



## HIGH COURT AMENDMENT RULES 1999

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MICHAEL HARDIE BOYS, Governor-General

### ORDER IN COUNCIL

At Wellington this 4th day of October 1999

Present:

THE RIGHT HON WYATT CREECH PRESIDING IN COUNCIL

PURSUANT to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 of the other members of the Rules Committee (of whom at least 1 was a Judge), makes the following rules.

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RULES

**1. Title and commencement**—(1) These rules may be cited as the High Court Amendment Rules 1999, and are part of the High Court Rules from time to time set out in the Second Schedule of the Judicature Act 1908 (“the High Court Rules”).

(2) Part 1, the Schedules, and rules 6 to 9 and 12 to 18 come into force on 1 January 2000.

(3) Rules 10 and 11 come into force on 1 December 1999.

PART 1

NEW RULES RELATING TO COSTS

**2. New rules substituted**—The High Court Rules are amended by revoking rules 46 to 48, and substituting the following rules:

**“46. Costs at discretion of Court**—(1) All matters relating to the costs of and incidental to a proceeding or a step in a proceeding are at the discretion of the Court.

“(2) Rules 47 to 48G apply subject to subclause (1).

“(3) This rule is subject to the provisions of any Act.

**“47. Principles applying to determination of costs**—The following general principles apply to the determination of costs:

“(a) The party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:

“(b) An award of costs should reflect the complexity and significance of the proceeding:

“(c) Costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:

“(d) An appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:

“(e) What is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the actual solicitor or counsel involved or on the time actually spent by the actual solicitor or counsel involved or on the costs actually incurred by the party claiming costs:

“(f) An award of costs should not exceed the costs incurred by the party claiming costs:

“(g) So far as possible the determination of costs should be predictable and expeditious.

“48. **Categorisation of proceedings**—(1) For the purposes of rule 47 (b), proceedings must be classified as falling within 1 of the following categories:

- |                         |     |  |
|-------------------------|-----|--|
| “Category 1 proceedings | ... | Proceedings of a straight-forward nature able to be conducted by counsel considered junior in the High Court:                        |
| “Category 2 proceedings | ... | Proceedings of average complexity requiring counsel of skill and experience considered average in the High Court:                    |
| “Category 3 proceedings | ... | Proceedings that because of their complexity or significance require counsel to have special skill and experience in the High Court. |

“(2) The Court may at any time determine in advance an applicable category in relation to a proceeding. If it does, the category applies to all subsequent determinations of costs in the proceeding unless there are special reasons to the contrary.

“48A. **Appropriate daily recovery rates**—For the purposes of rule 47 (c), the rates specified in the Second Schedule are the appropriate daily recovery rates for the categories of proceedings referred to in rule 48 and must be applied to those categories of proceedings. Those appropriate daily recovery rates are calculated, in accordance with the principle referred to in rule 47 (d), on the basis of being two-thirds of the actual daily rates referred to in that paragraph.

“48B. **Determination of reasonable time**—(1) For the purposes of rule 47 (c), a reasonable time for a step in a proceeding is—

“(a) The time specified for that step in the Third Schedule; or

“(b) If the Third Schedule does not apply, a time determined by analogy with that schedule; or

“(c) If no analogy can usefully be made, the time assessed as likely to be required for the particular step.

“(2) In determining what is a reasonable time for a step in a proceeding under subclause (1),—

“(a) If a comparatively small amount of time for the particular step is considered reasonable, the determination must be made by reference to band A; or

“(b) If a normal amount of time for the particular step is considered reasonable, the determination must be made by reference to band B; or

“(c) If a comparatively large amount of time is considered reasonable, the determination must be made by reference to band C.

“48C. **Increased costs and indemnity costs**—(1) Despite rules 47 to 48B, the Court may make an order—

- “(a) Increasing costs otherwise payable under those rules (‘increased costs’); or
- “(b) That the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (‘indemnity costs’).
- “(2) The Court may make the order at any stage of a proceeding in relation to any step in the proceeding.
- “(3) The Court may order a party to pay increased costs if—
- “(a) The nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or
- “(b) The party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—
- “(i) Failing to comply with these rules or a direction of the Court; or
- “(ii) Taking or pursuing an unnecessary step or an argument that lacks merit; or
- “(iii) Failing, without reasonable justification, to admit facts, evidence, documents, or accept a legal argument; or
- “(iv) Failing, without reasonable justification, to comply with a notice for discovery, notice for further particulars, notice for interrogatories, or other similar requirement under these rules; or
- “(v) Failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 48G, payment into Court, or an admission or offer of relief under rules 347 to 368, or some other offer to settle or dispose of the proceeding; or
- “(c) The proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring the proceeding or participate in the proceeding in the interests of those affected; or
- “(d) Some other reason exists which justifies the Court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.
- “(4) The Court may order a party to pay indemnity costs if—
- “(a) The party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or
- “(b) The party has ignored or disobeyed an order or direction of the Court or breached an undertaking given to the Court or another party to the proceeding; or
- “(c) Costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or
- “(d) The person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to the proceeding; or
- “(e) The party claiming costs is entitled to indemnity costs under a contract or deed; or
- “(f) Some other reason exists which justifies the Court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

“48D. **Refusal of, or reduction in, costs**—Despite rules 47 to 48B, the Court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if—

- “(a) The nature of the proceeding or the step in a proceeding is such that the time required by the party claiming costs would be substantially less than the time allocated under band A; or
- “(b) The property or interests at stake in the proceeding were of exceptionally low value; or
- “(c) The issues at stake were of little significance; or
- “(d) Although the party claiming costs has succeeded overall, that party has failed in relation to a cause of action or issue which significantly increased the costs of the party opposing costs; or
- “(e) The party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—
  - “(i) Failing to comply with these rules or a direction of the Court; or
  - “(ii) Taking or pursuing an unnecessary step or an argument that lacks merit; or
  - “(iii) Failing, without reasonable justification, to admit facts, evidence, or documents, or accept a legal argument; or
  - “(iv) Failing, without reasonable justification, to comply with a notice for discovery, notice for further particulars, notice for interrogatories, or other similar requirement under these rules; or
  - “(v) Failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 48C, payment into Court, or an admission or offer of relief under rules 347 to 368, or some other offer to settle or dispose of the proceeding; or
- “(f) Some other reason exists which justifies the Court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

“48E. **Costs in interlocutory applications**—(1) Unless there are special reasons to the contrary, costs on an opposed interlocutory application—

- “(a) Must be fixed in accordance with these rules when the application is determined; and
  - “(b) Become payable when they are fixed.
- “(2) Despite subclause (1), the Court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.
- “(3) This rule does not apply to an application for summary judgment.

“48F. **Costs may be determined by different Judge or Master**—Costs may be determined by a Judge or Master other than the Judge or Master who heard the matter to which the costs relate, if the Judge or Master who heard the matter to which the costs relate is not available conveniently to make the determination.

“48G. **Written offers ‘without prejudice save as to costs’**—(1) A party to a proceeding may at any time make to any other party to that proceeding a written offer that—

- “(a) Is expressed to be without prejudice save as to costs; and
- “(b) Relates to any issue in that proceeding.

“(2) The fact that such an offer has been made must not be communicated to the Court until the question of costs falls to be decided.

“(3) The effect (if any) that the making of such an offer has on the question of costs is at the discretion of the Court.”

**3. Joint and several liability for costs**—The High Court Rules are amended by revoking rule 50, and substituting the following rule:

“50. Unless the Court otherwise directs, the liability of each of 2 or more parties ordered to pay costs is joint and several.”

**4. New schedules substituted**—The High Court Rules are amended by revoking the Second Schedule, and substituting the Second and Third Schedules set out in Schedule 1 of these rules.

**5. Transitional provisions relating to application of new costs rules**—(1) Costs in proceedings commenced after the coming into force of this Part must be determined in accordance with the High Court Rules as amended by this Part.

(2) Costs in proceedings commenced before the coming into force of this Part must be determined,—

(a) In the case of a step in the proceedings taken before the coming into force of this Part, in accordance with the High Court Rules as in force immediately before the coming into force of this Part:

(b) In the case of a step in the proceedings taken after the coming into force of this Part, in accordance with the High Court Rules as amended by this Part.

(3) For the purposes of subclause (2), a step in a proceeding described in column 1 of Schedule 2 of these rules is taken on the date appearing opposite it in column 2 of that schedule.

(4) If the application of subclause (2) would, in the opinion of the Court, lead to an unjust result, the Court may,—

(a) If subclause (2) (a) applies, have regard to what the determination of costs would be in relation to the particular step in accordance with the High Court Rules as amended by this Part; or

(b) If subclause (2) (b) applies, have regard to what the determination of costs would be in accordance with the High Court Rules as in force immediately before the coming into force of this Part.

## PART 2

### AMENDMENTS TO OTHER RULES

**6. Review of decisions of Masters**—Rule 61C is amended by revoking subclauses (4) and (5), and substituting the following subclauses:

“(4) A review under section 26P (1) of the Act of an order or decision proceeds as an appeal by way of rehearing, if the order or decision—

“(a) Was made following a defended hearing; and

“(b) Is supported by recorded reasons.

“(4A) If subclause (4) does not apply to an order or decision that is to be reviewed under section 26P (1) of the Act, the review proceeds as a rehearing *de novo*.

“(4B) A Judge who reviews an order or decision in accordance with subclause (4) may, in his or her discretion, rehear the whole or any part of the evidence, or may receive further evidence, if the Judge thinks that the interests of justice so require.

“(5) A Judge who reviews an order or decision in accordance with subclause (4A) may give the order or decision such weight as the Judge thinks appropriate.”

**7. Transitional provision relating to reviews of decisions of Masters**—Rule 61C, as amended by rule 6, applies to applications made—

(a) On or after the coming into force of this rule:

(b) Before the coming into force of this rule if the hearing of the application has not commenced before the coming into force of this rule.

**8. Application of summary judgment procedure**—Rule 135 (a) is amended by omitting the expression “Part 14,”.

**9. Interlocutory application for summary judgment**—Rule 138 is amended by revoking subclause (6).

**10. When allowed without leave**—Rule 219 of the High Court Rules is amended by revoking paragraph (j), and substituting the following paragraph:

“(j) Where the proceeding is brought under the Carriage by Air Act 1967, or Part 9A of the Civil Aviation Act 1990, unless the party to be served is a High Contracting Party or a Party to a Convention referred to in Part 9A of the Civil Aviation Act 1990:”.

**11. Service in certain proceedings**—The High Court Rules are amended by revoking rule 223, and substituting the following rule:

“223. Where, for the purpose of a proceeding under the Carriage by Air Act 1967, or Part 9A of the Civil Aviation Act 1990, leave is given to serve a High Contracting Party or a Party to a Convention,—

“(a) The document to be served must be transmitted by the Registrar to the Secretary of Foreign Affairs and Trade, together with a copy of it translated into an official language of the country of the High Contracting Party or Party (if that language is a language other than English), with a request for the further transmission of the documents to the Government of that country; and

“(b) A certificate by the Secretary of Foreign Affairs and Trade that is transmitted to the Registrar and that certifies that the document was delivered on a specified date to the Government of the country of the High Contracting Party or Party is sufficient proof of service on that date, and must be filed on record as, and is equivalent to, an affidavit of service.”

**12. Who may swear affidavit verifying statement in answer to interrogatories**—The High Court Rules are amended by revoking rule 286, and substituting the following rule:

“286. (1) An affidavit verifying a statement of a party in answer to interrogatories may be made as follows:

“(a) By the person required to make the statement:

“(b) If the person required to make the statement is a minor or is mentally disordered, by the person’s next friend, guardian *ad litem*, or manager:

“(c) If the person required to make the statement is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 517:

“(d) If the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a Government department, by an officer of the Crown.

“(2) Despite subclause (1), if paragraph (c) or paragraph (d) of that subclause applies, and if the affidavit is to be filed and served in accordance with an order, the Court may—

“(a) Specify by name or otherwise the person to make the affidavit; or

“(b) Specify by description or otherwise the persons from whom the party may choose the person to make the affidavit.”

**13. Who may swear affidavit verifying list of documents**—The High Court Rules are amended by revoking rule 303, and substituting the following rule:

“303. (1) An affidavit verifying a list of documents under a notice or order given or made under any of the provisions of rules 293 to 304 may be made as follows:

“(a) By the person required to make the list:

“(b) If the person required to make the list is a minor or a mentally disordered person, by the person’s next friend, guardian *ad litem*, or manager:

“(c) If the person required to make the list is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 517:

“(d) If the person required to make the list is the Crown, an officer of the Crown who sues or is sued in an official capacity, or as representing a Government department, by an officer of the Crown.

“(2) Despite subclause (1), where paragraph (c) or paragraph (d) of that subclause applies, and the affidavit is to be filed and served in accordance with an order, the Court may—

“(a) Specify by name or otherwise the person to make the affidavit; or

“(b) Specify by description or otherwise the persons from whom the person required to verify the list may choose the person to make the affidavit.”

**14. Affidavits made on behalf of corporation**—The High Court Rules are amended by revoking rule 517, and substituting the following rule:

“517. A person may make an affidavit on behalf of a corporation or body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office) if the person—

“(a) Knows the relevant facts; and

“(b) Is authorised to make the affidavit.”

**15. Notice of proceeding and verifying affidavit**—Rule 700E (3) is amended by omitting the words “an officer of the corporation having knowledge of the facts”, and substituting the words “a person who meets the requirements of rule 517”.



**16. Time for appeal**—The High Court Rules are amended by revoking rule 704, and substituting the following rule:

“704. The notice of appeal must be filed and served in accordance with rule 703—

“(a) If the enactment which confers the right of appeal specifies a period within which the appeal must be brought, within that period; or

“(b) In any other case, within a month after the date of the decision.”

**17. Extension of time for appeal**—Rule 705 (1) of the High Court Rules is amended by revoking paragraph (c).

**18. Form 64E amended**—Form 64E in the First Schedule is amended by revoking the first paragraph, and substituting the following paragraph:

“1. I have knowledge of the facts stated in this affidavit and am duly authorised by the plaintiff in the above matter to make this affidavit on its behalf.”

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## SCHEDULES

Rule 4

## SCHEDULE 1

NEW SECOND AND THIRD SCHEDULES SUBSTITUTED

Rule 48A

## "SECOND SCHEDULE

## APPROPRIATE DAILY RECOVERY RATES

*(Note: The following are the appropriate daily recovery rates for the categories of proceedings referred to in rule 48.)*

| <b>Category of proceedings referred to in rule 48</b> | <b>Appropriate daily recovery rate</b> |
|---|--|
| Category 1 proceedings ... ..                         | \$850 per day                          |
| Category 2 proceedings ... ..                         | \$1,300 per day                        |
| Category 3 proceedings ... ..                         | \$1,900 per day                        |

Rule 48B

## "THIRD SCHEDULE

## TIME ALLOCATIONS

| <b>General civil proceedings</b>  | <b>Allocated days or part days</b> |          |          |
|---|------------------------------------|----------|----------|
|   | <b>A</b>                           | <b>B</b> | <b>C</b> |
| 1. Commencement of proceeding by plaintiff (receiving instructions, researching facts and law, and preparing, filing, and serving statement of claim and notice of proceeding or equivalent) ... .. | 1.6                                | 3        | 10       |
| 2. Commencement of defence by defendant (receiving instructions, researching facts and law, and preparing, filing, and serving statement of defence) ... ..   | 1                                  | 2        | 6        |
| 3. Other pleadings and notices:   |                                    |          |          |
| Counterclaim ... ..   | .8                                 | 1.6      | 4.8      |
| Cross-notice between defendants ...   | .6                                 | 1.2      | 4        |
| Commencement of proceedings against third parties, including notice and statement of claim ... ..   | 1.2                                | 2.4      | 7        |
| Notice of appearance with protest to jurisdiction ... ..  | .3                                 | .6       | 2        |
| Notice of appearance ... ..   | .2                                 | .2       | .2       |

SCHEDULE 1—*continued*NEW SECOND AND THIRD SCHEDULES SUBSTITUTED—*continued*“THIRD SCHEDULE—*continued*TIME ALLOCATIONS—*continued*

| General civil proceedings  | Allocated days or part days                  |     |     |
|--|--|-----|-----|
|  | A  | B   | C   |
| Pleading in response to other party's amended pleading (payable regardless of outcome except where formal or consented to) ... ..      | .3   | .6  | 2   |
| 4. Interlocutory proceedings and related steps:  |  |     |     |
| Notice to answer interrogatories ... ..  | .4   | 1   | 4   |
| Answer to interrogatories ... ..   | .4   | 1   | 4   |
| Notice to admit facts ... ..   | .4   | .8  | 2.4 |
| Admission of facts ... ..  | .4   | .8  | 2.4 |
| List of documents on discovery ... ..  | .7   | 1.5 | 6   |
| Production of documents for inspection   | .3   | 1   | 3   |
| Inspection of documents ... ..   | .5   | 1.5 | 6   |
| Payment into Court ... ..  | .3   | .3  | .3  |
| Filing offer of other relief ... ..  | .3   | .3  | .3  |
| Filing and serving memorandum in anticipation of judicial conference or mentions hearing ... ..  | .2   | .4  | 1   |
| Appearance at judicial conference ... ..   | .3   | .3  | .7  |
| Preparing and filing interlocutory application (excluding summary judgment application) and supporting affidavits ... ..               | .3   | .6  | 2   |
| Preparing and filing opposition to interlocutory application (excluding summary judgment application) and supporting affidavits ... .. | .3   | .6  | 2   |
| Arguing defended interlocutory application (excluding summary judgment application)  | Appearance in Court measured in quarter days |     |     |
| Appearance at mentions hearing or callover ... ..  | .2   | .2  | .2  |
| Sealing order or judgment ... ..   | .2   | .2  | .2  |

SCHEDULE 1—*continued*

NEW SECOND AND THIRD SCHEDULES SUBSTITUTED—*continued*

“THIRD SCHEDULE—*continued*

TIME ALLOCATIONS—*continued*

|                                  |   | <b>Allocated days or part days</b>                           |          |          |
|----------------------------------|---|--|----------|----------|
|                                  |   | <b>A</b>   | <b>B</b> | <b>C</b> |
| <b>General civil proceedings</b> |   |  |          |          |
| 5.                               | Summary judgment application (additional to costs in items 1 to 3):   |  |          |          |
|                                  | Preparing and filing summary judgment application and supporting affidavits   | .3   | .6       | 2        |
|                                  | Preparing and filing opposition and supporting affidavits ... ..  | .3   | .6       | 2        |
|                                  | Arguing defended summary judgment application   | Appearance in Court measured in quarter days                 |          |          |
| 6.                               | Obtaining judgment without appearance (additional to costs in items 1 to 5)   | .3   | .3       | .5       |
| 7.                               | Preparation for hearing (including preparation of affidavits or written or oral statements of evidence to be used at hearing, lists of issues and authorities, and selecting documents for common bundle of documents): |  |          |          |
|                                  | Plaintiff's preparation following setting down or direction for trial where trial does not eventuate ... ..   | 3  | 5        | 10       |
|                                  | Defendant's preparation following setting down or direction for trial where trial does not eventuate ... ..   | 2  | 4        | 8        |
|                                  | Preparation where case proceeds to hearing  | Twice the time occupied by the hearing measured in half days |          |          |
| 8.                               | Appearance at hearing:  |  |          |          |
|                                  | For sole or principal counsel ...   | Appearance in Court measured in half days                    |          |          |
|                                  | 2nd and subsequent counsel if certified for by Court  | 50% of allowance for principal counsel                       |          |          |

SCHEDULE 1—*continued*

NEW SECOND AND THIRD SCHEDULES SUBSTITUTED—*continued*

“THIRD SCHEDULE—*continued*

TIME ALLOCATIONS—*continued*

|                                  |   |  |  | <b>Allocated days or<br/>part days</b>  |          |          |
|----------------------------------|---|--|--|---|----------|----------|
|                                  |   |  |  | <b>A</b>  | <b>B</b> | <b>C</b> |
| <b>General civil proceedings</b> |   |  |  |   |          |          |
| 9.                               | Execution of judgment or order  |  |  |   |          |          |
|                                  | Charging order without application ...  |  |  | .3  | .3       | 1        |
|                                  | Charging order with application,<br>including any unopposed order ...   |  |  | .5  | .5       | 1.4      |
|                                  | Writ of sale ... ..   |  |  | .5  | .5       | .7       |
|                                  | Other execution process ... ..  |  |  | .5  | .5       | .7       |
| 10.                              | Other steps in the proceeding not<br>specifically mentioned ... ..  |  |  | As allowed by Court   |          |          |
| 11.                              | Disbursements:  |  |  |   |          |          |
|                                  | Fees of Court ... ..  |  |  | As paid   |          |          |
|                                  | Witnesses and interpreters’ fees,<br>allowances, and travelling expenses  |  |  | In accordance with<br>Witnesses and<br>Interpreters’ Fees<br>Regulations 1974 |          |          |
|                                  | Reasonable agency charges, including<br>those incurred in preparing for trial   |  |  | If and to the extent<br>certified for by Court                                |          |          |
|                                  | Reasonable expenses incurred in<br>effecting service of any document ...  |  |  | As paid   |          |          |
|                                  | Reasonable expenses incurred in binding<br>necessary number of copies of common<br>bundle of documents ... ..                 |  |  | As paid   |          |          |
|                                  | Ordering, paginating, preparing<br>index for, and photocopying<br>necessary number of copies of<br>common bundle of documents |  |  | Cost per page as<br>stipulated  |          |          |
|                                  | Other necessary payments ... ..   |  |  | As paid   |          |          |

SCHEDULE 1—*continued*NEW SECOND AND THIRD SCHEDULES SUBSTITUTED—*continued*“THIRD SCHEDULE—*continued*TIME ALLOCATIONS—*continued*

|  |   |     |     |     | <b>Allocated days or<br/>part days</b> |          |          |
|--|---|-----|-----|-----|--|----------|----------|
|  |   |     |     |     | <b>A</b>                               | <b>B</b> | <b>C</b> |
| <b>Bankruptcy proceedings</b><br>(additional to costs in items 1 to 11)          |   |     |     |     |  |          |          |
| 12.  | Preparing, filing, and serving bankruptcy notice  | ... | ... | ... | .1                                     | .2       | .6       |
| 13.  | Preparing bankruptcy petition and other documents | ... | ... | ... | .2                                     | .4       | 1.2      |
| 14.  | Appearance at hearing                             | ... | ... |     | .2                                     | .4       | 1.2      |
| 15.  | Supporting party on bankruptcy                    | ... |     |     | .2                                     | .4       | 1.2      |
| <br>   |   |     |     |     |  |          |          |
| <b>Company liquidation proceedings</b><br>(additional to costs in items 1 to 11) |   |     |     |     |  |          |          |
| 16.  | Preparing and issuing statutory demand            |     |     |     | .1                                     | .2       | .6       |
| 17.  | Preparing statement of claim and other documents  | ... | ... | ... | .3                                     | .6       | 1.8      |
| 18.  | Appearance at hearing                             | ... | ... |     | .2                                     | .4       | 1.2      |
| 19.  | Supporting party on liquidation                   | ... |     |     | .2                                     | .4       | 1.2”     |

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## SCHEDULE 2

Rule 5 (3)

## DATES ON WHICH STEPS TAKEN FOR PURPOSES OF RULE 5 (3)

| Step in proceeding described in Third Schedule of High Court Rules        | Date on which step taken  |
|---|---|
| 1. A step that requires the filing of a document or a number of documents | The date on which the document or the first of the documents is filed   |
| 2. Appearance in Court lasting more than a day                            | The date of the first appearance  |
| 3. Production of documents for inspection                                 | The date on which the documents were produced or, if the documents were produced over a period of time, the date on which documents were first produced |
| 4. Inspection of documents  | The date on which the documents became available for inspection, regardless of whether inspection took place  |
| 5. Preparation for trial or hearing                                       | The date on which the proceeding was set down for hearing or directed to be heard   |

MARIE SHROFF,  
Clerk of the Executive Council.

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## EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules amend the High Court Rules. *Rules 10* and *11* come into force on 1 December 1999. These 2 rules relate to the service of documents in proceedings involving a party to a convention relating to international carriage by air. The rest of the rules, which relate to costs and other matters, come into force on 1 January 2000.

## PART 1

## NEW RULES RELATING TO COSTS

*Rule 2* substitutes new *rules 46 to 48c* for the existing *rules 46, 46A, 47, and 48*. In essence, the existing rules provide that the Court has an absolute and overriding discretion as to costs and may fix costs at the level specified in the scale contained in the Second Schedule or at a level greater or less than the scale (*rules 46 and 48*). Costs follow the event, that is, they depend on the outcome of the proceeding (*rule 47*). *Rule 46A* relates to “Calderbank” letters and provides that offers of settlement may be made without prejudice except as to costs.

The new rules continue the principle that in matters of costs the Court has an overriding discretion, set out principles guiding costs determinations, provide for costs to be determined by reference to both an appropriate daily recovery rate and a reasonable time in relation to the proceeding or step in the proceeding, and set out the circumstances when increases in costs can be ordered or when the Court may refuse costs or reduce costs that might otherwise be payable.

*New rule 46* provides that all matters relating to costs in a proceeding or a step in a proceeding are in the discretion of the Court. The rule also makes it clear that the succeeding costs rules are subject to this overriding discretion.

*New rule 47* sets out principles applying to the determination of costs. These are that—

- The successful party is entitled to have costs paid by the unsuccessful party;
- Costs should reflect the complexity and significance of the proceedings;
- Costs are assessed on the basis of applying the appropriate daily recovery rate to the time considered reasonable for the proceeding or step in the proceeding;
- An appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable for the proceeding or step in the proceeding;
- The appropriate daily recovery rate and time do not depend on the skill and experience of the actual solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved;
- Costs should not exceed the actual costs incurred by the party seeking costs;
- The determination of costs should be predictable and expeditious.

*New rule 48* requires proceedings to be classified according to 3 categories. The categories are:

- Category 1 proceedings ... Proceedings of a straight-forward nature able to be conducted by counsel considered junior in the High Court;
- Category 2 proceedings ... Proceedings of average complexity requiring counsel of skill and experience considered average in the High Court;
- Category 3 proceedings ... Proceedings that because of their complexity or significance require counsel to have special skill and experience in the High Court.

The rule also allows the Court to determine, in advance, an applicable category in relation to a proceeding and, if it does, the category applies to all subsequent determinations of costs in the proceeding unless there are special reasons to the contrary.

*New rule 48A* provides that the rates specified in the new *Second Schedule* are the appropriate daily recovery rates for, and must be applied in relation to, the categories of proceedings referred to in *new rule 48*. The rates are fixed on the basis of being two-thirds of actual daily rates regarded as reasonable in line with the principle stated in *new rule 47 (d)*.

*New rule 48B* relates to the determination of a reasonable time for a particular step in a proceeding. In essence, what is a reasonable time is to be determined by reference to the new *Third Schedule* or, if it does not apply, by analogy with it or, if no analogy is possible, by an assessment of the time required for the particular step.

The new *Third Schedule* specifies 3 categories or bands for particular steps or stages in a proceeding. The bands apply depending on whether the time considered reasonable is normal for the particular step or comparatively small or large.



New rule 48c provides for increased costs or actual (“indemnity”) costs and sets out factors to be taken into account in determining when an order for increased or indemnity costs is appropriate.

New rule 48d provides that the Court may refuse to award costs or reduce the costs that might otherwise be payable and sets out the factors to be taken into account in determining whether to refuse or reduce costs.

New rule 48E provides that, in the absence of particular reasons, costs of an opposed interlocutory application must be fixed when the application is determined. Costs are determined as a discrete exercise in accordance with the new rules and become payable immediately they are fixed. The new rule does not apply to summary judgment applications.

New rule 48F provides that costs may be fixed by a Judge or Master other than the Judge or Master who heard the matter to which the costs determination relates if the Judge or Master who heard the matter is not available to make the costs determination.

New rule 48c restates existing rule 46A relating to “Calderbank” letters.

Rule 3 replaces existing rule 50. Rule 50 currently provides that each of several unsuccessful defendants is liable to the plaintiff for the plaintiff’s costs even though they defend the proceeding separately. The new rule provides that if more than 1 party is ordered to pay costs, each party is jointly and severally liable unless the Court orders otherwise.

Rule 4 substitutes new *Second* and *Third Schedules* for the existing *Second Schedule*. The new *Second Schedule* specifies appropriate daily recovery rates for the 3 categories of proceeding referred to in new rule 48. The new *Third Schedule* specifies both the matters for which costs may be ordered and time allocations for those matters in the separate categories or bands referred to.

Rule 5 is a transitional provision.

Costs in proceedings commenced after the new rules come into force must be determined in accordance with the High Court Rules as amended by these rules.

Costs in proceedings commenced before the new rules come into force must be determined,—

- (a) In the case of steps taken before the new rules come into force, in accordance with the High Court Rules as in force before the commencement of the new rules;
- (b) In the case of steps taken after the new rules come into force, in accordance with the High Court Rules as amended by these rules.

The *Second Schedule* of the rules specifies when a step in a proceeding must be treated as having been taken for the purposes of making a costs determination in proceedings commenced before the new rules come into effect.

Rule 5 also allows the Court to apply the new costs rules to the determination of costs in relation to a step in proceedings taken before the new rules take effect or apply the previous costs rules to the determination of costs in relation to a step in proceedings taken after the new rules take effect if the Court considers that applying the transitional rule would otherwise lead to an unjust result.

## PART 2

### AMENDMENTS TO OTHER RULES

*Part 2* contains amendments relating to 5 principal matters.

- In relation to reviews of orders or decisions given by Masters in Chambers, the amendments specify when those reviews are heard as appeals by way of rehearing, and when they are heard *de novo*;
- In relation to the summary judgment procedure, the amendments extend the summary judgment procedure to admiralty proceedings;
- In relation to the rules for the service of documents in proceedings involving a party to a convention relating to international carriage by air, the amendments bring the rules into line with recent changes to the Civil Aviation Act 1990;
- In relation to qualifications required by a person making an affidavit on behalf of a corporation or association, the amendments discontinue current requirements that the affidavit be made by an officer of the corporation or member of the association, and, instead, allow any person with the necessary knowledge and authority to make the affidavit;
- In relation to certain appeals (principally from statutory tribunals), the amendments clarify that the Court can extend the relevant appeal period only to the extent that the extension is consistent with the statute under which the appeal is brought.

*Rule 6* amends rule 61C relating to reviews of orders or decisions made by Masters in Chambers. The amendments prescribe that where the Master has set out his or her reasons for the order or decision following a defended hearing, the order or decision is reviewed as an appeal by way of rehearing (that is a form of hearing that normally proceeds on the record of the case, and in which the appellant has to show why the decision appealed against is wrong). If an order or decision given by a Master in Chambers is not preceded by a defended hearing, or is not supported by recorded reasons, the Judge reviewing the order or decision hears the matter *de novo* (that is afresh). A Judge who hears a review *de novo* may give the original order or decision such weight as the Judge thinks appropriate.

*Rule 7* is a transitional provision relating to reviews of decisions of Masters in Chambers. It provides that rule 61C, as amended by *rule 6*, will apply to applications made after the amendments to the rule come into force and to applications made before the amendments come into force where the hearing of the application has not begun.

*Rule 8* extends the summary judgment procedure to proceedings in admiralty.

*Rule 9* relates to the requisite qualifications of persons making affidavits on behalf of corporations. *Rule 9* amends rule 138 (which relates to applications for summary judgment) by revoking subclause (6). That subclause provides that rule 517 (which relates to the requisite qualifications of a person making an affidavit on behalf of a corporation) does not limit the persons who may make an affidavit in support of a corporation applying for summary judgment. In view of the removal of existing restrictions by new *rule 517* (as substituted by *rule 14*), rule 138 (6) is no longer appropriate.

*Rules 10* and *11* reflect changes made to the law relating to international carriage by air, by the Civil Aviation Amendment Act 1999.

The various conventions relating to international carriage by air and the applicable law now form part of the Civil Aviation Act 1990, rather than the Carriage by Air Act 1967. Accordingly, rules 219 and 223 dealing with service of documents in proceedings involving a party to a convention relating to international carriage by air are altered to reflect this change. References in the 2 rules to proceedings under the Carriage by Air Act 1967 are retained because this Act (as it read prior to the coming into force of the Civil Aviation Amendment Act 1999) will continue to apply to proceedings involving some parties to the relevant conventions.

*Rule 12* substitutes a new *rule 286*. The new *rule 286* makes the existing rule 286 (which relates to who may make an affidavit verifying a statement in answer to interrogatories) consistent with new *rule 517* on the qualifications of persons who make affidavits on behalf of corporations.

*Rule 13* substitutes a new *rule 303*. The new *rule 303* makes the existing rule 303 (which relates to who may make an affidavit verifying a list of documents for the purposes of discovery) consistent with new *rule 517* on the qualifications of persons who make affidavits on behalf of corporations.

*Rule 14* substitutes a new *rule 517*. The existing rule 517 provides that an affidavit may be made on behalf of a corporation by an officer of the corporation, and on behalf of a body of persons by a member of the body. Alternatively, the affidavit may be made by a person authorised by the Court. In an emergency, the affidavit may be made by a solicitor. The new *rule 517* allows any person to make the affidavit, if the person knows the relevant facts and is authorised to make the affidavit.

*Rule 15* also relates to corporate affidavits. The rule amends rule 700E (3), which currently provides that, where a corporation applies to have another corporation put into liquidation, the affidavit verifying the statement of claim must be made by an officer of the corporation having knowledge of the facts. Rule 700E (3) as amended requires the person making the affidavit to meet the requirements of *rule 517*.

*Rule 16* substitutes a new *rule 704* and should be read in conjunction with the amendment to rule 705 made by *rule 17*.

Part X of the High Court Rules relates to appeals to the High Court other than appeals under the District Courts Act 1947 or under the Summary Proceedings Act 1957 or appeals by way of case stated. Rule 704 requires a notice of appeal under Part X to be filed and served within 1 month after the date of the decision appealed against.

Rule 705 enables the High Court to extend the time for appealing if the enactment conferring the right of appeal permits the extension or does not limit the time prescribed for appealing or prescribes a longer period for appealing than 1 month.

The new *rule 704* provides that—

- (a) If the statute under which the appeal is brought specifies a time for appealing, the appeal must be brought within that period; or
- (b) In every other case the appeal must be brought within a month after the decision appealed against.

*Rule 17* amends rule 705 by removing the Court's discretion to extend the time for appealing if the enactment that confers the right of appeal prescribes a period longer than a month. The effect of the new *rule 704* and the amendment to rule 705 is to make the enactment definitive.

*Rule 18* amends form 64E. The amendment is consequential on *rule 15*.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 7 October 1999.

These rules are administered in the Ministry of Justice and the Department for Courts.