
 - (g) interest on costs (at the prescribed rate for Cayman Islands dollars) from or until a certain date, including a date before judgment.

- (8) No order for costs shall be made against an assisted person.
- (9) A term mentioned in the first column of the table below, when used in an order for costs, shall have the effect indicated in the second column of the table.

Term	Effect
<i>Costs or Costs in any event</i>	The party in whose favour the order is made is entitled to the costs in respect of the part of the proceedings to which the order relates whatever other costs orders are made in the proceedings.
<i>Costs reserved</i>	The issue of costs will be determined on a subsequent application.
<i>Costs here and below</i>	The party in whose favour the costs order is made shall be entitled not only to his costs in respect of the proceedings in which it is made but also to his costs of the same proceedings in any lower court, save that where such an order is made by the Court of Appeal on an appeal from the Grand Court the party shall not be entitled by virtue of that order to any costs which he has incurred in any court below the Grand Court.
<i>Costs in the cause or</i>	
<i>Costs in the application</i>	The party in whose favour the Court makes an order for costs at the end of the proceedings is entitled to his costs of the part of the proceedings to which the order relates.
<i>Plaintiff's costs in the cause or</i>	
<i>Defendant's costs in the cause</i>	If the party in whose favour the costs order is made is awarded costs at the end of the proceedings, that party is entitled to his costs of the part of the proceedings to which the order relates. If any other party is awarded costs at the end of the proceedings, the party in whose favour the final costs order is made is not liable to pay the costs of any other party in respect of the part of the proceedings to which the order relates.
<i>Costs thrown away</i>	Where proceedings or any part of them have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be

entitled to his costs of those proceedings or that part of the proceedings in respect of which it is made.

No order for costs

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

- (10) When used in an order of the Court, the expressions *Costs*, *Order for costs* and *Costs to be taxed if not agreed* shall mean costs to be taxed on the standard basis.
- (11) The Court may make an inter partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently.

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

- 5. (1) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described in the following paragraphs of this rule.
- (2) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by him as against any other party (except for the purpose of obtaining a default judgment), that other party shall be entitled to his costs of the action or counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.
- (3) Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into Court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance.
- (4) Where in an action for libel or slander against several defendants sued jointly a plaintiff, by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into Court by one of the defendants he shall be entitled to his costs of the action against that defendant incurred up to the time of giving notice of acceptance.
- (5) A defendant who has counterclaimed shall be entitled to the costs of the counterclaim if -

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

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

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

6. (1) The provisions of this rule shall apply in the circumstances mentioned in this rule unless the Court orders otherwise.
- (2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative, mortgagee, chargee or official liquidator he shall be entitled to the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the fund and the Court may order otherwise only on the ground that he has acted unreasonably or, in the case of a trustee, personal representative or official liquidator has in substance acted for his own benefit rather than for the benefit of the fund or the creditors as the case may be.
- (3) Where any person claiming to be a creditor –
- (a) seeks to establish any claim to a debt under any judgment or order in accordance with Order 44, or
 - (b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such procedure as is mentioned in Order 102, rule 13,
- he shall, if his claim succeeds, be entitled to his costs incurred in establishing it: and, if his claim or any part of it fails, he may be ordered to pay the costs of any person incurred in opposing it.
- (4) Where a claimant (other than a person claiming to be creditor) has established a claim to be entitled under a judgment or order in accordance with Order 44 and has been served with notice of the judgment or order pursuant to rule 2 of that Order, he shall, if he acknowledges service of that notice, be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.
- (5) The costs of any amendment made without leave in the writ or any pleadings shall be borne by the party making the amendment.

- (6) The costs of any application to extend the time fixed by these rules or by any direction or order thereunder shall be borne by the party making the application.
- (7) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 14 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his failure to admit the facts shall be borne by him.
- (8) If a party -
 - (a) on whom a list of documents is served under Order 24, or
 - (b) on whom a notice to admit documents is served under Order 27, rule 5,
 gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.

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

- 7. (1) Where a writ is indorsed with a claim for a liquidated sum only, it may include a claim for fixed costs on the following scale -
 - (a) the sum of \$50 where the principal sum claimed does not exceed \$2,000;
 - (b) the sum of \$250 where the principal sum claimed exceeds \$2,000 but does not exceed \$10,000;
 - (c) the sum of \$500 where the principal sum claimed exceeds \$10,000,
 plus in each case the prescribed fee paid upon issue of the writ.
- (2) Where a writ is indorsed with a claim of the kind mentioned in Order 13, rules 2, 3 or 4 and Order 19, rule 3, 4 or 5, it may be include a claim for fixed costs in the sum of \$250.
- (3) Nothing in this rule shall preclude a plaintiff from waiving his right to claim fixed costs and instead claiming costs to be assessed or taxed.

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

- 8. (1) The amount of costs which a successful party is entitled to recover against another party shall be assessed if the order is made in respect of –
 - (a) an appeal from the Summary Court; or

- (b) an action in which the Writ is indorsed only with a claim for a liquidated sum not exceeding \$25,000 (or where other relief claimed is abandoned).
- (2) Except in a case to which paragraph (1) applies, whenever the Court makes an order for costs, the party entitled to the benefit of the order shall be entitled, at his option –
 - (a) to an order that such costs shall be taxed if not agreed; or
 - (b) to have the amount of such costs assessed by the Judge.
 - (3) Subject to paragraph (4), where the Court is required to assess costs the Judge shall make his own summary assessment of the amount of legal fees and disbursements which he considers that a reasonable litigant is likely to have incurred and award that amount.
 - (4) The amount of costs payable by any party pursuant to an order for costs to be assessed shall not exceed –
 - (a) \$1,000 where the order relates to the costs of an interlocutory application; or
 - (b) \$10,000 where the order relates to the costs of an entire proceeding, together with the court fees which have been paid by the successful party.

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

- 9. (1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.
- (2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.
- (3) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.
- (4) Where it appears to the Court on application that there is no likelihood of any further order being made in a cause or matter, it may forthwith order the costs of any interlocutory proceedings which have taken place to be taxed.

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

- 10. The Court in exercising its discretion to make an order for costs shall take into account-
 - (a) any offer of contribution brought to its attention in accordance with Order 16, rule 10;

- (b) any payment of money into court and the amount of such payment;
- (c) any written offer made under Order 33, rule 4A(2); and
- (d) any written offer made under Order 22, rule 14.

PART III: WASTED COSTS ORDERS

Personal liability of attorney for costs (O.62, r.11)

- 11.** (1) In Part III of this Order the expression "attorney" shall include a "foreign lawyer".
- (2) Where it appears to the Court in any proceedings that anything has been done or that any omission has been made improperly, unreasonably or negligently by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.
- (3) Subject to the following provisions of this rule, where it appears to the Court that costs have been incurred improperly, unreasonably or negligently in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may order –
- (a) the attorney whom it considers to be responsible (whether personally or through an employee or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; or
 - (b) the attorney personally to indemnify such other parties against costs payable by them.
- (4) The amount payable under a wasted costs order made under paragraph 3(b) of this rule shall be taxed on the indemnity basis.

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

- 12.** (1) A wasted costs order may be made by the Court of its own motion if the attorney's liability is plain and obvious and can fairly be determined without the need for extensive evidence or any extensive investigation of the circumstances giving rise to that liability.
- (2) Subject to paragraph (3), before an order may be made under paragraph (1) of this rule the Court shall give the attorney a reasonable opportunity to appear and show cause why an order should not be made.

- (3) The Court shall not be obliged to give the attorney a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the attorney –
 - (a) fails to attend in person or by a proper representative;
 - (b) fails to deliver any document for the use of the Court, which ought to have been delivered or to be prepared with any proper evidence or account, or
 - (c) otherwise fails to proceed.
- (4) In any other case, an application for a wasted costs order shall be made by summons setting out the grounds of the application which shall be supported by an affidavit containing full particulars of all the facts and matters relied upon by the applicant.
- (5) A copy of a summons issued under this rule and the supporting affidavit must be served –
 - (a) on the attorney personally; or
 - (b) in the case of an application against Crown Counsel or any other attorney acting on behalf of the Attorney General, on the Attorney General.
- (6) The Court may direct that notice of any proceedings or order against an attorney under this rule be given to his client in such manner as may be specified in the direction.
- (7) The Court shall direct that notice of any proceedings or order under this rule against Crown Counsel shall be given to the Attorney General.

PART IV: TAXATION OF COSTS

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

- 13.** (1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these rules the term "the standard basis" in relation to the taxation of costs shall be construed accordingly.
- (2) Where the amount of costs is to be taxed on the standard basis, the taxing officer will only allow costs which are not only reasonable but are also proportionate to the matters in issue having regard to -

- (a) the amount of money involved;
 - (b) the importance of the case; and
 - (c) the complexity of the issues.
- (3) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term "the indemnity basis" in relation to the taxation of costs shall be construed accordingly.
- (4) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on a basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis.

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

- 14.** (1) Unless the Court otherwise orders, every taxation of a trustee's, personal representative's or official liquidator's costs where -
- (a) he is or has been a party to any proceedings in that capacity; and
 - (b) he is entitled to be paid his costs out of any fund, shall be on the indemnity basis.
- (2) On a taxation to which this rule applies, costs shall be taxed on the indemnity basis but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative or official liquidator as such.

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

- 15.** (1) This rule applies to any proceedings in which -
- (a) money is claimed or recovered by or on behalf of, or adjudged, or ordered, or agreed to be paid to, or for the benefit of, a person under disability, or
 - (b) money paid into court is accepted by or on behalf of a person under disability.

- (2) The costs of proceedings to which this rule applies which are payable by any plaintiff to his attorney shall, unless the Court otherwise orders, be taxed on the indemnity basis but shall be presumed –
- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client, and
 - (b) to have been reasonable in amount if their amount was expressly or impliedly approved by the client, and
 - (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature unless the attorney satisfies the taxing officer that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs inter partes;

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

- (3) On a taxation under paragraph (2), the taxing officer shall also tax any costs payable to that client in those proceedings and shall certify –
- (a) the amount allowed on the taxation of the attorney's bill to his own client, and
 - (b) the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings, and
 - (c) the amount (if any) by which the amount mentioned in sub-paragraph (a) exceeds the amount mentioned in sub-paragraph (b), and
 - (d) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a person under disability or patient and any other party.
- (4) Nothing in the foregoing provisions of this rule shall prejudice any attorney's lien for costs.
- (5) The foregoing provisions of this rule shall apply in relation to -
- (a) a counterclaim by or on behalf of a person who is a person under disability; and
 - (b) a claim made by or on behalf of a person who is a person under disability in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894,

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

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

- 16.** (1) The amount of costs to be allowed on taxation shall (subject to rule 17 and to any order of the Court fixing the costs to be allowed) be in the discretion of the taxing officer.
- (2) In exercising his discretion the taxing officer shall have regard the Guidelines issued by the Rules Committee pursuant to paragraph (3), to all the relevant circumstances, and in particular to –
- (a) the circumstances of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
 - (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the attorney;
 - (c) the number and importance of the relevant documents (however brief), properly prepared or perused;
 - (d) where money or property is involved, its amount or value;
- (3) The Rules Committee may issue guidelines relating to –
- (a) the procedure in respect of taxation;
 - (b) the form and content of bills of costs; and
 - (c) the nature and amount of fees, charges, disbursements, expenses or remuneration which may be allowed on taxation, and, for the avoidance of doubt, including the maximum rates that may be allowed on a taxation.

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

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

Foreign lawyers (O.62, r.18)

- 18.** (1) Work done by foreign lawyers may be recovered on taxation under these rules on the standard basis provided that -

- (a) the foreign lawyer has been temporarily admitted as an attorney; and
 - (b) the work was done after he was admitted.
- (2) Work done by foreign lawyers who are temporarily admitted must be fully itemised in the bill of costs and may not be treated as a disbursement.
 - (3) Whenever a claim is made for work done by foreign lawyers, the taxing officer will investigate whether it has resulted in a duplication or increase in the cost of the proceedings and any such increase shall be disallowed.
 - (4) Work done by local attorneys for the purpose of instructing foreign lawyers and vice versa shall be disallowed.
 - (5) The taxing officer shall disallow any item which appears to have been incurred, or the costs of which appears to have been increased, because the successful party has engaged both local attorneys and foreign attorneys.
 - (6) Time spent and disbursements incurred in respect of written and oral communication between foreign lawyers and local attorneys will be disallowed.
 - (7) The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than he would have been required to pay if the successful party had employed only local attorneys.

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

- 19.** (1) The costs of a litigant in person to be taxed on the standard basis shall be taxed subject to the provisions of this rule.
- (2) Where it appears to the taxing officer that the litigant in person has suffered pecuniary loss in doing any item of work to which the costs relate, there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an attorney on the litigant's behalf together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings, provided that the amount allowed in respect of any such item of work shall be such sum as the taxing officer thinks fit but not exceeding, except in the case of a disbursement or expense, two-thirds of the sum which would have been allowed in respect of that item of work if an attorney had been employed or the actual amount of pecuniary loss suffered, whichever is the less.
- (3) Where it appears to the taxing officer that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item an amount not exceeding \$30 per hour.

- (4) A litigant who is allowed costs in respect of a pre-trial examination or of attending court to conduct his case shall not be entitled to a witness payment or allowance in addition.
- (5) For the purposes of this rule a litigant in person includes a litigant who is a practising attorney.
- (6) For the purposes of this rule, a company acting without an attorney is to be treated as a litigant in person.

PART V: POWERS OF TAXING OFFICERS

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

- 20.** A taxing officer shall have power to tax -
- (a) the costs of or arising out of any proceedings to which this Order applies,
 - (b) the costs ordered by an award made on a reference to arbitration under any Law or payable pursuant to an arbitration agreement, and
 - (c) any other costs the taxation of which is ordered by the Court.

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

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

Costs Certificates (O.62, r.22)

- 22.** (1) The taxing officer -
- (a) shall, at the conclusion of taxation proceedings before him, issue a certificate in Form 305 for the net amount of the costs allowed by him (after making such set-offs as may be required) ;

- (b) may from time to time in the course of the taxation issue an interim certificate in Form 308 for any part of the costs which have been taxed or agreed;
 - (c) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission.
- (2) If the successful party and paying party agree the amount of costs, either party may apply to the taxing officer for a costs certificate (either interim or final) for the amount agreed.
 - (3) The successful party may apply to the taxing officer for the issue of a default costs certificate in Form 309 if the paying party fails to comply with any time limit prescribed by the rules or the Guidelines or fixed by the taxing officer.
 - (4) A default costs certificate –
 - (a) must be set aside by the taxing officer if it appears to him that the successful party was not entitled to it; and
 - (b) in any other case, may be set aside by the taxing officer if it appears to him that there is some good reason why he should conduct a taxation.
 - (5) A paying party who seeks to set aside a default costs certificate shall within 14 days of service of the default costs certificate –
 - (a) lodge an application in Form 313;
 - (b) lodge the bill of costs signed and completed in accordance with rule 27(3);
 - (c) lodge an affidavit explaining the reasons for his default; and
 - (d) pay into Court the whole amount specified in the certificate.
 - (6) A costs certificate shall be enforceable as if it were a judgment or order of the Court.

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

- 23.** (1) Where a party entitled to be paid costs is also liable to pay costs, the taxing officer shall -
 - (a) tax the costs which the party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and certify payment of any balance; or

- (b) delay the issue of a certificate for the costs the party is entitled to be paid, until he has paid or tendered the amount he is liable to pay.

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

24. (1) Where the Court orders an account to be taken and the account consists in part of costs, the Court may direct a taxing officer to tax those costs and the taxing officer shall after taxation of the bill of costs return it, together with his report on it, to the Court.
- (2) A taxing officer taxing a bill of costs in accordance with a direction under paragraph (1) shall have the same powers, and the same fee shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

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

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

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

26. (1) Subject to the provisions of this Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings which shall be assessed by the taxing officer.
- (2) Subject to paragraph (3) the taxing officer shall make his own assessment of the costs which he considers that a reasonable litigant is likely to have incurred in preparing his bill of costs and attending the taxation and award that amount.
- (3) The amount of costs payable by any party pursuant to an order made by a taxing officer under this rule shall not exceed –
- (a) \$5,000 in the case of taxations conducted by a Judge;

- (b) \$2,000 in all other cases.
- (4) Where an order is made in favour of the paying party, the amount shall be deducted from the costs ordered to be paid by him and a certificate issued for the balance.
- (5) The party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specified sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of taxation" at any time before the expiration of 14 days after the delivery to him of a copy of the bill of costs under rule 31(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the taxing officer until question of the costs of the taxation proceedings falls to be decided.
- (6) The taxing officer may take into account any offer made under paragraph (4) which has been brought to his attention.

PART VI: PROCEDURE ON TAXATION

Service of a bill of costs (0.62, r.27)

- 27.** (1) The successful party shall prepare a bill of costs in Form 314 and serve it on the paying party.
- (2) Where more than one party is liable jointly or severally to pay the whole or part of the costs, a copy of the bill of costs shall be served on every party.
- (3) The paying party shall state the extent to which he agrees with and accepts liability to pay the amounts claimed in the bill of costs by completing column 4 and returning the completed bill of costs to the successful party within 21 days or such longer period as may be agreed.
- (4) In addition to completing column 4, the paying party may also serve a written statement of objections.

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

- 28.** (1) Proceedings for the taxation of costs shall be commenced by lodging the following documents with the taxing officer -
- (a) an application for taxation in such of Forms 301 to 304 as may be appropriate;

- (b) a bill of costs completed and signed by each of the paying parties in accordance with rule 27(3);
 - (c) any statement of objections received from the paying party;
 - (d) any reply to the Statement of Objections relied upon by the successful party;
 - (e) where a party is entitled to require taxation of any costs directed to be paid by any award made on an arbitration under any Law or pursuant to any arbitration agreement and no order of the Court for enforcement of the award has been made, a true copy of the award; and
 - (f) where a party is entitled to require taxation of any costs directed to be paid by any order, award or other determination of any tribunal or other body constituted by or under any Law or Regulation, a true copy of the order, award or determination, as the case may be.
- (2) Where a party is entitled to recover taxed costs or to require any costs to be taxed by virtue of -
- (a) a judgment, direction or order given or made in proceedings in the Court; or
 - (b) rule 5; or
 - (c) an award made on an arbitration under any Law or pursuant to an arbitration agreement; or
 - (d) an order, award or other determination of a tribunal or other body constituted by or under any Law,

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

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

Subsequent procedure (0.62, r.29)

- 29.** (1) A taxation shall be inquisitorial in nature.
- (2) The taxing officer shall enquire into the bill of costs and determine the amount to be paid in accordance with this Order and the Guidelines for which purpose the taxing officer shall obtain such written explanations from the successful

party and/or such written submissions on behalf of the paying party as may be appropriate to enable him to make such determination fairly.

- (3) If the taxing officer considers that he cannot properly tax a bill of costs or complete his taxation of a bill of costs without hearing an oral submission from the successful party and/or the paying party, he shall fix a hearing date and send a notice of appointment to
 - (a) the successful party; and
 - (b) every paying party who has completed column 4 and signed the bill of costs;
- (4) The taxing officer may require the successful party to produce the following documents -
 - (a) the engagement letters or other documents which evidence the terms upon which he engaged his attorneys and foreign lawyers;
 - (b) the invoices (and detailed versions of the invoices) rendered on him by his attorneys and foreign lawyers;
 - (c) an index and/or bundle of the pleadings, affidavits and orders relating to the proceeding before the Court;
 - (d) the invoice, account or other document evidencing the payment of any disbursement;
 - (e) time records relating to legal fees;
 - (f) instructions, briefs, opinions or reports;
 - (g) the whole or any part of the correspondence files of his attorneys and foreign lawyers;
 - (h) any other documents which he considers relevant for the purpose of justifying the amounts claimed in the bill of costs.
- (5) The taxing officer may require that any document produced by the successful party is made available for inspection by the paying party, provided that the document in question is not privileged.
- (6) The taxing officer shall not give reasons for any of his decisions.
- (7) The taxing officer shall send an office copy of his costs certificate to each of the successful and paying parties.

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

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

30. (1) Any party who is dissatisfied with the amount of any costs certificate may apply to a Judge to review the taxing officer's decision.
- (2) In the event that the taxation was conducted by a Judge in his capacity as an ex officio taxing officer, the review shall be conducted by a different Judge.
- (3) An application under this rule for review of the taxing officer's decision must be made within 14 days after the decision to be reviewed or within such other period as may be fixed by the taxing officer.
- (4) Every applicant for review under this rule must at the time of making his application -
- (a) deliver to the Judge his objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case;
 - (b) deliver a copy of the objections to all parties affected by the application;
 - (c) if the applicant is the paying party, pay the amount as taxed into court; and
 - (d) serve notice of payment into court on every party referred to in subparagraph (b) above.
- (5) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such other period as may be fixed by the Judge, deliver to the Judge answers in writing to the objections stating concisely the grounds on which he will oppose the objections and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice under paragraph (4).
- (6) A review under this rule shall be inquisitional in nature and the Judge may receive further evidence and may exercise all the powers which he might have exercised on an original taxation, including the power to award costs of the proceedings before him.
- (7) In the event that the Judge considers that he cannot properly review the taxing officer's decision without hearing oral submissions, he shall fix a hearing date and any party to whom a copy of the objections was delivered under paragraph (4) shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (5).

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

- 31.** (1) A party to any taxation proceeding who is dissatisfied with any decision of a Judge (whether or not such decision has been reviewed in accordance with rule 30) may apply to the Judge for leave to appeal to the Court of Appeal which shall be granted only if the Judge is satisfied that the proposed appeal involves a point of construction of general importance.
- (2) There shall be no other right of appeal to the Court of Appeal in respect of a decision made by a Judge, whether acting as an ex officio taxing officer or conducting a review under rule 30.

No. 314

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 20

BETWEEN:

PLAINTIFF

AND:

DEFENDANT

BILL OF COSTS

PARTIES

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

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

INTRODUCTION

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

APPLICABLE ORDERS AND DIRECTIONS

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

PARTICULARS OF ATTORNEYS ENGAGED

[List the names of all the attorneys engaged and set out all information necessary to enable the Taxing Officer to determine the appropriate hourly rate recoverable in respect of each of them. In

the case of foreign lawyers, set out both the date upon which he was first admitted to practice as a professional lawyer and the date upon which he was temporarily admitted as an attorney in the Cayman Islands.]

DETAILS OF WORK DONE

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

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

[Signature of successful party's attorneys]

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

[Signature of paying party's attorneys]

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

[Signature of successful party's attorneys]

NOTE:

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