INTRODUCTION FOR CPR GUIDING DRAFTS

28.06.2019

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1. Background

1.1 Introduction and Summary

These Guiding Drafts are part of the plan of the Government of the Republic of Cyprus, pursuant to the Economic Adjustment Programme (EAP) (ended in March 2016), to reorganize and improve the Cypriot judicial system. The Supreme Court of the Republic, with the support of the Structural Reform Support Service (SRSS) of the European Commission, is undertaking an ambitious programme of reforms to improve the judicial system, focusing in particular on four areas: court operations, judicial training, E-Justice and the reform of the Civil Procedure Rules (CPR).

The current Cypriot rules were based on the Rules of England and Wales that were in force when Cyprus gained independence. There has been minimal revision to the Rules since 1958, with the exception of the 2016 amendments to Orders 25 and 30. The Rules were identified as a major cause of delay and a significant barrier to efficiency in the Cypriot judicial system. The need for radical amendment to these rules was acknowledged as far back as the Pikis Report in 1989.

Following the June 2016 Report on the Operational Needs of the Courts and Other Related Issues, the Supreme Court proposed a full review of the CPR as an important and distinct exercise within the wider reform project. In consultation with the SRSS of the European Commission, a request for technical assistance to support an in-depth review of the Rules was made in March 2017. The Institute of Public Administration (IPA), Dublin, was appointed to undertake this work.

A scoping mission took place in the Supreme Court in Nicosia from 3rd - 4th May 2017. The scoping team included:

- The Rt. Hon. Sir Martin Moore-Bick, Retired Appeal Court Judge, England.
- Ms Finola Flanagan, formerly of the Office of the Attorney General, Ireland.
- Mr Nathy Walsh, IPA, Ireland.
- Eirini Georgiopoulou, Policy Officer, SRSS.

The mission was undertaken to examine the main issues underlying the request to the IPA and to propose terms of reference for a review of the CPR. All the stakeholders consulted during the scoping mission confirmed the urgent need for reform of the existing Rules, which were identified as having a detrimental impact on litigation practice and case management. All stakeholders agreed that the best starting point for any review would be the existing Civil Procedure Rules for England and Wales, and that these rules should be adapted to take account of Cypriot practice, culture and customs.

Following the scoping mission, terms of reference for the project were agreed in December 2017. An Expert Group was appointed to undertake the work, comprising:

- The Rt. Hon. Lord Dyson
- Mr David di Mambro
- Ms Finola Flanagan
- Dr Marcos Dracos
- Dr Michael Mulreany
- Mr Nathy Walsh
- Mr Hugh O'Donnell

Mr George Erotocritou - former Judge of the Supreme Court - has been a key driver of the reform process and provided invaluable assistance to the Expert Group throughout the project. Mr Erotocritou is also the Cypriot Project Manager for all EU funded Court Reform projects.

It was agreed at the outset that the review of the CPR would involve the following three stages:

1. Stage 1 - Expert Review Report.
2. Stage 2 – Guiding and supporting the drafting of Rules of Civil Procedure
3. Stage 3 – Implementation (this will be a matter for the Supreme Court and Rules Committee and is not a part of this project).

The three stages are developed in more detail in section 1.3 below.

1.2 Project Purpose

As before, all stakeholders have agreed that, given the close historical legal ties with the UK, the best starting point for any review is the current version of the Civil Procedure Rules for England and Wales, which should be adapted to take account of Cypriot practice, culture and customs. It was agreed that the review will be carried out by:

- An analysis of the Civil Procedure Rules of England and Wales, with a view to identifying at a high level those elements appropriate for adoption as Rules of Procedure for the Supreme Court of Cyprus.
- Guiding and supporting the Rules Committee in drafting a set of Rules of Civil Procedure in English for presentation to the Supreme Court of the Republic of Cyprus.

Ultimately, the overriding objective of the reform of the CPR is to enable the courts to deal with cases justly and at proportionate cost. This objective will be incorporated at the very beginning of the Rules.

1.3 Stages in the Reform of the Rules of Civil Procedure

The reform of the CPR involves the following three stages.

1. *Stage 1 - Expert Review Report – Rules 1-89*: This stage involved the Expert Group producing a report on the appropriate changes to be made to the Rules. A draft report was forwarded to the Rules Committee on 27 April 2018 for their consideration. It formed the basis for meetings with the Rules Committee on 8 May 2018. The Rules Committee provided comments on the draft report to the Expert Group on 22 May 2018. In the light of those comments, the Expert Group reviewed and amended the draft report for submission to the Rules Committee and public consultation. Public consultations were held in Cyprus from 15 June 2018 to 13 July 2018. Feedback was analysed and discussed with the Rules Committee on 31 July 2018 and agreement reached to proceed to Stage 2.
2. *Stage 2 – Guiding and Supporting the Drafting of a Set of Rules of Civil Procedure for Presentation to the Supreme Court*: it was agreed the Expert Group would first prepare guiding drafts for consideration by the Rules Committee. These drafts were considered a number of times by the Rules Committee, culminating in the accompanying Guiding Drafts.
3. *Stage 3 – Implementation (not covered by this project):* This stage will involve translating the rules into Greek, the provision of appropriate training and briefing and the implementation of the Rules on a transitional basis. Responsibility for this stage rests with the Supreme Court and does not fall within the remit of the work of this current IPA project. Stage 3 will also include certain rules (such as those relating to appeals) which will require legislation.

2. Context of the Project

2.1 Background[1]

Cyprus is undertaking a programme of reforms to improve its judicial system. Problems with that system were highlighted by the Country Report 2017 (European semester) first published after the end of the Economic Adjustment Programme in March 2016 and reiterated in the Country Report 2017. A Country Specific Recommendation, adopted by the European Council in 2016, asked Cyprus to "Increase the efficiency and capacity of the court system and reform its civil procedure law".

The EU Justice Scoreboard[2] shows that while Cyprus's perceived judicial independence is higher than in other Member States, efficiency remains a serious challenge. The length of proceedings and backlogs in civil and commercial cases are amongst the highest in the EU. Lasting inefficiencies in the judicial system have been the subject of national dissatisfaction for some time. Delays of up to four years in Courts of First Instance and further delays of up to five years on appeal have led to a situation where the State, following a decision by the European Court of Human Rights, was required to pay damages to citizens affected by those delays.[3]

In 2014, the Cypriot government started implementing measures aimed at improving the efficiency of the judicial system. A report, prepared under the leadership of Mr George Erotocritou, at the time a Judge of the Supreme Court, explored the major operational needs of the courts and the problems in the judicial system. It was published in June 2016[4] and was provided to the European Commission. A successful request was then made to the SRSS of the European Commission for technical assistance to support an in-depth review of the courts' operations and the development of reform plans. The IPA was selected, with prior agreement of the Supreme Court representatives and the European Commission, to support the Supreme Court of Cyprus to undertake this review. In January 2017, Mr Erotocritou was appointed Director of Court Reform and Judicial Training.

During a scoping mission for the main courts project held in February 2017 serious concerns were identified with the Rules of Civil Procedure. It quickly became very clear that a separate project to reform these Rules was required. A scoping mission for this Civil Procedures Rules project was undertaken from 3-4 May 2017. Terms of reference were agreed in December 2017. An Expert Group, under the leadership of Lord Dyson, visited Cyprus in January 2018 to commence this separate project.

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[1] *Extract IPA document 27/6/17*

[2] *The EU Justice Scoreboard is an information tool which is published annually by the European Commission, which provides objective, reliable and comparable data on the quality, independence and efficiency of national justice systems.*

[3] *Case "Mavronichis v. Cyprus, 47/1997.*

[4] See "Report of the Supreme Court on the Operational Needs of the Courts and Other Related Issues", June 2016, hereafter referred to as the Erotocritou Report 2016.

2.2 The Need for Reform: A Short Summary

The need for radical amendment of these Rules has been acknowledged for a long time, as far back as the Pikis Report in 1989. Attempts to reform the Rules have been made, but they have not been particularly successful. Amendments, in effect since 2016, have been made to Orders 25 and 30.

It was the unanimous view of all the stakeholders consulted that the Rules are a major contributory cause of delay and inefficient litigation practice and case management. That there is an urgent need for a complete reform of the Rules is not in question. The revised Rules must enhance the managing role of the judge in the judicial process and provide for the more efficient use of judicial time. There is also a need to have a permanent committee to continually monitor and review the Rules.

Judges see changes to the Rules as an important element in the process of reform but agree that such changes have to be accompanied by wider structural, administrative, cultural and behavioural reforms, including changes in judicial practice and the manner in which litigation is conducted. There is a consensus that the Rules need to empower judges, that they should be as simple as possible to apply and that they should restrict opportunities to abuse judicial processes. There is consensus that the Rules should facilitate better case management, reduce the number of interlocutory applications and institute pre-action protocols of the kind used in England and Wales. They should provide judges with the power to refuse to grant extensions of time (particularly where extensions are likely to affect the trial date); to refuse to approve consent orders; to allow them greater discretion over matters such as the calling of witnesses, particularly expert witnesses; and to require payment of costs in unsuccessful interlocutory applications (the “pay as you go” principle). In short, the new Rules will allow and encourage judges to manage and control litigation justly, at proportionate cost and more speedily and efficiently than is possible under the existing Rules.

CIVIL PROCEDURE RULES GUIDING DRAFTS

Technical Assistance Project 2018/2019

IPA, Ireland

Supported by the Structural Reform Support Service (SRSS) of the European Commission

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Disclaimer

Any analysis, advice or conclusion by external experts given in the context of the technical assistance shall not be considered as representing an opinion of the European Commission or an assessment under existing mechanisms such as the European Semester. It is also not an interpretation of EU legislation by the European Commission. It should be noted that the Court of Justice of the European Union has the sole jurisdiction to interpret EU legislation after adoption. Any analysis, advice or conclusion given does not prejudice the competences of the European Commission for ensuring the application of the Treaties, and of measures adopted by the institutions pursuant to them, as well as for overseeing the application of Union law under the control of the Court of Justice of the European Union, as provided under article 17 of the TFEU.

The project was funded by the European Union via the Structural Reform Support Programme and implemented by the Institute of Public Administration, Dublin, in cooperation with the European Commission's Structural Reform Support Service (SRSS).

Foreword

I am pleased to enclose Guiding Drafts for new Civil Procedure Rules in Cyprus.

These Guiding Drafts are part of the wider plan of the Government of the Republic of Cyprus pursuant to the Economic Adjustment Programme (EAP) (ended in March 2016), to reorganize and improve the Cypriot judicial system.

The Supreme Court of the Republic, with the support of the Structural Reform Support Service (SRSS) of the European Commission, is undertaking an ambitious programme of reforms to improve the judicial system, focusing in particular on four areas: court operations, judicial training, E-Justice and the reform of the Civil Procedure Rules.

In pursuit of this objective, the Supreme Court appointed Mr George Erotocritou - former Judge of the Supreme Court – as Director of Court Reform to direct and manage the reform process.

Following the June 2016 Report on the Operational Needs of the Courts and Other Related Issues, the Supreme Court proposed a full review of the CPR as an important and distinct exercise within the wider reform project. In consultation with the SRSS of the European Commission, a request for technical assistance to support an in-depth review of the Rules was made in March 2017. The Institute of Public Administration (IPA), Dublin, was appointed to undertake this work.

Following a scoping mission, terms of reference for the review project were agreed in December 2017. An Expert Group was convened to advise on the new rules and I was appointed to lead the review project and Chair this group.

The Expert Group worked closely with a newly convened Cypriot Rules Committee and engaged in a wide public consultation process. The Supreme Court appointed Mrs Persefoni Panayi, Justice of the Supreme Court as President of the Rules Committee, which comprised representatives from the various strands of the Cypriot Justice System.

The Expert Group is grateful to Justice Panayi and the Rules Committee for their thorough and detailed engagement and the insights and wise counsel that they have provided to enable the Expert Group to develop these guiding drafts. The Expert Group is also very grateful to Mr Erotocritou for his time and commitment to this Project.

On behalf of the Expert Group, I would also like to thank the Supreme Court, the Bar Association of Cyprus, the SRSS of the European Commission and all those who participated in and contributed to the project and the consultation process.

In preparing these Guiding Draft Rules, the Expert Group has sought to ensure they meet the needs of the Cypriot Courts and the key stakeholders in the judicial system. The fundamental objective of the new rules will be to enable the courts to deal with cases justly, at proportionate cost and more speedily and efficiently than is possible under the existing Rules. This objective will be achieved by the introduction of a reformed civil procedure system in which the judges will be able to take control of case management.

We know these Guiding Drafts will be further refined and developed as they are steered by the Rules Committee and Supreme Court through various processes of consultation and implementation.

We wish all involved every success in this endeavor.

The Rt. Hon. Lord Dyson

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REPUBLIC OF CYPRUS

Civil Procedure Rules Guiding Drafts

Drafting Note
Throughout this document, 'Drafting Notes' appear. The text is in bold, boxed, and headed 'Drafting Note'. These are not part of the rules but rather are notes for the readers of these Guiding Draft Rules.

Part 1

Overriding objective

1.1 Citation

(1) These Rules of Court may be cited as the Civil Procedure Rules of 2019.

1.2 The overriding objective

(1) These rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.

(2) Dealing with a case justly and at proportionate cost includes, so far as is practicable:

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

1.3 Application by the court of the overriding objective

(1) The court must seek to give effect to the overriding objective when it:

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

unless any enactment or rule, provides otherwise.

1.4 Duty of the parties

(1) The parties are required to help the court to further the overriding objective.

1.5 Court's duty to manage cases

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

(2) Active case management includes:

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to use an Alternative Dispute Resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;

(h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
(i) dealing with as many aspects of the case as it can on the same occasion;
(j) dealing with the case without the parties needing to attend at court;
(k) making use of technology; and
(l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

Part 2

Application and interpretation of the rules

2.1 Application of the Rules

(1) These rules apply to all proceedings in the District Courts when exercising civil jurisdiction.

(2) Except to the extent that any enactment, or rule provides otherwise, these rules do not apply to proceedings before other courts, or to proceedings before the District Court when it does not exercise civil jurisdiction.

2.2 The glossary

(1) The glossary in 2.3 is a guide to the meaning of certain legal expressions used in the rules, but is not to be taken as giving those expressions any meaning in the rules which they do not have in the law generally.

2.3 Interpretation

(1) In these rules unless provided otherwise or the context otherwise requires:

"Alternative Dispute Resolution" means the procedure for settling disputes, including negotiation, mediation or arbitration, without litigation;

''bailiff'' means any person lawfully authorised to execute the process of the court;

''cause'' includes any claim or other proceeding between a claimant and defendant;

"child" means a person under the age of eighteen years but does not include a married person who is under that age;

Drafting Note
The Expert Group notes that the Rules Committee is of the opinion that for the sake of clarity a definition of "claim" should be in the CPR. However, the Expert Group is reluctant to define a claim as it has a very wide meaning and indeed it should have the widest possible meaning. Not defining it allows for it to have this wide meaning. The natural and ordinary meaning of a claim can be read widely, it includes e.g. assertion of one party against another under a pre-action protocol. To define 'claim' here would narrow the meaning of it.

"claimant" means a person who makes a claim;

''counterclaim'' means a claim brought by a defendant in response to the claimant's claim which is included in the same proceedings as the claimant's claim;

''court'' means the District Court having jurisdiction and competence under the law for the time being in force, and includes any one or more of the judges thereof whether sitting in court or in chambers;

“court officer” means the Registrar or a member of the court staff (including staff of the court registry) duly authorised;

“court order” includes an order from the court in any form whatsoever including a direction;

‘‘days’’ does not mean clear days unless expressly stated to be such;

“defendant” means a person against whom a claim is made;

“filing”, in relation to a document, means delivering it to the appropriate court registry and being accepted by the registry by being stamped as ‘‘filed’’;

“judge” means a judge of any court in so far as he or she has jurisdiction or competence under the law for the time being in force;

“advocate” means, a person entitled to practice law in the Republic pursuant to the Advocates Law Cap. 2;

‘‘matter’’ includes every proceeding in court not in a cause;

"Registrar " means the registrar of the court and includes an assistant registrar attached to the court;

“personal injuries” includes any disease and any impairment of a person's physical or mental condition;

“Personal Representative” means the executor or administrator of the deceased’s estate or the administrator of the estate of the incapacitated person appointed to act as such;

“Republic” means the Republic of Cyprus;

“Set Off” means a pleading by way of defence to the whole or part of a Claimant’s claim, whereby the Defendant claims a liquidated amount.

“statement of case”:

(a) means any document including a claim form, particulars of claim where these are not included in a claim form, defence, Part 8 claim, or reply to defence; and any other document used in the claim or any document of such nature.

(b) includes any further information given in relation to them voluntarily or by court order.

‘‘vacation’’ means the interval between sittings of the Supreme Court as prescribed in Part 59;

(2) The forms in the Appendices shall be used where applicable with such variations as may be necessary to suit the case.

Drafting Note in relation to 2.4 Court Staff
The Expert Group believes the recommendation to give additional powers to registrars is a key recommendation that would make the Cypriot system more efficient.

Expanding the powers of registrars helps to reduce the workload on judges and to speed up litigation. The Expert Group recommends that more powers be given to registrars and notes the comments of the Rules Committee that a new statutory and administrative framework might be required to ensure some of the additional powers can be given to registrars.

2.4 Court staff

(1) Where these rules require or permit the court to perform an act of a formal or administrative character, that act may be performed by a court officer.

(2) A requirement that a court officer carry out any act at the request of a party is subject to the payment of any fee required by a fees order for the carrying out of that act.

2.5 Court documents to be sealed

(1) The court must seal the following documents on issue:
- (a) the claim form (The reference to the claim form includes proceedings commenced under both Part 7 and Part 8); and
- (b) any other document which a rule requires it to seal.

(2) The court may place the seal on the document:
- (a) by hand; or
- (b) by printing a facsimile of the seal on the document whether electronically or otherwise.

(3) A document purporting to bear the court's seal shall be admissible in evidence without further proof.

2.6 Court's discretion as to where it deals with cases

(1) The court may deal with a case at any place that it considers appropriate subject to s. 59 of the Courts of Justice Law 14/60.

Drafting Note in relation to 2.7
The Expert Group notes the comment of the Rules Committee in relation to 2.7 that the provision should accord with the relevant provisions in the Interpretation Law, Cap.1. This is a matter for Stage 3.

2.7 Time

(1) This rule shows how to calculate any period of time for doing any act which is specified:
- (a) by these rules; or
- (b) by a judgment or order of the court.

(2) A period of time expressed as a number of days shall be computed as clear days.

(3) In this rule "clear days" means that in computing the number of days:
- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

(4) Guidance Note:

Examples

(a) Notice of an application must be served at least 3 days before the hearing.
An application is to be heard on Friday 20 October.
The last date for Service is Monday 16 October.

(b) The court is to fix a date for a hearing.
The hearing must be at least 28 days after the date of notice.
If the court gives notice of the date of the hearing on 1 October, the earliest date for the hearing is 30 October.

(c) Particulars of claim must be served within 14 days of Service of the claim form.
The claim form is served on 2 October.
The last day for Service of the particulars of claim is 16 October.

(d) Where the specified period:
(i) is 5 days or less; and
(ii) includes:
(iii) a Saturday or Sunday; or
(iv) a Public Holiday,
that day does not count.
Example
Notice of an application must be served at least 3 days before the hearing.
An application is to be heard on Monday 20 October.
The last date for Service is Tuesday 14 October.

(e) When the period specified:
(i) by these rules; or
(ii) by any judgment or court order,
for doing any act at the registry ends on a day on which the office is closed, that act shall be in time if done on the next day on which the court office is open.

2.8 Dates for compliance to be calendar dates and to include time of day

(1) Where the court gives a judgment, order or direction which imposes a time limit for doing any act, the last date for compliance must, wherever practicable:
(a) be expressed as a calendar date; and
(b) include the time of day by which the act must be done.

(2) Where the date by which an act must be done is inserted in any document, the date must, wherever practicable:
(a) be expressed as a calendar date; and
(b) include the time of day by which the act must be done.

2.9 Meaning of "month" in judgments, etc.

(1) In its application to these rules, the term "month" where it occurs in any judgment, order, direction or other document in proceedings before the District Court, means a calendar month, unless the context otherwise requires.

2.10 Time limits may be varied by parties

(1) Unless these rules provide otherwise or the court orders otherwise, the time specified by a rule or by the court for a person to do any act may be varied by the written agreement of the parties save that the parties may not vary by agreement

(a) the return of a pre-trial check list under rule 30.4;
(b) the trial;
(c) the trial period; or
(d) if the court specifies the doing of any act by a party with a sanction.

(2) Where parties have extended a time limit by agreement, the party for whom time has been extended must advise without delay the registrar of the Court in which the case has been commenced.

Part 3

The court’s case and costs management powers

Section I: The court’s case and costs management powers

3.1 The court's general powers of management

(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or by any other enactment or any powers it may otherwise have.

(2) Except where these rules provide otherwise, the court may:

(a) extend or shorten the time for compliance with any rule or court order (even if an application for extension is made after the time for compliance has expired);

(b) adjourn or bring forward a hearing;

(c) require a party or a party's advocate to attend the court;

(d) hold a hearing and receive evidence by using any method of direct oral and visual communication provided all persons participating in the hearing may see and hear the others at any given time;

(e) direct that part of any proceedings (such as a Counterclaim) be dealt with as separate proceedings;

(f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;

(g) consolidate proceedings;

(h) try two or more claims on the same occasion;

(i) direct a separate trial of any issue;

(j) decide the order in which issues are to be tried;

(k) exclude an issue from consideration;

(l) dismiss or give judgment on a claim after a decision on a preliminary issue;

(m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including taking steps with the aim of helping the parties settle the case.

(3) When the court makes an order, it may:

(a) make it subject to conditions, including a condition to pay a sum of money into court; and

(b) specify the consequence of failure to comply with the order or a condition.

(4) Where the court gives directions it will take into account whether or not a party has complied with any relevant Pre-action Protocol.

(5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule or a relevant pre-action protocol.

(6) When exercising its power under paragraph (5) the court must have regard to:

(a) the amount in dispute; and

(b) the costs which the parties have incurred or which they may incur and

(c) whether the party ordered to pay a sum of money into court is impecunious.

(7) Where a party pays money into court following an order under paragraph (3) or (5), the money shall be security for any sum payable by that party to any other party in the proceedings.

(8) A power of the court under these rules to make an order includes a power to vary or revoke the order.

(9) The court may contact the parties from time to time in order to monitor compliance with directions. The parties must respond promptly to any such enquiries from the court.

(10) The Court has additional powers in Section II: Pre-Action Protocols of this Part.

3.2 Court's power to make order of its own initiative

(1) Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(2) Where the court proposes to make an order of its own initiative:

(a) it shall give any person likely to be affected by the order an opportunity to make representations; and

(b) where it does so it must specify the time by and the manner in which the representations must be made.

(3) Where the court proposes:

(a) to make an order of its own initiative; and

(b) to hold a hearing to decide whether to make the order,

it must give each party likely to be affected by the order at least 3 days' notice of the hearing.

3.3 Power to strike out a statement of case

(1) In this rule and rule 3.4, reference to a statement of case includes reference to part of a statement of case.

(2) The court may strike out a statement of case if it appears to the court:

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule or court order.

(3) When the court strikes out a statement of case it may make any consequential order it considers appropriate.

(4) Where:

(a) the court has struck out a claimant's statement of case;

(b) the claimant has been ordered to pay costs to the defendant; and

(c) before the claimant pays those costs, the claimant starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out,

the court may, on the application of the defendant, stay that other claim until the costs of the first claim have been paid.

(5) Paragraph (2) does not limit any other power of the court to strike out a statement of case under any law or rule.

(6) An application for summary judgment under Part 24 may be issued and heard at the same time as an application under this rule

3.4 Judgment without trial after striking out in specific cases

(1) This rule applies where:

(a) the court makes an order which includes a term that the statement of case of a party shall be struck out if the party does not comply with the order; and

(b) the party against whom the order was made does not comply with it.

(2) A party may obtain judgment with costs by filing a request for judgment if:

(a) the order referred to in paragraph (1)(a) relates to the whole of a statement of case; and

(b) where the party wishing to obtain judgment is the claimant, the claim is for:
  (i) a specified amount of money;
  (ii) an amount of money to be decided by the court;
  (iii) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
  (iv) any combination of these remedies.

(3) Where judgment is obtained under this rule in a case to which paragraph 2(b)(iii) applies, it will be judgment requiring the defendant to deliver the goods, or (if the defendant does not do so) pay the value of the goods as decided by the court (less any payments made).

(4) The request must state that the right to enter judgment has arisen because the court's order has not been complied with.

(5) A party must make an application in accordance with Part 23 if they wish to obtain judgment under this rule in a case to which paragraph (2) does not apply.

3.5 Setting aside judgment entered after striking out

(1) A party against whom the court has entered judgment under rule 3.4 may apply to the court to set the judgment aside.

(2) An application under paragraph (1) must be made not more than 14 days after the judgment has been served on the party making the application.

(3) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside the judgment.

(4) If the application to set aside is made for any other reason, rule 3.6 (relief from sanctions) shall apply.

3.6 Relief from sanctions

(1) Where a party has failed to comply with a rule or court order, any sanction for failure to comply imposed by the rule or court order has effect unless the party in default applies for and obtains relief from the sanction.

(2) On an application for relief from any sanction imposed for a failure to comply with any rule or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, having regard to the overriding objective, including the need:
  (a) for litigation to be conducted efficiently and at proportionate cost; and
  (b) to enforce compliance with rules and orders.

(3) An application for relief must be supported by evidence.

Drafting Note on 3.7 Consolidation of proceedings before trial

3.1(2) (g) provides the power of consolidation of proceedings in a general way. The Expert Group recommends keeping 3.1 (2) (g) and omitting 3.7. The new rules should not be overly prescriptive, discretion is built into the rules through the overriding objective and the courts case management powers. The Expert Group finds the words of 3.7 too restrictive.

For example, it is unclear whether 3.7 allows for consolidation on a point of law i.e. where there are two proceedings with a common point of law. The court should have the discretion to consolidate in these circumstances so as to bring the two together or try one after the other with the same judge.

3.7 Consolidation of proceedings before trial

(1) If several proceedings are pending in the Court and the proceedings:

(a) involve some common question of law or fact; or

(b) are the subject of claims arising out of the same transaction or series of transactions;

any party to any of the proceedings may apply to the Court for an order that the proceedings be:

(i) consolidated; or

(ii) heard together; or

(iii) heard immediately after one another; or

(iv) stayed until after the determination of any of the other proceedings.

3.8 General power of the court to rectify matters where there has been an error of procedure

(1) Where there has been an error of procedure such as a failure to comply with a rule:

(a) the error does not invalidate any step taken in the proceedings unless the court so orders; and

(b) the court may make an order to remedy the error.

(2) A court will not make an order invalidating any step unless it is satisfied that:

(a) the error of procedure was serious; and

(b) such an order is necessary in the interests of justice taking into account the overriding objective.

Section II: Pre-Action Protocols - Pre-Action Conduct

3.9 General

(1) Approved pre-action protocols for specific areas of practice are being issued with this Part. Other pre-action protocols may subsequently be issued.

(2) Pre-action protocols outline the steps which parties should take to seek information and to provide information to each other about a prospective legal claim.

(3) The objectives of pre-action protocols are:

(a) to encourage the exchange of early and full information about the prospective legal claim;

(b) to enable parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings;

(c) to support the efficient management of proceedings under the Rules where litigation cannot be avoided.

3.10 Compliance with Protocols

(1) The Court may treat the standards set out in protocols as the normal reasonable approach to pre-action conduct. The Court will expect all parties to have complied substantially with the terms of an approved protocol. If proceedings are issued the Court may take into account the failure of any party to comply with a pre-action protocol when deciding whether or not to make an order under Part 28 (The Court's powers of management) or Part 39 (Costs).

(2) The Court will expect all parties to have complied, as far as reasonably practicable, with the terms of an approved protocol. If proceedings are issued and parties have not complied with this Part or a specific protocol, the Court will decide whether sanctions should be applied. The court is not likely to be concerned with minor infringements of the Part or protocol. The Court may look at the effect of non-compliance on the other party when deciding to impose sanctions.

3.11 Non-Compliance with Part or Protocol

(1) Parties will not be expected to observe this Part:

(a) in urgent claims;

(b) where a period of limitation is about to expire and the period between the expiration of the limitation and the date on which the claimant instructs an advocate to act on the claimant's behalf is too short to allow for compliance with this Part;

(c) where, for other good and sufficient reason, it can be shown that there need not be compliance and the reasons for non-compliance are set out fully in the claim form or statement of case.

(2) In a case where the limitation period is about to expire, the claimant's advocate should give as much notice of his or her intention to issue proceedings as is practicable and, in appropriate cases, the Court may be invited to extend the time for service of the claimant's supporting documents, if any, and/or for service of any defence or, alternatively, to stay proceedings while the recommended steps are followed.

(3) Where, in the opinion of the Court, non-compliance has led to commencement of proceedings which might otherwise not have needed to be commenced, or has led to the incurring of costs which might otherwise not have been incurred, the Court may make such order as it deems just and expedient including:

(a) an order that the party at fault pay the whole or part of the costs of the proceedings or of the other party or parties;
(b) an order that the party at fault pay those costs on an indemnity basis.

(4) The Court will exercise its powers under rule 3.11 (3) with the objective of placing the innocent party in no worse a position than the innocent party would have been in had there been compliance with the Part or protocol.

3.12 Examples of Non-Compliance

(1) A claimant may be found to have failed to comply with a protocol where, for example, the claimant fails:
(a) to provide sufficient information, or
(b) to follow the procedure required by the protocol.

(2) A defendant may be found to have failed to comply with a protocol where, for example, the defendant fails:
(a) to make a preliminary response to the letter of claim within the time fixed for that purpose by the relevant protocol;
(b) to make a full response within the time fixed for that purpose by the relevant protocol; or
(c) to disclose documents required to be disclosed by the relevant protocol.

3.13 Pre-Action Conduct in Cases not Covered by a Protocol

(1) In cases not covered by an approved protocol, the court will expect the parties, in accordance with the overriding objective and the matters referred to in Part 1.2 (2) (a), (b) and (c) of the Rules, to act reasonably in exchanging information and documents relevant to the claim and generally in trying to avoid litigation.

(2) Parties to a potential dispute should follow a reasonable procedure, suitable to their particular circumstances, and which is intended to avoid litigation. The procedure should not be regarded as a prelude to inevitable litigation. Such procedure should normally include:
(a) the claimant's writing to give details of the claim;
(b) the defendant's acknowledgement of the claim letter promptly;
(c) the defendant's giving a detailed written response within a reasonable time; and
(d) the parties conducting genuine and reasonable negotiations with a view to settling the claim economically and without court proceedings.

(3) The claimant's letter should:
(a) give sufficient but concise details to enable the recipient to understand and investigate the claim without the need for extensive further information;
(b) enclose copies of the essential documents on which the claimant relies;
(c) ask for a prompt acknowledgement of the letter, followed by a full written response within a stated period that is reasonable; (For many claims, a reasonable period for a full response may be one month);
(d) state whether court proceedings will be issued if the full response is not received within the stated period;
(e) identify and ask for copies of any essential documents, not in the claimant's possession, which the claimant wishes to see;
(f) state (if this is so) that the claimant wishes to enter into mediation or another alternative method of dispute resolution; and

(g) draw attention to the court's powers to impose sanctions for failure to comply with this Part and, if the recipient is likely to be unrepresented, enclose a copy of the Part.

(4) The defendant should acknowledge the claimant's letter in writing within 14 days of receiving it. The acknowledgement should state when the defendant will give a full written response. If the time for this is longer than the period stated by the claimant, the defendant should give reasons why a longer period is needed.

(5) The defendant's full written response should, as appropriate:

(a) accept the claim in whole or in part and make proposals for settlement; or

(b) state that the claim is not accepted.

(6) If the defendant does not accept the claim or part of it, the response should:

(a) give detailed reasons why the claim is not accepted, identifying which of the claimant's contentions, if any, are accepted and which are in dispute;

(b) enclose copies of the essential documents on which the defendant relies;

(c) enclose copies of documents asked for by the claimant, or explain why they are not enclosed;

(d) identify and ask for copies of any further essential documents, not in the defendant's possession, which the defendant wishes to see; and the claimant should provide these within a reasonable time or explain in writing why the claimant is not doing so;

(e) state whether the defendant is prepared to enter into mediation or another alternative method of dispute resolution.

(7) If the claim remains in dispute, the parties should promptly engage in appropriate negotiations with a view to settling the dispute and avoiding litigation.

(8) Documents disclosed by a party in accordance with this Part may not be used for any purpose other than resolving the dispute, unless the other party agrees.

(9) The resolution of some claim, but by no means all, may need help from an expert. If any expert is needed, the parties should, wherever practicable and to save expense, engage an agreed expert.

(10) Parties should be aware that, if the matter proceeds to litigation, the court may not allow the use of an expert's report, and that the cost of it is not always recoverable.

3.14 Commencement

(1) The Court will take compliance or non-compliance with a relevant protocol into account where the claim was started after the coming into force of that protocol but will not do so where the claim was started before that date.

(2) Parties in a claim started after a relevant protocol came into force, and who have, by work done before that date, achieved the objectives sought to be achieved by the requirements of that protocol, need not take any further steps to comply with those requirements. They will not be considered to have failed to comply with the protocol for the purposes of 3.11 and 3.12 of this Part.

3.15 Negotiations/Settlement

(1) Parties and their advocates are encouraged to enter into appropriate negotiations with a view to settling their dispute and avoiding litigation. A protocol will not specify when or how this might be done but parties should bear in mind that the courts increasingly take the view that litigation should be a last resort, and that parties should take all reasonable steps to resolve their dispute amicably before a claim is issued.

3.16 Service of Communications

(1) A claimant's letter, the defendant's response and any other communication in writing in compliance with this protocol may be personally delivered to the intended recipient or may be sent by post. This, however, is without prejudice to the parties agreeing on some other mode of transmission.

(2) Where the claimant's letter or the defendant's response or other communication is sent by post, it shall be deemed to have been received by the intended recipient on the 10th day after posting.

Section III: Protocol 1 - Claims for a Specified Sum of Money

3.17 Introduction

(1) This protocol has been kept deliberately simple to promote ease of use and general acceptability. It applies where the only claim (not taking into account interest and costs) is for a specified sum of money, but it does not apply to claims for damages for negligence arising out of an accident.

3.18 Letter of claim

(1) The claimant must send to the proposed defendant a letter of claim which should contain a clear summary of the facts on which the claim is based together with any relevant statement of account and the essential documents on which the claimant relies to support the claim. A recommended letter of claim is at Appendix I to this Part.

(2) The letter must also state:

- (a) the amount due and owing to the claimant;
- (b) where the claimant is claiming interest;
  - (i) the entitlement to interest (whether by agreement or otherwise);
  - (ii) the amount of interest due as at the date of the letter;
  - (iii) the rate at which interest is calculated; and
  - (iv) the rate and the amount per diem at which interest accrues after the date of the letter.
- (c) the amount of costs which the claimant claims.

3.19 Letter in response

(1) The defendant should reply within 14 calendar days of the date of receipt of the letter indicating whether he or she admits the claim by filling out the Defendant's Form in Appendix 2. If there is no reply the claimant is entitled to issue proceedings.

(2) If the claim is not admitted, the defendant should give detailed reasons why the claim is not admitted and enclose copies of the essential documents in the defendant's possession on which the defendant relies. If the defendant relies on documents which are not in the defendant's possession, the defendant should identify those documents.

(3) If the claim is admitted, the defendant should provide proposals for the repayment of the debt, give full particulars of the defendant's income and assets and send any documents that support the particulars, in order to enable the claimant to evaluate the proposal properly.

(4) The claimant is not obligated to accept any proposal made by the defendant. If the claimant rejects the proposal, the claimant should notify the defendant of the rejection and the reasons for it and of the claimant's intention to commence proceedings.

(5) The Court will expect the parties to act reasonably in making and considering proposals.

(6) The admission of the claim with or without an agreement on terms of payment, of course, does not preclude the claimant from issuing a claim and obtaining judgment.

Appendix 1
Letter of Claim

To
Defendant
Dear
Re: Claimant's Full Name
Claimant's Full Address
We are instructed by the above named to claim against you the following sums (set out details)
Our instructions are that you owe our client the said sums because of the following: (set out a summary of the facts on which the claim is based and enclose copies of relevant documents)
You are required to respond within 14 calendar days from the date of receipt of this letter by filling out the form attached and returning it to (specify). Failure to do so will result in legal proceedings being commenced against you without further notice.
Yours faithfully

Appendix 2
Defendant's Form

Do you admit owing the sum claimed: Yes/No
If 'No' state the reasons why and provide the essential documentation to support your reasons:
If 'Yes' state your proposals for the repayment of the debt providing full particulars of your income and assets and enclosing any relevant documents.
If you are willing to meet to discuss these proposals, please contact**……** to arrange a convenient date and time to discuss same.
NOTE: IF YOU DO NOT RESPOND, LITIGATION WILL BE COMMENCED AGAINST YOU WITHOUT FURTHER NOTICE AND YOU MAY SUFFER ADVERSE CONSEQUENCES IN COSTS AND/OR BY ANY DIRECTION OR ORDER THE COURT SEES FIT TO MAKE AGAINST YOU.

Section IV: Protocol 2 - Road Traffic Accidents and Personal Injury Claims

3.20 General

(1) The aims of the pre-action protocols are:

(a) to foster more pre-action contact between the parties, to encourage better and earlier exchange of information and facilitate better pre-action investigation by both sides;

(b) to put the parties in a position where they may be able to settle cases fairly and early without litigation;

(c) to enable proceedings to run in accordance with the Court's timetable and efficiently, if litigation does become necessary.

(2) This protocol is designed primarily for road traffic accidents that include property damage and personal injury. However, the substance of the protocol should be followed for all personal injury cases. Further, parties are urged to follow the substance of the protocol so far as it may be applicable to claims arising out of road traffic accidents where there is no personal injury.

(3) The Court will treat the standards set in this protocol as the normal, reasonable approach to pre-action conduct. If proceedings are issued, the Court will decide whether non-compliance with the protocol should merit adverse consequences.

(4) If the Court has to consider the question of compliance after proceedings have begun, it will not be concerned with minor infringements, e.g. failure by a short period to provide relevant information. One minor breach will not exempt the 'innocent' party from following the protocol. The Court will look at the effect of non-compliance on the other party when deciding whether to impose sanctions.

(5) However, the timetable and the arrangements for disclosing documents and obtaining expert evidence may need to be varied to suit the circumstances of the cases. Where one or both parties consider the details of the protocol are not appropriate to the case, and proceedings are subsequently issued, the Court will expect an explanation as to why the protocol has not been followed or has been varied.

3.21 The Letter before Claim

(1) The specimen letter of claim at Appendix A will usually be sent to the individual defendant. In practice, the defendant may have no personal financial interest in the financial outcome of the claim/dispute because the defendant is insured. Court imposed sanctions for non-compliance with the protocol may be ineffective against an insured. This is why the protocol emphasises the importance of passing the letter of claim to the insurer and the possibility that the insurance cover might be affected. If an insurer receives the letter of claim only after some delay by the insured, it would not be unreasonable for the insurer to ask the claimant for additional time to respond.

(2) The purpose of a letter of claim is for the claimant to provide sufficient information for the defendant to assess liability. Sufficient but concise information should also be provided to enable the defendant to estimate the likely amount of the claim.

Reasons for Early Issue

(3) The protocol recommends that a defendant be given 28 days to investigate and respond to a claim before proceedings are issued. This may not always be possible, particularly where a claimant consults an advocate only close to the end of any relevant limitation period. In these circumstances, the claimant's advocate should give as much notice of the intention to issue proceedings as is practicable and the parties should consider whether the court might be invited

to extend the time for service of the claimant's supporting documents and for service of any defence, or alternatively, to stay the proceedings while the recommended steps are followed.

(4) *Status of Letters of Claim and Response:* Letters of claim and response are not intended to have the same status as a statement of case in proceedings. Matters may come to light as a result of investigation after the letter of claim has been sent, or after the defendant has responded, particularly if disclosure of documents takes place outside the recommended 28 day period. These circumstances may mean that the pleaded case of one or both parties is presented slightly differently than in the letter of claim and response. It would not be consistent with the spirit of the protocol for a party to take a point on this in the proceedings, provided that there was no obvious intention by the party who changed his or her position to mislead the other party.

3.22 Disclosure of Documents

(1) The aim of the early disclosure of documents by the defendant is not to encourage 'fishing expeditions' by the claimant, but to promote an early exchange of relevant information to help in clarifying or resolving issues in dispute. The claimant's advocate can assist by identifying in the letter of claim or in a subsequent letter, the particular categories of documents which he or she considers are relevant.

3.23 Experts

(1) The protocol encourages joint selection of, and access to, experts. Most frequently this will apply to the medical expert but, on occasions, it may involve other experts on the issue of liability. The protocol promotes the practice of the claimant's obtaining a medical report and disclosing it to the defendant who then asks questions and/or agrees it and does not obtain his or her own report.

(2) The protocol provides for nomination of the expert by the claimant in personal injury claims because of the early stage of the proceedings and the particular nature of such claims. If proceedings have to be issued, a medical report must be attached to the proceedings. However, if necessary, after proceedings have commenced and, with the permission of the Court, the parties may obtain further expert reports. It will be for the Court to decide whether more than one expert's evidence should be admitted or whether the costs of more than one expert's report should be recoverable.

3.24 Letter of Claim

(1) The claimant must send to the proposed defendant two copies of a letter of claim as soon as sufficient information is available to substantiate a realistic claim and whether or not he or she is able to address issues of quantum in detail. One copy of the letter is for the defendant, the second for passing on to his or her insurers.

(2) The letter shall contain:

(a) a clear summary of the facts on which the claim is based;

(b) an indication of the nature of any injuries suffered;

(c) information about the place of treatment and the attending physician;

(d) the date(s) of treatment;

(e) the extent of injuries as known at the date of the letter;

(f) details of property damage;

(g) an indication of the quantum of the overall claim with particulars of same and supporting documents if information on quantum is available; and

(h) any other relevant information specific to the individual case.

(3) Advocates are recommended to use a standard format for such a letter. An example is at Appendix A but this may be amended to suit the particular case.

(4) Sufficient information should be given in order to enable the defendant's insurer/advocate to commence investigations and at least put a broad valuation on the proposed claim.

(5) If the claimant has information relating to the identity of the defendant's insurers, the claimant may also send a copy of the letter of claim directly to the insurers together with a letter to the insurers enquiring as to their position with respect to the prospective claim. Where the claimant intends, in road traffic accidents, to institute proceedings against the insurers, the claimant may, in the letter to the insurers, give them any notice of intention to do so as required by law.

3.25 Letter in Response

(1) The defendant or the defendant's insurers will have 28 days (or such longer period as may be agreed) from the date of receipt of the letter of claim to investigate the claim and reply to the letter, stating whether liability is accepted and if not, giving reasons for denial of liability including any alternative version of events relied upon. If there is no reply by the defendant or insurers within 28 days, the claimant is entitled to issue proceedings.

(2) If the defendant or the defendant's insurers require more time to investigate the claim and reply fully to the letter of claim, the parties may of course agree to extend the time. Parties are expected to act reasonably in requesting and/or agreeing to further time.

(3) Where liability is admitted, the presumption is that the defendant will be bound by this admission for all claims.

(4) Where it is the intention of the claimant to institute proceedings against the insurers under the applicable law, the claimant is reminded of the requirement to give to the insurers written notice within the time limit specified in the applicable law.

3.26 Documents

(1) If the defendant denies liability, the defendant should enclose with the letter of reply, documents in the defendant's possession which are material to the issues between the parties, and which would be likely to be ordered to be disclosed by the Court, either on an application for pre-action disclosure, or on disclosure during legal proceedings.

(2) Where the defendant admits some liability, but alleges contributory negligence by the claimant, the defendant should give reasons supporting those allegations and disclose any documents which are relevant to the issues in dispute. The claimant should respond to the allegations of contributory negligence before proceedings are issued.

3.27 Special Damages

(1) Where the claimant has not addressed the question of quantum in the letter of claim, the claimant should send to the defendant, as soon as the claimant has sufficient information on which to compute quantum, a Schedule of Damages with supporting documents, particularly where the defendant has admitted liability.

Letter of Claim

To
Defendant
Dear
Re: Claimant's Full Name
Claimant's Age
Claimant's Full Address
We are instructed by the above named to claim damages in connection with an accident which occurred at (place of accident) on the day of
Please confirm the identity of your insurers. Please note that the insurers will need to see this letter as soon as possible and it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them.
The circumstances of the accident are:
(Brief outline)
The reason why we are alleging fault on your part is:
(Give a concise statement of how the accident is alleged to have occurred)
A description of our clients' injuries is as follows:
(Brief outline)
Our client received treatment for the injuries at (*name and address of hospital or clinic or doctor's office etc. and name of attending physician, if known*).
Our client is still suffering from the effects of the injuries.
He or she is employed as (*occupation*) and has had the following time off work (*dates of absence*). His or her income is (*insert if known*).
[Or if you are our client's employers, please provide us with the usual earnings details which will enable us to calculate his or her financial loss.]
[We are obtaining a police report and will let you have a copy of the same upon your undertaking to meet half the cost of obtaining the report.]
[Where the claimant's loss can be calculated: He or she is claiming €_____ in damages (give details identifying the claims for property damage, if any, the claims for other special damage with particulars of same and the claim for general damages with appropriate particulars.]
We have also sent a letter of claim to (*name and address*) and a copy of that letter is attached. We understand their insurers are
(name, address of insurer if known).
At this stage of our enquiries we would expect the documents contained in parts (*insert appropriate parts of standard disclosure list*) to be relevant to this action.
A copy of this letter is attached for you to send to your insurers.
Finally, in accordance with the relevant pre-action protocol, we expect a reply to this letter within 28 days by yourselves or your insurers.
Yours faithfully

Part 4

Forms

Drafting Note: **For stage 3**

Part 5

Court Documents

5.1 Access to information

(1) Any person upon payment of the proper fee may obtain any information which can be derived from inspection of the cause book in any cause or matter of which he or she can give the reference number and the general description, and the Registrar having custody of the cause book shall give him or her a certificate (which shall be admissible in evidence) specifying the dates and general description of the several proceedings which have been taken in such cause or matter.

5.2 Right to inspect or be furnished with office copies of all documents and proceedings

(1) Any party to a cause or matter is entitled as of right to inspect or be furnished with office copies of all documents and proceedings in such cause or matter upon payment of the proper fee.

Νοείται ότι για την παροχή αντιγράφου της δικαστικής απόφασης τόσο σε δακτυλογραφημένη όσο και σε ηλεκτρονική μορφή (εφόσον ο αιτητής προμηθεύει τη διασκέτα) δεν καταβάλλεται δικαστικό τέλος.

5.3

(1) Οποιοδήποτε πρόσωπο που δεν είναι διάδικος σε θέμα ή ζήτημα, μπορεί να υποβάλει αίτηση για γενική έρευνα ή επιθεώρηση των βιβλίων καταχωρίσεων ή του φακέλου της υπόθεσης ή για τη χορήγηση επίσημου αντιγράφου, πρακτικού, εγγράφου ή τεκμηρίου που βρίσκεται στο φάκελο. Στην αίτηση παρατίθενται λεπτομερώς οι λόγοι για τους οποίους αυτή υποβάλλεται.

(2) Η αίτηση εξετάζεται από τον Πρόεδρο του Δικαστηρίου στο οποίο φυλάσσονται τα βιβλία ή ο φάκελος της υπόθεσης ή το Δικαστήριο ή το Δικαστή ενώπιον του οποίου εκκρεμεί η υπόθεση, ανάλογα με την περίπτωση και άδεια μπορεί να δοθεί υπό όρους που θα θεωρηθούν κατάλληλοι. Σε περίπτωση που αρμόδιο όργανο, αρχή ή υπηρεσία της Πολιτείας στο πλαίσιο της εκτέλεσης των εκ του νόμου απορρεόντων καθηκόντων τους αιτούνται τη χορήγηση του πρωτότυπου εγγράφου ή τεκμηρίου που βρίσκεται στο φάκελο υπόθεσης, άδεια μπορεί να δοθεί υπό όρους που θα θεωρηθούν κατάλληλοι και πιστοποιημένο αντίγραφο του εγγράφου ή τεκμηρίου τηρείται στο φάκελο της υπόθεσης.

(3) Υπηρεσιακός φάκελος που κατατίθεται ως τεκμήριο σε υπόθεση, επιστρέφεται από το Πρωτοκολλητείο στο αρμόδιο όργανο, αρχή ή υπηρεσία της Πολιτείας από την οποία προέρχεται, μετά το πέρας της διαδικασίας και αφού παρέλθει η προθεσμία για την καταχώρηση έφεσης.

(4) Σε περίπτωση που όργανο, αρχή ή υπηρεσία της Πολιτείας αιτείται, εκκρεμούσης της υπόθεσης, την προσωρινή παραλαβή δικού της υπηρεσιακού φακέλου ο οποίος έχει κατατεθεί ως τεκμήριο σε υπόθεση, η αίτηση εξετάζεται από το Δικαστήριο ή το Δικαστή ενώπιον του οποίου εκκρεμεί η υπόθεση ανάλογα με την περίπτωση και άδεια μπορεί να δοθεί υπό όρους που θα θεωρηθούν κατάλληλοι.

5.4 Administration actions and causes

(1) In administration actions and causes all creditors, legatees, heirs and beneficiaries under the will, have the same rights of inspection as a party.

5.5 Where inspection takes place

(1) The inspection shall take place in the presence of the Registrar or an officer of the Court at such time as may be convenient to him or her.

Part 6

Service

Section I: Definitions and General Rules

6.1 Definitions

(1) "Agreement in writing" - for the purposes of agreeing the method or place of service under this rule, an agreement in writing includes any agreement made by e-mail, fax or letter or by any combination of those methods.

6.2 Service of Claim Form where agreement in writing in respect of method and place of service of claim form

(1) The general rule is that a claim form may be served within the jurisdiction by such method and at such place as the parties may agree in writing.

(2) An agreement in writing under 6.2(1) of this Part may be made before or after service takes place.

6.3 Private Service

(1) The service, as provided by the Rules, of the claim form**,** notice of appeal, statements of case and of any judicial document, as well as service of any document the Court deems proper to order, is effected by a private bailiff who is authorised by the Supreme Court of Cyprus, and shall be cited in the relevant Civil Procedure Rules of 2019 as «the bailiff». The provisions of the Procedural Rules do not apply to service of any document which originates from a Government department or service.

A judicial document includes any document originating from a foreign judicial authority.

(2) A bailiff is a person duly authorised by the Supreme Court of Cyprus to serve documents in accordance with and under the provisions of the Procedural Rules. **[Drafting Note: procedural rules not previously defined. Perhaps what is meant is the Civil Procedure (Amendment) (No. 2) Procedural Rule of 1996.]**

(3) Service shall be governed by the provisions of the rules including the provisions of the Procedural Rules

(4) The liability of a bailiff regarding service and the process that he or she must follow, are stipulated in Annex C, Part II of the Procedural Rules

(5) Service by a bailiff is the responsibility of the litigant. The choice of bailiff to effect service of a document is made by the litigant

(6) With the assignment of service, the litigant pays the bailiff the relevant fees which are established in Annex C, Part III

Section II: Service of Claim Form within the Jurisdiction

6.4 Service of Claim Form where no agreement in writing in respect of method and place of service of claim form

(1) Where parties have not agreed in writing both the method and place of service then service shall be effected pursuant to this Section.

(2) Every defendant named on the claim form shall, except where a Judge otherwise orders, be served in the manner provided in this Section with an office copy of the claim form, and such service shall be deemed good service of the claim form.

(3)

(a) The service shall, whenever it is practicable, be effected by leaving the copy with the person to be served; but if he or she is not found at his house or at his or her usual place of employment, the service shall be deemed to be effected if the copy is left:

(i) with any member of his or her family of apparently 16 years and upwards then in his or her town or village or within the lands thereof; or

(ii) with any person apparently of such age and in charge of the place of his or her employment.

Where service is effected by leaving the copy with a person other than the person to be served, the affidavit of service shall state (if such be the case) that the person to be served was not found at his or her house or usual place of employment. (CYP Form 5.)

(b) The affidavit of service endorsed upon, or having attached thereto as an exhibit, a duplicate of the copy of the claim form served, shall be sworn and filed within seven days after service.

(4) Service on the person to be served may be effected at any time of the day or night and in any place and on any day of the week. This provision applies equally to the leaving of a copy with a member of the family. . In other cases the copy left with the person in charge of the place where the person to be served is employed shall be left during the hours, and at the place, of employment.

(5) When a child is a defendant to the action, service on his or her representative, as provided by law, shall, unless the Court otherwise orders, be deemed good service on the child: provided that the Court may order that service made or to be made on the child shall be deemed good service.

(6) When a defendant is an incapacitated person, service on his or her representative, as provided by law, shall, unless the Court otherwise orders, be deemed good service.

(7) In the absence of any statutory provision specifically regulating service of process upon a corporate body, service of an office copy of the claim form or other process on the president or a director or other head officer, or on the treasurer or secretary of such body, or service of such copy at the registered office of such body or its principal place of business on a person apparently authorised to accept such service, shall be deemed good service; and in the case of any company not formed in Cyprus, the copy may be left at its place of business in Cyprus, or

if there is no such place, with any person in Cyprus who appears to be authorized to transact business for the company in Cyprus, and such leaving of the copy shall be deemed good service unless the Court or a Judge otherwise orders. And where by any law specific provision is made for the service of any claim form or other process on any corporate body or any society or fellowship or any body or number of persons, corporate, or unincorporate, the service of the office copy of the claim form may be effected accordingly.

(8) Where a contract has been entered into in Cyprus by or through an agent residing or carrying on business in Cyprus on behalf of a principal residing or carrying on business outside Cyprus, a claim form in an action relating to or arising out of such contract may, by leave of the Court given before the determination of such agent's authority or business relations with the principal, be served on such agent. Notice of the order giving such leave and an office copy thereof and of the claim form which shall forthwith be sent by prepaid double-registered post letter to the defendant or defendants at the address of the defendant or defendants out of the jurisdiction: provided that nothing in this rule shall invalidate or affect any other mode of service provided by these rules.

Section III: Service of Documents other than the claim form within the jurisdiction

6.5 Service of Documents other than the claim form

(1) Any notice of appeal, statements of case and any judicial document, as well as service of any document the Court deems proper to be served or given to any person may be served or given at his or her address for service if he or she has furnished one, and if not then at his or her last known or usual place of residence or, if this is impossible, with the leave of the Court or Judge obtained by application without notice, in any one of the ways in which service or notice of a claim form may be effected or given. And everything done on any proceeding whereof notice has been served or given according to these Rules shall be binding on a person so served or notified, whether he or she attends on the proceeding or not.

(2) [Δ.Κ. 25.7.1997]**.** Εφόσον η διεύθυνση επίδοσης περιλαμβάνει και τηλεομοιότυπο ή ηλεκτρονική διεύθυνση καθίσταται αποδεκτή η επίδοση ή παράδοση δικαστικού εγγράφου, μέσω τηλεομοιοτυπικής επικοινωνίας ή ηλεκτρονικού ταχυδρομείου.

Translation in English of above Rule (1B):-

[P.R.25.7.1997] 1B. Provided that the address for service includes a fax number or e-mail address, the service or delivery of a judicial document by fax or e-mail, is acceptable.

(3) All documents or processes originating from a Government department or service required to be served through the court under any Rules of Court or under any Law or Procedural Rule shall be served on payment of the prescribed fee: such fee shall in the first instance be paid by the party by whom or on whose behalf application is made for such service. Such application shall be made, and fees paid, at the time of filing or issue of the originals of such documents or processes, and the Registrar may refuse to file or issue such originals except upon production of an application for service having endorsed thereon a certificate by the proper officer that the fees have been paid.

(4) Every document calling upon a person to appear before the Court, or giving any person notice of any proceeding proposed to be had or taken before the Court, shall, save where it is otherwise provided by these Rules, be served on such person at least four days prior to the day on which he or she is required to appear, or on which the proceeding whereof notice is given is to be had or taken.

(5) The Court may, if it or the Judge shall see fit, by order direct that any such document be served at short notice, care being taken that the person to be served, having regard to his place of residence, is allowed sufficient time to comply with the notice; and on making the order the Court may also thereby direct in what manner service of the document is to be effected.

Any such order may be made on the application of any person without notice to any other person.

(6) When the Court shall authorize any document to be served at short notice, the order need not be drawn up but a note shall be made on such document by the Registrar that it is so served under the authority of an order of the Court.

(7) When application is made for the service of any document, the document to be served shall be accompanied by a duplicate, and the affidavit of service shall be endorsed upon or have attached thereto as an exhibit, such duplicate.

(8) [Δ.Κ. 25.7.1997] **7.** Όταν γίνει επίδοση ή παράδοση δικαστικού εγγράφου, η βεβαίωση αποστολής μέσω τηλεομοιοτύπου, επισυνάπτεται ως τεκμήριο στο αντίγραφο του εγγράφου που έχει επιδοθεί ή παραδοθεί και κατατίθεται, όπου τούτο απαιτείται, στο Πρωτοκολλητείο.

Translation in English of above Rule 8:-

When service or delivery of a judicial document is effected, the fax delivery confirmation is attached as an exhibit to the duplicate copy of the served or delivered document and whenever this is required, it is submitted to the Registry.

Section IV: Address for Service

6.6 Address for Service

(1) Every party to an action or other proceeding before a Court of first instance shall furnish an address for service, being some proper place within the municipal limits of the town or village in which is situated the registry of the Court in which the action or other proceeding is instituted, at which address documents intended for the party may be left.

(2) In the case of appeals or other proceedings before the Supreme Court every party thereto shall furnish an address for service in Nicosia.

Drafting Note in relation to 6.6 (2) above

The Rules Committee has stated that this should be included in the Part dealing with appeals. This is a matter for Stage 3.

(3) [Δ.Κ. 25.7.1997] Η διεύθυνση επίδοσης η οποία καθορίζεται στο κλητήριο ένταλμα, εναρκτήρια κλήση, δικόγραφο ή οποιοδήποτε άλλο δικαστικό έγγραφο, μπορεί να περιλαμβάνει, εφόσον το επιλέξει ο διάδικος ή οποιοδήποτε μέρος στη διαδικασία, και επίδοση ή παράδοση μέσω καθοριζόμενου τηλεομοιοτύπου (ΦΑΞ) ή διεύθυνσης ηλεκτρονικού ταχυδρομείου.

Translation in English of above Rule (3):-

[P.R. 25.7.1997] (3) The address for service designated in the claim form pleading or any other judicial document, may include, if the party so elects, service or delivery by facsimile (fax) or e-mail at a specified fax number or e-mail address

(4) [Δ.Κ. 25.7.1997] **(4)** Η τηλεομοιοτυπική διεύθυνση μπορεί να είναι άλλη από τη διεύθυνση επίδοσης εντός της επαρχίας που εκκρεμεί η υπόθεση και μπορεί να ευρίσκεται σε οποιοδήποτε μέρος της Κύπρου.

Translation in English of above Rule (4):-

[P.R. 25.7.1997] (4) The fax address may be different from the address for service, within the district where the case is pending for trial, and may be situated in any part of Cyprus.

(5) If in the course of the claim a change occurs in a party's address for service, such party shall give notice of the new address for service to the Registrar and to every other party, failing which the old address for service shall continue to stand; but if at such old address the occupant of the premises refuses to allow such address to be treated as the address for service, it shall be sufficient if anything intended for the party failing to give notice of the new address for service is filed in the action or appeal. This Rule shall also apply to a representative of a child or incapacitated person as provided by law.

(6) The claimant shall give an address for service on the claim form, and the defendant on acknowledgment of service, and any person subsequently becoming a party to the claim or any application therein shall give an address for service on the first document that the defendant or person files in the claim and on the first document served or delivered in relation thereto. Any person already a party to the claim or any application therein who serves notice of any

proceeding on a person who is not already such a party shall on the document served state their address for service.

Section V: Service Out of the Jurisdiction

6.7 EU Law: Additional Provisions

(1) Permission by the court or a judge for service out of the jurisdiction is not required whenever the following are applicable:

(a) 'the Service Regulation', Council Regulation (EC) No 1393/2007 of 13 November 2007 on the Service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters; and

(b) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters' which came into force on 15 January 2015 replacing Regulation Judgments Regulation (EC) No 44/2001 with effect from 15 January 2015.

6.8 Service Out of the Jurisdiction: General Grounds

(1) Service out of the jurisdiction of a claim form including a Part 8 claim form may be allowed by the Court or a Judge whenever:

(a) A claim is made in respect of which the court has jurisdiction under the Law for the time being in force.

(b) A claim is made for a remedy against a person domiciled or ordinarily resident within the jurisdiction.

(c) A claim is made for an injunction ordering the defendant to do or refrain from doing an act within the jurisdiction.

(d) A claim is made against a person ('the defendant') on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –

(i) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and

(ii) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim.

(e) A claim is an additional claim under Part 21 and the person to be served is a necessary or proper party to the claim or additional claim.

(f) A claim is made against the defendant in reliance on one or more of Rules 6.10 to 6.14, and a further claim is made against the same defendant which arises out of the same or closely connected facts.

(g) A claim is made for an interim remedy which the court has jurisdiction to grant under the Law for the time being in force

(h) A claim is made in respect of a contract where the contract:

(i) was made within the jurisdiction;

(ii) was made by or through an agent trading or residing within the jurisdiction;

(iii) is governed by Cyprus law; or

(iv) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract.

(i) A claim is made in respect of a breach of contract committed within the jurisdiction.

(j) A claim is made for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in Rule 6.10 (1).

(k) A claim is made in tort where:

(i) damage was sustained, or will be sustained, within the jurisdiction; or

(ii) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction.

(l) A claim is made to enforce any judgment or arbitral award.

(m) The subject matter of the claim relates wholly or principally to property within the jurisdiction.

(n) A claim is made in respect of a trust which is created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, and which is governed by the law of Cyprus.

(o) A claim is made in respect of a trust which is created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, and which provides that jurisdiction in respect of such a claim shall be conferred upon the courts of Cyprus.

(p) A claim is made for any remedy which might be obtained in proceedings for the administration of the estate of a person who died domiciled within the jurisdiction or whose estate includes assets within the jurisdiction.

(q) A probate claim or a claim for the rectification of a will.

(r) A claim is made against the defendant as constructive trustee, or as trustee of a resulting trust, where the claim arises out of acts committed or events occurring within the jurisdiction or relates to assets within the jurisdiction.

(s) A claim is made for restitution where:

(i) the defendant's alleged liability arises out of acts committed within the jurisdiction; or

(ii) the enrichment is obtained within the jurisdiction; or

(iii) the claim is governed by the law of Cyprus.

(t) A claim is made by the Commissioners for Revenue and Customs relating to duties or taxes.

6.9 Service Out of the Jurisdiction by Agreement

(1) Subject to any relevant law, or applicable treaty or European Union Regulation, the parties to any contract may agree that service of any claim form in any action brought in respect of such contract may be effected at any place in or out of Cyprus on any party or any person on behalf of any party or in any manner specified or indicated in such contract.

(2) Service of any such claim form at the place (if any) or on the party or on the person (if any) or in the manner (if any) specified or indicated in the contract shall be deemed to be good and effective service wherever the parties are resident, and if no place or mode or, person be so specified or indicated, service out of Cyprus of such claim form may be ordered.

6.10 Application to Be Supported By Evidence

Drafting Note

The Expert Group question why an affidavit is used in (1) below. Witness statements should be used. If the default rule under Part 23 is an affidavit instead of a witness statement, there is little benefit to introducing witness statements.

The point of a witness statement is that it can be produced easily and it can be transmitted easily. Most evidence can be given this way. Witness statements are particularly useful where the maker of the statement is at some distance (this can be a problem where a witness is thousands of miles away) as opposed to getting an original affidavit to court. A witness statement can be made without a court officer or lawyer.

Affidavits are used in relation to significant applications such as search and freezing orders. Affidavits are used for these significant applications because swearing them is a more solemn act than signing a witness statement. Furthermore the consequences of a misleading affidavit as seen in the next paragraph are more severe.

In relation to dishonesty in an affidavit, the deponent is guilty of perjury and liable to a fine or imprisonment – it is a criminal offence. However, lying in a witness statement is not a criminal offence, it is dealt with as contempt of court in the civil court which was dealing with the case and which is the best judge as to whether or not the witness statement is misleading. The consequences for contempt of court are dealt with by the relevant laws in Cyprus.

(1) Every application for leave to serve a claim form on a defendant out of Cyprus shall be in accordance with Part 23 and supported by affidavit satisfying the Court or Judge that the plaintiff has *prima facie* a good cause of action and showing in what place or country such defendant is or probably may be found, and whether such defendant is a subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of Cyprus under this Part.

(2) Όπου επιβάλλεται η διαβίβαση ή αποστολή δικογράφων και άλλων εγγράφων σεαστικές και εμπορικές υποθέσεις που εκδικάζονται από τα Κυπριακά Δικαστήρια σε άλλη χώρα για επίδοση μέσω της Κεντρικής Αρχής (Υπουργείου Δικαιοσύνης και Δημοσίας Τάξεως), στη βάση Διεθνών ή Διμερών Συνθηκών που υπεγράφησαν με άλλα κράτη, ή Ευρωπαϊκών κανονισμών, θα καταβάλλεται πάγιο τέλος ύψους €7,00 για τη διαβίβαση ή αποστολή κάθε εγγράφου σε άλλη χώρα, πλέον τα έξοδα διαβίβασης ή αποστολής των εγγράφων.

(3) Where leave is given by the Court or a Judge for service of a claim form in any foreign country with which a Convention relating to such service has been or shall be extended to Cyprus the following procedure shall, subject to any special terms in the Convention, be adopted:

(4) The party bespeaking such service shall deliver to the competent authority in Cyprus specified under the convention, and in case no such authority is specified in the convention or where for some other reason that authority is unable to accept the documents directly, then to the Registrar:

(a) the document to be served;

(b) two copies thereof;

(c) a translation thereof in the official language of the country in which service is to be effected verified —upon oath by or on behalf of the person making the request; and

(d) two copies of such translation.

The translation and copies thereof need not be supplied.

(5) The party bespeaking such service shall also deposit in the Court the sum of €32 in respect of each person to be served. In the event of the expenses incurred by the Ministry of Justice and Public Order in respect of such service amounting to less than the amount of the deposit the surplus shall be refunded by the Competent Authority or Registrar, as the case may be, to the party making the deposit.

(6) The Competent Authority or Registrar, as the case may be, shall file a copy of the document to be served and the verified translation thereof (where required). He or she shall seal and forward to the Ministry of Justice and Public Order in duplicate the document to be served, and shall also seal and forward therewith in duplicate the verified translation (where required) of such document.

(7) The certificate of any consular officer of the Republic or an affidavit sworn before him by the person who effected the service, or an official certificate or declaration upon oath or otherwise transmitted by the Government or Court of a foreign country, shall, provided that it certifies or declares the claim form or notice of the claim form to have been personally served, or to have been duly served upon the defendant in accordance with the law of such foreign, country, or words to that effect, be deemed to be sufficient proof of such service.

(8) Where an official certificate or declaration transmitted to the Cyprus Court in the manner provided in rule XX(7), certifies or declares that efforts to serve a document have been without effect, the Court or a Judge may, upon application without notice of the plaintiff, order that the claimant be at liberty to bespeak a request for substituted service of such document.

6.11 Time Limit for Acknowledgment of Service

(1) Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to acknowledge service, such time to depend on the place or country where or within which the claim form is to be served or the notice given. Such order shall also contain a direction that, if the defendant does not acknowledge service within the appointed time, notice of any application in the action may be given by posting a copy on the Court notice board.

(2) The court, after issuing an order giving leave to effect such service or to give such notice, may dispense with or amend any time limit it has previously set within which the defendant is to acknowledge service and may amend any concomitant direction it has previously given.

6.12 Dispensing with service out of the jurisdiction

(1) The court may dispense with service of a claim form in exceptional circumstances.

(2) An application for an order to dispense with service may be made at any time and –

(a) must be supported by evidence; and

(b) may be made without notice.

Section VI: Substituted Service of the Claim Form or document other than a Claim Form

6.13 Order for Substituted Service of the Claim Form or document other than the Claim Form

(1) Σε κάθε περίπτωση που ήθελε φανεί στο Δικαστήριο ότι λόγω οποιασδήποτε αιτίας δεν είναι εφικτό να επιτευχθεί εγκαίρως επίδοση με τον τρόπο που προβλέπεται στα Sections II ή III, της παρούσας Διαταγής, το Δικαστήριο δύναται να εκδώσει οποιοδήποτε διάταγμα για υποκατάστατη ή άλλη επίδοση ή για την υποκατάσταση της ειδοποίησης επίδοσης με οποιοδήποτε τρόπο ήθελε φανεί σ΄αυτό δίκαιο και ορθό υπό τις περιστάσεις, περιλαμβανομένης και επίδοσης ή παράδοσης μέσω καθοριζόμενου τηλεομοιοτύπου (ΦΑΞ) ή διεύθυνσης ηλεκτρονικού ταχυδρομείου.εφόσον αυτά περιλαμβάνονται στην διεύθυνση επίδοσης και δημοσίευσης σε οποιοδήποτε μέσο με ηλεκτρονική μορφή, ή άλλο ευλόγως προσφερόμενο από την εκάστοτε τεχνολογία, τρόπο.

Νοείται ότι ειδοποίηση έγερσης αγωγής ή άλλης διαδικασίας η οποία θα εκδοθεί δυνάμει της παρούσας Διαταγής και θα συνάδει με τον Τύπο 5Α, δεν είναι αναγκαίο όπως περιλάβει όλο το κείμενο της αγωγής ή άλλης διαδικασίας αλλά θα είναι αρκετό να περιλαμβάνει τον αριθμό αγωγής ή διαδικασίας, το Δικαστήριο στο οποίο η αγωγή ή διαδικασία εκκρεμεί, τους διάδικους και με συνοπτικό τρόπο τη φύση της διαφοράς και την αξίωση που διατυπώνεται. Είναι επίσης απολύτως αναγκαίο να προσδιορίζεται είτε η προθεσμία στην οποία ο διάδικος πρέπει να καταχωρήσει σημείωμα εμφάνισης, ή ένσταση ή άλλης δικονομικής φύσεως ενέργεια και αν υπάρχει ανάγκη εμφάνισης στο Δικαστήριο, να καθορίζεται σαφώς η ημερομηνία και ώρα εμφάνισης.
Πρόσθετα στην ειδοποίηση πρέπει να αναφέρεται ότι όλα τα σχετικά έγγραφα είναι διαθέσιμα προς παραλαβή από το αρμόδιο πρωτοκολλητείο. Για το σκοπό αυτό ο ενάγων φροντίζει ώστε να υπάρχει στο πρωτοκολλητείο, δεόντως πιστοποιημένο, αντίγραφο αγωγής και οποιοδήποτε άλλο έγγραφο είναι αναγκαίο να δοθεί στο διάδικο.

In any event when it seems to the Court that, due to any cause, it is not feasible for the service to take place promptly, in accordance with the provisions of Sections II or III then the Court may issue an order for a substituted or other service or order the substitution of the notice of service in any way that would, under the circumstances, appear as fair and rightful, including service or delivery by facsimile (fax) or e-mail at a specified fax number or e-mail address provided that these are included in the address for service and the publication in any medium in an electronic form or other manner that is reasonably available by technology.

A notice of a claim form or another process which is issued under this rule and is in accordance with Form 5A, is not required to include the whole text of the claim form or other process and it shall suffice if it includes the number of the claim form or other process, the court in which the claim or other process is pending, the parties and, summarily, the nature of the dispute and the stated claim.

It is a strict requirement of this rule that the notice of a claim form indicates either the deadline by which a party must file appearance or opposition or take any other step of a procedural nature and, in the event that an appearance should be made in Court, the date and time of the appearance.

The notice must contain a statement that all relevant documents are available to be received from the relevant Registry. For this purpose, the claimant must ensure that a duly certified copy

of the claim form and any other necessary document, is available at the Registry for the (other) litigant.

(2) An order under paragraph 6.13(1) of Section VI shall appoint the time within which the defendant shall file his or her acknowledgment of service of the claim form, and shall also contain a direction that, if the defendant does not file an acknowledgment of service within the appointed time, notice of any application in the action may be given by posting an office copy of the notice on the Court notice board.

6.14 Application for Substituted Service

(1) Every application to the Court for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

Part 7

How to start proceedings: the claim form

7.1 How to start proceedings, date when commenced and date when action brought for limitation purposes

(1) There are two methods of beginning proceedings:
   (a) by issuing a claim form under Part 7; or
   (b) by issuing a claim form under the alternative procedure specified by Part 8 (no substantial dispute as to fact or rule requires it).

(2) Proceedings are started when the court issues a claim form at the request of the claimant.

(3) A claim form is issued on the date entered on the form by the court.

(4) A person who seeks a remedy from the court before proceedings are started or in relation to proceedings which are taking place, or will take place, in another jurisdiction must make an application under Part 23.

(5) Where a claimant resides in Cyprus, a claim form presented by an advocate shall not be issued unless accompanied by a retainer in writing in Form XXX.

(6) Where the claimant is illiterate, the retainer under (5) shall be attested by a registrar, certifying officer or two competent witnesses not being advocates' clerks.

(7) Notwithstanding (5) above, a claim form may be issued with the court's permission, upon good cause being shown, without it is being accompanied by a retainer.

7.2 Claim form heading

(1) The claim form must be headed with the title of the proceedings, including the full name of each party. The full name means, in each case where it is known:
   (a) in the case of an individual, his or her full unabbreviated name and title by which he or she is known;
   (b) in the case of an individual carrying on business in a name other than his or her own name, the full unabbreviated name of the individual, together with the title by which he or she is known, and the full trading name;
   (c) in the case of a partnership
      (i) where partners are being sued in the name of the partnership, the full name by which the partnership is known, including suffix; or
      (ii) where partners are being sued as individuals, the full unabbreviated name of each partner and the title by which he or she is known;
   (d) in the case of a company registered in the Republic, the full registered name, including suffix, if any;
   (e) in the case of any other company or corporation, the full name by which it is known, including suffix where appropriate.

7.3 Address at which the defendant resides or carries on business

(1) Where the defendant is an individual, the claimant should (if he or she is able to do so) include in the claim form an address at which the defendant resides or carries on business. This paragraph applies even though the defendant's advocate have agreed to accept service on the defendant's behalf.

7.4 Particulars of claim

(1) Particulars of claim must:

(a) be contained in and served with the claim form; or

(b) be filed within 28 days after service of the claim form and be served on the defendant by the claimant as soon as practicable thereafter .

7.5 Service of a claim form

(1) A claim form will be served in accordance with Part 6.

7.6 Renewal of a claim and extension of time for service

(1) No claim form shall be in force for more than 12 months from the day of its issue including that day; but if any defendant named in it has not been served, the Claimant may, before the 12 months expire, apply for an order to renew the claim form; and the Court, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reasons, may order that the claim form be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed claim form. And the claim form shall in such case be marked by the registrar with the words " Renewed by order dated … … … the day of… … … …, 20… " , or words to the like effect; and a claim form so renewed shall remain in force and be available to prevent the operation of any law whereby the time for the commencement of the claim may be limited, and for all other purposes, from the date of the issuing of the original claim form.

(2) After a claim form is renewed every office copy used for service shall bear a copy of the words on the original claim form indicating that it has been renewed.

7.7 Application by defendant for service of claim form

(1) Where a claim form has been issued against a defendant, but has not yet been served, the defendant may serve a notice on the claimant requiring the claimant to serve the claim form or discontinue the claim within a period specified in the notice.

(2) The period specified in a notice served under paragraph (1) must be at least 14 days after Service of the notice.

(3) If the claimant fails to comply with the notice, the court may, on the application of the defendant:

(a) dismiss the claim; or

(b) make any other order it thinks just.

7.8 Specific provisions in relation to Partnerships

(1) Any two or more persons claiming or being liable as partners and carrying on business in Cyprus may sue or be sued in the name of the partnership of which such persons were co-partners at the time when the cause of action arose.

(2) Any party to a claim by or against a partnership may apply to a court for a statement of the names and places of residence of all the persons who constituted the partnership , at the time or period relevant to the claim, to be furnished in such manner, and verified on oath or otherwise as the court may direct.

(3) When a claim form is issued by partners in the name of the partnership , such claimants or their advocates shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing, within 10 days of such demand the names and places of residence of all the persons constituting the said partnership at the time or period relevant to the claim.

(4) If the claimants or their advocates fail to comply with such demand, the claim may, upon an application by any party to the claim, be stayed upon such terms as the Court may direct.

(5) Where pursuant to such demand, the names of the partners are declared, the claim shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as claimants in the claim form and all the proceedings shall continue in the name of the partnership.

(6) Where persons are sued as partners in the name of their partnership the claim form shall be served either

(a) upon any one or more of the partners, or

(b) at the principal place of the business of the partnership in Cyprus upon any person having at the time of service the control or management of the partnership business there;

(7) Subject to the provisions of these rules, such service shall be deemed good service upon the partnership so sued, whether any of the members thereof are out of Cyprus or not, and no permission to issue a claim form against them shall be necessary:

(8) In the case of a partnership which has been dissolved to the knowledge of the claimant before the commencement of the action, the claim form shall be served upon every person in Cyprus sought to be made liable.

(9) Where a claim form is issued against a partnership, and is served as directed by rule 7.8 (6) above, every person upon whom it is served shall be informed by notice in writing in Form ## given at the time of such service whether he or she is served as a partner or as a person having the control or management of the partnership business, or in both capacities.

(10) In default of such notice, the person served shall be deemed to be served as a partner.

(11) Where persons are sued as partners in the name of a partnership the acknowledgment of service may be filed in the name of partnership or in the individual names of the partners, but all subsequent proceedings shall, nevertheless, continue in the name of the partnership.

(12) Where a claim form is served upon a person having the control or management of the partnership business, and the partnership files an acknowledgment of service, it shall not be necessary for that person to file an acknowledgment of service in his or her own name.

(13) Any person served as a partner, but who denies that he or she was a partner or liable as such at any material time, may on acknowledging service state that he or she does so as "a person served as a partner in the defendant partnership, but who denies that he or she was a partner at any material time ".

(14) Such acknowledgment as long as it stands shall be treated as an acknowledgment of service on behalf of the partnership.

(15) If a person states on acknowledgment of service under Part 10 then:

(a) the claimant may apply to the Court to strike out the statement on the ground that the person making it was a partner or liable as such, or may leave that question to be determined at a later stage of the proceedings; or

(b) the person so stating on acknowledgment of service may apply to the Court to set aside the service on him or her on the ground that he or she was not a partner or liable as such or he or she may by his or her defence deny either or both:

(i) his or her liability as a partner,

(ii) the liability of the defendant partnership in respect of the claimant’s claim.

(16) An order may on the application of either party at any time be made that the liability of the person served and the liability of the defendant partnership may be tried in such manner and at such times as the Court may think fit.

Part 8

Alternative procedure for claims

Drafting Note:
A suggestion for renaming "Part 8 Procedure" could be "the Alternative Procedure for Claims" if this sounds better in Greek, this is the suggestion of the Expert Group but ultimately this is a matter for translation and Stage 3.

8.1 Types of claim in which Part 8 procedure may be followed

(1) The Part 8 procedure is the procedure set out in this Part.

(2) A claimant may use the Part 8 procedure where:

(a) the claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact; or

(b) paragraph (5) applies.

(3) Questions on which the court's decision is sought and for which the Part 8 procedure may be suitable may include but are not confined to:

(a) interpretation of any legislation or subordinate legislation;

(b) construction of a contract;

(c) construction of a will;

(d) construction of a deed;

(e) a trustee seeks the permission of the court in relation to the taking of any particular step and there is no or no substantial dispute as to fact;

(f) a claim by or against a child or an incapacitated person, which has been settled before the commencement of proceedings and the sole purpose of the claim is to obtain the approval of the court to the settlement.

(4) The Part 8 procedure must also be used for any claim or application in relation to which a law or rule provides that the claim or application is brought by originating summons, by petition or other originating process, save where that law or rule provides for a distinct procedure.

(5) A rule may, in relation to a specified type of proceedings:

(a) require or permit the use of the Part 8 procedure; and

(b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

(6) The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure but rather had used the Part 7 procedure and, if it does so, the court may give any directions it considers appropriate.

(7) Paragraph (2) does not apply if a rule provides that the Part 8 procedure may not be used in relation to the type of claim in question.

(8) Where the claimant uses the Part 8 procedure he or she may not obtain default judgment under Part 13.

8.2 The Claim form

(1) Where the claimant uses the Part 8 procedure claim form, and the form is issued it must state:

(a) that this Part applies;

(b)

(i) the question which the claimant wants the court to decide; or

(ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy

(c) if the claim is being made under an enactment, what that enactment is;

(d) if the claimant is claiming in a representative capacity, what that capacity is; and

(e) if the defendant is sued in a representative capacity, what that capacity is.

(2) The claim form is issued when sealed by the court.

(3) When the claimant is represented by an advocate, a retainer must be filed, the provisions of Part 7.1 (5) to (7) will apply.

(4) The claimant must file any written evidence on which the claimant intends to rely when the claimant files the claim form and serve it on the defendant with the claim form.

(5) The claimant may rely on the matters set out in the claim form as evidence under this rule if the claim form is verified by a statement of truth.

8.3 Acknowledgment of service

(1) If the defendant does not file a defence; the defendant must:

(a) file an acknowledgment of service in the relevant Practice Form not more than 14 days after service of the claim form; and

(b) serve the acknowledgment of service on the claimant and any other party.

(2) The acknowledgment of service must state:

(a) whether the defendant contests the claim;

(b) whether the defendant does not contest the claim or contests only part of it, and/or

(c) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.

(3) When the defendant is represented by an advocate, a retainer must be filed in accordance to the provisions of Part 7.1. (5)-(7)

(4) Subject to the above, the rules of Part 10 (acknowledgement of service) apply.

8.4 Procedure where defendant objects to use of the Part 8 procedure

(1) Where the defendant contends that the Part 8 procedure should not be used because:

(a) there is a substantial dispute of fact; and

(b) the use of the Part 8 procedure is not required or permitted by a rule,

the defendant must state the reasons when filing the acknowledgment of service.

(2) When the court receives the acknowledgment of service and the notice of opposition together with any written evidence it will give directions as to the future management of the case.

8.5 Consequence of not filing an acknowledgment of service

(1) This rule applies where:

(a) the defendant has failed to file an acknowledgment of service; and

(b) the time period for doing so has expired.

(2) The court may proceed in the absence of the defendant.

(3) The defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

(4) The provisions of Part 13 apply, with the necessary modifications, in cases where the defendant has not filed an acknowledgment of service and has not appeared at the hearing.

8.6 Filing and serving of written evidence by the claimant

(1) The claimant must file any written evidence on which the claimant intends to rely when filing the claim form.

(2) The claimant's evidence must be served on the defendant with the claim form.

(3) The claimant may not rely on the matters set out in the claim form as evidence under this rule unless the claim form is verified by a statement of truth.

8.7 Notice of opposition

(1) Where the defendant contests the claim or seeks a different remedy, the defendant must file and serve on the other parties a notice of opposition within 28 days from filing the acknowledgment of service.

(2) The notice of opposition must:

(a) refer briefly but specifically to the grounds of opposition;

(b) refer to any specific statutory provision or rule relied on.

(3) A defendant who wishes to rely on written evidence must file it together with the notice of opposition and serve it on every other party.

8.8 Evidence: general

(1) Written evidence which has not been filed and served in accordance with rule 8.6. may not be relied on at the hearing of the claim unless the court gives permission.

(2) The court may require or permit a party to adduce oral evidence at the hearing.

(3) The Court may permit a party to adduce further written evidence for good cause.

(4) The court may give directions requiring the attendance for Cross-Examination of a witness who has given written evidence.

8.9 Managing the claim

(1) The Court will fix a date for case management, on the application of a party or on its own initiative, as soon as practicable after the defendant has:

(a) acknowledged service of the claim form indicating that the defendant does not contest the claim or part of the claim, or

(b) acknowledged service of the claim indicating that the defendant contests the claim and filed the written evidence, or

(c) failed to file acknowledgment of service or written evidence.

Part 9

Responding to particulars of claim: general

9.1 Scope of this Part

(1) This Part sets out how a defendant may respond to particulars of claim.

(2) Where the defendant receives a claim form which states that particulars of claim are to follow, the defendant need not respond to the claim until the particulars of claim have been served.

9.2 Defence, admission or acknowledgment of service

(1) When particulars of claim are served on a defendant, the defendant may:

(a) file or serve an admission in accordance with Part 15 for the whole or part of the claim; or

(b) file an acknowledgment of service in accordance with Part 10 and subsequently file a defence in accordance with Part 17.

Part 10

Acknowledgment of service

10.1 Acknowledgment of service

(1) This Part deals with the procedure for filing an acknowledgment of service.

(2) Where the claimant uses the procedure set out in Part 8 (alternative procedure for claims) this Part applies subject to the modifications set out in rule 8.3.

(3) A defendant must file an acknowledgment of service if the defendant wishes to dispute the claim, or part of it.

(4) Where a defendant has filed an acknowledgement of service the defendant must serve a copy of the filed acknowledgment on every claimant and every other party

(5) If the defendant wishes to dispute the court's jurisdiction or argue that the court should not exercise its jurisdiction then the defendant must file an acknowledgment of service ticking the appropriate box in the Form.

(6) An acknowledgment of service must be signed by the defendant or by the defendant's advocate.

(7) Where the defendant is a legal entity, a person holding a senior position in the legal entity may sign the acknowledgment of service on the defendant's behalf, but must state the position he or she holds.

(8) Each of the following persons is a person holding a senior position:
in respect of a registered legal entity, a director, the treasurer, secretary, chief executive, manager or other officer of the legal entity.

(9) Where a claim is brought against a partnership:
   (a) service must be acknowledged in the name of the partnership on behalf of all persons who were partners at the time when the cause of action accrued; and
   (b) the acknowledgment of service may be signed by any of those partners, or by any person authorised by any of those partners to sign it.

(10) Children and incapacitated persons may acknowledge service only by their representative, as provided by Law, unless the court otherwise orders.

(11) When presented by an advocate, the acknowledgment of service must be accompanied by a retainer in Form …. in accordance with Part 7.1(5)-(7).

(12) Upon receipt of the acknowledgment of service, the Registrar shall file the same, and date, sign, and seal the duplicate thereof.

(13) The duplicate of the acknowledgment of service dated, signed and filed as aforesaid, shall be a certificate that the acknowledgment of service was entered on the day noted by the Registrar.

10.2 General provisions

(1) The defendant's name should be set out in full on the acknowledgment of service.

(2) Where the defendant's name has been incorrectly set out in the claim form, it should be correctly set out on the acknowledgment of service followed by the words "described as" and the incorrect name.

(3) If two or more defendants to a claim acknowledge service of a claim through the same advocate at the same time, only one acknowledgment of service need be used.

(4) An acknowledgment of service may be amended or withdrawn only with the permission of the court.

(5) An application for permission under rule 10.2(4) must be made in accordance with Part 23.

10.3 Consequence of not filing an acknowledgment of service

(1) If:

(a) a defendant fails to file an acknowledgment of Service within the period specified in rule 10.4; and

(b) does not within that period serve or file an admission in accordance with Part 15,

the claimant may obtain default judgement if Part 13 allows it.

10.4 The period for filing an acknowledgment of service

(1) The general rule is that the period for filing an acknowledgment of service is:

(a) where the defendant is served with a claim form which states that particulars of claim are to follow, 14 days after service of the particulars of claim; and

(b) in any other case, 14 days after service of the claim form.

(2) A defendant may file an acknowledgment of service at any time before judgment, provided that the defendant shall be ordered to pay any costs properly incurred by the claimant in case of a request or an application for default judgment.

10.5 Notice to claimant that defendant has filed an acknowledgment of service

(1) The defendant must deliver a copy of the filed acknowledgment to the claimant and any other party.

10.6 Contents of acknowledgment of service

(1) An acknowledgment of service must:

(a) contain the name of the defendant’s advocate or state that the defendant defends in person;

(b) be signed by the defendant or the defendant's advocate; and

(c) include the defendant's address for service within the municipal limits of the town or village in which the Registry of the court is situated.

(2) The defendant’s address for service may include the defendant’s facsimile (fax) number and/or email address.

(3) Where the defendant is an individual, and the claim form does not contain an address at which he or she resides or carries on business, or contains an incorrect address, the defendant must provide such an address in the acknowledgment of service.

Part 11

Discontinuance

11.1 Scope of this Part

(1) The rules in this Part set out the procedure by which a claimant may discontinue all or part of a claim.

(2) A claimant who:

(a) claims more than one remedy; and

(b) subsequently abandons the claim to one or more of the remedies but continues with the claim for the other remedies,

is not treated as discontinuing all or part of a claim for the purposes of this Part.

(3) The procedure for amending a statement of case, set out in Part 18, applies where a claimant abandons a claim for a particular remedy but wishes to continue with the claim for other remedies.

11.2 Right to discontinue claim

(1) A claimant may discontinue all or part of a claim at any time.

(2) However:

(a) a claimant must apply for permission of the court to discontinue all or part of a claim where :

(i) the case has been set for case management; or

(ii) the court has granted an interim injunction; or

(iii) any party has given an undertaking to the court;

(b) where the claimant has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 27), the claimant may discontinue that claim only if:

(i) the defendant who made the interim payment consents in writing; or

(ii) the court gives permission;

(c) where there is more than one claimant, a claimant may not discontinue unless:

(i) every other claimant consents in writing; or

(ii) the court gives permission.

(3) Where there is more than one defendant, the claimant may discontinue all or part of a claim against all or any of the defendants.

11.3 Procedure for discontinuing

(1) To discontinue a claim or part of a claim, a claimant must:

(a) file a notice of discontinuance; and

(b) serve a copy of it on every other party to the proceedings who has filed an acknowledgment of service.

(2) The claimant must state in the notice of discontinuance that the claimant has served notice of discontinuance on every other party to the proceedings.

(3) Where the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the notice of discontinuance.

(4) Where there is more than one defendant, the notice of discontinuance must specify against which defendants the claim is discontinued.

11.4 Right to apply to have notice of discontinuance set aside

(1) Where the claimant discontinues under rule 11.2 (1) the defendant may apply to have the notice of discontinuance set aside.

(2) The defendant may not make an application under this rule more than 28 days after the date when the notice of discontinuance was served on the defendant.

11.5 When discontinuance takes effect where permission of the court is not needed

(1) Discontinuance of a claim against any defendant takes effect on the date when notice of discontinuance is served on the defendant under rule 11.3 (1).

(2) Subject to rule 11.4, the proceedings are brought to an end as against the defendant on that date.

(3) However, this does not affect proceedings to deal with any question of costs.

11.6 Liability for costs

(1) Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom the claimant discontinues incurred on or before the date on which notice of discontinuance was served on the defendant.

(2) If proceedings are only partly discontinued:

(a) the claimant is liable under paragraph (1) for costs relating only to the part of the proceedings which the claimant is discontinuing; and

(b) unless the court orders otherwise, the costs which the claimant is liable to pay must not be assessed until the conclusion of the rest of the proceedings.

11.7 Discontinuance and subsequent proceedings

(1) Where a case has been discontinued under this Part, it shall not constitute a bar to the bringing of a fresh claim without prejudice to the ability of the court to prevent abuse of process.

(2) If any subsequent claim shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court may order a stay of such subsequent action, until such costs shall have been paid.

11.8 Stay of remainder of partly discontinued proceedings where costs not paid

(1) This rule applies where:

(a) proceedings are partly discontinued;

(b) a claimant is liable to pay costs under rule 11.6.

(c) the claimant fails to pay those costs or make the payment within 14 days of:

(i) the date on which the parties agreed the sum payable by the claimant; or

(ii) the date on which the court ordered the costs to be paid or the payment to be made.

(2) Where this rule applies, the court may stay the remainder of the proceedings until the claimant pays the whole of the costs which the claimant is liable to pay under rule 11.6.

Part 12

Disputing the court's jurisdiction

12.1 Procedure for disputing the court's jurisdiction

(1) A defendant who wishes to:

(a) dispute the court's jurisdiction to try the claim; or

(b) argue that the court should not exercise its jurisdiction,

may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10 and tick the appropriate box signifying that intention.

(3) An application under this rule must:

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(4) If the defendant:

(a) does not comply with paragraph (2) or

(b) having complied with paragraph (2) does not make such an application within the period specified in paragraph (3),

the defendant is to be treated as having submitted to the jurisdiction of the court and may not argue that the court should not exercise its jurisdiction.

(5) Nothing in (4) deprives the defendant of the right to dispute the jurisdiction of the court to try the claim.

Drafting Note on 12.1 (4) and (5)
12.1(5) seems contradictory to 12.1(4). Once you submit to jurisdiction you are stuck to it, even if you are sued by the same party in another jurisdiction that is more suitable. There are situations where essentially the same claim is started in a different jurisdiction, the problem you then have is you have to go on defending the claim – whereas the other jurisdiction may be more desirable for both parties so you would want the action in Cyprus stayed. You cannot have it stayed in Cyprus according to the above drafted rules.

From the perspective of civil procedure, The Expert Group is of the view that it is inconceivable that jurisdiction may be declined after a trial. There has to be an end to the jurisdictional issue at an early stage, one way or the other, even if further facts come to light later. If changes in the law are required, these should be made.

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including:

(a) setting aside the claim form;

(b) setting aside service of the claim form;

(c) discharging any order made before the claim was commenced or before the claim form was served;

(d) staying the proceedings and/or

(e) transferring the proceedings to the court or tribunal having jurisdiction to the extent that this is required or permitted by any law or rule.

(7) If on an application under this rule the court does not make a declaration pursuant to rule 12.1 (6):

(a) the acknowledgment of service shall cease to have effect;

(b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and

(c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.

(8) If the defendant files a further acknowledgment of service in accordance with paragraph (7) (b) the defendant shall be treated as having submitted to the court's jurisdiction, unless at the same time the defendant has explicitly reserved the right to appeal.

(9) If a defendant makes an application under this rule, the defendant must file and serve the written evidence in support with the application notice, but need not before the hearing of the application file:

(a) in a Part 7 claim, a defence; or

(b) in a Part 8 claim, any other written evidence.

Part 13

Default judgment

13.1 Meaning of "default judgment", "defence" and "failed"

(1) In these rules, "default judgment" means judgment without trial where a defendant:

(a) has failed to file an acknowledgment of service; or

(b) has failed to file a defence.

(c) "failed" means failed to file before

(i) the relevant time for doing so has expired, and

(ii) before judgment was requested.

13.2 Claims in which default judgment may not be obtained

(1) A claimant may not obtain a default judgment where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

13.3 Conditions to be satisfied

(1) The claimant or defendant may obtain judgment in default of an acknowledgment of service or defence only if the defendant has failed to file an acknowledgment of service or a defence to the claim or the claimant has failed to file a defence to the counterclaim under rule 21.4 (or any part thereof).

(2) The claimant or defendant in a counterclaim may not obtain a default judgment if:

(a) the defendant or claimant in a counterclaim has applied:

(i) to have the claimant's or defendant's statement of case struck out under rule 3.3; or

(ii) for summary judgment under Part 24,

and, in either case, that application has not been disposed of;

(b) the defendant or claimant has satisfied the whole claim or counterclaim (including any claim for costs) on which the claimant or defendant is seeking judgment;

(c)

(i) the claimant or defendant is seeking judgment on a claim or counterclaim for money; and

(ii) the defendant or claimant has filed or served on the claimant or defendant an admission together with a request for time to pay.

(3) If the defendant is resident outside of the jurisdiction and, for the purposes of execution there, a judgment on the merits is required then:

(a) instead of obtaining judgment in default under this Part, the claimant may make an application for summary judgment under Part 24 and

(b) in such circumstances, because the claimant would be applying for summary judgment before any acknowledgment has been filed, he or she will require permission to make such an application.

13.4 Procedure for obtaining default judgment

(1) Subject to paragraph (2), a claimant may obtain a default judgment by filing a written request to the relevant Court using the Practice Form where the claim is for:

(a) a specified amount of money;

(b) an amount of money to be decided by the court;
(c) delivery of goods where the claim form gives the defendant the alternative of paying their value; or
(d) any combination of these remedies.

(2) The claimant must make an application in accordance with Part 23 if the claimant wishes to obtain a default judgment:
(a) on a claim which consists of or includes a claim for any other remedy; or
(b) where rule 13.9 or rule 13.10 so provides.

(3) Where a claimant:
(a) claims any other remedy in the claim form in addition to those specified in paragraph (1); but
(b) abandons that claim in the request for judgment;
the claimant may still obtain a default judgment by filing a request under paragraph (1).

(4) Where the claimant makes a request for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on the statement of case. In circumstances where the court deems it necessary, it may:
(a) decline to grant the request and direct that an application be filed under Part 23; or
(b) require that the claimant file additional evidence (in the form of a witness statement or otherwise) to prove its claim.
In either case, the court shall briefly state the exceptional circumstances.

(5) Unless any enactment or rule otherwise provides, requests for judgment in default need not be served on any defendant who has failed to file an acknowledgment of service and may be determined by the court.

Drafting Note in relation to 13.4 (5)
The Expert Group recommends that 13.4 (5) should be changed to where the Defendant has failed to file a defence.

The Expert Group thinks that there is a risk in how 13.4 (5) is drafted as it may exclude default judgement for failure to file a defence. The Expert Group intended the default judgment procedure to work simply with as little input as possible needed from the court to streamline the procedure.

The same applies in 13.10 (3) (b)

13.5 Nature of judgment where default judgment obtained by filing a request

(1) Where the claim is for a specified sum of money, the claimant may specify in a request filed under rule 13.4 (1):
(a) the date by which the whole of the judgment debt is to be paid; or
(b) the times and rate at which it is to be paid by instalments.

(2) Except where paragraph (4) applies, a default judgment on a claim for a specified amount of money obtained on the filing of a request, will be judgment for the amount of the claim (less any payments made) and costs:
(a) to be paid by the date or at the rate specified in the request for judgment; or
(b) if none is specified, immediately.
(Interest may be included in a default judgment obtained by filing a request if the conditions set out in rule 13.6 are satisfied).

(3) Where the claim is for an unspecified amount of money, a default judgment obtained on the filing of a request will be for an amount to be decided by the court and costs.

(4) Where the claim is for delivery of goods and the claim form gives the defendant the alternative of paying their value, a default judgment obtained on the filing of a request will be judgment requiring the defendant to:

(a) deliver the goods or (if the defendant does not do so) pay the value of the goods as decided by the court (less any payments made); and

(b) pay costs.

13.6 Interest

(1) A default judgment on a claim for a specified amount of money obtained on the filing of a request may include the amount of interest claimed to the date of judgment if:

(a) the particulars of claim include the details required by rule 16.4;

(b) where interest is claimed under the Courts of Justice Law 14/1960 , the rate is no higher than the rate of interest payable on judgment debts at the date when the claim form was issued; and

(c) the claimant's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the claim form to the date of the request for judgment.

(2) In any case where paragraph (1) does not apply, judgment will be for an amount of interest to be decided by the court.

13.7 Procedure for deciding an amount or value

(1) This rule applies where the claimant obtains a default judgment on the filing of a request under rule 13.4 (1) and judgment is for:

(a) an amount of money to be decided by the court;

(b) the value of goods to be decided by the court; or

(c) an amount of interest to be decided by the court.

(2) Before the court enters judgment it will give any directions it considers appropriate.

13.8 Claim against more than one defendant

(1) A claimant may obtain a default judgment on request under this Part on a claim for money or a claim for delivery of goods against one of two or more defendants, and proceed with the claim against the other defendants.

(2) Where a claimant applies for a default judgment against one of two or more defendants:

(a) if the claim can be dealt with separately from the claim against the other defendants:

(i) the court may enter a default judgment against that defendant; and

(ii) the claimant may continue the proceedings against the other defendants;

(b) if the claim cannot be dealt with separately from the claim against the other defendants:

(i) the court will not enter default judgment against that defendant; and

(ii) the court must deal with the application at the same time as it disposes of the claim against the other defendants.

(3) A claimant may not enforce against one of two or more defendants any judgment obtained under this Part for possession of land or for delivery of goods unless:

(a) the claimant has obtained a judgment for possession or delivery (whether or not obtained under this Part) against all the defendants to the claim; or

(b) the court gives permission.

13.9 Procedure for obtaining a default judgment for costs only

(1) Where a claimant wishes to obtain a default judgment for costs only the claimant must make an application in accordance with Part 23.

(2) Where an application is made under this rule for costs only, judgment shall be for an amount to be decided by the court.

13.10 Default judgment obtained by making an application

(1) The claimant must make an application in accordance with Part 23 where:

- (a) the claim is:
  - (i) a claim against a child or an incapacitated person; or
  - (ii) a claim in tort by one spouse or civil partner against the other. or
- (b) the claimant wishes to obtain a default judgment where the defendant has failed to file an acknowledgment of service:
  - (i) against a defendant who has been served with the claim out of the jurisdiction (service where permission of the court is not required);
  - (ii) against a foreign State;
  - (iii) against a diplomatic agent who enjoys immunity from civil jurisdiction; or
  - (iv) against persons or organisations who enjoy immunity from civil jurisdiction.

(2) On an application against a child or incapacitated person:

- (a) where a litigation friend has not been already been designated by any law or appointed by court order to act on behalf of the child or protected party, a litigation friend must be appointed by the court before judgment can be obtained, and
- (b) the claimant must satisfy the court by evidence that the claimant is entitled to the judgment claimed.

(3) An application for a default judgment may be made without notice if:

- (a) the claim was served on the defendant ;
- (b) the defendant has failed to file an acknowledgment of service; and
- (c) notice does not need to be given under any other provision of these rules.

(4) Where an application is made against a foreign State for a default judgment where the defendant has failed to file an acknowledgment of service:

- (a) the application may be made without notice, but the court hearing the application may direct that a copy of the application notice be served on the State;
- (b) if the court:
  - (i) grants the application; or
  - (ii) directs that a copy of the application notice be served on the State,

  the judgment or application notice (and the evidence in support) may be served out of the jurisdiction without any further order;
- (c) where paragraph (2)(b) permits a judgment or an application notice to be served out of the jurisdiction, the procedure for serving the judgment or the application notice is the same as for serving a claim form.

13.11 Want of prosecution

Drafting Note
The Rules Committee considers that the rule should be extended to cover other instances e.g. where an admission is filed but the claimant fails to apply for judgment. The Expert Group concurs – this and any subsequent extensions are matters for Stage 3.

(1) Where after the expiration of 6 months since the end of the period specified in the rules for filing an acknowledgment of service, or a defence as the case may be:
   (a) a defendant has not filed an acknowledgment of service or an admission or a defence or counterclaim; and
   (b) the claimant has not entered or applied for judgment under Part 13 (default judgment), or Part 24 (summary judgment),
   the Registrar shall inform the court accordingly.

(2) The court may thereupon direct the Registrar to serve a notice to the claimant requiring the claimant to apply for judgment under Part 13 or Part 24 within 14 days after the giving of the notice and informing the claimant that upon failure so to proceed within the 14 days aforesaid the action shall stand dismissed for want of prosecution.

(3) Upon failure to proceed within the 14 days as aforesaid, or within such extended time as may be allowed, the action shall stand dismissed for want of prosecution and the parties shall be informed accordingly.

(4) Where an action stands dismissed under this rule the claimant may institute a fresh action.

Part 14

Setting aside or varying default judgment

14.1 Scope of this Part

(1) The rules in this Part set out the procedure for setting aside or varying judgment entered under Part 13 (default judgment).

14.2 Cases where the court must set aside judgment entered under Part 13

(1) The court must set aside a judgment entered under Part 13 without regard to the defendant's or in the case of a counterclaim the claimant's promptness or the prospects of success if judgment was wrongly entered because:

(a) in the case of a judgment in default of an acknowledgment of service, any of the conditions in rule 13.3 (1) was not satisfied;

(b) in the case of a judgment in default of a defence, any of the conditions in rule 13.3 (1) and 13.3 (2) was not satisfied; or

(c) the whole of the claim or counterclaim was satisfied before judgment was entered.

(d) the claim form has not in fact been served.

14.3 Cases where the court may set aside or vary judgment entered under Part 13

(1) In any other case, the court may set aside or vary a judgment entered under Part 13 upon such terms as may be just if:

(a) the defendant or claimant has a real prospect of successfully defending the claim or counterclaim; or

(b) it appears to the court that there is some other good reason why:

(i) the judgment should be set aside or varied; or

(ii) the defendant should be allowed to defend the claim.

(2) In considering whether to set aside or vary a judgment entered under Part 13, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

14.4 Abandoned claim restored where default judgment set aside

(1) Where:

(a) the claimant claimed a remedy in addition to one specified in rule 13.4 (1) (claims in respect of which the claimant may obtain default judgment by filing a request);

(b) the claimant abandoned the claim for that remedy in order to obtain default judgment on request in accordance with 13.4 (3); and

(c) that default judgment is set aside under this Part,

the abandoned claim is restored when the default judgment is set aside.

Part 15

Admissions

15.1 Admissions

(1) Any party to a cause or matter may give notice by the statement of case or otherwise in writing that the party admits the truth of the whole or any part of the case of any other party.

(2) Either party may request the other party to admit the truth of the contents of any document, saving all just exceptions; and in case of refusal or neglect to admit after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless the court orders otherwise.

15.2 Form of Notice to Admit: content of documents

(1) A notice to admit the truth of the contents of any documents shall be given in duplicate in Form 18, and the admission thereunder shall be endorsed on the notice after the manner provided in the footnote to that Form.

15.3 Notice to admit: specific facts

(1) Any party may, by notice in writing, at any time not later than ten days before the day for which the trial has been fixed, call on any opposite party to admit for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice.

15.4 Notice to admit: refusal or neglect to admit after notice under this Part

(1) In case of refusal or neglect to admit any fact mentioned in a notice served under rule 15.3 within 14 days after service of a notice, or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact shall be paid by the party so neglecting or refusing, whatever the results of the cause, matter, or issue may be, unless the court orders otherwise.

(2) Any admission made in pursuance of such notice is to be deemed to be made only for the purpose of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: provided also that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

15.5 Court or a Judge may at any time allow any party to amend or withdraw any admission

(1) The Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

15.6 Form of notice to admit facts

(1) A notice to admit facts shall be in Form ####, and admission of facts shall be in Form ####.

15.7 Judgment on Admissions

(1) Any party may at any stage of a cause or matter where admissions of fact have been made either in a statement of case, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he or she may be entitled to, without waiting for the determination of

any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just.

15.8 Notice to admit the truth the contents of any documents or facts

(1) A notice to admit the truth of the contents of any documents or facts may be signed by the party or the party's advocate.

(2) Any admission made in pursuance of any notice to admit the truth the contents of any documents or facts may be signed by the party or the party's advocate.

(3) If a notice to admit comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice, unless the court orders otherwise.

Part 16

Statements of Case

16.1 Part not to apply where claimant uses Part 8 procedure

(1) This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

16.2 General provisions as to the content of statements of case

(1) A party must raise by the statement of case:

(a) all matters which show that the claim or counterclaim, as the case may be, is or is not maintainable;

(b) all such grounds of defence or reply, as the case may be, which if not raised:

(i) would be likely to take the opposite party by surprise; or

(ii) would raise issues of fact not arising out of the preceding statement of case, such as, fraud, prescription or limitation of time, release, payment, performance, or facts showing illegality of any kind, or rendering the claim or counterclaim unenforceable.

16.3 Contents of the claim form

(1) The claim form must:

(a) contain a concise statement of the nature of the claim;

(b) specify the remedy which the claimant seeks;

(c) where the claimant is making a claim for money, contain a statement of value in accordance with rule 16.4;

(d) where the claimant's only claim is for a specified sum, contain a statement of the interest accrued on that sum; and

(2) In civil proceedings against the Republic, the claim form must be issued against the Attorney General of the Republic or any other person or institution specified for this purpose in any other enactment and must also contain:

(a) the names of the government departments and officers of the Republic concerned; and

(b) brief details of the circumstances in which it is alleged that the liability of the State arose.

(3) If the particulars of claim are not contained in, or are not served with the claim form, the claimant must state on the claim form that the particulars of claim will follow.

(4) If the claimant is claiming in a representative capacity, the claim form must state what that capacity is.

(5) If the defendant is sued in a representative capacity, the claim form must state what that capacity is.

(6) The court may grant any remedy to which the claimant is entitled even if that remedy is not specified in the claim form.

16.4 Statement of value to be included in the claim form

(1) This rule applies where the claimant is making a claim for money.

(2) The claimant must, in the claim form, state:

(a) the amount of money claimed and the relevant court scale;
(b) that the claimant expects to recover:
(i) not more than €10000;
(ii) more than €10000; or

(3) When calculating how much the claimant expects to recover, the claimant must disregard any possibility:
(a) that the court may make an award of:
(i) interest;
(ii) costs;
(b) that the court may make a finding of contributory negligence;
(c) that the defendant may make a counterclaim or that the defence may include a set-off.

(4) Subject to the provisions of section 22 of the Courts of Justice Law, the statement of value in the claim form does not limit the power of the court to give judgment for the amount which it finds the claimant is entitled to.

16.5 Contents of the particulars of claim

(1) Particulars of claim must include:
(a) a concise statement of the facts on which the claimant relies in order to formulate the claim;

Drafting Note in relation to 16.5 (1)

The Expert Group does not think that the words 'in order to formulate the claim' in 16.5 (1) add anything or indeed understand precisely what they mean. The Expert Group recommends that they should be omitted; however, if the Rules Committee think they are helpful then the words should be left in.

(b) if the claimant is seeking interest, a statement to that effect and the details set out in paragraph (2);
(c) if the claimant is seeking aggravated damages or exemplary damages a statement to that effect and the grounds for claiming them.

(2) If the claimant is seeking interest the claimant must:
(a) state whether the claimant is doing so:
(i) under the terms of a contract;
(ii) under an enactment and if so which; or
(iii) on some other basis and if so what that basis is; and
(b) if the claim is for a specified amount of money, state:
(i) the percentage rate at which interest is claimed;
(ii) the date from which it is claimed;
(iii) the date to which it is calculated, which must not be later than the date on which the claim form is issued;
(iv) the total amount of interest claimed to the date of calculation; and
(v) the daily rate at which interest accrues after that date.

16.6 Separate particulars of claim in the same set of proceedings in respect of different defendants

(1) In a suitable case the court may order, either before or after the service of any particulars of claim, that the claimant be permitted to serve separate particulars of claim on different defendants.

(2) Copies of the separate particulars of claim must be served on the other defendants).

16.7 Contents of defence

(1) In the defence, the defendant must state:
- (a) which of the allegations in the particulars of claim the defendant denies;
- (b) which allegations the defendant is unable to admit or deny, but which the defendant requires the claimant to prove; and
- (c) which allegations the defendant admits.

(2) Where the defendant denies an allegation:
- (a) the defendant must state the reasons for doing so; and
- (b) if the defendant intends to put forward a different version of events from that given by the claimant, the defendant must state the defendant's own version.
- (c) the requirements of (a) and (b) are not satisfied by a bare denial of the allegation.

(3) A defendant who:
- (a) fails to specifically deal with an allegation; but
- (b) has set out in the defence the nature of the case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

(4) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless the defendant expressly admits the allegation.

(5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation.

(6) If the defendant disputes the claimant's statement of value under rule 16.4 the defendant must:
- (a) state why the defendant disputes it; and
- (b) if able, give the defendant's own statement of the value of the claim.

(7) If the defendant is defending in a representative capacity, the defendant must state what that capacity is.

(8) If the defendant has not filed an acknowledgment of Service under Part 10, the defendant must give an address for Service.

16.8 Defence of set-off

(1) Where a defendant:
- (a) contends that the defendant is entitled to money from the claimant; and
- (b) relies on this as a defence to the whole or part of the claim,

the contention may be included in the defence and set off against the claim, whether or not it is also a Part 21 claim.

16.9 Reply to defence

(1) A claimant who does not file a reply to the defence shall not be taken to admit the matters raised in the defence.

(2) A claimant who:
- (a) files a reply to a defence; but

(b) fails to deal with a matter raised in the defence,

shall be taken to require that matter to be proved.

(3) Where a claimant files and serves a reply and defence to counterclaim this should normally form one document with the defence to counterclaim following on from the reply.

(4) Where a defence raises new issues then the claimant should set out his or her own version of events in relation to those new issues.

16.10 Court's power to dispense with statements of case

(1) If a claim form has been:

(a) issued in accordance with rule 7.1; and

(b) served in accordance with rule 7.5,

the court may, in a suitable case and with the consent of the parties, make an order that the claim will continue without any other statement of case.

16.11 Particulars of claim

(1) If practicable, the particulars of claim should be contained in the claim form.

(2) Where the particulars of claim are not contained in the claim form, they must be filed separately within 28 days after service of the claim form.

(3) If the particulars of claim are not contained in the claim form, the claim form must also contain a statement that particulars of claim will follow.

16.12 Other matters to be included in particulars of claim

(1) Where a claim is made for an injunction or declaration in respect of or relating to any land or the possession, occupation, use or enjoyment of any land the particulars of claim must:

(a) state whether or not the injunction or declaration relates to residential premises, and

(b) identify the land (by reference to a plan where necessary).

(2) Where a claim is brought to enforce a right to recover possession of goods the particulars of claim must contain a statement showing the value of the goods.

(3) Where a claim is based upon a written agreement:

(a) a copy of the contract or exchange of communication or documents constituting the agreement should be attached to or served with the particulars of claim and the original(s) should be available at the hearing, and

(b) any general conditions of sale incorporated in the contract should also be attached (but where the contract is or the documents constituting the agreement are bulky this rule is complied with by attaching or serving only the relevant parts of the contract or documents).

(4) Where a claim is based upon an oral agreement, the particulars of claim should set out the contractual words used and state by whom, to whom, when and where they were spoken.

(5) Where a claim is based upon an agreement by conduct, the particulars of claim must specify the conduct relied on and state by whom, when and where the acts constituting the conduct were done.

(6) Where a claimant desires to have an account taken, the particulars of claim must include a claim that such account be taken.

(7) In a claim for libel the particulars of claim must state sufficient particulars to identify the publications in respect of which the claim is brought.

(8) In a claim for recovery of possession of immovable property the particulars of claim should set out the value of the property sought to be recovered, and in those for trespass the value of the part actually trespassed upon.

16.13 Matters which must be specifically set out in the statement of case if relied on

(1) The claimant or defendant as the case may be must specifically set out the following matters in the statement of case where the defendant wishes to rely on them in support of the claim or defence:

(a) any allegation of fraud,
(b) the fact of any illegality,
(c) details of any misrepresentation,
(d) details of all breaches of trust,
(e) notice or knowledge of a fact,
(f) details of unsoundness of mind or undue influence,
(g) details of wilful default, and
(h) any facts relating to mitigation of loss or damage,
(i) any breach of statutory duty,
(j) details of any infringement of the provisions of the Constitution of the Republic,
(k) details of any infringement of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a relevant protocol thereof as such has been ratified.
(l) details of any infringement of the provisions of European Union law.
(m) details of the expiry of any relevant limitation period relied on.

16.14 Claims for money expressed in foreign currency

(1) Where a claim is for a sum of money expressed in a foreign currency it must expressly state:

(a) that the claim is for payment in a specified foreign currency,
(b) why it is for payment in that currency,

16.15 Inconsistent Statements of Case

(1) Save by way of amendment where leave to amend has been granted, a subsequent statement of case must not raise any new ground of claim or contain any allegation of fact inconsistent with a previous statement of case of the party making the same.

16.16 Matters which may be included in the statement of case

(1) A party may:

(a) refer in the statement of case to any point of law on which the claim or defence, as the case may be, is based,
(b) give in the statement of case the name of any witness the party proposes to call, and
(c) attach to or serve with this statement of case a copy of any document which the party considers is necessary to the claim or defence, as the case may be (including any expert's report to be filed in accordance with Part 34).

16.17 Matters to which no objection can be raised

(1) No technical objection shall he raised to any statement of case on the ground of any alleged want of form.

(2) No claim shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

Part 17

Defence and Reply

17.1 Part not to apply where claimant uses the Part 8 procedure

(1) This Part applies to claims commenced by claim form under Part 7. This Part does not apply where the claimant uses the procedure set out in Part 8 (alternative procedure for claims).

17.2 Filing a defence

(1) A defendant who wishes to defend all or part of a claim must file a defence.

(2) The defence which is required by this rule is a defence complying with this Part, with rule 16.7 and rule 16.8 (contents of defence and set-off as appropriate).

(3) The defence must be verified by a statement of truth pursuant to Part 22.

17.3 Consequence of not filing a defence

(1) If a defendant fails to file a defence, the claimant may obtain default judgment if Part 13 allows it.

17.4 The period for filing a defence

(1) The general rule is that the period for filing a defence is:

(a) 28 days after the acknowledgment of service.

(2) Without prejudice to the court's power to extend the time for filing a defence, the general rule is subject to the following rules:

(a) section v of Part 6 (which specifies how the period for filing a defence is calculated where the claim form is served out of the jurisdiction);

(b) part 12 (which provides that, where the defendant makes an application disputing the court's jurisdiction, the defendant need not file a defence before the hearing);

17.5 Agreement extending the period for filing a defence

(1) The defendant and the claimant may agree that the period for filing a defence specified in rule 17.4 shall be extended by up to 42 days. Provided that the number of days of any extension or extensions does not exceed 42 days in total.

(2) Where the defendant and the claimant agree to extend the period for filing a defence, the defendant must notify the court in writing immediately thereafter.

17.6 Delivery of copy of defence

(1) The defendant must deliver a copy of the defence to every other party immediately after it is filed.

17.7 Making a counterclaim

(1) Part 21 applies to a defendant who wishes to make a counterclaim.

(2) Any counterclaim must be contained in one document with the defence and to follow immediately thereafter.

17.8 Reply to defence

(1) If a claimant files a reply to the defence, the claimant must deliver the reply on the other parties immediately after it is filed.

(2) Where a claimant delivers a reply and a defence to counterclaim, the reply and defence to counterclaim should form one document with the defence to counterclaim following on from the reply.

17.9 Close of pleadings

(1) As between a claimant and a defendant the pleadings close with the filing of a defence or a reply (if any).

(2) A party may not file or serve any statement of case after a reply without the permission of the court.

(3) Where a subsequent statement of case is filed with the permission of the court, it shall be delivered to every other party as soon as practicable thereafter.

17.10 Claim not defended or admitted

(1) Where:

(a) 6 months have expired since the end of the period for filing a defence specified in rule 17.4;

(b) no defendant has served or filed an admission or filed a defence or counterclaim; and

(c) the claimant has not entered or applied for judgment under Part 13 (default judgment), or Part 24 (summary judgment) within 2 months from the expiration of the above 6 month period,

the Court may dismiss the claim for want of prosecution.

(2) Where a claim is dismissed for want of prosecution this will be without prejudice to the institution of fresh proceedings concerning the same cause of action.

Part 18

Amendments to statements of case

18.1 Amendments to statements of case

(1) A party may amend the statement of case at any time before it has been served on any other party.

(2) If the statement of case has been served, a party may amend it only:

(a) with the written consent of all the other parties; or

(b) with the permission of the court, in the interests of justice and having regard to the overriding objective.

(3) If a statement of case has been served, an application to amend it by removing, adding or substituting a party must be made in accordance with rule 20.4.

18.2 Costs

(1) Subject to Part 39 dealing with costs:

(a) The costs of and occasioned by the amendment will usually be borne by the party applying for the amendment.

(b) The costs of a contested application will usually follow the event and will be borne by the unsuccessful party.

18.3 Power of court to disallow amendments made without permission

(1) If a party has amended the statement of case where permission of the court was not required, the court may nevertheless disallow the amendment in exceptional circumstances.

(2) A party may apply to the court for an order under paragraph (1) within 14 days of service on the party of a copy of the amended statement of case.

18.4 Amendments to statements of case with the permission of the court

(1) Where the court gives permission for a party to amend the party's statement of case it may give directions as to:

(a) consequential amendments to be made to any other statement of case; and

(b) service of any amended statement of case.

(2) The power of the court to give permission under this rule is subject to:

(a) rule 20.2 (change of parties: general);

(b) rule 20.6 (special provisions about adding or substituting parties after the end of a relevant limitation period); and

(c) rule 18.7 (amendment of statement of case after the end of a relevant limitation period).

18.5 The date from which amendments take effect

(1) An amendment duly made, with or without leave, takes effect from the date of the original document which has been amended

(2) This provision does not apply to amendments to remove, add or substitute parties to the proceedings

18.6 Procedure: applications to amend where the permission of the court is required

(1) The application may be dealt with at a hearing or, if rule 23.12 applies, without a hearing.

(2) When making an application to amend a statement of case, the applicant should file with the court:

(a) the application notice, and

(b) a copy of the statement of case clearly identifying the proposed amendments.

(3) Where permission to amend has been given, the applicant must within 14 days of the date of the order, or within such other period as the court may direct, file with the court the amended statement of case.

(4) The statement of case must be re-verified by a statement of truth.

(5) A copy of the order and the amended statement of case must be served on every party to the proceedings, unless the court orders otherwise.

(6) The amended statement of case and the court copy of it should be endorsed as follows:

(a) where the court's permission was required:
'"Amended [Particulars of Claim *or as may be*] by Order of [District Judge ....] *or as may be* dated ..."'

(b) Where the court's permission was not required:
'"Amended [Particulars of Claim *or as maybe*] under [rule 18.1(1) or (2)(a)] dated ...'

(7) The statement of case in its amended form must show the amendments.

18.7 Amendments to statements of case after the end of a relevant limitation period

(1) This rule applies where:

(a) a party applies to amend his or her statement of case in one of the ways mentioned in this rule; and

(b) a period of limitation has expired.

(2) The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims if the new capacity is one which that party had when the proceedings started or has since acquired.

Part 19

Further information

19.1 Obtaining further information

(1) The court may at any time order a party to:
   (a) clarify any matter which is in dispute in the proceedings; or
   (b) give additional information in relation to any such matter,
   whether or not the matter is contained or referred to in a statement of case.

(2) Rule 19 (1) is subject to any rule of law to the contrary.

(3) Where the court makes an order under rule 19 (1), the party against whom it is made must:
   (a) file the response; and
   (b) serve it on the other parties,
   within the time specified by the court.

19.2 Preliminary request for further information or clarification

(1) Before making an application to the court for an order under Part 19, the party seeking clarification or information should first serve on the party from whom it is sought a written request for that clarification or information (a Request) stating a date by which the response to the Request should be served. The date must allow the party who is responding a reasonable time to respond.

(2) A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare the party's own case or to understand the case to be met.

(3) Requests must be made as far as possible in a single comprehensive document and not piecemeal.

(4) A Request may be made by letter if the text of the Request is brief and the reply is likely to be brief; otherwise the Request should be made in a separate document.

(5) If a Request is made in a letter, the letter should, in order to distinguish it from any other that might routinely be written in the course of a case:
   (a) state that it contains a Request made under Part 19, and
   (b) deal with no matters other than the Request.

19.3 Form of Request

(1) A Request (whether made by letter or in a separate document) must:
   (a) be headed with the name of the court and the title and number of the claim,
   (b) in its heading state that it is a Request made under Part 19 , identify the first party and the second party and state the date on which it is made,
   (c) set out in a separate numbered paragraph each request for information or clarification,
   (d) where a Request relates to a document, identify that document and (if relevant) the paragraph or words to which it relates,
   (e) state the date by which the first party expects a response to the Request.

19.4 Responding to a request

(1) A response to a Request must be in writing, dated and signed by the second party or the party's advocate.

(2) Where the Request is made in a letter the second party may give the response in a letter or in a formal reply. Such a letter should identify itself as a response to the Request and deal with no other matters than the response.

(3) A response must:

(a) be headed with the name of the court and the title and number of the claim,

(b) in its heading identify itself as a response to that Request,

(c) set the response to each request for information or clarification in a separate numbered paragraph ,

(d) refer to and have attached to it a copy of any document not already in the possession of the first party which forms part of the response.

(4) A second or supplementary response to a Request must identify itself as such in its heading.

(5) The second party must, when serving the response on the first party, serve on every other party and file with the court a copy of the Request and of the second party's response.

19.5 Statements of truth

(1) A response should be verified by a statement of truth.

19.6 Refusal to provide

(1)

(a) If the responding party objects to complying with the Request or part of it or is unable to do so at all or within the time stated in the Request the responding party must inform the first party promptly and in any event within that time.

(b) Where the responding party considers that a Request can only be complied with at disproportionate expense and objects to comply for that reason the responding party should say so in the reply and explain briefly why the party has taken that view.

(c) The responding party may do so in a letter or in a separate document (a formal response), but in either case must give reasons and, where relevant, give a date by which the party expects to be able to comply.

(d) There is no need for the responding party to apply to the court if party objects to a Request or is unable to comply with it at all or within the stated time. The responding party need only comply with rule 19.6 (1)(a) above.

19.7 Restriction on the use of further information

(1) Unless the court orders otherwise, information provided by a party to another party (whether given voluntarily or following an order made under rule 19.1 above) must not be used for any purpose except for that of the proceedings in which it is given.

Part 20

Parties and group litigation

Drafting Note
Orders 13 and 14 are covered in the rules already under general case management provisions. Part 3.7 covers the point about consolidation. The Expert Group recommends that the case management powers work best if left as they are.

20.1 Parties: general

(1) Any number of claimants or defendants may be joined as parties to a claim.

Section I: Addition and substitution of parties

20.2 Change of parties: general

(1) This rule applies where a party is to be added or substituted except where the case falls within rule 20.6 (special provisions about changing parties after the end of a relevant limitation period).

(2) The court may order a person to be added as a new party if:
   (a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or
   (b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

(3) The court may order any person to cease to be a party if it is not desirable for that person to be party to the proceedings.

(4) The court may order a new party to be substituted for an existing one if:
   (a) the existing party's interest or liability has passed to the new party; or
   (b) it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings.

20.3 Provisions applicable where two or more persons are jointly entitled to a remedy

(1) Where a claimant claims a remedy to which some other person is jointly entitled with the claimant, all persons jointly entitled to the remedy must be parties unless the court orders otherwise.

(2) If any person does not agree to be a claimant, the person must be made a defendant, unless the court orders otherwise.

20.4 Procedure for adding and substituting parties

(1) The court's permission is required to remove, add or substitute a party, unless the claim form has not been served.

(2) An application for permission under paragraph (1) may be made by:
   (a) an existing party; or
   (b) a person who wishes to become a party.

(3) An application for an order under rule 20.2(4) (substitution of a new party where existing party's interest or liability has passed):

(a) may be made without notice; and
(b) must be supported by evidence.

(4) Nobody may be added or substituted as a claimant unless:
(a) the person has given consent in writing; and
(b) that consent has been filed with the court.

(5) An order for the removal, addition or substitution of a party must be served on:
(a) all parties to the proceedings; and
(b) any other person affected by the order.

(6) When the court makes an order for the removal, addition or substitution of a party, it may give consequential directions about:
(a) filing and serving the claim form on any new defendant;
(b) serving relevant documents on the new party; and
(c) the management of the proceedings.

(7) Where the court has made an order adding or substituting a new claimant, the court may direct:
(a) a copy of the order to be served on every party to the proceedings and any other person affected by the order,
(b) copies of the statements of case and of documents referred to in any statement of case to be served on the new party,
(c) the party who made the application to file within 14 days an amended claim form and particulars of claim.

(8) Where the court has made an order adding or substituting a defendant whether on its own initiative or on an application, the court may direct:
(a) the claimant to file with the court within 14 days (or as ordered) an amended claim form and particulars of claim for the court file,
(b) a copy of the order to be served on all parties to the proceedings and any other person affected by it,
(c) the amended claim form and particulars of claim, forms for admitting, defending and acknowledging the claim and copies of the statements of case and any other documents referred to in any statement of case to be served on the new defendant.
(d) unless the court orders otherwise, the amended claim form and particulars of claim to be served on any other defendants.

20.5 The date from which an amendment to add a party takes effect

(1) Unless the court otherwise orders, the addition of a new party takes effect on the date the amended claim form is served upon him or her.

20.6 Special provisions about adding or substituting parties after the end of a relevant limitation period

(1) This rule applies to a change of parties after the end of a period of limitation.

(2) The court may add or substitute a party only if:
(a) the relevant limitation period was current when the proceedings were started; and
(b) the addition or substitution is necessary.

(3) The addition or substitution of a party is necessary only if the court is satisfied that:
(a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
(b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or

(c) the original party has died or had a bankruptcy order made against it and the party's interest or liability has passed to the new party.

(4) In addition, the court may add or substitute a party where, in the exercise of any statutory power, it directs that the limitation period shall not apply to the claim by or against the new party.

Section II
Representative parties

20.7 Representative parties with same interest

(1) Where more than one person has the same interest in a cause or matter:
  (a) the claim may be begun; or
  (b) the court may order that the claim be continued,
  by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

(2) The court may direct that a person may not act as a representative.

(3) Any party may apply to the court for an order under paragraph (2).

(4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule:
  (a) is binding on all persons represented in the claim; but
  (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

20.8 Representation of interested persons who cannot be ascertained etc.

(1) This rule applies to claims about:
  (a) the estate of a deceased person;
  (b) property subject to a trust; or
  (c) the meaning of a document, including a statute.

(2) The court may make an order appointing a person to represent any other person or persons in the claim where the person or persons to be represented:
  (a) are unborn;
  (b) cannot be found;
  (c) cannot easily be ascertained; or
  (d) are a class of persons who have the same interest in a claim and:
    (i) one or more members of that class are within sub-paragraphs (a), (b) or (c); or
    (ii) to appoint a representative would further the overriding objective.

(3) An application for an order under paragraph (2):
  (a) may be made by:
    (i) any person who seeks to be appointed under the order; or
    (ii) any party to the claim; and
  (b) may be made at any time before or after the claim has started.

(4) An application notice for an order under paragraph (2) must be served on:
  (a) all parties to the claim, if the claim has started;
  (b) the person sought to be appointed, if that person is not the applicant or a party to the claim; and
  (c) any other person as directed by the court.

(5) No order shall be made under this rule unless the person to be appointed consents to the appointment.

(6) The court's approval is required to settle a claim in which a party is acting as a representative under this rule.

(7) The court may approve a settlement where it is satisfied that the settlement is for the benefit of all the represented persons.

(8) Unless the court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this rule:

(a) is binding on all persons represented in the claim; but

(b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.

20.9 Representation of beneficiaries by trustees etc.

(1) A claim shall be brought by or against trustees, executors or administrators in that capacity without adding as parties any persons who have a beneficial interest in the trust or estate, unless any law or rule provides otherwise.

(2) Any judgment or order given or made in the claim is binding on the estate unless the court orders otherwise in the same or other proceedings.

20.10 Death

(1) Where a person who had an interest in a claim has died and that person has no personal representative the court may order:

(a) the court may order the claim to proceed in the absence of a person representing the estate of the deceased; or

(b) a person to be appointed to represent the estate of the deceased the court may order that the claim shall not proceed until a grant of probate or administration, whether general or limited, has been made as provided by the provisions of Cap. 189; or

(c) the claim shall proceed by any heirs in the same manner as a personal representative under to the provisions of section 29 of Cap. 189.

(2) Where a defendant against whom a claim could have been brought has died and:

(a) a grant of probate or administration has been made, the claim must be brought against the persons who are the personal representatives of the deceased;

(b) a grant of probate or administration has not been made:

(i) the claim must be brought against "the estate of" the deceased; and

(ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim for a grant under the provisions of section 19 of Cap. 189 for the purposes of the claim.

(3) A claim shall be treated as having been brought against "the estate of" the deceased in accordance with paragraph (2) (b) (i) where:

(a) the claim is brought against the "personal representatives" of the deceased but a grant of probate or administration has not been made; or

(b) the person against whom the claim was brought was dead when the claim was started.

(4) Before making an order under this rule, the court may direct notice of the application to be given to any other person with an interest in the claim.

(5) Where an order has been made under paragraphs (1) or (2) (b) (ii) any judgment or order made or given in the claim is binding on the estate of the deceased.

20.11 Power to make judgments binding on non-parties

(1) This rule applies to any claim relating to:

(a) the estate of a deceased person;

(b) property subject to a trust; or

(c) the sale of any property.

(2) The court may at any time direct that notice of:

(a) the claim; or

(b) any judgment or order given in the claim,

be served on any person who is not a party but who is or may be affected by it.

(3) An application under this rule:
  (a) may be made without notice; and
  (b) must be supported by written evidence which includes the reasons why the person to be served should be bound by the judgment in the claim.

(4) Unless the court orders otherwise:
  (a) a notice of a claim or of a judgment or order under this rule must be:
    (i) issued by the court; and
    (ii) accompanied by a form of acknowledgment of service with any necessary modifications;
  (b) a notice of a claim must also be accompanied by:
    (i) a copy of the claim form; and
    (ii) such other statements of case, witness statements or affidavits as the court may direct; and
  (c) a notice of a judgment or order must also be accompanied by a copy of the judgment or order.

(5) If a person served with notice of a claim files an acknowledgment of service of the notice within 14 days the person will become a party to the claim.

(6) If a person served with notice of a claim does not acknowledge service of the notice the person will be bound by any judgment given in the claim as if the person were a party.

(7) If, after service of a notice of a claim on a person, the claim form is amended so as substantially to alter the remedy claimed, the court may direct that a judgment shall not bind that person unless a further notice, together with a copy of the amended claim form, is served on the person.

(8) Any person served with a notice of a judgment or order under this rule:
  (a) shall be bound by the judgment or order as if the person had been a party to the claim; but
  (b) may, provided the person acknowledges service:
    (i) within 28 days after the notice is served on the person, apply to the court to set aside or vary the judgment or order; and
    (ii) take part in any proceedings relating to the judgment or order.

(9) The following rules of Part 10 (acknowledgment of service) apply:
  (a) rule 10.5; and
  (b) rule 10.6, subject to the modification that references to the defendant are to be read as references to the person served with the notice.

(10) A notice under this rule is issued on the date entered on the notice by the court.

Section III: Derivative Claims

20.12 Commencement of Derivative claims

(1) This Section applies to a derivative claim (where a company, other body corporate or trade union is alleged to be entitled to claim a remedy, and a claim is made by a member of it for it to be given that remedy).

(2) The company, body corporate or trade union for the benefit of which a remedy is sought must be made a defendant to the claim.

(3) A claim form must be headed "Derivative claim".

20.13 Every Derivative claim once issued requires order of the court to continue

(1) After the issue of the claim form, the claimant must not (save to apply for permission to continue the claim) take any further step in the proceedings without the permission of the court, other than the making of an urgent application for interim relief.

(2) The claimant must within 21 days of issue of the claim form apply to the court by application notice for an order for permission for the claim to continue.

(3) The application notice must be supported by the written evidence on which the claimant relies in support of the permission application.

(4) The application notice and the written evidence must be served on the defendant within the period in which the claim form must be served and in any event at least 14 days before the hearing of the application.

(5) The defendant must 7 days before the hearing of the application deliver and file a notice of opposition in Form …, if the defendant intends to oppose the application, and the written evidence upon which the defendant intends to rely.

(6) The court will grant such an order only if the claimant establishes that there is a prima facie case to be tried.

Part 21

Counterclaims and other additional claims

21.1 Purpose of this Part

(1) The purpose of this Part is to enable counterclaims and other additional claims to be managed in the most convenient and effective manner.

21.2 Scope and interpretation

(1) This Part applies to:

(a) a counterclaim by a defendant against the claimant or against the claimant and some other person;

(b) an additional claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and

(c) where an additional claim has been made against a person who is not already a party, any additional claim made by that person against any other person (whether or not already a party).

(2) In these rules:

(a) "additional claim" means any claim other than the claim by the claimant against the defendant; and

(b) unless the context requires otherwise, references to a claimant or defendant include a party bringing or defending an additional claim.

21.3 Application of these Rules to additional claims

(1) An additional claim shall be treated as if it were a claim for the purposes of these rules, except as provided by this Part.

(2) The following rules do not apply to additional claims:

(a) rules 7.5 and 7.6 (time within which a claim form may be served);

(b) rule 16.4 (statement of value); and

(3) Part 13 (default judgment) applies to a counterclaim but not to other additional claims.

21.4 Defendant's counterclaim against the claimant

(1) A defendant may make a counterclaim against a claimant by filing particulars of the counterclaim.

(2) A defendant may make a counterclaim against a claimant:

(a) without the court's permission if the defendant files it with the defence; or

(b) at any other time with the court's permission.

(3) Part 10 (acknowledgment of service) does not apply to a claimant who wishes to defend a counterclaim.

21.5 Counterclaim against a person other than the claimant

(1) A defendant who wishes to counterclaim against a person along with the claimant must apply to the court for an order that that person be added as an additional party.

(2) An application for an order under paragraph (1) may be made without notice unless the court directs otherwise.

(3) Where the court makes an order under paragraph (1), it will give directions as to the management of the case.

21.6 Defendant's additional claim for contribution or indemnity from another party

(1) A defendant who has filed an acknowledgment of service or a defence may make an additional claim for contribution or indemnity against a person who is already a party to the proceedings by:
  (a) filing a notice containing a statement of the nature and grounds of his or her additional claim; and
  (b) serving the notice on that party.

(2) A defendant may file and serve a notice under this rule:
  (a) without the court's permission, if the defendant files and serves it:
    (i) with the defence; or
    (ii) if the additional claim for contribution or indemnity is against a party added to the claim later, within 28 days after that party files a defence; or
  (b) at any other time with the court's permission.

21.7 Procedure for making any other additional claim

(1) This rule applies to any additional claim except:
  (a) a counterclaim only against an existing party; and
  (b) a claim for contribution or indemnity made in accordance with rule 21.6.

(2) An additional claim is made when the court issues the appropriate claim form.

(3) A defendant may make an additional claim:
  (a) without the court's permission if the additional claim is issued before or at the same time as the defendant files a defence;
  (b) at any other time with the court's permission.

(4) Particulars of an additional claim must be contained in or served with the additional claim.

(5) An application for permission to make an additional claim may be made without notice, unless the court directs otherwise.

21.8 Application for permission of the court to make an additional claim

(1) An application for permission to make an additional claim must be supported by evidence stating:
  (a) The stage which the proceedings have reached,
  (b) The nature of the additional claim to be made or details of the question or issue which needs to be decided,
  (c) a summary of the facts on which the additional claim is based and
  (d) the name and address of any proposed additional party.

21.9 Statement of truth

(1) The contents of an additional claim must be verified by a statement of truth.

21.10 Service of claim form

(1) Where an additional claim may be made without the court's permission, any claim form must:
  (a) in the case of a counterclaim against an additional party only, be served on every other party when a copy of the defence is served;
  (b) in the case of any other additional claim, be served on the person against whom it is made within 14 days after the date on which the additional claim is issued by the court.

(2) Paragraph (1) does not apply to a claim for contribution or indemnity made in accordance with rule 21.6.

(3) Where the court gives permission to make an additional claim it will at the same time give directions as to its service.

21.11 Matters relevant to the question of whether an additional claim should be separate from the claim

(1) This rule applies where the court is considering whether to:

(a) permit an additional claim to be made;

(b) dismiss an additional claim; or

(c) require an additional claim to be dealt with separately from the claim by the claimant against the defendant.

(2) The matters to which the court may have regard include:

(a) the connection between the additional claim and the claim made by the claimant against the defendant;

(b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him or her; and

(c) whether the additional claimant wants the court to decide any question connected with the subject matter of the proceedings:

(i) not only between existing parties but also between existing parties and a person not already a party; or

(ii) against an existing party not only in a capacity in which that party is already a party but also in some further capacity.

21.12 Effect of service of an additional claim

(1) A person on whom an additional claim is served becomes a party to the proceedings if the person is not a party already.

(2) When an additional claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the additional claim.

21.13 Special provisions relating to default judgment on an additional claim other than a counterclaim or a contribution or indemnity notice

(1) This rule applies if:

(a) the additional claim is not:

(i) a counterclaim; or

(ii) a claim by a defendant for contribution or indemnity against another defendant under rule 21.6; and

(b) the party against whom an additional claim is made fails to file an acknowledgment of service or defence in respect of the additional claim.

(2) The party against whom the additional claim is made:

(a) is deemed to admit the additional claim, and is bound by any judgment or decision in the proceedings in so far as it is relevant to any matter arising in the additional claim;

(b) subject to paragraph (3), if default judgment under Part 13 is given against the additional claimant, the additional claimant may obtain judgment in respect of the additional claim by filing a request in the relevant practice form.

(3) An additional claimant may not enter judgment under paragraph (2) (b) without the court's permission if:

(a) that claimant has not satisfied the default judgment which has been given against that claimant; or

(b) that claimant wishes to obtain judgment for any remedy other than a contribution or indemnity.

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The court may at any time set aside or vary a judgment entered under paragraph (2) (b).

21.14 Procedural steps on service of an additional claim form on a non-party

(1) Where an additional claim form is served on a person who is not already a party it must be accompanied by:

(a) a form for defending the claim;

(b) a form for admitting the claim;

(c) a form for acknowledging service; and

(d) a copy of:

(i) every statement of case which has already been served in the proceedings; and

(ii) such other documents as the court may direct.

(2) A copy of the additional claim form must be delivered on every existing party.

21.15 Case management where a defence to an additional claim is filed

(1) Where a defence is filed to an additional claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) In giving directions under paragraph (1) the court must ensure that, so far as practicable, the original claim and all additional claims are managed together.

Part 22

Statements of Truth

22.1 Documents to be verified by a statement of truth

(1) The following documents must be verified by a statement of truth:
- (a) a statement of case;
- (b) a response complying with an order under rule 19.1 to provide further information;
- (c) a witness statement;
- (d) any other document which a rule or direction requires.

(2) Where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.

(3) If an applicant wishes to rely on matters set out in the application notice as evidence, the application notice must be verified by a statement of truth.

(4) The statement of truth must be signed by:
- (a) in the case of a statement of case, a response or an application:
  - (i) the party or representative of a child or incapacitated person under any law; or
  - (ii) the advocate on behalf of the party or representative of a child or incapacitated person under any law; and
- (b) in the case of a witness statement, the maker of the statement.

(5) Where a document is to be verified on behalf of a legal entity, subject to rule 22.1 (8), the statement of truth must be signed by a person holding a senior position in the legal entity. That person must state the office or position held.

(6) Each of the following persons is a person holding a senior position:
- (a) in respect of a registered legal entity, a director, the treasurer, secretary, chief executive, manager or other officer of the legal entity.

(7) Where the document is to be verified on behalf of a partnership, those who may sign the statement of truth are:
- (a) any of the partners, or
- (b) a person having the control or management of the partnership business.

(8) Where a party is legally represented, the advocate may sign the statement of truth on the party's behalf in respect of the documents referred to in rule 22 (1) (a), (b) and (d) above. In signing, the advocate must state the capacity in which he or she signs and the name of the firm where appropriate.

(9) A advocate who signs a statement of truth must sign in his or her own name and not that of his or her firm or employer.

22.2 Inability of persons to read or sign documents to be verified by a statement of truth

(1) Where a document containing a statement of truth is to be signed by a person who is unable to read or sign the document, this must be certified by an authorised person.

(2) An authorised person is a person able to administer oaths and take affidavits but need not be independent of the parties or their representatives.

(3) The authorised person must certify:
- (a) that the document has been read to the person signing it;
- (b) that that person appeared to understand it and approved its content as accurate;

(c) that the declaration of truth has been read to that person;

(d) that that person appeared to understand the declaration and the consequences of making a false declaration; and

(e) that that person signed or made his or her mark in the presence of the authorised person.

(4) The certification shall be at the end of the document and shall include the points raised above in 22.2 (3) (a) – (e).

22.3 Failure to verify a statement of case

(1) If a party fails to verify the statement of case by a statement of truth:

(a) the statement of case shall remain effective unless struck out; but

(b) the party may not rely on the statement of case as evidence of any of the matters set out in it.

(2) The court may strike out a statement of case which is not verified by a statement of truth.

(3) Any party may apply for an order under paragraph (2).

22.4 Failure to verify a witness statement

(1) If the maker of a witness statement fails to verify the witness statement by a statement of truth, it shall be inadmissible as evidence unless the court permits it.

22.5 Power of the court to require a document to be verified

(1) The court may order a person who has failed to verify a document in accordance with rule 22.1 to verify the document.

(2) Any party may apply for an order under paragraph (1).

22.6 Contempt of court

(1) Proceedings for contempt of court may be brought against a person if he or she makes or causes to be made a false statement in a document verified by a statement of truth without an honest belief in its truth pursuant to s. 44 of the Courts of Justice Law 14/1960..

Part 23

General Rules about Applications for Court Orders

23.1 Meaning of "application notice" and "respondent"

(1) In this Part:

"application notice" means a document in which the applicant states the applicant's intention to seek a court order; and

"respondent" means:

(a) the person against whom the order is sought; and

(b) such other person as the court may direct.

23.2 Application notice to be filed

(1) The general rule is that an applicant must file an application notice.

(2) An applicant may make an application without filing an application notice if:

(a) this is permitted by a rule; or

(b) the court dispenses with the requirement for an application notice.

(3) Any applications made before a claim is commenced should be made under this Part.

23.3 Time when an application is made

(1) Where an application must be made within a specified time, it is so made if the application notice is received by the court within that time.

23.4 What an application notice must include

(1) An application notice must state:

(a) what order the applicant is seeking;

(b) the specific statutory provision or rule relied on; and

(c) briefly, why the applicant is seeking the order.

(2) An application notice must be signed and include:

(a) the title of the claim,

(b) the court in which the application notice is filed,

(c) the reference number of the claim,

(d) the full name of the applicant and the full name of the respondent,

(e) where the applicant is not already a party, the applicant's address for service.

(3) A draft copy of the order sought by the applicant must be attached to the notice of application.

(4) If the applicant relies on facts which appear in the court books or records, these facts must be specifically identified in the application notice;

(5) If the applicant relies on facts set out in an affidavit, this must be specifically stated in the application notice.

23.5 Service of a copy of an application notice

(1) The general rule is that a copy of the application notice must be served on each respondent.

(2) A copy of the application notice:

(a) must be served as soon as practicable after it is filed; and

(b) except where another time limit is specified in these Rules, must in any event be served at least 4 days before the court is to deal with the application.

Drafting Note in relation to in 23.5 (2) and (4):
What is meant by "dealing with the application" in 23.5 (2) and (4)? The Expert Group assumes that it is the hearing of the application. But it seems that a distinction is drawn between "appearance before the court" and the "hearing": see rule 23.9(2) and 23.11(1). This needs to be looked at carefully. The Expert Group doesn't see why there needs to be two stages i.e. appearance and then hearing, unless the application is unusually complex or heavy.

It seems to the Expert Group that two stages are not necessary for Part 23 Applications. The court in which the application notice is made could receive the documents at the time the application notice is filed. This could be a requirement that would obviate the need for a first hearing. Ultimately if the local context dictates that the two stages are necessary then this is a decision for the Rules Committee.

(3) When a copy of an application notice is served it must be accompanied by:
(a) a copy of any written evidence in support; and
(b) a copy of any draft order which the applicant has attached to the application.

(4) If:
(a) an application notice is served; but
(b) the period of notice is shorter than the period required by these rules,
the court may direct that, in the circumstances of the case, sufficient notice has been given and deal with the application.

23.6 When an application without notice may be made

(1) An application may be made without serving an application notice in any of the following circumstances only:
(a) where there is urgency or other peculiar circumstances,
(b) where the overriding objective is best furthered by doing so,
(c) by consent of all parties,
(d) where the court dispenses with the requirement for service;
(e) where a Law, rule or court order permits.

(2) The Court dealing with an application made without notice may direct that it be served to such persons as the Court may think fit in which case it will be proceed as an application made with notice.

Drafting Note in relation to 23.7 and witness statements
The Expert Group notes that a 'witness statement' has been replaced by an affidavit in places throughout the rules. The Expert Group respects the Rules Committee's power to do this but would strongly recommend that it reconsider. Witness statements are a very efficient way of saving time and increasing efficiency in the court. The benefits of witness statements have been spelt out in an earlier drafting note.

23.7 Affidavit to be filed with an application notice

(1) An application notice need not be accompanied by an affidavit if the applicant relies on facts which appear in the court books or records.

(2) When an applicant relies on any facts which do not appear in the court books or records, the application notice must be supported by affidavit.

23.8 Date of Appearance of the parties before the Court

(1) The Registry shall fix a date for the appearance of the parties before the Court and shall notify the applicant of the date and the time.

23.9 Notice of Opposition

(1) A respondent who intends to oppose an application must file and serve on every other party a notice of opposition to the application in Form …

(2) The notice of opposition must be filed at least four days before the date fixed for appearance before the Court and served on every other party immediately thereafter.

Drafting Note in relation to 23.9
The Expert Group's response is the same as in 23.5 (2) and (4).

The Expert Group question the need for two stages namely appearance and hearing except for the most complex Part 23 applications. The four days in 23.9 (2) is the same period as is given for the service of the application notice under rule 23.5(2). Should there not be an interval between the two dates? Perhaps the periods should be 6 days and 4 days? But then how do the 5 day periods mentioned in 23.10 (1)(a) and (c) fit in? These time periods should be reconsidered. The time for complying with these steps needs to be sequential and streamlined.

(3) The notice of opposition must:
- (a) state the respondent's intention to oppose the application;
- (b) refer briefly but specifically to the grounds of opposition; and
- (c) refer to the specific statutory provision or rule relied on.

(4)
- (a) If the respondent relies of any facts which do not appear in the court books or records, the notice of opposition must be supported by affidavit.
- (b) If the respondent relies on facts which appear in the court books or records, the notice of opposition need not be supported by affidavit, but these facts must be specifically identified in the notice of opposition.

23.10 Further or Supplementary Affidavit

(1)

(a) an applicant may file and serve a further affidavit in reply to the respondent's notice of opposition within 5 working days after service of the notice of opposition;
(b) this affidavit must be limited to new matters raised in the notice of opposition.
(c) a respondent may file and serve a further affidavit in reply to the applicant's further affidavit within 5 working days thereafter which must also be limited to new matters raised in the further affidavit of the applicant.

(2) In all other cases, the court may permit the filing of a further or supplementary affidavit for good cause shown.

23.11 Hearing of the application

(1) At the date fixed for appearance, the court shall fix the application for hearing and give any other necessary directions.
(2) Η ακρόαση αίτησης διεξάγεται στη βάση των γεγονότων που αναφέρονται στην αίτηση ή στις ένορκες δηλώσεις τηρουμένης της δυνατότητας αντεξέτασης.
(3) All parties must file and serve skeleton arguments on all other parties to the application at least two days before the date for fixed for hearing.
(4) The skeleton arguments must be accompanied by any authorities deemed necessary.

23.12 Applications which may be dealt without a hearing

(1) The court may deal with an application without a hearing if:
(a) the parties agree as to the terms of the order sought, or
(b) the parties agree that the court should dispose of the application without a hearing.

23.13 Service of application where application made without notice

(1) This rule applies where the court has disposed of an application which it permitted to be made without service of a copy of the application notice.
(2) Where the court makes an order a copy of the application notice and any evidence in support must, unless the court orders otherwise, be served with the order on any party and other person against whom the order was made.

23.14 Application to set aside or vary order made without notice

(1) A person who was not served with a copy of the application notice before an order was made under rule 23.13, may apply to have the order set aside or varied.
(2) An application under this rule must be made within 10 days after the date on which the order was served on the person making the application.

23.15 Power of the court to proceed in the absence of a party

(1) Where the applicant or any respondent fails to attend the hearing of an application, the court may proceed in his or her absence.

23.16 Drawing up of court orders

(1) Every order, if and when drawn up, shall be drawn up in the same manner as judgments directed to be drawn up, and when drawn up, shall show on the face of it by whom, or on whose behalf, the application was made, and the nature of the order made.

23.17 When an order becomes binding

(1) Every order shall be binding on the applicant and on all other parties to the claim on whom the application notice was duly served, from the date it is made.

(2) Where any party to the claim has not been duly served with the application notice, the order becomes binding from the date of service of an office copy of the order on the party.

Part 24

Summary Judgment

24.1 Scope of this Part

(1) This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

(2) The court may give summary judgment against a claimant or defendant in any type of proceedings.

24.2 Grounds for summary judgment

(1) The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if:

(a) it considers that:

(i) the claimant has no real prospect of succeeding on the claim or issue; or

(ii) the defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.

24.3 Procedure

(1) A claimant may not apply for summary judgment until the defendant against whom the application is made has filed an acknowledgement of service unless the court gives permission.

(2) If a claimant applies for summary judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.

(3) Where a summary judgment hearing is fixed, the respondent (or the parties where the hearing is fixed of the court's own initiative) must be given at least 14 days' notice of the date fixed for the hearing.

24.4 The Application Notice

(1) The application is made in accordance with Part 23.

(2) The application notice or the evidence contained or referred to in it or served with it must:

(a) identify concisely any point of law or provision in a document on which the applicant relies, and/or

(b) state that it is made because the applicant believes that on the evidence the respondent has no real prospect of succeeding on the claim or issue or (as the case may be) of successfully defending the claim

and in either case state that the applicant knows of no other reason why the disposal of the claim or issue should await trial.

(3) Unless the application notice itself contains all the evidence (if any) on which the applicant relies, the application notice should identify the written evidence on which the applicant relies. This does not affect the applicant's right to file further evidence under rule 24.5(2).

24.5 Evidence for the purposes of a summary judgment hearing

(1) If the respondent to an application for summary judgment wishes to rely on written evidence at the hearing, the respondent must:
   (a) file the written evidence; and
   (b) serve copies on every other party to the application,
   at least 7 days before the summary judgment hearing.

(2) If the applicant wishes to rely on written evidence in reply, the applicant must:
   (a) file the written evidence; and
   (b) serve a copy on the respondent,
   at least 3 days before the summary judgment hearing.

(3) Where a summary judgment hearing is fixed by the court of its own initiative:
   (a) any party who wishes to rely on written evidence at the hearing must:
      (i) file the written evidence; and
      (ii) unless the court orders otherwise, serve copies on every other party to the proceedings,
      at least 7 days before the date of the hearing;
   (b) any party who wishes to rely on written evidence at the hearing in reply to any other party's written evidence must:
      (i) file the written evidence in reply; and,
      (ii) unless the court orders otherwise, serve copies on every other party to the proceedings,
      at least 3 days before the date of the hearing.

(4) This rule does not require written evidence:
   (a) to be filed if it has already been filed; or
   (b) to be served on a party on whom it has already been served.

(5) All written evidence filed must be verified by statement of truth.

24.6 Orders the court may make

(1) The orders the court may make on an application under Part 24 include:
   (a) judgment on the claim,
   (b) the striking out or dismissal of the claim,
   (c) the dismissal of the application,
   (d) a conditional order

(2) A conditional order is an order which requires a party:
   (a) to pay a sum of money into court, or
   (b) to take a specified step in relation to the party's claim or defence, as the case may be, and provides that that party's claim will be dismissed or his or her statement of case will be struck out if the party does not comply.

(3) The Court may also:
   (a) give directions as to the filing and service of a defence;
   (b) give further directions about the management of the case.

24.7 Setting aside order for summary judgment

(1) If an order for summary judgment is made against a respondent who does not appear at the hearing of the application, the respondent may apply for the order to be set aside or varied.

(2) On the hearing of an application under this rule the court may make such order as it thinks just.

Part 25

Interim Remedies

Section I: General notes

25.1 Orders for interim remedies

(1) The following interim remedies that the Judge may grant include, but are not limited to:

(a) an interim injunction;

(b) an interim declaration;

(c) an order:

(i) for the detention, custody or preservation of relevant property;

(ii) for the inspection of relevant property;

(iii) for the taking of a sample of relevant property;

(iv) for the carrying out of an experiment on or with relevant property;

(v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and

(vi) for the payment of income from relevant property until a claim is decided;

(d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);

(e) an order (referred to as a "freezing injunction"):

(i) restraining a party from removing from the jurisdiction assets located there; or

(ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;

(f) an order for the appointment of a receiver

(g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction;

(h) an order requiring a party to admit another party to a premises for the purpose of preserving evidence etc.

(i) an order for disclosure of documents or inspection of property before a claim has been made);

(j) an order in certain proceedings for disclosure of documents or inspection of property against a non-party);

(k) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party's right to the fund;

(l) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if the party does so, the property shall be given up to the party;

(m) an order directing a party to prepare and file accounts relating to the dispute;

(n) an order directing any account to be taken or inquiry to be made by the court; and

(o) an order under Article 9 of Council Directive (EC) 2004/48 on the enforcement of intellectual property rights (order in intellectual property proceedings making the continuation of an alleged infringement subject to the lodging of guarantees).

(2) In paragraph (1)(c) and (g), "relevant property" means property (including land) which is the subject of a claim or as to which any question may arise on a claim.

(3) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

25.2 Time when an order for an interim remedy may be made

(1) An order for an interim remedy may be made at any time, including:
  (a) before a claim has been commenced; and
  (b) after judgment has been given.

(2) However:
  (a) paragraph (1) is subject to any rule or other enactment which provides otherwise;
  (b) the court may grant an interim remedy before a claim has been made only if:
    (i) the matter is urgent; or
    (ii) other peculiar circumstances exist.

(3) Where it grants an interim remedy before commencement of the proceedings, the court should give directions requiring a claim to be commenced.

Drafting Note
The Rules Committee has stated that legislative change is required for 25.2 (3) and 25.4 (1) (b).

(4) Notwithstanding (3) the court need not direct that a claim be commenced where the application is made for an order for disclosure or inspection before commencement of a claim.

25.3 How to apply for an interim remedy

(1) The court may grant an interim remedy on an application made without notice if it appears to the court that: there are good reasons for not giving notice such as where:
  (a) the matter is urgent; or
  (b) other peculiar circumstances exist.

(2) Whenever possible a draft of the order sought should be filed with the application notice and an electronic version of the draft should also be available to the court in a format compatible with the word processing software used by the court.

(3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

25.4 Application for an interim remedy where there is no related claim

(1) This Part also applies where a person wishes to apply for an interim remedy but:
  (a) the remedy is sought in relation to proceedings which are taking place, or will take place, outside the jurisdiction; or
  (b) the application is made for an order for disclosure or inspection before a claim has been commenced.

25.5 Inspection of property before commencement or against a non-party

(1) This rule applies where a person makes an application for:
  (a) inspection of property before commencement; and
  (b) inspection of property against a non-party.

(2) The evidence in support of such an application must show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property:
  (a) is or may become the subject matter of such proceedings; or

(b) is relevant to the issues that will arise in relation to such proceedings.

(3) A copy of the application notice and a copy of the evidence in support must be served on:

(a) the person against whom the order is sought; and

(b) in relation to an application, every party to the proceedings other than the applicant.

Section II: Interim Injunctions

25.6 Evidence

(1) Applications for interim injunctions, including search orders and orders for disclosure and inspection before a claim has been commenced must be supported by affidavit evidence.

(2) The evidence must set out the facts on which the applicant relies for the claim being made against the respondent, including all material facts of which the court should be made aware.

(3) Where an application is made without notice to the respondent, the evidence must also set out why notice was not given.

25.7 Orders for injunctions

Drafting Note on an advocate giving an undertaking on behalf of his or her client
In England a provision that the advocate can give an undertaking on behalf of his or her client does not exist and it is not problematic - an advocate is always able to give an undertaking. The Expert Group questions the need for an express provision.
The Rules Committee mentioned the need for a provision arising from Cypriot case law that an undertaking given by an advocate on behalf of his or her client does not fulfil the requirement of s.9 of Cap.6 that where the order is made without notice, the person making the application enter into a recognizance. The Expert Group suggests that the statute (s.9 of Cap.6) could be amended to allow an advocate to give an undertaking or the rule could be omitted if it causes difficulty.

(1) Any order for an injunction, unless the court orders otherwise, must contain:
  (a) an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay.
  (b) if made without notice to any other party, a return date for a further hearing at which the other party can be present,

(2) When the court makes an order for an injunction, it should consider whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order.

(3) Proceedings are 'prohibitively expensive' if their likely costs, including any court fees payable by the applicant and the amount of any cross-undertaking in damages, and having regard to any limit under Part 39 on a party's maximum costs liability, either:
  (a) exceed the financial resources of the applicant; or
  (b) are objectively unreasonable.

(4) When a court considers the financial resources of the applicant, it will have regard, so far as practicable, to any financial support which any person has provided or is likely to provide to the applicant.

(5) An order for an injunction shall state that it is effective until final judgment or further order, or, in an appropriate case, until a certain date or event.

(6) Any order for an injunction must set out clearly what the respondent must do or not do.

25.8 Interim injunction to cease if claim is stayed

(1) If:
  (a) the court has granted an interim injunction other than a freezing injunction; and
  (b) the claim is stayed other than by agreement between the parties,

the interim injunction shall be set aside unless the court orders that it should continue to have effect even though the claim is stayed.

Drafting Note in relation to the 25.8
The point of the rule is that where there is a stay the parties and the court apply their mind as to what is to happen to an interim injunction so that an interim injunction is not left hanging. Technically, a claim does not cease when it is stayed. It is "frozen". Some provision must be made here because a stay is not a dismissal.

Freezing injunctions are excluded because there may be third parties who may be affected e.g. a party who has been deprived of having a debt paid by the defendant. There may well be a cross undertaking that needs to be addressed for instance a bank that was deprived of a set off.
If the Rules Committee feels that a freezing injunction should not be excluded then simply delete 'freezing injunction' in 25.8 (1) (a) above.

Section III: Freezing injunctions and search orders

25.9 General

(1) A form of a Freezing Injunction is annexed as Form XXX.

(2) A form of a Search Injunction is annexed as Form XXX.

25.10 Search orders

(1) The following provisions apply to search orders in addition to those listed above

25.11 The Supervising Advocate

(1) The Supervising Advocate must be experienced in the operation of search orders.

(2) The Supervising Advocate must make a list of all material removed from the premises and supply a copy of the list to the respondent.

(3) The Supervising Advocate shall provide a report on the carrying out of the order to the applicant's advocate.

(4) The Supervising Advocate must not be an employee or member of the applicant's firm of advocate.

25.12 Evidence

(1) the affidavit must state the name, firm and its address, and experience of the Supervising Advocate, also the address of the premises and whether it is a private or business address, and

(2) the affidavit must disclose very fully the reason the order is sought, including the probability that relevant material would disappear if the order were not made.

25.13 Service

(1) the order must be served personally, unless the court otherwise orders, and must be accompanied by the evidence in support and any documents capable of being copied,

(2) exhibits designated by the court as confidential need not be served but they must be made available for inspection by the respondent in the presence of the applicant's advocate while the order is carried out and afterwards be retained by the respondent's advocate on their undertaking not to permit the respondent:

  (a) to see them or copies of them except in their presence, and

  (b) to make or take away any note or record of them,

(3) the Supervising Advocate may be accompanied only by the persons mentioned in the order,

(4) the Supervising Advocate must explain the terms and effect of the order to the respondent in everyday language and advise the respondent

  (a) of the right to take legal advice and to apply to vary or discharge the order; and

  (b) that the respondent may be entitled to avail of

    (i) legal professional privilege; and

    (ii) the privilege against self-incrimination.

25.14 Search and custody of materials

(1) No material shall be removed unless clearly covered by the terms of the order,

(2) the premises must not be searched and no items shall be removed from them except in the presence of the respondent or a person who appears to be a responsible employee of the respondent,

(3) where copies of documents are sought, the documents should be retained for no more than 2 days before return to the owner,

(4) where material in dispute is removed pending trial, the applicant's advocate should place it in the custody of the respondent's advocate on their undertaking to retain it in safekeeping and to produce it to the court when required.

(5) in appropriate cases the applicant should insure the material retained in the respondent's advocate' custody,

(6) no material shall be removed from the premises until the respondent has had reasonable time to check the list,

(7) if any of the listed items exists only in computer readable form, the respondent must immediately give the applicant's advocate effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out,

(8) the applicant must take all reasonable steps to ensure that no damage is done to any computer or data,

(9) the applicant and his or her representatives may not themselves search the respondent's computers unless they have sufficient expertise to do so without damaging the respondent's system,

(10) as soon as the report is received the applicant's advocate shall:

(a) serve a copy of it on the respondent, and

(b) file a copy of it with the court, and

(11) where the Supervising Advocate is satisfied that full compliance with rule 25.14 (6) and (7) above is impracticable, he or she may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

25.15 Delivery-Up Orders

(1) The following provisions apply to orders, other than search orders, for delivery up or preservation of evidence or property where it is likely that such an order will be executed at the premises of the respondent or a third party.

(2) In such cases the court shall consider whether to include in the order for the benefit or protection of the parties similar provisions to those specified above in relation to injunctions and search orders.

25.16 Injunctions against third parties

(1) The following provisions apply to orders which will affect a person other than the applicant or respondent, who:

(a) did not attend the hearing at which the order was made; and

(b) is served with the order.

(2) Where such a person served with the order requests:

(a) a copy of any materials read by the judge, including material prepared after the hearing at the direction of the judge or in compliance with the order; or

(b) a note of the hearing,

the applicant, or his or her advocate, must comply promptly with the request, unless the court orders otherwise.

Annex - Sample Receivership Order

Drafting Note:
The English CPR does not contain a sample receivership order, so the Expert Group prepared one from scratch. The fact that the English CPR does not contain a sample Receivership Order should give some pause for thought. Receivership orders are very variable and it is difficult to have a standard form. That said, they may be helpful. ROs are less standardised than Freezing and Search Orders, so the sample should be approached more liberally.

Annex

Receivership Order (Interim Receiver pursuant to Section 32 of Law N. 14/1960)

Note: This a sample receivership order for an application made without notice. Appropriate modifications should be made for applications on notice.

ORDER FOR THE APPOINTMENT OF RECEIVERS

IN [name of court]

Before [Judge]

Claim No.

Dated

B E T W E E N

[X]

Claimant/Applicant

[Y]

Defendant/Respondent

Name, address and reference of Respondent

PENAL NOTICE

IF YOU [Y] DISOBEY THIS ORDER YOU MAY BE HELD IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

This Order

1. This is a Receivership Order made against [ ] ("the Respondent") on [ ] by [ ] on the application of [ ] ("the Applicant"). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.

2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order.

3. There will be a further hearing in respect of this order on [ ] ("the return date").

4. If there is more than one Respondent:

   (a) unless otherwise stated, references in this order to "the Respondent" mean both or all of them; and

   (b) this order is effective against any Respondent on whom it is served or who is given notice of it.

Appointment of Receiver

5. Until the return date or further order of the court, [name of receiver], from [], (the **"Receiver"**) is appointed as Interim Receiver over [all the assets of the Respondent] [including] [the assets of the Respondent set out in Schedule C] (the **"Assets"**).

Powers of Receiver

6. The Receiver shall have the powers set out in Schedule D (the **"Powers"**).

7. The Receiver shall have such other powers as are necessary for, or incidental to, the effective exercise of the Powers or inherent in his/her appointment.

Reporting obligations of the Receiver

8. The Receiver shall file a report with the Court, and deliver copies to the Claimant's advocates and the Respondent (or its advocates in Cyprus if appointed), which sets out the actions and steps the Receiver has taken in the exercise of his/her powers and duties as Receiver, the Receiver's Costs (as defined in paragraph 11, below) and [set out any other matters if appropriate], as follows:

   (a) within [2 weeks] of his/her appointment; and

   (b) thereafter every [10 weeks].

Duty of cooperation

9. The Respondent shall not in any way impede or interfere with the Receivers' functions and powers and shall co-operate with the Receiver in order to enable the Receiver to exercise his/her powers in respect of the Assets including, without limitation: [set out duties]

[Examples]

(a) vesting assets in the Receiver's name (or the Receiver's nominees) at the Receiver's request;

(b) directing agents of the Respondent to take such steps as are necessary, including for the delivery of any Assets held by third parties for the Respondent to the Receiver or the Receiver's nominee;

(c) providing such information as may be requested by the Receiver which the Respondent is able to provide or is able to procure or direct a third party to provide, except that the Respondent is not obliged to deliver to the Receiver legally privileged materially, without further order from the court.

Prior Encumbrances and Banks

10. The appointment of the Receiver shall be without prejudice to the rights of third parties who hold any prior rights or encumbrances over the Assets, including any rights to take possession arising from such prior encumbrances.

11. This order does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Respondent before it was notified of this order.

12. No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

Receiver's Remuneration

13. The Receiver shall be entitled to payment of his/her reasonable remuneration and reasonable costs and expenses incurred in the performance of his/her duties and exercise of his/her powers as Receiver (the **"Receiver's Costs"**).

14. The Receiver's Costs shall be paid, in the first instance, by the Claimant.

15. The Court has power to order that the Respondent shall pay the Receiver's Costs and/or that the Respondent shall indemnify the Claimant for the Receiver's Costs under the Court's general powers of awarding costs.

Security by the Respondent

16. The order will cease to have effect if the Respondent:

(a) provides security by paying the sum of € into court, to be held to the order of the court; or

(b) makes provision for security in that sum by another method agreed with the Applicant's advocates.

Security by the Applicant

17. The Applicant shall provide security in the sum of [] by [set out form of security e.g. bank guarantee] for losses caused to the Respondent by this order. The security shall be held to the order of the court and may be used if the Court decides that the Respondent has suffered loss as a result of this Order and should be compensated for that loss.

Costs

18. The costs of this application are reserved to the judge hearing the application on the return date.

Variation or Discharge of this Order

19. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's advocate. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's advocate in advance.

Interpretation of this Order

20. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He or she must not do it through others acting on his or her behalf or on his or her instructions or with his or her encouragement.

21. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

Effect of this order

22. It may be a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

Persons outside Cyprus

23. (1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court:

(a) the Respondent or his or her officer or agent appointed by power of attorney;

(b) any person who:

(i) is subject to the jurisdiction of this court;

(ii) has been given written notice of this order at his or her residence or place of business within the jurisdiction of this court; and

(iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

Assets located outside Cyprus

24. Nothing in this order shall, in respect of assets located outside Cyprus, prevent any third party from complying with:

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's advocate.

Applications by Receiver

25. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. The Receiver is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this order and for assistance in carrying out the terms of this order.

Communications with the Court

All communications to the court about this order should be sent to:

Schedule A Affidavits

The Applicant relied on the following affidavits:

[name]

[number of affidavit]

[date sworn]

[filed on behalf of]

(1)

(2)

Schedule B Undertakings given to the court by the applicant

(1) If the court later finds that this order has caused loss to the Respondent and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make.

[(2) The Applicant will:

(a) on or before [date] cause a written guarantee in the sum of € to be issued from a bank with a place of business within Cyprus, in respect of any order the court may make pursuant to paragraph (1) above; and

(b) immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent.]

(3) As soon as practicable the Applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].

(4) The Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's counsel/advocate].

(5) The Applicant will serve upon the Respondent [together with this order] [as soon as practicable]:

(i) copies of the affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application;

(ii) the claim form; and

(iii) an application notice for continuation of the order.

[(6) Anyone notified of this order will be given a copy of it by the Applicant's advocates.]

(7) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.

(8) If this order ceases to have effect (for example, if the Respondent provides security or the Applicant does not provide a bank guarantee as provided for above) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he or she has given notice of this order, or who he or she has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

[(9) The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in Cyprus or in any other jurisdiction, other than this claim.]

[(10) The Applicant will not without the permission of the court seek to enforce this order in any country outside Cyprus [or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets].]

Name and address of applicant's advocates

The Applicant's advocates are:

[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail.]

Schedule C Assets

(Assets to be listed in this schedule)

Schedule D Powers of Receiver

Examples

(1) The power to take possession and/or control of the Assets, and to receive any sums due, profits or money receivable in respect of the Assets, including but not limited to dividends and current and future payments of debts owed [to protect and preserve them].

(2) The power to manage and/or administer and/or exercise all the rights related to the Assets [to protect and preserve them].

(3) The power to exercise all rights (including, without limitation, rights to call general meetings, voting rights, rights to appoint directors, and rights to inspect) attaching to shares.

(4) The power to act in the name of the Respondent in respect of the Assets.

(5) The power to give instructions to persons or entities who hold the Assets or the legal title thereof as nominees, trustees, fiduciaries or other similar capacity.

(6) The power to hire and/or employ and/or appoint any professional, advisor, representative, lawyer, and/or accountant in Cyprus or abroad which the Receiver considers appropriate to assist him in the execution of his duties and/or powers.

(7) The power to sign any document which is necessary for, or ancillary to, the proper execution of his powers and/or duties.

(8) The power to appoint representatives to take actions on his behalf where this is considered appropriate.

(9) The power to take all necessary steps and actions to obtain from the directors and/or officers and/or secretary and/or other agents of the Respondent, full access to all books, accounts, registers or other documents and information which relate to the assets, rights, obligations, debts and/or other business and corporate affairs of the Respondent [for the purposes of exercising the powers conferred on him/her].

Part 26

Security for Costs

26.1 Security for Costs

(1) A claimant (and, in respect of a counter-claim which is not merely in the nature of a set-off, a defendant) ordinarily resident outside of the European Union ή Κράτους – Μέλους της Ευρωπαϊκής Ένωσης may, at any stage of the action, be ordered to give security for costs, though he or she may be temporarily resident inside the European Union ή σε Κράτος – Μέλος της Ευρωπαϊκής Ένωσης.

Provided that foreign workers with a low income are exempt from any order for security for costs. Νοείται ότι αλλοδαποί εργαζόμενοι με χαμηλό εισόδημα εξαιρούνται οποιασδήποτε διαταγής για παροχή ασφάλειας εξόδων.

(2) In actions brought by persons resident outside of the European Union ή Κράτους – Μέλους της Ευρωπαϊκής Ένωσης, when the claimant's claim is founded on a judgment or order or on a negotiable instrument, the power to require the claimant to give security for costs shall be in the discretion of the Court.

(3) Where a person sues in a representative capacity on behalf of a child or incapacitated person under the provisions of any law he or she, may, if an appellant, be ordered to give security for costs.

(4) If it appears that a person suing is not the real claimant but is merely suing as a nominal claimant in somebody else's interests, then such person may, at any stage of the action, be required to give security for costs on the grounds of insolvency or poverty.

(5) Where the Court orders security for costs to be given it may stay the proceedings in the action until such security is given, and in the event of the security not being given within the time appointed may dismiss the action.

(6) Where a bond is to be given as security for costs, it shall, unless the Court or a Judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the Court.

Part 27

Interim Payments

27.1 Interim payments: general procedure

(1) A party may apply for an order (referred to as an order for interim payment) for payment by a defendant (including a defendant by a counterclaim) on account of any damages, debt or other sum (except costs) which the court may hold the other party liable to pay.

(2) The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgement of service applicable to the defendant against whom the application is made.

(3) The claimant may make more than one application for an order for an interim payment.

(4) A copy of an application notice for an order for an interim payment must:

(a) be served at least 21 days before the hearing of the application; and

(b) be supported by evidence.

(5) If the respondent to an application for an order for an interim payment opposes the application, the respondent must:

(a) file a written notice of opposition in accordance with Part 23 together with the written evidence on which the respondent relies; and

(b) serve copies on every other party to the application,

at least 7 days before the hearing of the application.

(6) If the applicant wishes to rely on written evidence in reply, the applicant must:

(a) file the written evidence; and

(b) serve a copy on the respondent,

at least 3 days before the hearing of the application.

(7) This rule does not require written evidence:

(a) to be filed if it has already been filed; or

(b) to be served on a party on whom it has already been served.

(8) The court may order an interim payment in one sum or in instalments.

(9) The permission of the court must be obtained before making a voluntary interim payment in respect of a claim by a child or incapacitated person.

27.2 Interim payments: conditions to be satisfied and matters to be taken into account

(1) The court may only make an order for an interim payment where any of the following conditions are satisfied:

(a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;

(b) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;

(c) the following conditions are satisfied:

(i) the claimant is seeking an order for possession of land (whether or not any other order is also sought); and

(ii) the court is satisfied that even if the claim for possession was finally determined in favour of the defendant, the defendant would still be required to

compensate the claimant for the defendant's use and occupation of the land before the determination of the claim

(2) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(3) The court must take into account:

(a) contributory negligence; and

(b) any relevant set-off or counterclaim.

27.3 Evidence

(1) An application for an interim payment of damages must be supported by evidence dealing with the following:

(a) the sum of money sought by way of an interim payment,

(b) the items or matters in respect of which the interim payment is sought,

(c) the sum of money for which final judgment is likely to be given,

(d) the reasons for believing that the conditions set out in rule 27.2 are satisfied,

(e) any other relevant matters,

(f) in claims for personal injuries, details of special damages and past and future loss, and

(g) in a claim under Section 58, Cap. 148., details of the person(s) on whose behalf the claim is made and the nature of the claim.

(2) Any documents in support of the application should be exhibited, including, in personal injuries claims, the medical report(s).

27.4 Instalments

(1) Where an interim payment is to be paid in instalments the order should set out:

(a) the total amount of the payment,

(b) the amount of each instalment,

(c) the number of instalments and the date on which each is to be paid, and

(d) to whom the payment should be made.

27.5 Powers of court where it has made an order for interim payment

(1) Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the court may make an order to adjust the interim payment.

(2) The court may in particular:

(a) order all or part of the interim payment to be repaid;

(b) vary or discharge the order for the interim payment;

(c) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.

(3) The court may make an order under Rule 27.5 (2) (c) only if:

(a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which the defendant has made a claim against the other defendant for a contribution, indemnity or other remedy; and

(b) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the court could make an order for interim payment.

(4) The court may make an order under this rule without an application by any party if it makes the order when it disposes of the claim or any part of it.

(5) Where:

(a) a defendant has made an interim payment; and

(b) the amount of the payment is more than the total liability under the final judgment or order,

the court may award interest on the overpaid amount from the date when the defendant made the interim payment.

27.6 Adjustment of final judgment figure

(1) In this paragraph "judgment" means:

(a) any order to pay a sum of money,

(b) a final award of damages,

(c) an assessment of damages.

(2) In a final judgment where an interim payment has previously been made which is less than the total amount awarded by the judge, the order should set out in a preamble:

(a) the total amount awarded by the judge, and

(b) the amounts and dates of the interim payment(s).

(3) The total amount awarded by the judge should then be reduced by the total amount of any interim payments, and an order made for entry of judgment and payment of the balance.

(4) In a final judgment where an interim payment has previously been made which is more than the total amount awarded by the judge, the order should set out in a preamble:

(a) the total amount awarded by the judge, and

(b) the amounts and dates of the interim payment(s).

(5) An order should then be made for repayment, reimbursement, variation or discharge and for interest on an overpayment.

27.7 Enforcement of an Interim Payment

(1) In the event that a party against whom an order for an interim payment has been made, fails to pay the whole or any part of the payment within the time required, then the other party shall be entitled to enforce it as a judgement.

Part 28

Case Management: Preliminary Stage

28.1 Scope of this Part

(1) Definitions in this Part and in the Civil Procedure Rules generally:
- (a) a "small claim" is a claim where the claimant claims:
  - (i) the sum of €10000 or less or
  - (ii) damages limited to €10000 or,
  - (iii) in the opinion of the court, the claimant is unlikely to obtain judgement for more than €10000
- (b) a "standard claim" is a claim where the claimant claims:
  - (i) a sum in excess of €10000 or,
  - (ii) damages in excess of €10000 or,
  - (iii) in the opinion of the court, the claimant is likely to obtain judgment for more than €10000

(2) At the "Case Management: Preliminary Stage" provided for in this Part the court will direct that any claim is to proceed either as a small claim or a standard claim.

(3) Where the claim is brought using the procedure under Part 8 the court may direct that the claim shall proceed as a small claim or a standard claim as it sees fit.

(4) The court, having regard to the overriding objective, may at any time and notwithstanding the criteria in rule 28.1 direct that a claim which it had directed should proceed as:
- (a) a small claim, should thereafter proceed as a standard claim or
- (b) a standard claim,

should thereafter proceed as a small claim.

(5) Matters relevant to the exercise of the court's power to direct whether any claim should proceed as a small claim or as a standard claim include:
- (a) the financial value, if any, of the claim;
- (b) the nature of the remedy sought;
- (c) the likely complexity of the facts, law or evidence;
- (d) the number of parties or likely parties;
- (e) the value of any counterclaim or other part 21 claim and the complexity of any matters relating to it;
- (f) the amount of oral evidence which may be required;
- (g) the importance of the claim to persons who are not parties to the proceedings;
- (h) the views expressed by the parties; and
- (i) the circumstances of the parties.

(6) It is for the court to assess the financial value of a claim, and in doing so it will disregard:
- (a) any amount not in dispute;
- (b) any claim for interest;
- (c) costs; and
- (d) any contributory negligence.

(7) Where:
- (a) two or more claimants have started a claim against the same defendant using the same claim form; and

(b) each claimant has a claim against the defendant separate from the other claimants,

the court will consider the claim of each claimant separately when it assesses financial value.

28.2 Directions questionnaire

(1) Every party must file and serve on every other party a directions questionnaire.

28.3 Stay to allow for settlement of the case

(1) A party may, when filing the completed directions questionnaire, make a written request for the proceedings to be stayed while the parties try to settle the case by alternative dispute resolution or other means.

(2) If all parties request a stay, the proceedings will be stayed for up to three months and the court will notify the parties accordingly.

(3) Where the court stays the proceedings under this rule, the claimant must inform the court if a settlement is reached.

(4) If the period of stay expires and the court has not been informed that a settlement has been reached, the case will be re-listed and the parties will be notified accordingly.

28.4 Direction as to whether small or standard claim

(1) The court will direct whether the claim is to proceed as a small claim or a standard claim:

(a) when all parties have filed their directions questionnaires; or

(b) when giving directions pursuant to rule 28.1

unless it has stayed the proceedings under rule 28.3.

(2) If the court has stayed the proceedings under rule 28.3, it will allocate the claim to a track at the end of the period of the stay.

(3) Before deciding whether the claim is to proceed as a small or a standard claim, the court may order a party to provide further information about his or her case.

28.5 Notice of allocation

(1) When it has directed whether the claim is to proceed as a small or standard claim, the court will deliver an order making such direction to every party.

Part 29

Small Claim

Drafting Note in relation to one procedure for small claims encompassing both domestic and European cross-border claims

The €10,000 limit proposed for domestic claims is higher than the €5,000 limit in European small claims.

Furthermore, the merging is not desirable as if you have a claim between two people in Cyprus or one person outside of Cyprus who isn't effected by EU law, the process is different so they need to be kept separate. EU law requires different processes and procedure.

There are considerable differences between Parts 45 and 29. European procedure requires service by post – this could be unconstitutional in the domestic context. There are specific features in the EU rule which do not apply and could not apply in the domestic procedure. There are also issues in relation to enforcement.

29.1 Scope of this Part

(1) This part deals with small claims.

29.2 Extent to which other Parts apply

(1) The following Parts of these Rules do not apply to small claims:
- (a) Part 25 (interim remedies) except as it relates to Interim Injunctions;
- (b) Part 31 (disclosure and inspection) except as provided by rule 31.1 (3);
- (c) Part 32 (evidence) except rule 32.1 (power of court to control evidence);
- (d) Subject to Part 19 (further information);
- (e) Part 37 (hearings) except rule 37.2 (general rule: hearing to be in public).

(2) The other Parts of these Rules apply to small claims except to the extent that a rule limits such application.

(3) The court of its own initiative may order a party to provide further information if it considers it appropriate to do so.

29.3 Court's power to grant a final remedy

(1) Subject to section 22 of the Courts of Justice Law 14/1960, the court may grant any final remedy in relation to a small claim which it could grant if the claim were a standard claim.

29.4 Preparation for the hearing

(1) After Case Management: Preliminary Stage in Part 28 the court will:
- (a) give directions and fix a date for the final hearing
- (b) fix a date for a preliminary hearing under rule 29.5, if considered appropriate; or
- (c) give notice that it proposes to deal with the claim without a hearing under rule 29.9 and invite the parties to notify the court by a specified date if they agree the proposal.

(2) The court will:

(a) give the parties at least 21 days' notice of the date fixed for the final hearing, unless the parties agree to accept less notice; and

(b) inform them of the amount of time allowed for the final hearing.

29.5 Preliminary hearing

(1) The court may hold a preliminary hearing for the consideration of the claim, but only:

(a) where:

(i) it considers that special directions are needed to ensure a fair hearing; and

(ii) it appears necessary for a party to attend at court to ensure that the party understands what the party must do to comply with the special directions; or

(b) to enable it to dispose of the claim on the basis that one or other of the parties has no real prospect of success at a final hearing; or

(c) to enable it to strike out a statement of case or part of a statement of case on the basis that the statement of case, or the part to be struck out, discloses no reasonable grounds for bringing or defending the claim.

(2) When considering whether or not to hold a preliminary hearing, the court must have regard to the desirability of limiting the expense to the parties of attending court.

(3) Where the court decides to hold a preliminary hearing, it will give the parties at least 14 days' notice of the date of the hearing.

(4) The court may treat the preliminary hearing as the final hearing of the claim if all the parties agree.

(5) At or after the preliminary hearing the court will:

(a) fix the date of the final hearing (if it has not been fixed already) and give the parties at least 21 days' notice of the date fixed unless the parties agree to accept less notice;

(b) inform them of the amount of time allowed for the final hearing;

(c) give any appropriate directions;

(d) dispose of the claim on the basis of rule 29.5(1)(b); and

(e) strike out a statement of case or part of a statement of case on the basis of rule 29.5 (1)(c).

29.6 Power of court to add to, vary or revoke directions

(1) The court may add to, vary or revoke directions.

29.7 Conduct of the final hearing

(1) The court may adopt any method of proceeding at a hearing that it considers to be fair.

(2) The court may limit cross-examination

(3) The court must give reasons for its decision.

(4) The Court may limit the time allowed for the hearing and may limit the time for the giving evidence and the making of submissions.

29.8 Non-attendance of parties at a final hearing

(1) If a party who does not attend a final hearing:

(a) has given written notice to the court and the other party at least 7 days before the hearing date that the party will not attend;

(b) has served on the other party at least 7 days before the hearing date any other documents which the party has filed with the court; and

(c) has, in a written notice, requested the court to decide the claim in the party's absence and has confirmed compliance with paragraphs (a) and (b) above,

the court will take into account that party's statement of case and any other documents the party has filed and served when it decides the claim.

(2) If a claimant does not:

(a) attend the hearing; and

(b) give the notice referred to in paragraph (1)

the court may dismiss the claim.

(3) If:

(a) a defendant does not:

(i) attend the hearing; or

(ii) give the notice referred to in paragraph (1); and

(b) the claimant either:

(i) does attend the hearing; or

(ii) gives the notice referred to in paragraph (1),

the court may decide the claim on the basis of the evidence of the claimant alone.

(4) If neither party attends or gives the notice referred to in paragraph (1), the court may dismiss the claim and any defence and counterclaim.

29.9 Disposal without a hearing

(1) The court may, if all parties agree, deal with the claim without a hearing.

29.10 Setting judgment aside and re-hearing

(1) A party:

(a) who was neither present nor represented at the hearing of the claim; and

(b) who has not given written notice to the court under rule 29.8 (1),

may apply for an order that a judgment under this Part shall be set aside and the claim re-heard.

(2) A party who applies for an order setting aside a judgment under this rule must make the application not more than 14 days after the day on which notice of the judgment was served at the party's designated address for service.

(3) The court may grant an application under paragraph (2) only if the applicant:

(a) had a good reason for not attending or being represented at the hearing or giving written notice to the court under rule 29.8 (1); and

(b) has a reasonable prospect of success at the hearing.

(4) If a judgment is set aside:

(a) the court must fix a new hearing for the claim; and

(b) the hearing may take place immediately after the hearing of the application to set the judgment aside.

(5) A party may not apply to set aside a judgment under this rule if the court dealt with the claim without a hearing under rule 29.9.

Part 30

Standard Claims

30.1 Scope of this Part

(1) This Part contains general provisions about management of standard claims. A standard claim is any claim which is not a small claim.

30.2 Case management

(1) On the allocation of a claim as a standard claim the court will fix a date for a case management conference.

(2) At the case management conference, the court will give directions for the future conduct of the proceedings up to trial, specify the date by which the parties must file any pre-trial checklist, fix a date for any pre-trial review and fix the trial date.

(3) If a party has an advocate, a representative:

(a) familiar with the case; and

(b) with sufficient authority to deal with any issues that are likely to arise,

must attend case management conferences and pre-trial reviews.

30.3 Steps taken by the parties

(1) The parties must endeavour to agree appropriate directions for the management of the proceedings and submit agreed directions as provided in rule (2), or their respective proposals to the court at least seven days before any case management conference. Where the court approves agreed directions, or issues its own directions, as provided in rule (3), the parties will be so notified by the court and the case management conference will be vacated.

(2) To obtain the court's approval the agreed directions must:

(a) set out a timetable by reference to calendar dates for the taking of steps for the preparation of the case,

(b) include a date when it is proposed that the trial will take place,

(c) include provision about disclosure of documents, and

(d) include provision about both factual and expert evidence.

(3) If the court does not approve the agreed directions filed by the parties but decides that it will give directions of its own initiative, it will take them into account in deciding what directions to give.

30.4 Pre-trial checklist

(1) The court will give directions to the parties at the Case Management Conference for the completion and filing of a pre-trial checklist (listing questionnaire) by a specified date, unless it considers that the claim can proceed to trial without the need for a pre-trial checklist.

(2) Each party must file the completed pre-trial checklist by the date specified by the court.

(3) If no party files the completed pre-trial checklist by the date specified, the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court.

(4) If:

(a) a party files a completed pre-trial checklist but another party does not;

(b) a party has failed to give all the information requested by the pre-trial checklist; or

(c) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete preparation of the case for trial,

the court may give such directions or make such order as it thinks appropriate.

30.5 Pre-trial review

(1) If, on receipt of the parties' pre-trial checklists, the court decides:

(a) to hold a pre-trial review; or

(b) to cancel a pre-trial review which has already been fixed,

it will serve notice of its decision at least 7 days before the date fixed for the pre-trial review or, as the case may be, the cancelled pre-trial review.

30.6 Failure to comply with case management directions

(1) Where a party fails to comply with a direction given by the court any other party may apply for an order that the first party must do so or for a sanction to be imposed or both of these.

(2) The party entitled to apply for such an order must do so without delay but should first warn the other party of his or her intention to do so.

(3) The court may take any such delay into account when it decides whether to make an order imposing a sanction or to grant relief from a sanction imposed by the rules.

30.8 Variation of case management timetable and other directions of the court

(1) A party must apply to the court if he or she wishes to vary the date which the court has fixed for:

(a) a case management conference;

(b) a pre-trial review;

(c) the return of a pre-trial checklist under rule 30.4;

(d) the trial.

(2) Any date set by the court or these rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

Part 31

Disclosure and inspection of documents

Drafting Note:
There are a large number of small cases where the IBA disclosure procedure will not be appropriate. The Expert Group drafted this Part so that for simpler cases a different disclosure would apply. It was never the intention of the Expert Group to simply incorporate the IBA rule on disclosure for all cases. This Part, as drafted by the Expert Group, sought to balance the IBA rule with the English Rules. It is considered by the Expert Group that this is the most appropriate rule on disclosure, while incorporating the IBA procedure.

The Court needs to retain discretion as to what disclosure procedure is applicable to a relevant case. In a large number of cases, particularly smaller cases, the IBA rule wouldn't really work.

31.1 Scope of this Part

(1) This Part sets out rules about the disclosure and inspection of documents.

(2) This Part applies to all standard claims.

(3) This Part applies to a small claim only if and to the extent that the court so directs.

31.2 Meaning of disclosure

(1) A party discloses a document by stating that the document exists or has existed.

31.3 Meaning of document

(1) In this Part:
"document" means anything in which information of any description is recorded; and
"copy", in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

31.4 Disclosure

(1) In all claims to which this rule applies:
  (a) an order to give disclosure is an order to give standard disclosure unless the court directs or the parties agree otherwise;
  (b) the court may dispense with or limit standard disclosure; and
  (c) the parties may agree in writing to dispense with or to limit standard disclosure.

(2) Standard disclosure requires a party to disclose only the documents on which the party relies.

(3) Where the court considers that efficient or fair disposal of the claim so requires, the court may order that: any party disclose to the other parties in the action the existence of documents which the party has or has had in the party's control being documents
  (a) upon which that party relies;
  (b) which adversely affect the party's own case; or
  (c) another party's case; or
  (d) which support any other party's case.

(4) Not less than 14 days before the first case management conference each party must file and serve a list verified by a statement of truth, which sets out those documents on which the party intends to rely.

(5) If:

(a) the parties agree proposals for the scope of disclosure; and

(b) the court considers that the proposals are appropriate in all the circumstances,

the court may approve them without a hearing and give directions in the terms proposed.

(6) At the first or any subsequent case management conference, the court will decide, having regard to the overriding objective and the need to limit disclosure to that which is necessary to deal with the case justly, which of the following orders to make in relation to disclosure:

(a) an order dispensing with disclosure;

(b) an order that a party disclose the documents on which it relies, and at the same time request any specific disclosure it requires from any other party;

(c) an order that directs, where practicable, the disclosure to be given by each party on an issue by issue basis;

(d) an order that each party disclose any documents which it is reasonable to suppose may contain information which enables that party to advance its own case or to damage that of any other party, or which leads to an enquiry which has either of those consequences;

(e) any other order in relation to disclosure that the court considers appropriate.

31.5 Specific disclosure

(1) The court may make an order for specific disclosure or specific inspection.

(2) An order for specific disclosure is an order that a party must do one or more of the following things:

(a) disclose documents or classes of documents specified in the order;

(b) carry out a search to the extent stated in the order;

(c) disclose any documents located as a result of that search.

(3) An order for specific inspection is an order that a party permit inspection of a document referred to in rule 31.12 (2).

31.6 Duty of search

(1) When giving standard disclosure, a party is required to make a reasonable search for documents falling within rule 31.4(2).

(2) The factors relevant in deciding the reasonableness of a search include the following:

(a) the number of documents involved;

(b) the nature and complexity of the proceedings;

(c) the ease and expense of retrieval of any particular document; and

(d) the significance of any document which is likely to be located during the search.

(3) Where a party has not searched for a category or class of document on the grounds that to do so would be unreasonable, the party must state this in the disclosure statement and identify the category or class of document.

31.7 Specific disclosure: duty limited to documents which are or have been in party's control

(1) A party's duty to make specific disclosure of one or more documents is limited to documents which are or have been in the party's control.

(2) For this purpose a party has or has had a document in the party's control if:

(a) it is or was in the party's physical possession;

(b) the party has or has had a right to possession of it; or

(c) the party has or has had a right to inspect or take copies of it.

31.8 Disclosure of copies

(1) A party need not disclose more than one copy of a document.

(2) A copy of a document that contains a modification, obliteration or other marking or feature:

(a) on which a party intends to rely; or

(b) which adversely affects the party's own case or another party's case or supports another party's case;

shall be treated as a separate document.

31.9 Procedure for disclosure

(1) A disclosure statement is a statement made by the party disclosing the documents:

(a) setting out the extent of the search that has been made to locate documents which the party is required to disclose;

(b) certifying that the party understands the duty to disclose documents; and

(c) certifying that to the best of the party's knowledge the party has carried out that duty.

(2) Where the party making the disclosure statement is a company, firm, association or other organisation, the statement must also:

(a) identify the person making the statement; and

(b) explain why he or she is considered an appropriate person to make the statement.

(3) The parties may agree in writing:

(a) to disclose documents without making a list; and

(b) to disclose documents without the disclosing party making a disclosure statement.

31.10 Duty of disclosure continues during proceedings

(1) Any duty of disclosure continues until the proceedings are concluded.

(2) If documents to which that duty extends come to a party's notice at any time during the proceedings, the party must immediately notify every other party.

31.11 Disclosure in stages

(1) The parties may agree in writing, or the court may direct, that disclosure or inspection or both shall take place in stages.

31.12 Right of inspection of a disclosed document

(1) A party to whom a document has been disclosed has a right to inspect that document except where:

(a) the document is no longer in the control of the party who disclosed it;

(b) the party disclosing the document has a right or a duty to withhold inspection of it;

(c) paragraph (2) applies.

(2) Where a party considers that it would be disproportionate to the issues in the case to permit inspection of documents within a category or class of document disclosed under rule 31.4(3)(b), (c) or (d):

(a) the party is not required to permit inspection of documents within that category or class; but

(b) must state in the party's disclosure statement that inspection of those documents will not be permitted on the grounds that to do so would be disproportionate.

31.13 Documents referred to in statements of case etc.

(1) A party may inspect a document mentioned in:

(a) a statement of case;

(b) a witness statement;
(c) a witness summary; or
(d) an affidavit.

(2) A party may apply for an order for inspection of any document mentioned in an expert's report which has not already been disclosed in the proceedings.

31.14 Inspection and copying of documents

(1) Where a party has a right to inspect a document:
(a) that party must give the party who disclosed the document written notice of the party's wish to inspect it;
(b) the party who disclosed the document must permit inspection not more than 7 days after the date on which the party received the notice; and
(c) that party may request a copy of the document and, if the party also undertakes to pay reasonable copying costs, the party who disclosed the document must supply the other party with a copy not more than 7 days after the date on which the request was received.

31.15 Disclosure before proceedings start

(1) This rule applies where an application is made to the court for disclosure before proceedings have started.
(2) The application must be supported by evidence.
(3) The court may make an order under this rule only where:
(a) the respondent is likely to be a party to subsequent proceedings;
(b) the applicant is also likely to be a party to those proceedings;
(c) disclosure before proceedings have started is desirable in order to:
(i) dispose fairly of the anticipated proceedings;
(ii) assist the dispute to be resolved without proceedings; or
(iii) save costs.
(4) An order under this rule must:
(a) specify the documents or the classes of documents which the respondent must disclose; and
(b) require the respondent, when making disclosure, to specify any of those documents:
(i) which are no longer in the respondent's control; or
(ii) in respect of which the respondent claims a right or duty to withhold inspection.
(5) Such an order may:
(a) require the respondent to indicate what has happened to any documents which are no longer in the respondent's control; and
(b) specify the time and place for disclosure and inspection.

31.16 Orders for disclosure against a person not a party

(1) This rule applies where an application is made to the court for disclosure by a person who is not a party to the proceedings.
(2) The application must be supported by evidence.
(3) The court may make an order under this rule only where:
(a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
(b) disclosure is necessary in order to dispose fairly of the claim or to save costs.
(4) An order under this rule must:

(a) specify the documents or the classes of documents which the respondent must disclose; and

(b) require the respondent, when making disclosure, to specify any of those documents:

(i) which are no longer in the respondent's control; or

(ii) in respect of which the respondent claims a right or duty to withhold inspection.

(5) Such an order may:

(a) require the respondent to indicate what has happened to any documents which are no longer in the respondent's control; and

(b) specify the time and place for disclosure and inspection.

(Rule 45.28 contains rules in relation to the disclosure and inspection of evidence arising out of mediation of certain cross-border disputes.)

31.17 Rules not to limit other powers of the court to order disclosure

(1) Rules 31.15 and 31.16 do not limit any other power which the court may have to order:

(a) disclosure before proceedings have started; and

(b) disclosure against a person who is not a party to proceedings.

(2) Where a party to proceedings which have commenced seeks an order under the court's equitable powers for disclosure against a person who is not a party then the party applying should apply for an order that such person be joined as a party and make an interim application against him or her under Part 25 (interim remedies).

(3) Where proceedings have not commenced and a person seeks an order under the court's equitable powers for disclosure against another person then the person applying should bring a claim for equitable disclosure using the Part 8 procedure.

31.18 Claim to withhold inspection or disclosure of a document

(1) A person may apply, without notice, for an order permitting the person to withhold disclosure of a document on the ground that disclosure would damage the public interest.

(2) Unless the court orders otherwise, an order of the court under paragraph (1):

(a) must not be served on any other person; and

(b) must not be open to inspection by any person.

(3) A person who wishes to claim that he or she has a right or a duty to withhold inspection of a document, or part of a document must state in writing:

(a) that the person has such a right or duty; and

(b) the grounds on which the person claims that right or duty.

(4) The statement referred to in paragraph (3) must be made:

(a) in the list in which the document is disclosed; or

(b) if there is no list, to the person wishing to inspect the document.

(5) A party may apply to the court to decide whether a claim made under paragraph (3) should be upheld.

(6) For the purpose of deciding an application under paragraph (1) (application to withhold disclosure) or paragraph (5) (claim to withhold inspection) the court may:

(a) require the person seeking to withhold disclosure or inspection of a document to produce that document to the court; and

(b) invite any person, whether or not a party, to make representations.

(7) An application under paragraph (1) or paragraph (5) must be supported by evidence.

(8) This Part does not affect any rule of law which permits or requires a document to be withheld from disclosure or inspection on the ground that its disclosure or inspection would damage the public interest.

31.19 Restriction on use of a privileged document inspection of which has been inadvertently allowed

(1) Where a party inadvertently allows a privileged document to be inspected, the party who has inspected the document may use it or its contents only with the permission of the court.

31.20 Consequence of failure to disclose documents or permit inspection

(1) A party may not rely on any document which the party fails to disclose or in respect of which the party fails to permit inspection unless the court gives permission.

31.21 Subsequent use of disclosed documents

(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where:

(a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;

(b) the court gives permission; or

(c) the party who disclosed the document and the person to whom the document belongs agree,

subject to any laws or regulations pertaining to protection of personal data.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made:

(a) by a party; or

(b) by any person to whom the document belongs.

31.22 False disclosure statements

(1) Proceedings for contempt of court may be brought against a person if he or she makes, or causes to be made, a false disclosure statement, without an honest belief in its truth.

31.23 Electronic Disclosure

(1) Rule 31.3 contains a broad definition of a document. This extends to electronic documents, including e-mail and other electronic communications, word processed documents and databases. In addition to documents that are readily accessible from computer systems and other electronic devices and media, the definition covers those documents that are stored on servers and back-up systems and electronic documents that have been "deleted". It also extends to additional information stored and associated with electronic documents known as metadata.

Part 32

Evidence

Section I: Evidence

32.1 Power of court to control evidence

(1) The court may control the evidence by giving directions as to:
   (a) the issues on which it requires evidence;
   (b) the nature of the evidence which it requires to decide those issues; and
   (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible subject to the provisions of the Evidence Law Cap 9.

(3) The court may limit cross-examination.

32.2 Evidence of witnesses: general rule

(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved:
   (a) at trial, by their oral evidence or evidence in writing given in public; and
   (b) at any other hearing, by their evidence in writing.

(2) This is subject:
   (a) to any provision to the contrary contained in these rules or elsewhere; or
   (b) to any order of the court.

32.3 Requirement to serve witness statements for use at trial

Drafting Note from the Local Drafter:
The pre-requisite of service of a witness statement for its use at trial may run contrary to s. 25 of the Evidence Law Cap. 9 which enables a witness to produce a written statement even at the last moment and have it filed as part of his evidence. Though s.37 of Cap. 9 empowers the Supreme Court to issue procedural rules to better implement the law, setting such a pre-requisite may be considered as limiting the relevant provision rather than regulating its application. Prior service of the written statement is important for the purpose of the preparation of the cross-examination and we therefore consider that the rule should be retained and the law should be amended accordingly.

(1) A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally.

(2) The court will order a party to serve on the other parties any witness statement of the oral evidence which the party serving the statement intends to rely on in relation to any issues of fact to be decided at the trial.

(3) The court may give directions as to:
   (a) the order in which witness statements are to be served; and
   (b) whether or not the witness statements are to be filed.

32.4 Use at trial of witness statements which have been served

(1) If:

(a) a party has served a witness statement; and

(b) the party wishes to rely at trial on the evidence of the witness who made the statement, the party must call the witness to give oral evidence unless the court orders otherwise or the party puts the statement in as hearsay evidence.

(2) Where a witness is called to give oral evidence under paragraph (1), his or her witness statement shall stand as his or her evidence in chief.

(3) A witness giving oral evidence at trial may with the permission of the court:

(a) amplify his or her witness statement; and

(b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties.

(4) The court will give permission under paragraph (3) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his or her witness statement.

(5) If a party who has served a witness statement does not:

(a) call the witness to give evidence at trial; or

(b) put the witness statement in as hearsay evidence,

any other party may put the witness statement in as hearsay evidence.

32.5 Evidence in proceedings other than at trial

(1) The general rule is that evidence at hearings other than the trial is to be by witness statement unless the court, or any other enactment requires otherwise.

(2) At hearings other than the trial, a party may, rely on the matters set out in:

(a) the party's statement of case; or

(b) the party's application notice,

if the statement of case or application notice is verified by a statement of truth.

32.6 Order for cross-examination

(1) Where, at a hearing other than the trial, evidence is given in writing, any party may apply to the court for permission to cross-examine the person giving the evidence.

(2) If the court gives permission under paragraph (1) but the person in question does not attend as required by the order, his or her evidence may not be used unless the court gives permission.

32.7 Form of witness statement

Drafting Note
At Stage 3 the contents of the witness statement should be in a Form to be annexed to the CPR.

(1) A witness statement must comply with the requirements set out in this rule:

(2) The witness statement should be headed with the title of the proceedings or anticipated proceedings, where the proceedings are between several parties with the same status it is sufficient to identify the parties as follows:

AB. (and others)

Claimants/Applicants

CD. (and others)

Defendants/Respondents (as appropriate)

(3) At the top right hand corner of the first page there should be clearly written:

(a) the party on whose behalf it is made,
(b) the initials and surname of the witness,
(c) the number of the statement in relation to that witness,
(d) the identifying initials and number of each exhibit referred to, and
(e) the date the statement was made.

(4) The witness statement must, if practicable, be in the intended witness's own words, the statement should be expressed in the first person and should also state:
(a) the full name of the witness,
(b) his or her place of residence or, if he or she is making the statement in his or her professional, business or other occupational capacity, the address at which he or she works, the position he or she holds and the name of his or her firm or employer,
(c) his or her occupation, or if he or she has none, his or her description, and
(d) the fact that he or she is a party to the proceedings or is the employee of such a party if it be the case.

(5) A witness statement must indicate:
(a) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and
(b) the source for any matters of information or belief.

(6) An exhibit used in conjunction with a witness statement should be verified and identified by the witness and remain separate from the witness statement.

(7) Where a witness refers to an exhibit or exhibits, he or she should state "I refer to the (*description of exhibit*) marked "".

(8) The provisions on exhibits apply similarly to witness statements as they do to affidavits.

(9) Where a witness makes more than one witness statement to which there are exhibits, in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.

(10) A witness statement should:
(a) be produced on durable quality A4 paper with a 3.5 cm margin,
(b) be fully legible and should normally be typed on one side of the paper only,
(c) where possible, be bound securely in a manner which would not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the witness,
(d) have the pages numbered consecutively as a separate statement (or as one of several statements contained in a file),
(e) be divided into numbered paragraphs,
(f) have all numbers, including dates, expressed in figures, and
(g) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the statement.

(11) It is usually convenient for a witness statement to follow the chronological sequence of the events or matters dealt with; each paragraph of a witness statement should as far as possible be confined to a distinct portion of the subject.

(12) A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence; it must include a statement by the intended witness that he or she believes the facts in it are true.

(13) To verify a witness statement the statement of truth is as follows:
'"I believe that the facts stated in this witness statement are true".'

(14) Attention is drawn to rule 32.13 which sets out the consequences of verifying a witness statement containing a false statement without an honest belief in its truth.

(15) Any alteration to a witness statement must be initialled by the person making the statement or by the authorised person where appropriate.

(16) A witness statement which contains an alteration that has not been initialled may be used in evidence only with the permission of the court.

(17) If the court directs that a witness statement is to be filed, it must be filed in the court where the action in which it was or is to be used, is proceeding or will proceed.

(18) Where the court has ordered that a witness statement is not to be open to inspection by the public or that words or passages in the statement are not to be open to inspection the court officer will so certify on the statement and make any deletions directed by the court under rule 32.12 (4).

32.8 Witness summaries

(1) A party who:

(a) is required to serve a witness statement for use at trial; but

(b) is unable to obtain one,

may apply, without notice, for permission to serve a witness summary instead as soon as the party becomes aware of the necessity to do so.

(2) A witness summary is a summary of:

(a) the evidence, if known, which would otherwise be included in a witness statement; or

(b) if the evidence is not known, the matters about which the party serving the witness summary proposes to question the witness.

(3) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness.

(4) Unless the court orders otherwise, a witness summary must be served within the period in which a witness statement would have had to be served.

(5) Where a party serves a witness summary, so far as practicable, rules 32.3 (requirement to serve witness statements for use at trial) and 32.7 (form of witness statement) shall apply to the summary.

32.9 Consequence of failure to serve witness statement or summary

(1) If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission.

(2) Where a party fails to serve witness statements on time: an application for an extension of time is an application for relief from sanctions and Part 3.6 applies.

32.10 Cross-examination on a witness statement

(1) Where a witness is called to give evidence at trial, he or she may be cross-examined on his or her witness statement, whether or not the statement or any part of it was referred to during the witness's Evidence-in-Chief.

32.11 Use of witness statements for other purposes

(1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that:

(a) the witness gives consent in writing to some other use of it;

(b) the court gives permission for some other use; or

(c) the witness statement has been put in evidence at a hearing held in public,

subject to any laws or regulations pertaining to protection of personal data.

32.12 Availability of witness statements for inspection

(1) A witness statement which stands as evidence in chief is open to inspection during the course of the trial unless the court otherwise directs.

(2) Any person may ask for a direction that a witness statement is not open to inspection.

(3) The court will not make a direction under paragraph (2) unless it is satisfied that a witness statement should not be open to inspection because of:

(a) the interests of justice;

(b) the public interest;

(c) the nature of any expert medical evidence in the statement;

(d) the nature of any confidential information or personal data (including information relating to personal financial matters) in the statement; or

(e) the need to protect the interests of any child or incapacitated person.

(4) The court may exclude from inspection words or passages in the statement.

32.13 False statements

(1) Proceedings for contempt of court may be brought against a person if he or she makes or causes to be made a false statement in a document verified by a statement of truth without an honest belief in its truth pursuant to s. 44 of the Courts of Justice Law 14/60.

32.14 Affidavit evidence

(1) Evidence must be given by affidavit instead of or in addition to a witness statement if this is required by the court, a provision contained in any other rule, or any other enactment.

(2) Nothing in these rules prevents a witness giving evidence by affidavit at a hearing other than the trial if he or she chooses to do so in a case where paragraph (1) does not apply.

32.15 Form of affidavits

(1) An affidavit must comply with the requirements set out in this rule.

(2) A deponent is a person who gives evidence by affidavit or affirmation.

(3) Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be.

(4) At the top right hand corner of the first page (and on the backsheet) there should be clearly written:

(a) the party on whose behalf it is made,

(b) the initials and surname of the deponent,

(c) the number of the affidavit in relation to that deponent,

(d) the identifying initials and number of each exhibit referred to, and

(e) the date sworn.

(5) The affidavit must, if practicable, be in the deponent's own words, the affidavit should be expressed in the first person and the deponent should:

(a) commence “I (*full name*) of (*address*) state on oath”

(b) if giving evidence in his or her professional, business or other occupational capacity, give the address at which he or she works in (1) above, the position he or she holds and the name of his or her firm or employer,

(c) give his or her occupation or, if he or she has none, his or her description, and

(d) state if he or she is a party to the proceedings or employed by a party to the proceedings, if it be the case.

(6) Every affidavit shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

(7) Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, but on interlocutory applications an affidavit may contain statements of information and belief, with the sources and grounds thereof. The costs of every affidavit which shall unnecessarily set forth matter of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

(8) Where a deponent:

(a) refers to an exhibit or exhibits, he or she should state "there is now shown to me marked the (*description of exhibit*)", and

(b) makes more than one affidavit (to which there are exhibits) in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each affidavit.

(9) The jurat of an affidavit is a statement set out at the end of the document which authenticates the affidavit. It must:

(a) be signed by all deponents,

(b) be completed and signed by the person before whom the affidavit was sworn whose name and qualification must be printed beneath his or her signature,

(c) contain the full address of the person before whom the affidavit was sworn, and

(d) follow immediately on from the text and not be put on a separate page.

(10) An affidavit should:

(a) be produced on durable quality A4 paper with a 3.5 cm margin,

(b) be fully legible and should normally be typed on one side of the paper only,

(c) where possible, be bound securely in a manner which would not hamper filing, or otherwise each page should be endorsed with the case number and should bear the initials of the deponent and of the person before whom it was sworn,

(d) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file),

(e) be divided into numbered paragraphs,

(f) have all numbers, including dates, expressed in figures, and

(g) give the reference to any document or documents mentioned either in the margin or in bold text in the body of the affidavit.

(11) Where an affidavit is sworn by a person who is unable to read or sign it, the person before whom the affidavit is sworn must certify in the jurat that:

(a) he or she read the affidavit to the deponent,

(b) the deponent appeared to understand it, and

(c) the deponent signed or made his or her mark, in his or her presence.

(12) If that certificate is not included in the jurat, the affidavit may not be used in evidence unless the court is satisfied that it was read to the deponent and that he or she appeared to understand it.

(13) Any alteration to an affidavit must be initialled by both the deponent and the person before whom the affidavit was sworn.

(14) No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall without leave of the Court or a Judge be read or made use of in any matter pending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the signature or initials of the officer taking the affidavit, nor in the case of any erasure, unless the words or

figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it.

(15) The Court or Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

(16) A defective or erroneous affidavit may be amended by leave of the Court, which may be obtained ex parte.

(17) Only the following may administer oaths and take affidavits:
Registrar or person specifically authorised by the Supreme Court.

(18) An affidavit must be sworn before a person independent of the parties or their representatives.

(19) Where an affidavit proposed to be sworn is illegible or difficult to read, or is in the judgment of the person who would have to administer the oath so written as to facilitate fraudulent alterations, he may refuse to administer the oath and may require the affidavit to be re-written.

(20) The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous and irrelevant.

(21) There shall be appended to every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a Judge shall otherwise direct. And before an affidavit is used in the Court for any purpose, the original shall be filed in the Court.

(22) Where an affidavit is in a foreign language:
- (a) the party wishing to rely on it
- (b) must have it translated, and
- (c) must file the foreign language affidavit with the court, and
- (d) the translator must make and file with the court an affidavit verifying the translation and exhibiting both the translation and a copy of the foreign language affidavit.

(23) A document used in conjunction with an affidavit should be:
- (a) produced to and verified by the deponent, and remain separate from the affidavit, and
- (b) identified by a declaration of the person before whom the affidavit was sworn.

(24) The declaration should be headed with the name of the proceedings in the same way as the affidavit.

(25) The first page of each exhibit should be marked:
- (a) as in paragraph (3) above, and
- (b) with the exhibit mark referred to in the affidavit.

(26) Copies of individual letters should be collected together and exhibited in a bundle or bundles. They should be arranged in chronological order with the earliest at the top, and firmly secured.

(27) When a bundle of correspondence is exhibited, the exhibit should have a front page attached stating that the bundle consists of original letters and copies. They should be arranged and secured as above and numbered consecutively.

(28) Photocopies instead of original documents may be exhibited provided the originals are made available for inspection by the other parties before the hearing and by the judge at the hearing.

(29) Court documents may not be exhibited (official copies of such documents prove themselves).

(30) Where an exhibit contains more than one document, a front page should be attached setting out a list of the documents contained in the exhibit; the list should contain the dates of the documents.

(31) Items other than documents should be clearly marked with an exhibit number or letter in such a manner that the mark cannot become detached from the exhibit.

(32) Small items may be placed in a container and the container appropriately marked.

(33) Where an exhibit contains more than one document:
(a) the bundle should not be stapled but should be securely fastened in a way that does not hinder the reading of the documents, and
(b) the pages should be numbered consecutively at bottom centre.

(34) Every page of an exhibit should be clearly legible; typed copies of illegible documents should be included, paginated with "a" numbers.

(35) Where affidavits and exhibits have become numerous, they should be put into separate bundles and the pages numbered consecutively throughout.

(36) Where on account of their bulk the service of exhibits or copies of exhibits on the other parties would be difficult or impracticable, the directions of the court should be sought as to arrangements for bringing the exhibits to the attention of the other parties and as to their custody pending trial.

(37) All provisions in this rule relating to affidavits apply to affirmations with the following exceptions:
(a) the deponent should commence "I (*name*) of (*address*) do solemnly and sincerely affirm ....." and
(b) in the jurat the word "sworn" is replaced by the word "affirmed".

32.16 Affidavit made outside the jurisdiction

(1) A person may make an affidavit outside the jurisdiction in accordance with:
(a) this Part; or
(b) the law of the place where he or she makes the affidavit.

(2) Any affidavit, declaration or affirmation may be sworn or taken in Great Britain, Ireland or the Channel Islands or in any British Colony, Possession, Protectorate or Mandated Territory or other place under the dominion of Her Majesty in foreign parts before any Court, Judge, notary public, or person lawfully authorized to administer oaths in any such Colony, Possession, Protectorate, Mandated Territory or other place under the dominion of Her Majesty, or may be sworn or taken before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts outside Her Majesty's Dominions, and the Judges and other officers of the Cyprus Courts shall take judicial notice of the seal or signature as the case may be of any such Court, Judge, notary public, person, Consul or Vice-Consul appended or subscribed to any such affidavit, declaration or affirmation or to any other document, and shall allow the same as regards its form to be used in a Cyprus Court without further proof but subject always as regards admissibility of its contents to the rules of evidence.

32.17 Defects in affidavits, witness statements and exhibits

(1) Where:
(a) an affidavit,
(b) a witness statement, or
(c) an exhibit to either an affidavit or a witness statement,
does not comply with Part 32 in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation.

(2) Permission to file a defective affidavit or witness statement or to use a defective exhibit may be obtained from a judge in the court where the case is proceeding.

32.18 Notice to admit or produce documents

(1) A party shall be deemed to admit the authenticity of a document disclosed to the party under Part 31 (disclosure and inspection of documents) unless the party serves notice that the party wishes the document to be proved at trial.

(2) A notice to prove a document must be served:

(a) by the latest date for serving witness statements; or

(b) within 7 days of disclosure of the document,

whichever is later.

32.19 Acts or instruments of Certifying Officers and executed documents

(1) An act or instrument of a Certifying Officer may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved.

(2) Any document executed in any place outside the Republic, shall be admitted in evidence in any court or in any proceeding without proof of the seal or signature of any person purporting to sign such document of or his official capacity, under the conditions set out in section 17 of the Evidence Law Cap. 9.

(3) Any document being a part of the records of a public or church authority or of a business, shall be admitted in evidence in any court or in any proceeding without further proof upon presentation into court of a certificate executed by a duly authorised official of the public or church authority or of the business, under the conditions set out in section 35 of the Evidence Law Cap. 9 and subject to the court's power to refuse admission of such evidence under section 36 of the Evidence Law Cap. 9.

Section II
Witness Summonses

32.20 Scope of this Section

(1) This Section of this Part provides:
  (a) for the circumstances in which a person may be required to attend court to give evidence or produce a document; and
  (b) for a party to obtain evidence before a hearing to be used at the hearing.

(2) In this Section, reference to a hearing includes a reference to the trial.

32.21 Witness summonses

(1) A witness summons is a document issued by the court requiring a witness to:
  (a) attend court to give evidence; or
  (b) produce documents to the court.

(2) A witness summons must be in the relevant practice form.

(3) There must be a separate witness summons for each witness.

(4) A witness summons may require a witness to produce documents to the court either:
  (a) on the date fixed for a hearing; or
  (b) on such date as the court may direct.

(5) The only documents that a summons under this rule can require a person to produce before a hearing are documents which that person could be required to produce at the hearing.

32.22 Issue of a witness summons

(1) A witness summons is issued on the date entered on the summons by the court.

(2) A party must obtain permission from the court where the party wishes to:
  (a) have a summons issued less than 7 days before the date of the trial;
  (b) have a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial; or
  (c) have a summons issued for a witness to attend court to give evidence or to produce documents at any hearing except the trial.

(3) A witness summons must be issued by the court where the case is proceeding.

(4) The court may set aside or vary a witness summons issued under this rule.

32.23 Time for serving a witness summons

(1) The general rule is that a witness summons is binding if it is served at least 7 days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than 7 days before the date on which the witness is required to attend before the court or tribunal.

(3) A witness summons which is:
  (a) served in accordance with this rule; and
  (b) requires the witness to attend court to give evidence,
  is binding until the conclusion of the hearing at which the attendance of the witness is required.

32.24 Who is to serve a witness summons

(1) A witness summons is to be served by the court unless the party on whose behalf it is issued indicates in writing, when the party asks the court to issue the summons that the party wishes to serve it.

(2) Where the court is to serve the witness summons, the party on whose behalf it is issued must deposit, in the court office, the money to be paid or offered to the witness under rule 34.7.

(3) Process and other service is to be effected by private bailiff.

Part 33

Witnesses, depositions and evidence for foreign courts or for Cyprus courts where witness or evidence is out of the jurisdiction

33.1 Taking of evidence in European Union Member States

(1) Where a court makes a request to or receives a request from a court of another Member State of the European Union for the taking of evidence in the Republic or that Member State, such a request or taking of evidence shall be carried out in accordance with the provisions of Council Regulation (EC) No 1206/2001 and, where appropriate and to the extent this does not interfere with the above Regulation, in accordance with the provisions of rule 33.3 (3).

33.2 Request for evidence from a foreign court

(1) Where a request is received from a court of a foreign country which is not a Member State of the European Union for the taking of evidence in the Republic, such request shall be dealt with by the Supreme Court of Cyprus in accordance with the provisions of Foreign Courts (Evidence) Law, Cap. 12.

33.3 Taking of evidence in other cases

(1) The request and taking of evidence in cases not covered by rules 33.1 shall be carried out in accordance with this rule:

(2) The court may order the issue of a request to examine witnesses in Form ….

(3) Where an order is made to examine a witness or witnesses in any foreign country with which a convention in that behalf has been or shall be extended to Cyprus the following procedure shall be adopted :

(a) The party obtaining such order shall file with the registrar an undertaking in the Form ….

(b) Such undertaking shall be accompanied by:

(i) a request in duplicate in the Form …, together with a translation of that request in the official language of the country in which the same is to be executed, which translation shall be verified upon oath by or on behalf of the party obtaining the order;

(ii) two copies of the specific interrogatories (if any) to accompany the request and a translation of such interrogatories verified on oath;

(iii) two copies of the cross-interrogatories (if any) and a translation thereof verified on oath.

(c) The party obtaining an order under this rule shall also at the time of filing the undertaking mentioned in paragraph (i) of this rule deposit in court € …. in respect of each witness to be examined. In the event of the expenses incurred by the Minister of Justice in connection with the request amounting to less than the sum deposited, the surplus will be refunded to the person making the deposit.

(d) The registrar shall file a copy:

(i) of the request;

(ii) of the specific interrogatories (if any);

(iii) of the cross-interrogatories (if any).

(e) He or she shall seal and forward to the Minister of Justice:

(i) the request and verified translation thereof;

(ii) a copy of the interrogatories (if any) and a verified translation thereof;

(iii) a copy of the cross-interrogatories (if any) and a verified translation thereof.

He or she shall also furnish to the Minister of Justice the names and addresses of the agents of the parties as given in the undertaking filed pursuant to this rule.

(f) Where an order is made for the examination of a witness or witnesses before an Embassy of the Republic in any foreign country with which a convention authorising such examination has been or shall be extended to Cyprus, such order shall be in the Form ….

(g) Where any witness or person is ordered to be examined before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with an office copy of the writ and statement of case (if any), or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

(h) The examination shall take place in the presence of the parties, their advocates, or agents, or such of them as shall attend. And the depositions shall not be used at the trial or hearing unless the party on whose application the order was made shall have given notice to all other parties to attend the examination.

(i) On an examination taken as aforesaid witnesses shall be subject to cross-examination and re-examination and the depositions shall be taken, as nearly as possible, in the same way as evidence is taken on the trial of an action. The depositions shall be taken down in writing by the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness and shall be signed by the witness in the presence of the parties, or such of them as may think fit to attend. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he or she shall state his or her opinion thereon to the advocates, agents, or parties, and shall refer to such statement in the depositions, but he or she shall not have power to decide upon the materiality or relevancy of any question. If the witness refuses to sign his or her deposition, the examiner shall make a note of his or her refusal and sign the deposition himself or herself, and the deposition may be given in evidence whether the witness signs it or not.

(j) If any witness shall object to any question which may be put to him or her before an examiner, the question so put and the objection of the witness thereto, shall be taken down by the examiner and transmitted by him or her to the court to be there filed, and the validity of the objection shall be decided by the court.

(k) If any person duly summoned by subpoena to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed in court, and thereupon the party requiring the attendance of the witness may apply to the court or a Judge for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be.

(l) In any case, the court or a Judge shall have power to order the witness to pay any costs occasioned by his or her refusal or objection.

(m) When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him or her to the court, and there filed.

(n) Except where by this rule otherwise provided, or directed by the court or a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the court or Judge is satisfied that the deponent is dead, or beyond the jurisdiction of the court or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence saving all just exceptions without proof of the signature to such certificate.

(o) Any party in any cause or matter may summon any person in Cyprus to attend and give evidence or produce any document in his or her possession before any person appointed to take the examination in Cyprus, for the purpose of using his or her evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such summons to attend before such person for cross-examination,

(p) The foregoing rules relating to the examination of any person before a person appointed to take the examination shall be subject to such directions as the court may see fit to make pursuant thereto.

(q) All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

Part 34

Experts

34.1 Duty to restrict expert evidence

(1) Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings.

(2) Where a claim has been directed to proceed as a small claim, expert evidence should be given from only one expert on a particular issue, unless the court permits otherwise.

34.2 Interpretation and definitions

(1) A reference to an 'expert' in this Part is a reference to a person who has been instructed to give or prepare expert evidence for the purpose of proceedings.

(2) 'Single joint expert' means an expert instructed to prepare a report for the court on behalf of two or more of the parties (including the claimant) to the proceedings.

34.3 Experts: overriding duty to the court

(1) It is the duty of experts to help the court on the matters within their expertise.

(2) This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid.

34.4 Expert Evidence – General Requirements

(1) Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

(2) Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

(3) Experts should consider all material facts, including those which might detract from their opinions.

(4) Experts should make it clear:

(a) when a question or issue falls outside their expertise; and

(b) when they are not able to reach a definite opinion, for example because they have insufficient information.

(5) If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

Drafting Note in relation to 34.5
34.5 is a significant rule for judicial control of the proceedings as opposed to party autonomy over the proceedings. In England, there has been no problem or claim that the Rules in relation to Experts infringe on the ECHR, but the Expert Group cannot advise on whether the Constitution or any local laws would require the draft rule to be amended.

34.5 Court's power to restrict expert evidence

(1) No party may call an expert or put in evidence an expert's report without the court's permission.

(2) When parties apply for permission they must identify:

(a) the field in which expert evidence is required and the issues which the expert evidence will address; and

(b) where practicable, the name of the proposed expert.

(3) If permission is granted it shall be in relation only to the expert named or the field identified under paragraph (2). The order granting permission may specify the issues which the expert evidence should address.

(4) Where a claim has been directed to proceed as a small claim, if permission is given for expert evidence, it will normally be given for evidence from only one expert on a particular issue.

(5) The court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party.

34.6 General requirement for expert evidence to be given in a written report

(1) Expert evidence is to be given in a written report unless the court directs otherwise.

34.7 Written questions to experts

(1) A party may put written questions about an expert's report (which must be proportionate) to:

(a) an expert instructed by another party; or

(b) a single joint expert appointed under rule 34.8.

(2) Written questions under paragraph (1):

(a) may be put once only;

(b) must be put within 28 days of service of the expert's report; and

(c) must be for the purpose only of clarification of the report;

unless in any case,

(i) the court gives permission; or

(ii) the other party agrees.

(3) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(4) Where:

(a) a party has put a written question to an expert instructed by another party; and

(b) the expert does not answer that question,

the court may make one or both of the following orders in relation to the party who instructed the expert:

(i) that the party may not rely on the evidence of that expert; or

(ii) that the party may not recover the fees and expenses of that expert from any other party.

34.8 Court's power to direct that evidence is to be given by a single joint expert

(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert.

(2) In deciding whether to give such a direction, the court will take into account all the circumstances, including:

(a) whether it is proportionate to have separate experts for each party on a particular issue with reference to:

(i) the amount in dispute;

(ii) the importance to the parties; and

(iii) the complexity of the issue;

(b) the instruction of a single joint expert is likely to assist the parties and the court to resolve the issue more speedily and in a more cost-effective way than separately instructed experts;
(c) expert evidence is to be given on the issue of liability, causation or quantum;
(d) the expert evidence falls within a substantially established area of knowledge which is unlikely to be in dispute or there is likely to be a range of expert opinion;
(e) a party has already instructed an expert on the issue in question and whether or not that was done in compliance with any relevant pre-action protocol;
(f) questions put in accordance with rule 34.7 are likely to remove the need for the other party to instruct an expert if one party has already instructed an expert;
(g) questions put to a single joint expert may not conclusively deal with all issues that may require testing prior to trial;
(h) a conference may be required with the advocates, experts and other witnesses which may make instruction of a single joint expert impractical; and
(i) a claim to privilege makes the instruction of any expert as a single joint expert inappropriate.

(2) Where the parties who wish to submit the evidence ("the relevant parties") cannot agree who should be the single joint expert, the court may:
(a) select the expert from a list prepared or identified by the relevant parties; or
(b) direct that the expert be selected in such other manner as the court may direct.

34.9 Instructions to a single joint expert

(1) Where the court gives a direction under rule 34.8 for a single joint expert to be used, any relevant party may give instructions to the expert.

(2) When a party gives instructions to the expert that party must, at the same time, send a copy to the other relevant parties.

(3) The court may give directions about:
(a) the payment of the expert's fees and expenses; and
(b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed:
(a) limit the amount that can be paid by way of fees and expenses to the expert; and
(b) direct that some or all of the relevant parties pay that amount into court.

(5) Unless the court otherwise directs, relevant parties are jointly and severally liable for the payment of the expert's fees and expenses.

34.10 Power of court to direct a party to provide information

(1) Where a party has access to information derived from a source of expertise which is not reasonably available to another party, the court may direct the party who has access to the information to:
(a) prepare and file a document recording the information; and
(b) serve a copy of that document on the other party.

(2) The document served must include sufficient details of all the facts, tests, experiments and assumptions which underlie any part of the information to enable the party on whom it is served to make, or to obtain, a proper interpretation of the information and an assessment of its significance.

34.11 Contents of report

(1) An expert's report must:

(a) give details of the expert's qualifications;
(b) give details of any literature or other material which has been relied on in making the report;
(c) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;
(d) make clear which of the facts stated in the report are within the expert's own knowledge;
(e) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;
(f) where there is a range of opinion on the matters dealt with in the report:
(i) summarise the range of opinions; and
(ii) give reasons for the expert's own opinion;
(g) contain a summary of the conclusions reached;
(h) if the expert is not able to give an opinion without qualification, state the qualification;
(i) contain a statement that the expert understands their duty to the court, and has complied with that duty.

(2) At the end of an expert's report there must be a statement that the expert understands and has complied with their duty to the court.

(3) The expert's report must be verified by a statement of truth.

(4) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(5) The instructions referred to in paragraph (4) shall not be privileged against disclosure but the court will not, in relation to those instructions:
(a) order disclosure of any specific document included in or provided to the expert together with the instructions; or
(b) permit any questioning in court in relation to the instructions, other than by the party who instructed the expert,
unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under paragraph (3) to be inaccurate or incomplete.

34.12 Use by one party of expert's report disclosed by another

(1) Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial.

34.13 Discussions between experts

(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to:
(a) identify and discuss the expert issues in the proceedings; and
(b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court setting out those issues on which:
(a) they agree; and
(b) they disagree, with a summary of their reasons for disagreeing.

(4) The content of the discussion between the experts shall not be referred to at the trial unless the parties agree.

(5) Where experts reach agreement on an issue during their discussions, the agreement shall not bind the parties unless the parties expressly agree to be bound by the agreement.

34.14 Consequence of failure to disclose expert's report

(1) A party who fails to deliver to all other parties an expert's report may not use the report at the trial or call the expert to give evidence orally unless the court gives permission.

34.15 Expert's right to ask court for directions

(1) Experts may file written requests for directions for the purpose of assisting them in carrying out their functions.

(2) Experts must, unless the court orders otherwise, provide copies of the proposed requests for directions under paragraph (1):

(a) to the party instructing them, at least 7 days before they file the requests; and

(b) to all other parties, at least 4 days before they file them.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

34.16 Concurrent expert evidence

(1) At any stage in the proceedings the court may direct that some or all of the experts from like disciplines shall give their evidence concurrently.

(2) The court may direct that the parties agree an agenda for the taking of concurrent evidence, based upon the areas of disagreement identified in the experts' joint statements made pursuant to rule 34.13.

(3) At the appropriate time the relevant experts will each take the oath or affirm. Unless the court orders otherwise, the experts will then address the items on the agenda in the following manner:

(a) the court may initiate the discussion by asking the experts, in turn, for their views. At one or more appropriate stages when questioning a particular expert, the court may invite the other expert to comment or to ask that expert's own questions of the first expert;

(b) after the process set out in (a) has been completed for all the experts, the parties' representatives may ask questions of them.

Part 35

Offers to Settle

35.1 Scope of this Part

(1) This Part contains rules relating to
   (a) offers to settle which a party may make to another party; and
   (b) the consequences of those offers.

(2) This Part does not limit a party's right to make an offer to settle otherwise than in accordance with this Part [but if the offer is not made in accordance with rule 35.5 to 35.8] it will not have the consequences specified in this Part.

35.2 Introductory

(1) An offer to settle under this Part may be made in any proceedings whether or not there is a claim for money.

(2) The party who makes the offer is called the 'offeror'.

(3) The party to whom the offer is made is called the 'offeree'.

(4) An offer to settle is made when it is delivered to the offeree.

35.3 Making offer to settle

(1) A party may make an offer to another party to settle under this Part which is expressed to be 'without prejudice' but in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to
   (a) the allocation of the costs of the proceedings; and
   (b) the question of interest on damages.

(2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

Drafting Note in relation to 35.3
On reflection, Part 35 is not appropriate for interlocutory applications, it would be more appropriate to use case law such as Calderbank v Calderbank – a Calderbank letter or a 'without prejudice letter save as to costs' is more appropriate. There are wide costs rules, the overriding principle in costs allows for wide costs orders also.

35.4 Time when offer to settle may be made

(1) A party may make an offer to settle under this Part at any time but not later than 21 days before the beginning of the trial.

35.5 Procedure for making offer to settle

(1) An offer to settle under this Part must be in writing.

(2) The offeror must serve the offer on the offeree and a copy on all other parties.

(3) Neither the fact nor the amount of the offer or of any payment into court in support of the offer may be communicated to the court until after all questions relating to liability and the amount of money to be awarded, other than costs and interest, have been decided.

(4) Sub-rule (3) does not apply to

(a) an offer which has been accepted; or
(b) any defence of tender before claim which has been pleaded.

35.6 Extent to which offer to settle includes interest, costs or counterclaim

(1) An offer to settle a claim or counterclaim for money and or damages under this Part must state whether or not the amount offered includes
(a) interest; or
(b) costs.

(2) Where the offer includes interest or costs or both it must state any amount which is included for each.

(3) Where there is a counterclaim as well as a claim, the offer must state
(a) in the case of an offer by the claimant to accept a settlement of his or her claim, whether or not it takes into account the counterclaim; or
(b) in the case of an offer by the defendant to settle the claimant's claim, whether or not it takes into account the counterclaim.

35.7 Offer to settle made after interim payment

(1) If an interim payment has been made, whether voluntarily or under an order under Part 27 any subsequent offer to settle under this Part must state whether it is in addition to the interim payment or whether it is intended that the interim payment will be deducted from any amount paid under the settlement.

35.8 Offer to settle part of a claim

(1) An offer to settle under this Part must state whether or not it relates to the whole or part of the claim.

(2) Where it does not clearly state otherwise, it is to be taken to relate to the whole claim.

(3) Where the offer relates only to part or parts of the claim it must
(a) identify the part or parts of the claim in respect of which it is made; and
(b) where there is more than one part, state what is offered in respect of each part to which the offer relates.

35.9 Time limit for accepting an offer to settle

(1) The offeror may state in the offer that it is open for acceptance until a specified date.

(2) For the purposes of this Part, the offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.

(3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.

35.10 Procedure for acceptance

Drafting Note in relation to the withdrawal of an offer
In England withdrawal of an offer is done by letter. There is no need to provide for a withdrawal of offer in the Rules. In these rules, an offer can be withdrawn any time before acceptance. The Expert Group attempted to create a very simple Part here. The English Part is very complex, the Expert Group believes its draft is the most appropriate.

The Expert Group does not think there is any need to make a provision. In relation to withdrawal of an offer, the ordinary rules of contract apply and it may be withdrawn on notice at any point before acceptance.

If the Rules Committee want a provision, a rule could read simply "the offer is treated as withdrawn when such withdrawal is delivered to the offeree." The Expert Group stresses that it does not think this is necessary.

(1) To accept an offer for the purposes of this Part, a party must
  (a) serve written notice of acceptance to the offeror; and
  (b) deliver a copy of the notice to any other party.

(2) The offeree accepts the offer when notice of acceptance is served on the offeror. The claimant or defendant must apply as soon as possible for consequential directions.

(3) Where an offer or payment into court is made in proceedings concerning children or incapacitated persons:
  (a) the offer or payment may be accepted only subject to the permission of the court; and
  (b) no payment out of any sum paid into court may be made without a court order.

35.11 Withdrawing an offer

(1) An offer under this Part can only be withdrawn if the offeree has not previously served notice of acceptance.

(2) The offeror may withdraw the offer by serving written notice of the withdrawal on the offeree.

(3) Such notice of withdrawal takes effect when it is served on the offeree.

35.12 Effect of acceptance – generally

(1) Where the offeree accepts an offer which relates to the whole claim (counterclaim), the claim is stayed upon the terms of the offer.

(2) Where the offer relates to a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer.

(4) Where the approval of the court is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only if and when the court gives its approval.

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) Where money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect proceedings to obtain payment out of court.

(7) Where an offer is accepted but its terms are not complied with, either party may apply to the court for an order
  (a) removing the stay under this paragraph to enable the proceedings to be determined;
  (b) enforcing the terms of the settlement agreement; or
  (c) granting such other relief as may be appropriate.

(8) Where a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an accepted offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

35.13 Costs where offer not accepted – general rules

(1) Where the defendant makes an offer to settle that is not accepted and:

(a) in the case of an offer to settle a claim for money and or damages, the court awards less than the full amount of the defendant's offer; or

(b) in any other case, the court considers that the claimant acted unreasonably in not accepting the defendant's offer,

the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted in accordance with its terms.

(2) Where a claimant makes an offer to settle that is not accepted and

(a) in the case of an offer to settle a claim for money and or damages, the court awards an amount which is equal to or more than the amount of the offer; or

(b) in any other case, the court considers that the defendant acted unreasonably in not accepting the claimant's offer,

the court may, in exercising its discretion as to interest, take into account the failure of the defendant to accept the claimant's offer.

(3) Under Part 39 the court may in its discretion make such order as to costs (including the amount of costs and the period in respect of which they are to be paid) as it thinks fit and Part 39 shall apply to any award or assessment of costs under this Part.

(4) The court may decide that the general rule under sub-rule (1) is not to apply in a particular case.

(5) In deciding whether the general rule should not apply and in considering the exercise of its discretion under sub-rule (2), the court may take into account

(a) the terms of any offer;

(b) the stage in the proceedings at which the offer was made;

(c) the information available to the offeror and the offeree at the time that the offeror made the offer; and

(d) the conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated.

(6) This rule applies to offers to settle at any time, including before proceedings were started.

Part 36

Miscellaneous provisions about payments into court

36.1 Money paid into court under a court order or under any enactment

(1) A party who makes a payment into court under a court order must:
  (a) serve notice of the payment on every other party; and
  (b) in relation to each such notice, file a certificate of service.

(2) A party paying money into court under an order or in support of a defence of tender before claim must:
  (a) serve a copy of the Form … on each other party; and
  (b) file at the court:
    (i) a copy of the Form …; and
    (ii) a certificate of service confirming service of a copy of that form on each party served.

(3) A litigant in person without a current account may, in a claim proceeding in court, make a payment into court by:
  (a) lodging the payment in cash with the court where the case is proceeding; and
  (b) giving the court a completed Form ……

36.2 Applications relating to funds in court

(1) This paragraph applies to an application relating to money or securities which have been paid into court other than an application for the payment out of the money or securities (for example, an application for money to be invested, or for payment of interest to any person).

(2) An application:
  (a) must be made in accordance with Part 23; and
  (b) may be made without notice, but the court may direct notice to be served on any person.

36.3 Money paid into court where defendant wishes to rely on a defence of tender before claim

(1) Where a defendant wishes to rely on a defence of tender before claim the defendant must make a payment into court of the amount the defendant says was tendered.

(2) If the defendant does not make a payment in accordance with paragraph (1), the defence of tender before claim will not be available until the defendant does so.

36.4 Payment out of money paid into court

(1) Money paid into court under a court order or in support of a defence of tender before claim may not be paid out without the court's permission except where:
  (a) a Part 35 offer is accepted without needing the permission of the court; and
  (b) the defendant agrees that a sum paid into court by the defendant should be used to satisfy the offer (in whole or in part).

(2) Permission may be obtained by making an application in accordance with Part 23. The application notice must state the grounds on which the order for payment out is sought. Evidence of any facts on which the applicant relies may also be necessary.

(3) Where the court gives permission under rule 36.4(1), it will include a direction for the payment out of any money in court, including any interest accrued.

(4) Where permission is not required to take money out of court, the requesting party should file a request for payment with the court Accounting Department, accompanied by a statement that the defendant agrees that the money should be used to satisfy the Part 35 offer.

(5) The request for payment should contain the following details:

(a) where the party receiving the payment is legally represented:

(i) the name, business address and reference of the advocate; and

(ii) the name of the bank, and the sort swift code number, the title of the account, and the account number and IBAN number (if applicable), where the payment is to be transmitted;

(b) where the party is acting in person:

(i) their name and address; and

(ii) their bank account details as in rule 36.4 (5) (a) (ii) above.

(6) Where rule 36.4 (4) applies, interest accruing up to the date of acceptance will be paid to the defendant.

(7) Subject to rule 36.4 (8), if a party does not wish the payment to be transmitted into their bank account or if they do not have a bank account, they may send a written request to the Treasury of the Republic for the payment to be made to them by cheque.

(8) Where a party seeking payment out of court has provided the necessary information, the payment where a party is legally represented, must be made to the advocate

36.5 Payment into court under Trustees Law, Cap. 193

(1) A trustee wishing to make a payment into court under section 60 of the Trustees Law Cap. 193 must file a witness statement or an affidavit setting out:

(a) a short description of:

(i) the trust; and

(ii) the instrument creating the trust, or the circumstances in which the trust arose;

(b) the names of the persons interested in or entitled to the money or securities to be paid into court, with their address so far as known to him or her;

(c) a statement that the trustee agrees to answer any inquiries which the court may make or direct relating to the application of the money or securities; and

(d) the trustee's address for service.

(2) If a trustee pays money or securities into court, unless the court orders otherwise they must immediately serve notice of the payment into court on every person interested in or entitled to the money or securities.

36.6 Application for payment out of funds paid into court by trustee

(1) An application for the payment out of any money or securities paid into court under section 60 of the Trustees Law, Cap. 193 must be made in accordance with this Part.

(2) The application may be made without notice, but the court may direct notice to be served on any person.

Part 37

Miscellaneous Provisions relating to hearings

37.1 Interpretation

(1) In this Part, reference to a hearing includes a reference to the trial.

37.2 General rule: hearing to be in public

(1) The general rule is that a hearing is to be in public. The public may be excluded from all or any part of the trial on a decision of the court where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety or the public morals or where the interests of children or the protection of the private life of the parties so require or, in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice.

(2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.

(3) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.

37.3 Failure to attend the trial

(1) The court may proceed with a trial in the absence of a party, but:

(a) if no party attends the trial, it may strike out the whole of the proceedings;

(b) if the claimant does not attend, it may strike out the claim and any defence to counterclaim and

(c) if a defendant does not attend, it may strike out the defence or counterclaim (or both).

(2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.

(3) Where a party does not attend and the court gives judgment or makes an order against the party, the party who failed to attend may apply for the judgment or order to be set aside.

(4) An application under paragraph (2) or paragraph (3) must be supported by evidence.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant:

(a) acted promptly when the party found out that the court had exercised its power to strike out or to enter judgment or make an order against the party;

(b) had a good reason for not attending the trial; and

(c) has a reasonable prospect of success at the trial.

37.4 Trial bundles

(1) Unless the court orders otherwise, the claimant must file a trial bundle containing documents required by any court order.

(2) The claimant must file the trial bundle not more than 7 days and not less than 3 days before the start of the trial.

37.5 Proceedings at the trial

(1) The proceedings at the trial shall be as follows: (The party on whom the burden of proof lies is called in this rule "the first party", and the other party is called "the second party".)

(a) Where the issues between the parties involve legal points only and the parties state that no evidence is being adduced, the first party may address the court, then the second party may do likewise, and finally the first party may reply.

(b) In other cases:

(i) The first party may open the case and adduce evidence; after the first party has done so, the second party shall be asked whether the second party intends to adduce evidence and if the second party does not so intend, then the first party may address the court for the purpose of summing up the evidence; and finally the second party may address the court. If the second party states that the second party does intend to call evidence, then this party may open the case and adduce evidence and afterwards the second party may address the court, and finally the first party may reply.

(ii) The first party may not adduce evidence in reply except this party must ask for leave immediately after the second party's evidence is concluded. If such leave is granted, the second party's summing up shall be postponed until after the evidence in reply is heard.

(iii) When the first party has replied, or, if the first party has no right to reply, when the second party has addressed the court, the case shall be closed, unless the court directs either party to adduce further evidence or itself calls any witness.

(2) On the hearing of any action involving a counter-claim or of any two actions directed to be heard together, the order of proceedings shall be as follows: ("The first party" in this rule means the party on whom the burden of proof lies in respect of the claim in the action, and "the second party" means the other party; and "counter-claim" includes a claim in the second action.)

(a) Where the parties state that evidence is not being adduced-

(i) If the burden of proof in the counter-claim is on the first party, this party may address the court in regard to the claim and the counter-claim, then the second party may do likewise, and finally the first party may reply;

(ii) If the burden of proof in the counter-claim is not on the first party, the first party may address the court in regard to the claim, the second party may address the court in regard to the claim and the counter-claim, then the first party may reply in regard to the claim and address the court on the counter-claim, and finally the second party may reply in regard to the counter-claim only.

(b) Where the parties state that evidence is not being adduced in regard to the claim but is being adduced in regard to the counter-claim (or that it is not being adduced in regard to the counter-claim but is being adduced in regard to the claim), then the proceedings in the claim shall be severed from those in the counter-claim and be regulated in accordance with the provisions of rule 38.5(1). If witnesses have been summoned, that part of the case shall be taken first in which evidence is being heard.

(c) Where the parties state that evidence is being adduced both on the claim and on the counter-claim, then:

(i) If the burden of proof as regards the counter-claim lies on the first party, the first party may open its case and adduce evidence both on the claim and the counter-claim; afterwards the second party shall be asked whether the second party intends to call evidence, and if this party states that this party does not so intend,

then the first party may address the court for the purpose of summing up the evidence; and finally the second party may address the court. If the second party states that the second party does intend to call evidence, then this party may open the case and adduce the evidence both on the claim and the counter-claim, and afterwards the second party may address the court; and finally, the first party may reply. And paragraph (ii) (b) of rule 37.5(1) shall apply.

(ii) If the burden of proof as regards the counter-claim does not lie on the first party, this party may open the case and adduce the evidence on the claim. Afterwards the second party shall be asked whether the second party intends to call evidence on the claim. Then:

(*a*) If the second party states that the second party does not so intend, the first party may address the court for the purpose of summing up the evidence on the claim, the second party may then address the court on the claim, and the proceedings as regards the claim shall terminate with such address. Then the proceedings on the counter-claim shall begin with the second party opening the case thereon and adducing the evidence, and shall be conducted in the same manner as the hearing of a claim.

(*b*) If the second party states that the second party intends to call evidence in regard to the claim, this party may open the case both on the claim and the counter-claim and adduce the evidence in regard to both. Then if the first party states that the first party is not calling evidence in regard to the counter-claim, the second party may address the court for the purpose of summing up the evidence; and finally the first party may reply. If, on the other hand, the first party states that the first party intends calling evidence in regard to the counter-claim, then the second party shall address the court on the claim, and the first party may open the case on the counterclaim and adduce the evidence thereon and thereafter address the court for the purpose of summing up the evidence and of replying on the claim; and finally the second party may reply on the counter-claim only. (But the first party's reply on the claim may, if the court so thinks fit, follow immediately after the second party's address thereon.)

A party shall not adduce evidence in reply except by leave of the court; and where such leave is given, the evidence shall be adduced at such stage as the court may direct, regard being had to the principle that the other party must be given an opportunity of commenting thereon.

The court may sever the trial of the claim from that of the counter-claim, care being taken to save expense in respect of witnesses, if they have been summoned and are in attendance.

Subject to the foregoing provisions, the court may modify, and regulate the proceedings in such manner as it may consider expedient so as to enable the claim and the counter-claim to be fully heard, regard being had to the principles underlying the procedure laid down in Rule 37.5(1).

Drafting Note for Rules Committee
37.6 has been added to ensure consecutive hearing days. The Expert Group is of the view that 37.6 should remain in Part 37 where it is as it provides for all hearings whereas Part 30 only applies to standard claims.

37.6 Court sittings

(1) Αι κατωτέρω αναφερόμενοι περίοδοι θα είναι αι υπό του Ανωτάτου Δικαστηρίου τηρούμεναι διακοπαί:

(α) θεριναί διακοπαί: από της 10ης Ιουλίου μέχρι της 9ης Σεπτεμβρίου, αμφοτέρων των ημερομηνιών συμπεριλαμβανομένων.

(β) διακοπαί Χριστουγέννων: από της 24ης Δεκεμβρίου μέχρι της 6ης Ιανουαρίου, αμφοτέρων των ημερομηνιών συμπεριλαμβανομένων.

(γ) διακοπαί του Πάσχα: από της Μεγάλης Πέμπτης προ του Ελληνορθοδόξου Πάσχα μέχρι της Κυριακής του Θωμά, αμφοτέρων των ημερών συμπεριλαμβανομένων:

Νοείται ότι δύνανται να γίνωνται συνεδρίαι κατά την διάρκειαν οιασδήποτε των ως άνω διακοπών δυνάμει οδηγιών-

(α) του Ανωτάτου Δικαστηρίου, δια την ακρόασιν οιασδήποτε υποθέσεως ή δί άλλην διαδικασίαν,

(β) οιουδήποτε δικαστού του Δικαστηρίου, δια την ακρόασιν υπ' αυτού οιασδήποτε υποθέσεως ή δί' άλλην διαδικασίαν υπαγομένην εις την αρμοδιότητα ενός Δικαστού του Δικαστηρίου.

(2) Αι εν τω κανονισμώ 38.6(1) αναφερόμενοι περίοδοι θα είναι επίσης αι υπό των Επαρχιακών Δικαστηρίων τηρούμεναι διακοπαί:

Νοείται ότι ο πρόεδρος Επαρχιακού Δικαστηρίου θα δύναται, οσάκις θεωρεί τούτο σκόπιμον, να δίδη οδηγίας δια την διεξαγωγήν συνεδριών καθ' οιονδήποτε χρόνον ήθελε θεωρήσει εύλογον, δια την ακρόασιν πολιτικών αγωγών.

(3) Η ακρόασις πολιτικών αγωγών εις τα Επαρχιακά Δικαστήρια θα δύναται να διακόπτηται επί τρεις ημέρας κατά την διάρειαν του Βαϊραμιού Ραμαζάν και επί τρεις ημέρας κατά την διάρκειαν του του Βαϊραμιού Κουρπάν και κατά την ημέραν των Γενεθλίων του Προφήτου, όσον αφορά εις τους Τούρκους διαδίκους.

(4) When the court fixes the date or dates for the hearing of the trial, then the court should so far as practicable direct that the dates for the hearing of the trial shall be consecutive.

37.7 Court books and office procedure

(1) The Registrar shall keep a cause book in connection with the proceedings in actions, which book shall show such particulars as the president of the District Court may from time to time direct. In the absence of any such direction, the Registrar shall continue to show in the cause book the same particulars as heretofore.

(2) The Registrar shall keep a taxing book in which he or she shall enter the particulars of every bill of costs taxed by him, showing which of the items claimed are allowed and which disallowed, and at the foot of such particulars he shall certify under his or her hand the amount allowed.

(3) In actions for claims not exceeding ενενήντα τεσσάρων ευρώ (€94) the following shall bear a note under the hand of or initialed by a Court officer to the effect that the action is for a claim not exceeding ninety-four euros (€94):

(a) all documents filed in the action;

(b) all judgments and orders entered therein;

(c) all documents issued in connection therewith;

(d) the counterfoils of any such documents.

(4) The President of every Court shall make such arrangements as shall seem to him or her convenient for regulating the time at which application may be made to the officers of the Court for the issue of writs of summons, the drawing up of judgments, and other like matters. Notice of such arrangements shall be posted in some conspicuous place in or near the Court.

37.8 Miscellaneous

(1) Every document or other exhibit put in evidence shall be marked by a Judge or by an officer of the court when it is put in, and the mark placed thereon shall be noted in the minutes of the court.

(2) Exhibits shall remain in the custody of the court and shall not be given out except by leave of a Judge.

(3) Where a Judge in delivering judgment makes use of notes or reads a written judgment, the notes made use of or the judgment read shall forthwith be handed to the Registrar to be filed.

(4) The Judge shall make a note of the times at which a hearing or trial commences and terminates respectively and the time actually occupied thereby on each day on which the same shall take place, for purposes of assessment of cost.

Part 38

Judgments, orders, taking of accounts, sale of land etc.

38.1 Entry of judgments and orders

(1) Save where the Court shall have directed that a judgment or order be not drawn up until a certain date or until a certain event has happened, every judgment or order shall, on the application of any party to the Registrar, be entered in a book to be kept for the purpose.

(2) Every judgment or order when entered shall be dated as of the day on which it was pronounced, and shall, save where it otherwise directs, take effect from that date, and a note shall be made in the book in which it is entered of the date of entry.

(3) Every judgment or order when entered shall be entitled with the full title and amended title (if any) of the action in which it is given. It shall show which of the parties were present or represented by advocate at the hearing or trial, and whether any of the parties were not so present or represented. It shall state as concisely as possible the judgment or order of the Court, and, where it shall seem to the Court necessary or advisable, the grounds of the judgment or order.

(4) In any judgment or order, whether in default of appearance or defence or after hearing or trial or otherwise, the party at whose instance the judgment or order is entered shall, if he so desires, be entitled to have recited in the judgment or order a statement as to the manner and place in and at which the service of the claim form or other process by which the proceedings were commenced was effected.

(5) Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done.

(6) Where any judgment or order is given subject to the filing of any affidavit or production of any document, the Registrar shall examine the affidavit or document produced, and if the same shall be regular and contain all that is by law required, the judgment or order shall be entered accordingly.

38.2 Production of certified copy for registration at a District Land Registry

(1) Οσάκις απαιτείται η προσαγωγή πιστοποιημένου αντιγράφου αποφάσεως ή διατάγματος δια σκοπούς εγγραφής της τοιαύτης αποφάσεως ή διατάγματος παρά Επαρχιαχώ Κτηματολογικώ Γραφείω συμφώνως ταις προνοίαις του άρθρου 54 του Περί Πολιτικής Δικονομίας Νόμου, δεν είναι δε εφικτή η προσαγωγή εις το Δικαστήριον του φακέλλου διαδικασίας ένθα εξεδόθη η τοιαύτη απόφασις ή διάταγμα και του βιβλίου αποφάσεων ένθα αύτη κατεχωρίσθη, το Δικαστήριον ή Δικαστής δύναται, κατά το δοκούν, να δώση οδηγίας όπως η τοιαύτη απόφασις ή διάταγμα καταχωρισθή εις βιβλίον τηρούμενον επί τω σκοπώ, και όπως εκδοθή πιστοποιημένον αντίγραφον ταύτης, τη αιτήσει του εξ αποφάσεως πιστωτού, τεκμηριουμένης υπό της αυτής μαρτυρίας ως προνοείται εν κανονισμώ 19 της Διατάξεως 40.

(2) Η αίτησης θα υποβάλλεται κατ' αρχήν μονομερώς (ex parte), αλλά το Δικαστήριον ή δικαστής ο επιλαμβανόμενος ταύτης δύναται να δώση οδηγίας όπως αύτη υποβληθή δια κλήσεως μετά σχετική ειδοποιήσεως εις τοιούτον πρόσωπού ή πρόσωπα ως το Δικαστήριον ή Δικαστής ήθελε θεωρήσει πρέπον.

38.3 Setting aside of judgement or order obtained by fraud

(1) A judgment or order obtained by fraud may, upon action brought by any person , whether a party to the record or not, be set aside as against the person who committed or procured the fraud, but this limitation shall not apply to an action to set aside a judgment or order granting probate of a will.

38.4 Setting aside or varying of a judgment or order by non-party

(1) A person who is not a party but who is directly affected by a judgment or order may apply in court to have the judgment or order set aside or varied.

38.5 Correction of errors in judgments and orders

(1) The court may at any time correct an accidental slip or omission in a judgment or order.

(2) A party may apply for a correction without notice.

38.6 Accounts and inquiries: general

(1) Where the court orders any account to be taken or any inquiry to be made, it may, by the same or a subsequent order, give directions as to the manner in which the account is to be taken and verified or the inquiry is to be conducted.

(2) In particular, the court may direct that in taking an account, the relevant books of account shall be evidence of their contents but that any party may take such objections to the contents as the party may think fit.

(3) Any party may apply to the court in accordance with Part 23 for directions as to the taking of an account or the conduct of an inquiry or for the variation of directions already made.

(4) Every direction for the taking of an account or the making of an inquiry shall be numbered in the order so that, as far as possible, each distinct account and inquiry is given its own separate number.

38.7 Verifying the account

(1) Subject to any order to the contrary:

(a) the accounting party must make out the accounting party's account and verify it by an affidavit or witness statement to which the account is exhibited,

(b) the accounting party must file the account with the court and at the same time notify the other parties that the accounting party has done so and of the filing of any affidavit or witness statement verifying or supporting the account.

38.8 Objections

(1) Any party who wishes to contend:

(a) that an accounting party has received more than the amount shown by the account to have been received, or

(b) that the accounting party should be treated as having received more than the accounting party has actually received, or

(c) that any item in the account is erroneous in respect of amount, or

(d) that in any other respect the account is inaccurate,

must, unless the court directs otherwise, give written notice to the accounting party of the party's objections.

(2) The written notice referred to in paragraph (d) must, so far as the objecting party is able to do so:

(a) state the amount by which it is contended that the account understates the amount received by the accounting party,
(b) state the amount which it is contended that the accounting party should be treated as having received in addition to the amount the accounting party actually received,
(c) specify the respects in which it is contended that the account is inaccurate, and
(d) in each case, give the grounds on which the contention is made.

(3) The contents of the written notice must, unless the notice contains a statement of truth, be verified by either an affidavit or a witness statement to which the notice is an exhibit.

38.9 Allowances

(1) In taking any account all just allowances shall be made without any express direction to that effect.

38.10 Management of proceedings

(1) The court may at any stage in the taking of an account or in the course of an inquiry direct a hearing in order to resolve an issue that has arisen and for that purpose may order that points of claim and points of defence be served and give any necessary directions.

38.11 Delay

(1) If it appears to the court that there is undue delay in the taking of any account or the progress of any inquiry the court may require the accounting party or the party with the conduct of the inquiry, as the case may be, to explain the delay and may then make such order for the management of the proceedings (including a stay) and for costs as the circumstances may require.

38.12 Distribution

(1) Where some of the persons entitled to share in a fund are known but there is, or is likely to be, difficulty or delay in ascertaining other persons so entitled, the court may direct, or allow, immediate payment of their shares to the known persons without reserving any part of those shares to meet the subsequent costs of ascertaining the other persons.

38.13 Accounts and inquiries to be conducted before Judge

(1) Unless the court orders otherwise, an account or inquiry will be taken or made by a Judge.

38.14 Advertisements

(1) The court may:
(a) direct any necessary advertisement; and
(b) fix the time within which the advertisement should require a reply.

38.15 Examination of claims

(1) Where the court orders an account of debts or other liabilities to be taken, it may direct any party, within a specified time, to:
(a) examine the claims of persons claiming to be owed money out of the estate or fund in question.
(b) determine, so far as he or she is able, which of them are valid; and
(c) file written evidence:
(i) stating his or her findings and his or her reasons for them; and

(ii) listing any other debts which are or may be owed out of the estate or fund.

(2) Where the court orders an inquiry for next of kin or other unascertained claimants to an estate or fund, it may direct any party, within a specified time, to:

(a) examine the claims that are made;

(b) determine, so far as he or she is able, which of them are valid; and

(c) file written evidence stating his or her findings and his or her reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the court to examine claims, the court may direct them to join with the party directed to examine claims in producing the written evidence required by this rule.

38.16 Consideration of claims by the court

(1) For the purpose of considering a claim the court may:

(a) direct it to be investigated in any manner;

(b) direct the person making the claim to give further details of it; and

(c) direct that person to:

(i) file written evidence; or

(ii) attend court to give evidence,

to support the person's claim.

Part 39

Costs

Drafting Note:
Pay-as-you go is within the court's discretion. This power comes from the court's discretion and the overriding principle. See 39.2 (1).

39.1 The overriding principle

(1) In relation to

(a) any order for costs between parties

(b) any costs payable by a client to the client's advocate

(c) whether the whole or part of those costs are to be assessed by reference to Part 39.11 (4) – (6) of this Part or on some other basis;

(d) by whom they are to be assessed

(e) the amount of any costs

(f) the period within which are to be paid and

(g) any instalments by which they are to be paid

the overriding principle is that, subject to the Overriding Objective, they are all within the discretion of the court and any specific or general provision in any rule is subject to this overriding principle.

39.2 Factors for court to take into account when exercising its discretion

(1) The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party and that such order or orders will or should be made in relation to any application made as the trial progresses.

(2) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including:

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 35 apply.

(3) The conduct of the parties includes:

(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties complied with any relevant pre-action protocol;

(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;

(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

(4) 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 pursuant to the Courts of Justice Law 14/1960.

(5) Before the court considers making an order under Rule 39.2(4)(f), it will consider whether it is practicable to make an order under Rule 39.2 (4)(a) or (c), which is either a proportion of costs instead (e.g. 50%) or a party's costs to be assessed after a certain date, because that is easier.

(6) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs unless there is good reason not to do so.

39.3 Litigants in Person

(1) Where a party is a litigant in person then the court may award that party costs.

(2) The litigant in person shall be entitled to recover all court fees, properly incurred.

(3) The litigant in person shall be entitled to recover all costs properly and necessarily incurred such as in relation to travel and other out-of-pocket expenses proved to the satisfaction of the Registrar.

39.4 Court to order (1) Summary or (2) Detailed Assessment

(1) Where the court orders a party to pay costs to another party it may either:

(a) make a summary assessment of the costs; or
(b) order detailed assessment of the costs by the Registrar which is subject to the approval of the court.

39.5 Where court reserves the question of costs and no further order made

(1) If the court reserves the question of costs, and no further order is made, then the order reserving the costs shall be treated as those costs follow the event.

39.6 Orders for costs where no description of whether the costs

(1) If an order is made that a party or person pay costs or be paid costs, without any further description of the costs, the costs are to be treated costs as between party and party.

39.7 Summary Assessment

(1) The general rule is that the court should make a summary assessment of the costs at the conclusion of any hearing which has lasted not more than an aggregate of 6 hours in which case the order will deal with the costs of the application or matter to which the hearing related. If this hearing disposes of the claim, the order may deal with the costs of the whole claim, unless there is good reason not to do so, for example where the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily.

39.8 Consent orders

(1) Where an application has been made and the parties to the application agree an order by consent without any party attending, the parties should seek to agree a figure for costs to be inserted in the consent order or agree that there should be no order for costs.

39.9 Duty of parties and advocates

(1) It is the duty of the parties and their advocates to assist the judge in making a summary assessment of costs in any case to which rule 39.7 above applies.

39.10 Wasted Costs

(1) Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the advocate for any party having neglected to attend personally, or by some other person on his behalf, or having omitted to give notice or deliver any papers or do any other act that was necessary, the advocate shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

(2) If in any case it shall appear to the Court or Judge that costs have been incurred either improperly or without any reasonable cause, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the advocate, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the advocate of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the advocate and his or her client, and also (if the circumstances of the case shall require) why the advocate should not repay to his or her client any costs which the client may have been ordered to pay to any other person; and may thereupon make such order as the justice of the case may require. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct.

39.11 Detailed Assessment of costs on an award

(1) Costs may (where necessary) be assessed on an award.

(2) In every bill of costs the professional charges shall be entered separately from the disbursements, and the two sets of items shall be totaled separately in the bill.

(3) In any case where the Court or Judge shall think fit to award costs to any party, the Court or Judge may by the order direct assessment of the costs of such party and payment of a proportion thereof, or direct payment of a sum in lieu of assessed costs, and direct by and to whom such proportion or sum shall be paid.

(4) Save where other provision is made, in causes or matters commenced after these rules come into operation, and in respect of proceedings taken hereafter in causes or matters already commenced, parties as between themselves, and advocates as between themselves and their clients shall, subject to the provisions of these rules and any special order of the Court, be entitled to charge and shall be allowed such fees set out in Appendix X [**Drafting Note: For Stage 3**] as are appropriate to the case; and where the claim in any cause or matter is not a claim for money, the value of the claim must be ascertained from the evidence in the case or, if it cannot, then from any admission made to the Registrar or evidence received by him.

(5) For the purposes of assessment or any other matter which he or she is authorized to hear the Registrar [or any person appointed by the court to assess costs] may administer oaths.

(6) The Court or Judge may allow, or order to be assessed, fees on a higher scale than those specified in Appendix X on special grounds arising out of the nature and importance or the difficulty or urgency of the case, and may in addition allow, generally or in regard to particular

items, fees for a second advocate on such scale as may seem fit, but not exceeding two-thirds of the fees allowed to the first advocate

39.12 Disallowing and adjusting costs

(1) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any endorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery, applications for time, bills of costs, service of notice of summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he or she shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence ; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any judgment or order) for the purpose aforesaid and thereupon the same consequences shall ensue as if the party had been specially directed to do so.

(2) In any case in which, any Rule or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he or she shall think fit, delay the allowance of the costs such party is entitled to receive until the party has paid or tendered the costs the party is liable to pay ; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

(3) On every assessment the taxing officer shall allow all such costs, charges and expenses, as shall appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over-caution, negligence, or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses.

(4) As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the advocate (if any) in respect of the work to which any such fee or allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

(5) If upon any assessment it shall appear that the costs have been increased by unnecessary delay, or by improper, vexatious, prolix or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive having regard to the nature of the business transacted or the interests involved or the money or value of property to which the costs relate, or to the other circumstances of the ease, the taxing officer shall allow only such an amount of costs as may be reasonable and proper, and shall (if necessary) apportion the amount among the parties if more than one.

39.13 Review of the assessment

(1) Any party who may be dissatisfied with the certificate of the taxing officer, as to any item which may have been objected to, may within seven days from the date of the certificate, apply for review of the assessment as to such item or part of an item, and the Court may thereupon make such order as it may think just; but the certificate of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to.

39.14 Agreements between advocate and client

(1) If an advocate makes an agreement with his or her client as to the fees to be paid to him or her by the client, such agreement shall not affect the amount of or any rights or remedies for the recovery of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs, payable or recoverable by him or her to or from the client, to be assessed according to these rules unless such person has otherwise agreed - provided always that the client who has entered into any agreement with the client's advocate shall not be entitled to recover from any other person, under any order for the payment of any costs which are the subject of such agreement, more than the amount payable by the client to his or her own advocate under the same.

39.15 Recovery of costs of execution

(1) Subject to the provisions contained in these rules, the party enforcing a judgment or order shall be entitled to recover the costs of execution unless the Court shall otherwise direct : provided that where the judgment or order sought to be enforced is one for the payment of money and costs, the party enforcing it shall not be allowed as costs of execution more than the money directed to be paid (exclusive of costs) under such judgment or order : provided also that where the judgment or order is not one for the payment of money and directs the payment of costs, the party enforcing such payment of costs shall not be allowed as costs of execution more than the money directed to be paid as costs under such judgment or order.

In execution by sale of immovable property all fees and charges (including all fees and charges paid to the Land Registry Office in connection therewith) shall be deemed to be costs of execution.

Where the judgment or order sought to be enforced by the sale of immovable property directs payment of a sum not exceeding ενενήντα τεσσάρων ευρώ (€94) costs shall be allowed only for one application for such sale.

In other cases no costs shall be allowed for a second or subsequent application for such sale unless the Court is satisfied that such further application was really necessary.

(2) In execution by sale of immovable property no costs of execution shall be recovered which are in excess of the amount realized at the sale unless for good cause shown the Court or a Judge shall otherwise order.

39.16 Miscellaneous

(1) The costs of any proceedings which may require to be assessed shall be assessed by the Registrar of the Court in which the proceeding is taken, unless the Court disposing of the proceeding shall have already measured them under rule 39.12 (1).

(2) On assessment of any bill of costs the Registrar shall call upon the party claiming any costs to furnish evidence that any sum claimed on account of service, or on account of the travelling expenses and costs of maintenance of any witness, or on account of the preparation of a plan or model, or on account of the translation or copying of any document, or otherwise however, was in fact paid.

(3) The Registrar need not require further proof of payment of sums in respect of work and services shown on the face of the proceedings to have been done and performed. In matters not appearing on the face of the proceedings the Registrar shall require proof that the work has been done or the services rendered in respect of which any claim is made. In respect of disbursements other than those in this rule mentioned or any liability the Registrar shall require proof that the payment has been made.

(4) If it shall appear to the Court or the Registrar that costs have been incurred improperly or unreasonably, or that any costs properly incurred have proved fruitless through the fault of the advocate, the Court or the Registrar may disallow such costs.

39.17 Assessment between advocate and client

(1) Where on assessment between advocate and client the advocate relies upon any agreement and the client objects that it is unfair and unreasonable, the Registrar may enquire into the facts and certify the same to the Court ; and if, upon such certificate, it shall appear to the Court or Judge that cause has been shown either for cancelling the agreement or for reducing the amount payable under the same, the Court or Judge shall have power to order such cancellation or reduction, and to give all such directions necessary or proper for the purpose of carrying such order into effect, or otherwise consequential thereon, as to the Court or Judge may seem fit.

39.18 Service of bill of costs

(1) Any party seeking to recover costs may (but shall not be bound to) serve upon the party from whom payment is sought a copy of the bill of costs, with a demand for payment of the amount thereof; and if payment is not made within seven days of the day on which the copy of the bill of costs was so served, the costs of the service shall be considered as part of the costs of assessment.

39.19 Costs of assessment

(1) The costs of every assessment shall be paid by the parties, or such of them as the Registrar shall at the time of assessment direct, in such proportion and in such manner as he or she shall think right; and no costs of assessment shall be allowed unless claimed at the time of assessment.

39.20 Proceedings on the assessment of a bill of costs

(1)

(a) When application is made for the assessment of a bill of costs, the Registrar shall appoint such time for the assessment as shall in his or her opinion be sufficient to enable all parties interested to appear before him or her; and notice of the time so fixed shall be caused to be served on all parties interested by the party applying for the assessment. For the purpose of any assessment of costs by the Chief Registrar the address for service of a party shall include the address of any advocate who may have appeared for such party on the hearing before the Court.

(b)

(i) When advocate's fees are claimed in an assessment between party and party, the bill of costs shall be accompanied by a joint affidavit or separate affidavits by the party applying and the party’s advocate (or advocates, where costs for more than one advocate have been certified by the Court), stating whether or not any express agreement was made in regard to the advocate's remuneration and whether or not such agreement was oral (in which case the terms thereof

shall be set forth in the affidavit) or in writing (in which case the written agreement shall be attached to the affidavit as an exhibit thereto).

(ii) When an advocate seeks to tax costs against his or her client he or she shall, with his or her bill, where no retainer has been filed, file an affidavit stating that he or she was retained by the client orally or in writing (in which latter case he or she shall attach the written retainer to the affidavit as an exhibit, if it is not already filed in Court), and whether or not he or she made any express agreement about his or her remuneration : if he or she states that there was such agreement, he or she shall, if it was oral, set forth the terms thereof in the affidavit, or, if it was in writing, attach it to the affidavit as an exhibit thereto.

(2) The proceedings on the assessment of any bill of costs shall, as nearly as possible, be the same as on the hearing of an action.

(3) Where the Registrar shall allow to the party seeking to recover costs the costs of assessment or any part thereof, he or she shall add the costs of assessment allowed to the amount of the assessed costs. Where he or she shall allow to the party from whom costs are sought to be recovered his or her costs of assessment or any part thereof, he or she shall set off the costs of assessment allowed by him or her against the amount of assessed costs, and the person seeking to recover costs shall be entitled only to recover the residue.

(4) Where any party is ordered to pay the costs of any action or of any proceeding in an action, such costs shall not include the costs of proving any document, unless it was proved in the course of the action (or is proved at the time of assessment) that notice to admit the document was duly served on such party.

(5) Where the Court shall by its judgment order that the costs occasioned by any particular part of any claim or defence are to be paid by the party making such claim or defence, the Registrar, on ascertaining the particulars of any costs claimed under such order, may apply to the Court for directions as to whether all or any of the costs so claimed are to be considered as costs so ordered to be paid.

(6) Where any party is ordered to pay the costs of any appeal, such costs shall not, unless the Court which heard the appeal or a Judge thereof shall otherwise order, include any costs occasioned by the neglect of the appellant to specify in the notice of appeal the particular part of the judgment or order against which the appeal is made, and the Registrar in taxing any bill of costs may, when he or she has ascertained the particulars thereof, apply to the Court for directions as to whether any of the costs claimed are to be considered as costs so occasioned.

(7) Any person entitled to recover costs shall, on application, be furnished by the Registrar with a certificate of the amount of such costs allowed on assessment, to be dated as of the day of assessment.

(8) Certificates of assessment may, upon being filed, be executed as if they were orders of the Court, but execution thereon may be stayed by order of a Judge of the Court on the same terms as execution of an order of the Court may be stayed.

39.21 Costs - Special Situations - Pre-commencement disclosure and orders for disclosure against a person who is not a party

(1) This Rule applies where a person applies:

(a) for an order under:

(i) section 33 of the Senior Courts Act 1981; or

(ii) section 52 of the County Courts Act 1984,] **[Drafting Note: this is where the discloser is likely to be sued – This is English Legislation and Cypriot equivalent is required]**

(which give the court powers exercisable before commencement of proceedings); or

(b) for an order under:

(i) [section 34 of the Senior Courts Act 1981; or

(ii) section 53 of the County Courts Act 1984,]

(which give the court power to make an order against a non-party for disclosure of documents, inspection of property etc.). **[Drafting Note this is where the discloser IS NOT likely to be a party - This is English Legislation and Cypriot equivalent is required]**

(2) The general rule is that the court will award the person against whom the order is sought that person's costs:

(a) of the application; and

(b) of complying with any order made on the application.

(3) The court may however make a different order, having regard to all the circumstances, including:

(a) the extent to which it was reasonable for the person against whom the order was sought to oppose the application; and

(b) whether the parties to the application have complied with any relevant pre-action protocol.

Part 40

Change of Advocate

40.1 Change of Advocate

(1) A party suing or defending by an advocate shall, subject to the provisions of Legal Aid Law 165(I)/2002**,** be at liberty to change the party's advocate in any cause or matter upon notice of the change being filed in the Court in which the cause or matter is proceeding together with a retainer in the appropriate form where required under these rules; but until such notice is filed and a copy thereof served on the other parties to the cause or matter, the former advocate shall be considered the advocate of the party until the final conclusion of the cause or matter.

Part 41

Appeals

Drafting Note
The statutory basis must be there before rules can be drafted. The English Rules can be used here but starting to write new rules on appeals now is premature. Furthermore, it should be noted that it is not uncommon to have Court of Appeal rules as well as rules in CPR on appeals.
For Stage 3.

Part 42

Commercial Court

Drafting Note:
The English Rules can be used here but starting to write new rules on the Commercial Court now is premature.
The new CPR have been drafted to keep in mind commercial cases, so there is no reason that they are not suitable for the Commercial Court as well.
The Expert Group's current recommendation is that commercial cases can mostly rely on the general CPR as they have been drafted, and as the court becomes more settled, there may need to be amendments and changes to the Rules but that is premature to do now.
The below rule may not even be necessary as the Expert Group has been informed that the draft bill provides which claims may be filed in the Commercial Court.
The appropriate rule in England is CPR 58

This is a matter for Stage 3.

42.1 Scope of this Part and interpretation

(1) This Part applies to claims in the Commercial Court.

(2) In this Part, "commercial claim" means any claim arising out of the transaction of trade and commerce and includes any claim relating to:

- (a) a business document or contract;
- (b) the export or import of goods;
- (c) the carriage of goods by land, sea, air or pipeline;
- (d) the exploitation of oil and gas reserves or other natural resources;
- (e) insurance and re-insurance;
- (f) banking and financial services;
- (g) the operation of markets and exchanges;
- (h) the purchase and sale of commodities;
- (i) the construction of ships;
- (j) business agency.

42.2 Application of the Civil Procedure Rules

(1) These Rules apply to claims in the commercial court unless this Part provides otherwise.

Part 43: Admiralty

Drafting Note:

The Expert Group believes that the English Rules and Practice Direction relating to Admiralty are well drafted and concise, and recommends them as a good basis for updating the Cypriot Part, subject to Cyprus specific considerations. In the UK, the legislation underpinning the Part has been recently updated. A key concern of the Expert Group is the extent to which it may be possible to adopt the provisions of the English CPR, if that legislative basis is not in place in Cyprus.

The Colonial Courts of Admiralty Act 1980 provided for the granting of Admiralty jurisdiction by UK Parliament to colonial courts. The Cyprus Admiralty Jurisdiction Order 1893 gave Admiralty jurisdiction to the Cyprus Supreme Court applying the 1890 Act to Cyprus (section 3). There are Cyprus Admiralty Rules which have been updated or amended subsequently and as recently as 2017. Some of these rules and accompanying forms are in Greek. They appear to be a comprehensive set of rules (237 in all) addressing various aspects of admiralty proceedings in the Supreme Court in Cyprus. Needless to say, these rules are not in the form/have the new philosophy of the consolidated rules for Cyprus on which the Expert Group have been working. Incidentally, there are some references which are no longer appropriate (e.g. Ottoman subject/ship).

The E&W Administration of Justice Act 1956 is an act of general application in which Part I (sections 1-8) applies to Admiralty including aircraft. These provisions were repealed by the Supreme Court Act 1981. The E&W Admiralty Rules are contained in Part 61 and have PD 61 alongside. They give effect to the Admiralty provisions of section 20 of the Supreme Court Act 1981 which, of course, is not law in Cyprus. This jurisdiction includes certain claims concerning "aircraft" (see for example section 20(1)(d) and 20(2)(j)(iii)). Section 20 refers to several international conventions (e.g. Salvage Convention 1989) and E&W legislation (e.g. Merchant Shipping Acts 1894-1979 and 1995).

It appears the Administration of Justice Act 1956 is not a sufficient basis for the new rules. International conventions, private international law and, no doubt, EU law would be relevant. This Part is very statute and common law specific. The Expert Group is of the view that a separate study should be undertaken on the statutory provisions similar to execution in stage 3.

Part 44

Arbitration

44.1 Scope of this Part and interpretation

(1) This Part contains rules about arbitration claims.

(2) In this Part:
- (a) the "1987 Law " means the International Commercial Arbitration Law 1987, N. 101/1987;
- (b) "Cap. 4" means the Arbitration Law, Cap. 4;
- (c) the "Arbitration Laws " means the 1987 Law and Cap. 4;
- (d) "arbitration claim form" means a claim Form [xxx].

Section I: Claims under the Arbitration Laws

44.2 Interpretation

(1) In this Section of this Part "arbitration claim" means:

- (a) any application to the court under the Arbitration Laws;
- (b) a claim to determine:
  - (i) whether there is a valid arbitration agreement;
  - (ii) whether an arbitration tribunal is properly constituted; or
  - (iii) what matters have been submitted to arbitration in accordance with an arbitration agreement;
- (c) a claim to declare that an award by an arbitral tribunal is not binding on a party; and
- (d) any other application affecting:
  - (i) arbitration proceedings (whether started or not); or
  - (ii) an arbitration agreement.

(2) This Section of this Part does not apply to an arbitration claim to which Section II of this Part applies.

44.3 Commencing the claim

(1) Except where paragraph (2) applies an arbitration claim must be commenced by the issue of an arbitration claim form in accordance with the Part 8 procedure.

(2) An application under the Arbitration Acts to stay legal proceedings must be made by application notice to the court dealing with those proceedings.

(3) An arbitration claim form must be substantially in the form set out in Form xxx.

44.4 Arbitration claim form

(1) An arbitration claim form must:

(a) include a concise statement of:

(i) the remedy claimed; and

(ii) any questions on which the claimant seeks the decision of the court;

(b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;

(c) show that all statutory requirements have been met;

(d) specify under which section of the Arbitration Laws (or other enactment) the claim is made;

(e) identify against which (if any) defendants a costs order is sought; and

(f) specify either:

(i) the persons on whom the arbitration claim form is to be served, stating their role in the arbitration and whether they are defendants; or

(ii) that the claim is made without notice (if appropriate) and the grounds relied on.

(2) Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue.

(3) Where the claimant applies for an order seeking extension of time for beginning arbitral proceedings the claimant may include in the arbitration claim form an alternative application for a declaration that such an order is not needed.

44.5 Service out of the jurisdiction

(1) The court may give permission to serve an arbitration claim form out of the jurisdiction if:

(a) the claimant seeks:

(i) to challenge; or

(ii) some other order, direction or remedy in connection with

an arbitration award made within the jurisdiction;

(An arbitration award is conclusively deemed to have been made within the jurisdiction if the seat of arbitration is the Republic of Cyprus.)

or

(b) the claimant:

(i) seeks an order, direction or remedy in aid of an arbitration or some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and

(ii) the seat of the arbitration is or will be within the jurisdiction or the court has jurisdiction to grant the order, direction or remedy pursuant to the Arbitration Laws or any other enactment.

(2) An application for permission under paragraph (1) must be supported by affidavit:

(a) stating the grounds on which the application is made; and

(b) showing in what place or country the person to be served is, or probably may be found.

(3) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

(4) The court may exercise its powers to permit service of an arbitration claim form at the address of a party's representative acting for that party in the arbitration.

44.6 Notice

(1) Where an arbitration claim is made under (a) section 9(1), 13, 20(1), 27(1), 29 of Cap. 4 or (b) section 13(3) and 14(1) of the 1987 Law , each arbitrator must be a defendant.

(2) An arbitrator who is not a defendant in an arbitration claim may:

(a) apply to be made a defendant; or

(b) make representations to the court under rule 44.6(3).

(3) An arbitrator may make representations by filing written evidence or by writing to the court.

44.7 Case management

(1) Part 28 and any other rule that requires a party to file a directions questionnaire does not apply.

(2) Arbitration claims are allocated to the standard track.

(3) Part 29 does not apply.

44.8 Stay of legal proceedings

(1) An application notice seeking a stay of legal proceedings under the Arbitration Laws must be served on all parties to those proceedings who have given an address for service.

(2) A copy of an application notice under paragraph (1) must be served on any other party to the legal proceedings (whether or not the other party is within the jurisdiction) who has not given an address for service, at:

(a) the party's last known address; or

(b) a place where it is likely to come to the party's attention.

(3) Where a question arises as to whether:

(a) an arbitration agreement has been concluded; or

(b) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement,

the court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

44.9 Hearings

(1) The arbitration claim shall be heard in public. The court may order that an arbitration claim be heard in private where it is in the interest of the security of the Republic or the constitutional order or the public order or the public safety or the public morals or where the interests of children or the protection of the private life of the parties so require or, in special circumstances where, in the opinion of the court, publicity would prejudice the interests of justice.

(2) Rule 37.2 does not apply.

Section II: Enforcement and Securing the attendance of witnesses

44.10 Scope of this Section

(1) This Section of this Part applies to all arbitration enforcement proceedings other than by a claim on the award.

(2) In case of inconsistency between these rules and any mandatory rules contained in any Law, the provisions of that law shall prevail.

44.11 Enforcement of awards

(1) Applications to recognise or enforce an award must be made using an arbitration claim form.

(2) The parties on whom the arbitration claim form is served must acknowledge service and the enforcement proceedings will continue as if they were an arbitration claim under Section I of this Part.

(3) With the permission of the court the arbitration claim form may be served out of the jurisdiction irrespective of

(a) where the award is, or is treated as, made; and

(b) the residence of the claimant or the defendant(s).

(4) An application to recognise or enforce an award must be supported by affidavit:

(a) exhibiting:

(i) where the application is made under Cap. 4, the arbitration agreement and the original award (or copies);

(ii) where the application is under section 35(1) of the 1987 Act, the documents required to be produced by section 35(2) of that Act; or

(iii) where the application is under Law 84/1979, the documents required to be produced by Article IV of the Annex of that Law;

(iv) where the application is under Law 64/1966, the documents required to be produced in article 54(2) of the Annex of that Law;

(v) where the application is under any other Law, the documents required to be produced under that Law

(b) stating the name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award; and

(c) stating either:

(i) that the award has not been complied with; or

(ii) the extent to which it has not been complied with at the date of the application.

(5) Where a legal entity is a party any reference in this rule to place of residence shall have effect as if the reference were to the registered or principal address of the legal entity.

(6) Applications to recognise or enforce an award under Law 64/1966 must be made to the District Court of Nicosia or the Commercial Court.

(7) Applications to recognise or enforce an award under Law 84/1979 or the 1987 Act must be made to the court specified in section 2 of Law 121(I)/2000 or (if that section does not apply) to any District, Family or Commercial Court (as the case may be).

Drafting Note in relation to 44.11 (7)
This rule is intended to give effect to Cyprus' communication to ICSID that the Nicosia DC is the competent authority for recognition and enforcement of ICSID awards (https://icsid.worldbank.org/en/Pages/icsiddocs/Designations-of-Courts-or-Other-Authorities-for-Recognition-and-Enforcement-of-Awards.aspx). We have assumed that this communication takes precedence over Law 121(I)/2000 and therefore takes precedence enabling us to specify this. As far as we know, there is no law specifying the court to which application should be made for the recognition and enforcement of ICSID Awards. Law 64/1966 does not specify the competent court.

First instance case law has shown a problem with Section 2 of 121(I)/2000, namely where neither the Claimant nor the Respondent is a resident of Cyprus. There is a gap in the law and the proposed rule seeks to address this gap by providing that where section 2 does not apply then any court has jurisdiction to recognise/enforce an award. We are not aware of any legislation that would be contrary to proposed rule 44.11(7).

44.12 Interest on awards

Drafting Note:

There should be an amendment of Art 33 of the Courts of Justice Law 14/1960 to cater for the case of interest awarded on an arbitral award as Art 33 covers all the cases where the Court is called to adjudge interest.

(1) Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he or she must file a statement giving the following particulars:

(a) whether simple or compound interest was awarded;

(b) the date from which interest was awarded;

(c) where rests were provided for, specifying them;

Drafting Note:

Rests means the period in which interest is calculated. Compounding interval is the modern term.

(d) the rate of interest awarded; and

(e) a calculation showing:

(i) the total amount claimed up to the date of the statement; and

(ii) any sum which will become due on a daily basis.

(2) A statement under paragraph (1) must be filed whenever the amount of interest has to be quantified for the purpose of recognition and enforcement of the award.

44.13 Securing the attendance of witnesses

(1) A party to arbitral proceedings being conducted in Cyprus who wishes to rely on section 17 of Cap. 4 or section 27 of the 1987 Law to secure the attendance of a witness must apply for a witness summons in accordance with Section II of Part 32.

(2) The application must be made at the registry of the District Court or Commercial Court in the district where the arbitral proceedings have been instituted.

(3) A witness summons will not be issued until the applicant files written evidence showing that the application is made with:

(a) the permission of the tribunal; or

(b) the agreement of the other parties.

Part 45

European procedures

European Payment Order Procedure Supreme Court Procedural Rule 7/2008

European Small Claims Procedure Supreme Court Procedural Rule 6/2008

EU Directive 2008/52/EC

45.1 Scope of this Part and interpretation

(1) Section I contains rules about European orders for payment made under the European Payment Order Procedure Supreme Court Procedural Rule 7/2008 implementing Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

(2) Section II contains rules about the European small claims procedure made under the European Small Claims Procedure Supreme Court Procedural Rule 6/2008 implementing Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure.

(3) Section III contains rules about mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

(4) In this Part:

"Service Regulation" means Regulation (EC) 1393/2007 on service, within the same meaning as rule 6.7(1)(a).

(5) Except where:

(a) the EOP Procedural Rule (which has the same meaning as in rule 45.2(2)(a));

(b) the ESCP Procedural Rule (which has the same meaning as in rule 45.2(2)(b)); or

(c) the Service Regulation

makes different provisions about the certification or verification of translations, every translation required by this Part or such Procedural Rule or Regulation must be accompanied by a statement by the person making it that it is a correct translation. The statement must include that person's name, address and qualifications for making the translation.

Section I
European order for payment procedure

45.2 Scope of this Section and interpretation

(1) This Section applies to applications for European orders for payment and other related proceedings under the Supreme Court Procedural Rule 7/2008.

(2) In this Section:

(a) "EOP Procedural Rule" means the European Order for Payment Procedure Supreme Court Procedural Rule 7/2008.;

(b) "ESCP Procedural Rule" means the European Small Claims Procedure Supreme Court Procedural Rule 6/2008.;

(c) "court of origin" has the meaning given by rule 5.4 of the EOP Procedural Rule;

(d) "EOP" means a European order for payment;

(e) "EOP application" means an application for an EOP;

(f) "EOP application form A" means the Application for a European order for payment form A, annexed to the EOP Procedural Rule at Annex I to that Procedural Rule;

(g) "European order for payment" means an order for payment made by a court under rule 12.1 of the EOP Procedural Rule;

(h) "Member State" has the meaning given by rule 2.3 of the EOP Procedural Rule;

(i) "Member State of origin" has the meaning given by rule 5.1 of the EOP Procedural Rule;

(j) "statement of opposition" means a statement of opposition filed in accordance with rule 16 of the EOP Procedural Rule.

45.3 Application for a European Order for Payment

(1) An EOP application shall be made in accordance with the EOP Procedural Rule and in particular rule 7 of that Procedural Rule.

(2) Where a declaration provided by the claimant under rule 7.3 of the EOP Procedural Rule contains any deliberate false statement, rule 32.13 applies as if the EOP application form A were verified by a statement of truth.

45.4 Withdrawal of EOP application

(1) At any stage before a statement of opposition is filed, the claimant may notify the court that the claimant no longer wishes to proceed with the claim.

(2) Where the claimant notifies the court in accordance with paragraph (1):

(a) the court will notify the defendant that the application has been withdrawn; and

(b) no order as to costs will be made.

45.5 Transfer of proceedings where an EOP application has been opposed

(1) Where a statement of opposition is filed in accordance with rule 16 of the EOP Procedural Rule and the claimant has not opposed the transfer of the matter to ordinary civil proceedings within the meaning of rule 17 of the EOP Procedural Rule:

(a) the EOP application will be treated as if it had been started as a claim under Part 7 if:

(i) the claimant has requested under rule 7 of the EOP Procedural Rule that such a transfer be made in the event of opposition;

(ii) the claimant has requested that the claim be transferred to the ESCP procedure in the event of opposition, but the claim does not fall within the scope of the ESCP Procedural Rule; or

(iii) the claimant has not specified a preferred procedure in the event of opposition; and

(b) the EOP application will be treated as if it had been started under the ESCP Procedural Rule if:

(i) the claimant has requested under rule 7 of the EOP Procedural Rule that such a transfer be made in the event of opposition; and

(ii) the claim is within the scope of the ESCP Procedural Rule.

45.6 Procedure where EOP application treated as if started as a claim under Part 7

(1) Where the EOP application is treated as if it had been started as a claim under Part 7, pursuant to Rule 45.5(1)(a):

(a) the EOP application form A will be treated as a Part 7 claim form including particulars of claim; and

(b) thereafter, these Rules apply with necessary modifications and subject to this rule and rules 45.8 and 45.9.

(2) When the court notifies the claimant in accordance with rule 17(3) of the EOP Procedural Rule the court will also:

(a) notify the claimant:

(i) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and

(ii) of the time within which the defendant must respond under Rule 45.8; and

(b) notify the defendant:

(i) that a statement of opposition has been received;

(ii) that the application will not continue under Part 45;

(iii) that the application has been transferred under rule 17 of the EOP Procedural Rule;

(iv) that the EOP application form A is now treated as a Part 7 claim form including particulars of claim; and

(v) of the time within which the defendant must respond under Rule 45.8.

45.7 Procedure where EOP application treated as if started as a claim under the ESCP Procedural Rule

(1) Where an EOP application is treated as if it had been started as a claim under the ESCP Procedural Rule pursuant to Rule 45.5(1)(b):

(a) the EOP application form A will be treated as an ESCP claim form; and

(b) thereafter, these Rules apply subject to the ESCP Procedural Rule and the modifications in paragraph (2).

(2) When the court notifies the claimant of the transfer in accordance with rule 17(5) of the EOP Procedural Rule the court will also:

(a) notify the claimant:

(i) that the EOP application form A is now treated as ESCP claim form; and

(ii) of the time within which the defendant must respond under rule 5 of the ESCP Procedural Rule; and

(b) notify the defendant:

(i) that a statement of opposition has been received;

(ii) that the application has been transferred under rule 17 of the EOP Procedural Rule;

(iii) that the EOP application form A is now treated as an ESCP claim form A; and

(iv) of the time within which the defendant must respond under rule 5 of the ESCP Procedural Rule.

45.8 Filing of acknowledgment of service and defence where an EOP application is treated as if started as a claim under Part 7

(1) The defendant must file a defence within 30 days of the date of notification to the defendant by the court.

(2) If the defendant wishes to dispute the court's jurisdiction, the defendant must instead:

(a) file an acknowledgment of service within the period specified in paragraph (1); and

(b) make an application under Part 12 within the period specified in that Part.

(3) Where this rule applies, the following rules do not apply:

(a) rule 10.1(3);

(b) rule 10.3; and

(c) rule 15.4(1).

45.9 Default judgment where an EOP application is treated as if started as a claim under Part 7

(1) If:

(a) the defendant fails to file an acknowledgment of service within the period specified in rule 45.8(2)(a); and

(b) does not within that period:

(i) file a defence in accordance with Part 17 (except rule 17.4(1) and rule 45.8(1)); or

(ii) file an admission in accordance with Part 15,

the claimant may obtain default judgment if Part 13 allows it.

(2) Where this rule applies, rule 10.2 does not apply.

45.10 Review in exceptional cases

(1) An application for a review under rule 20 of the EOP Procedural Rule must be made in accordance with Part 23.

45.11 Enforcement of European orders for payment

(1) A person seeking to enforce an EOP in the Republic must file at the court in which enforcement proceedings are to be brought the documents required by rule 21 of the EOP Procedural Rule.

(2) Where a person applies to enforce an EOP expressed in any currency other than in Euros, the application must contain a certificate of the Euro equivalent of the judgment sum at the close of business on the date nearest preceding the date of the application.

45.12 Refusal of enforcement

(1) An application under rule 22 of the EOP Procedural Rule that the court should refuse to enforce an EOP must be made in accordance with Part 23 to the court in which the EOP is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under rule 22 on:

(a) all other parties to the proceedings and any other person affected by the order ("the affected persons"); and

(b) any court in which enforcement proceedings of the EOP are pending in the Republic ("the relevant courts").

(3) Upon service of the order on the affected persons, all enforcement proceedings of the EOP in the relevant courts will cease.

45.13 Stay of or limitation on enforcement

(1) Where the defendant has sought a review and also applies for a stay of or limitation on enforcement in accordance with rule 23 of the EOP Procedural Rule, such application must be made in accordance with Part 23 to the court in which the EOP is being enforced.

(2) The defendant must, as soon as practicable, serve a copy of any order made under rule 23 on:

(a) all other parties to the proceedings and any other person affected by the order; and

(b) any court in which enforcement proceedings are pending in the Republic,

and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.

Section II: European small claims procedure

45.14 Scope of this Section and interpretation

(1) This Section applies to the European small claims procedure under the Supreme Court Procedural Rule 6/2008.

(2) In this Section:

(a) 'ESCP Procedural Rule' means the European Small Claims Procedure Supreme Court Procedural Rule 6/2008.;

(b) "defendant's response" means the response to the ESCP claim form;

(c) "ESCP" means the European small claims procedure established by the ESCP Procedural Rule;

(d) "ESCP claim form" means the claim form completed and filed in the ESCP;

(e) "ESCP counterclaim" has the meaning given to counterclaim by recital 16 of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007;

(f) "ESCP judgment" means a judgment given in the ESCP;

(g) "Member State" has the meaning given by rule 2.3 of the ESCP Procedural Rule;

45.15 Filing an ESCP claim form

(1) An ESCP claim form shall be completed and filed in accordance with the ESCP Procedural Rule, in particular rule 4.1, and in accordance with this paragraph.

(2) Where a declaration provided by the claimant in the ESCP claim form contains any deliberate false statement, rule 32.13 applies as if the ESCP claim form were verified by a statement of truth.

45.16 Allocation of ESCP claims

(1) ESCP claims are treated as if they were small claims.

(2) Where this rule applies, rule 28.1(4) does not apply.

45.17 Transfer of proceedings where the claim is outside the scope of the ESCP Procedural Rule – rule 4.2 of the ESCP Procedural Rule

(1) Where the court identifies that the claim is outside the scope of the ESCP Procedural Rule, the court will notify the claimant of this in a transfer of proceedings notice.

(2) If the claimant wishes to withdraw the claim, the claimant must notify the court of this within 21days of the date of the transfer of proceedings notice.

(3) Where the claimant has notified the court in accordance with paragraph (2), the claim is automatically withdrawn.

(4) Where the claimant has not notified the court in accordance with paragraph (2) and the claim is instead to be transferred under rule 4.2 of the ESCP Procedural Rule:

(a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim; and

(b) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the court will notify the claimant of the transfer and its effect.

45.18 Defendant's response

(1) The defendant's response shall be made in accordance with the ESCP Procedural Rule and in particular rule 5.3 of the ESCP Procedural Rule.

(2) Where a declaration provided by the defendant in the defendant's response contains any deliberate false statement, rule 32.13 applies as if the defendant's response were verified by a statement of truth.

45.19 Transfer of proceedings where the defendant claims that the non-monetary claim exceeds the limit set in rule 2.1 of the ESCP Procedural Rule – rule 5.5 of the ESCP Procedural Rule

(1) This rule applies where, under rule 5.5 of the ESCP Procedural Rule, the defendant claims that the value of a non-monetary claim exceeds the limit in rule 2.1 of the ESCP Procedural Rule.

(2) When the court dispatches the defendant's response to the claimant, it will:

(a) notify the claimant that the court is considering whether the claim is outside the scope of the ESCP Procedural Rule in a consideration of transfer notice; and

(b) send a copy of the notice to the defendant.

(3) If the claimant wishes to withdraw the claim in the event that the court decides that the claim is outside the scope of the ESCP Procedural Rule the claimant must notify the court and the defendant of this within 21 days of the date of the consideration of transfer notice.

(4) The court will notify the defendant as well as the claimant of its decision whether the claim is outside the scope of the ESCP Procedural Rule.

(Rule 5.5 of the ESCP Procedural Rule provides that the court shall decide within 30 days of dispatching the defendant's response to the claimant, whether the claim is within the scope of the ESCP Procedural Rule.)

(5) If the court decides that the claim is outside the scope of the ESCP Procedural Rule and the claimant has notified the court and defendant in accordance with paragraph (3), the claim is automatically withdrawn.

(6) If the court decides that the claim is outside the scope of the ESCP Procedural Rule and the claimant has not notified the court and defendant in accordance with paragraph (3):

(a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;

(b) the defendant's response will be treated as a defence; and

(c) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the court will notify the parties.

(7) This rule applies to an ESCP counterclaim as if the counterclaim were an ESCP claim.

45.20 Transfer of proceedings where the ESCP counterclaim exceeds the limit set in rule 2.1 of the ESCP Procedural Rule – rule 5.7 of the ESCP Procedural Rule

(1) Where the ESCP counterclaim exceeds the limit set in rule 2.1 of the ESCP Procedural Rule, the court will:

(a) notify the defendant of this in a transfer of proceedings notice; and

(b) send a copy of the notice to the claimant,

when the court dispatches the defendant's response to the claimant.

(2) If the defendant wishes to withdraw the ESCP counterclaim, the defendant must notify the court and the claimant of this within 21 days of the date of the transfer of proceedings notice.

(3) If the defendant notifies the court and claimant under paragraph (2), the ESCP counterclaim is automatically withdrawn.

(4) If the defendant does not notify the court and claimant in accordance with paragraph (2):

(a) the claim will be treated as if it had been started as a claim under Part 7 and the ESCP claim form will be treated as a Part 7 claim form including particulars of claim;

(b) the defendant's response and ESCP counterclaim are to be treated as the defence and counterclaim; and

(c) thereafter, these Rules apply with necessary modifications and subject to this rule,

and the court will notify the parties.

45.21 Review of judgment

(1) An application for a review under rule 18 of the ESCP Procedural Rule must be made in accordance with Part 23.

45.22 Enforcement of an ESCP judgment

(1) A person seeking to enforce an ESCP judgment in the Republic must file at the court in which enforcement proceedings are to be brought the documents required by rule 21 of the ESCP Procedural Rule.

(2) Where a person applies to enforce an ESCP judgment expressed in any currency other than Euros, the application must contain a certificate of the Euro equivalent of the judgment sum at the close of business on the date nearest preceding the date of the application.

45.23 Refusal of enforcement

(1) An application under rule 22 of the ESCP Procedural Rule that the court should refuse to enforce an ESCP judgment must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.

(2) The judgment debtor must, as soon as practicable, serve copies of any order made under rule 22 on:

(a) all other parties to the proceedings and any other person affected by the order ("the affected persons"); and

(b) any court in which enforcement proceedings are pending in the Republic ("the relevant courts").

(3) Upon service of the order on the affected persons, all enforcement proceedings of the ESCP judgment in the relevant courts will cease.

45.24 Stay of or limitation on enforcement

(1) An application by the defendant under rule 23 of the ESCP Procedural Rule must be made in accordance with Part 23 to the court in which the ESCP judgment is being enforced.

(2) The defendant must, as soon as practicable, serve a copy of any order made under rule 23 on:

(a) all other parties to the proceedings and any other person affected by the order; and

(b) any court in which enforcement proceedings are pending in the Republic,

and the order will not have effect on any person until it has been served in accordance with this rule and they have received it.

Section III: Mediation directive

45.25 Scope of this Section and interpretation

(1) This Section applies to mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

(2) In this Section:

"Mediation Directive" means Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. A copy of the Directive can be found at Annex 3;

"cross-border dispute" has the meaning given by article 2 of the Mediation Directive;

"mediation" has the meaning given by article 3(a) of the Mediation Directive;

"mediation administrator" means a person involved in the administration of the mediation process;

"mediation evidence" means evidence arising out of or in connection with a mediation process;

"mediation settlement" means the content of a written agreement resulting from mediation of a relevant dispute;

"mediation settlement agreement" means a written agreement resulting from mediation of a relevant dispute;

"mediation settlement enforcement order" means an order made under rule 45.26 (5);

"mediator" has the meaning given by article 3(b) of the Mediation Directive; and

"relevant dispute" means a cross-border dispute that is subject to the Mediation Directive.

45.26 Making a mediation settlement enforceable (mediation settlement enforcement orders)

(1) Where the parties, or one of them with the explicit consent of the others, wish to apply for a mediation settlement to be made enforceable, the parties or party may apply:

(a) where there are existing proceedings in the Republic, by an application made in accordance with Part 23; or

(b) where there are no existing proceedings in the Republic, by the Part 8 procedure as modified by this rule.

(2) Where rule 45.26 (1)(b) applies, rules 8.3 to 8.8 will not apply.

(3) The mediation settlement agreement must be annexed to the application notice or claim form when it is filed.

(4) Except to the extent that paragraph (7) applies, the parties must file any evidence of explicit consent to the application under paragraph (1) when the parties file the application or claim form.

(5) Subject to paragraph (6), where an application is made under paragraph (1), the court will make an order making the mediation settlement enforceable.

(6) The court will not make an order under paragraph (5) unless the court has evidence that each of the parties to the mediation settlement agreement has given explicit consent to the application for the order.

(7) Where a party to the mediation settlement agreement:

(a) has agreed in the mediation settlement agreement that a mediation settlement enforcement order should be made in respect of that mediation settlement;

(b) is a party to the application under paragraph (1); or

(c) has written to the court consenting to the application for the mediation settlement enforcement order,

that party is deemed to have given explicit consent to the application for the mediation settlement enforcement order.

(8) An application under paragraph (1) will be dealt with without a hearing, unless the court otherwise directs.

45.27 Mediation settlement enforcement orders: foreign currency

(1) Where a person applies to enforce a mediation settlement enforcement order which is expressed in any currency other than Euros, the application must contain a certificate of the Euro of the sum remaining due under the order at the close of business on the day before the date of the application.

45.28 Mediation evidence: disclosure or inspection

(1) Where a person seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that person must apply:

(a) where there are existing proceedings in the Republic, by an application made in accordance with Part 23; and

(b) where there are no existing proceedings in the Republic, by the Part 8 procedure.

(2) Where the application is made:

(a) under paragraph (1)(a), the mediator or mediation administrator who has control of the mediation evidence must be named as a respondent to the application and must be served with a copy of the application notice; and

(b) under paragraph (1)(b), the mediator or mediation administrator who has control of the mediation evidence must be made a party to the claim.

(3) Evidence in support of the application under paragraph (1)(a) or (1)(b) must include evidence that:

(a) all parties to the mediation agree to the disclosure or inspection of the mediation evidence;

(b) disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or

(c) disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(4) This rule does not apply to proceedings in the Republic that have been allocated to the small claims track.

(5) Where this rule applies, Parts 31 to 34 apply to the extent they are consistent with this rule.

45.29 Mediation evidence: witnesses and depositions

(1) This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by:

(a) a witness summons;

(b) cross-examination with permission of the court under rule 32.6;

(c) any order under Part 33 (witnesses, depositions and evidence for foreign courts or for Cyprus courts where witness or evidence is out of the jurisdiction);

(d) an order under rule 32.21 (witness summonses).

(2) When applying for a witness summons, permission under rule 32.6 or an order under Part 33 or 32.21 the party must provide the court with evidence that:

(a) all parties to the mediation agree to the obtaining of the mediation evidence;

(b) obtaining the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or

(c) the disclosure or inspection of the mediation settlement is necessary to implement or enforce the mediation settlement agreement.

(3) When considering a request for a witness summons, permission under rule 32.6 or an order under Part 33 or 32.21 the court may invite any person, whether or not a party, to make representations.

(4) This rule does not apply to proceedings in the Republic that have been allocated to the small claims track.

(5) Where this rule applies, Parts 32 and 33 apply to the extent they are consistent with this rule.

45.30 Mediation evidence: small claims

(1) Where a party wishes to rely on mediation evidence in proceedings that are small claims, that party must inform the court immediately.

Part 46

Stakeholder Claims and Applications

46.1 Scope of this Part and interpretation

(1) This Part contains rules which apply where:

(a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels; and

(b) competing claims are made or expected to be made against that person in respect of that debt or money or for those goods or chattels by two or more persons.

(2) In this Part:

(a) "stakeholder" means any person to whom paragraph (1) applies;

(b) "stakeholder application" means an application made under rule 46.2(1).

46.2 Stakeholder application

(1) A stakeholder may make an application to the court for a direction as to whom the stakeholder should:

(a) pay a debt or money; or

(b) give any goods or chattels.

(2) Such application must be made to the court in which an existing claim is pending against the stakeholder, or, if no claim is pending, to the court in which the stakeholder might be sued.

(3) A stakeholder application must be made by Part 8 claim form unless made in an existing claim, in which case it must be made by application notice in accordance with Part 23.

(4) A claim form or application notice under this rule must be supported by affidavit stating that the stakeholder:

(a) claims no interest in the subject-matter in dispute other than for charges or costs;

(b) does not collude with any of the claimants to that subject-matter; and

(c) is willing to pay or transfer that subject-matter into court or to dispose of it as the court may direct.

(5) The stakeholder must serve the claim form or application notice on all other persons who, so far as he or she is aware, assert a claim to the subject matter of the stakeholder application.

(6) A respondent who is served with a claim form or application notice under this rule must within 14 days file at court and serve on the stakeholder an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) The claim form or application notice will be referred to a Judge.

46.3 Powers of court hearing a stakeholder application

(1) At any hearing in a stakeholder application, the court may:

(a) order that any stakeholder or any claimant to the subject matter of the application be made a defendant in any claim pending with respect to the subject-matter in dispute;

(b) order that an issue between all parties be stated and tried and may direct which of the parties is to be claimant and which defendant, and give all necessary directions for trial;

(c) determine the stakeholder application summarily;

(d) give directions for the determination of the application summarily or of any issue on the application; or

(e) give directions for the retention, sale or disposal of the subject matter of the application, and for the payment of any proceeds of sale.

(2) Nothing in this rule limits the court's case management powers to make any other directions permissible under these Rules.

46.4 Trial of issue

(1) Part 37 will, with the necessary modifications, apply to the trial of a preliminary issue directed to be tried in a stakeholder application as it applies to the trial of a claim.

(2) The court by which an issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the stakeholder application.

46.5 Costs

(1) The court may in or for the purposes of any stakeholder application make such order as to costs or any other matter as it thinks just.

(2) Where a respondent fails to appear at the hearing, the court may direct that the stakeholder's costs shall be summarily assessed.

Execution

Drafting Note:
The Expert Group has considered in detail the comments provided by the Supreme Court, the Rules Committee, the Bar Council, as well as Ms Marina Eleftheriou and Ms Artemis Antoniou.

The Expert Group considered that the above responses confirm that the problems with Execution are overwhelmingly related to the need for legislative change, not to mention factors such as the economic crises and possibly the need for cultural change. The problems are not related to the Rules.

Therefore, it is the view of the Expert Group that the Cypriot rules as they currently stand are relatively sound. Some changes have been made such as a new Part titled 'Miscellaneous Provisions in relation to Execution'. This new Part incorporates minor changes such as Post-Judgement Disclosure as well as the issue raised concerning the Motor Vehicle Registry. Such similar points could be included here.

However, it is the view of the Expert Group that the shortcomings identified can only be addressed at a Government Policy level and this requires a detailed separate study to be carried out on the whole area of Execution including consultation with relevant parties on appropriate legislative changes. This is not within the remit of the current project.

Part 47

Execution in General

47.1 Execution in General

(1) Where any person is by any judgment or order directed to pay any money, or to deliver or transfer any property movable or immovable to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

(2) Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, the person shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to the person, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct.

(3) Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he or she is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

(4) No writ of execution shall be issued without the production to the officer by whom the same should be issued of an office copy of the judgment or order upon which the writ of execution is to issue. And the officer shall (where necessary) be satisfied that the proper time has elapsed or (where necessary) the proper leave given to entitle the creditor to execution.

(5) Every writ of execution shall be sealed with the seal of the Court which gave the judgment or made the order sought to be executed, and shall bear date as of the day on which it is issued.

(6) Every writ of execution for the recovery of money shall direct the deputy sheriff to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount and the costs of the execution. And the writ shall also direct in what manner the money levied in execution is to be disposed of by the deputy sheriff.

(7) Every person to whom any sum or money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to apply for the issue of writs to enforce payment thereof, subject nevertheless as follows:—

(a) If the judgment or order is for payment within a period therein mentioned, no writ shall be issued until after the expiration of such period;

(b) The Court or Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he or she shall think fit.

(8) Όταν παρέλθουν δέκα έτη από την απόφαση ή την ημερομηνία του διατάγματος, ή όταν έχει γίνει οποιαδήποτε αλλαγή στους διαδίκους οι οποίοι δικαιούνται ή υπόκεινται σε εκτέλεση, ο διάδικος ο οποίος ισχυρίζεται ότι δικαιούται σε εκτέλεση μπορεί να υποβάλει μονομερή αίτηση στο Δικαστήριο ή το Δικαστή για άδεια να εκτελέσει ανάλογα. Και το Δικαστήριο ή ο Δικαστής

εάν ικανοποιηθεί ότι ο διάδικος, ο οποίος υποβάλλει την αίτηση αυτή, δικαιούται να εκτελέσει, μπορεί να εκδώσει διάταγμα προς αυτό το σκοπό, ή μπορεί να διατάξει όπως οποιοδήποτε επίδικο θέμα ή ζήτημα αναγκαίο για να αποφασιστούν τα δικαιώματα των διαδίκων εκδικαστεί με οποιοδήποτε από τους τρόπους με τους οποίους μπορεί να εκδικαστεί οποιοδήποτε ζήτημα σε αγωγή. Και σε κάθε μια από τις περιπτώσεις το Δικαστήριο ή ο Δικαστής μπορεί να επιβάλει τέτοιους όρους ως προς τα έξοδα ή διαφορετικά, οι οποίοι θα είναι δίκαιοι.

(9) Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

(10) Any person not being a party to a cause or matter who obtains any order or in whose favour any order is made shall be entitled to enforce obedience to such order by the same process as if the person were a party to such cause or matter; and any person not being a party to a cause or matter against whom obedience to any judgment or order may be enforced shall be liable to the same process for enforcing obedience to such judgment or order as if the person were a party to such cause or matter.

(11) Any party against whom judgment has been given on an order made may apply to the Court or a Judge for a stay of execution or other relief against such judgment upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

(12) An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except so far as the Court appealed from or the Court of Appeal, or a Judge of either Court, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct. Before any order staying execution is entered, the person obtaining the order shall furnish such security (if any) as may have been directed. If the security is to be given by means of a bond, the bond shall be made to the party in whose favour the decision under appeal was given.

(13) Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a Judge of either Court, it shall be made in the first instance to the Court or Judge below.

Νοείται ότι το Δικαστήριο ή Δικαστής πριν τη χορήγηση αναστολής εκτέλεσης μεριμνά για την καταβολή των εξόδων που έχουν προκύψει ή αναμένεται να προκύψουν σε σχέση με την κατάσχεση.

(14) If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract, be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct and execution may issue for the amount so ascertained and costs.

(15) Any judgment or order against a legal entity willfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the property of the legal entity, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.

(16) Every writ of execution shall expire and cease to be in force as soon as it is returned into the Court, but if the judgment or order remains unsatisfied, a new writ may be issued.

(17) If either the court bailiff executing a writ or any person interested in or affected by the execution thereof wishes to have the Court's directions in any matter relating to it, he or she may apply to the Court out of which the writ issued or to a Judge thereof, for directions to the deputy sheriff ; and the Court or Judge may, either without notice or upon notice given to such person as the

Court or Judge may think fit, give such directions as may be just. Directions given to the deputy sheriff on his or her own application need not be entered as an order. In other cases any person interested in or affected thereby may require the directions to be entered as an order and deliver an office copy of the order to the deputy sheriff for compliance therewith, or may appeal therefrom if dissatisfied: Provided that where the application is made by a person claiming property seized under a writ of execution, directions shall not be given without notice to the other party.

(18) Where any judgment or order is sought to be executed out of the District of the Court by which such judgment or order is given, the writ shall be prepared by a Registrar of such Court in the same manner as any writ of execution to be executed within the District of the Court is prepared, save that it shall be addressed to the Sheriff of the District within which the writ is to be executed. Such writ shall be delivered by a Registrar to the party applying for the same, and shall be presented by the party to the Registrar of the Court within the District of which it is to be executed. On presentation thereof by the party the same shall be signed by one of the Judges of such last-mentioned Court, and shall then be passed to the Sheriff for execution.

(19) Such writ when so signed shall for all purposes be deemed to be a writ issued out of such last-mentioned Court, and all questions arising in the course of, or consequent on the execution of such writ, shall be disposed of by such last-mentioned Court.

(20) Ανεξαρτήτως παντός διαλαμβανομένου εν τω παρόντι Διαδικαστικώ Κανονισμώ δι'ου απαιτείται η προσαγωγή πιστοποιημένου αντιγράφου αποφάσεως ή διατάγματος διά σκοπούς εκτελέσεως, οσάκις δεν είναι εφικτή η προσαγωγή εις το Δικαστήριον του φακέλλου διαδικασίας ένθα εξεδόθη η τοιαύτη απόφασις ή διάταγμα και του βιβλίου αποφάσεων ή διαταγμάτων ένθα ταύτα κατεχωρίσθησαν, δεν θα απαιτήται η προσαγωγή τω Δικαστηρίω ή τω πρωτοκολλητή πιστοποιημένου αντιγράφου της τοιαύτης αποφάσεως ή διατάγματος, νοουμένου ότι η ακόλουθος μαρτυρία θα προσκομίζηται προς τεκμηρίωσιν της αιτήσεως δι'εκτέλεσιν:

(α) ένορκος δήλωσις του εξ αποφάσεως πιστωτού παρέχουσα πλήρεις λεπτομερείας της αποφάσεως ή διατάγματος του Δικαστηρίου, και του ποσού το οποίον εισέτι οφείλεται δυνάμει της τοιαύτης αποφάσεως ή διατάγματος ·

(β) ένορκος δήλωσις του δικηγόρου ο οποίος ενεφανίσθη διά τον εξ αποφάσεως πιστωτήν κατά την ημερομηνίαν καθ'ην ή τοιαύτη απόφασις ή διάταγμα εξεδόθη—

(i) παρέχουσα πλήρεις λεπτομερείας αναφορικώς προς τους διαδίκους οι οποίοι ενεφανίσθησαν αυτοπροσώπως ή αντεπροσωπεύθησαν διά δικηγόρου κατά την ακρόασιν και κατά πόσον οιοιδήποτε των διαδίκων δεν ενεφανίσθησαν ή δεν αντεπροσωπεύθησαν,

(ii) αναφέρουσα συνοπτικώς την απόφασιν ή διάταγμα του Δικαστηρίου, και

(iii) επισυνάπτουσα αντίγραφον του κλητηρίου εντάλματος (ή οιουδήποτε άλλου εντάλματος ή αιτήσεως), τα δικόγραφα (pleadings), το αρχικόν πρακτικόν της αποφάσεως ή διατάγματος το ληφθέν επί του φακέλλου του και οιονδήποτε άλλον σχετικόν έγγραφον του οποίου η προσαγωγή ήθελεν απαιτηθή υπό του Δικαστηρίου· και

(γ) οιανδήποτε ετέραν μαρτυρίαν οίαν θα εζήτει το Δικαστήριον.

Part 48

Execution by Seizure and Sale of Movable Property

48.1 Execution by Seizure and Sale of Movable Property

(1) Where a judgment or order of a Court directing the recovery by or payment to any person of money is sought to be enforced by a writ of execution for the sale of movable property, the writ may be issued upon a request in writing to the Registrar of the Court signed by the party applying for the writ, accompanied by an affidavit of the amount still due under the judgment or order. The request shall state the title of the action, the date of the judgment or order sought to be executed and the name of the person or firm against whose goods the writ is to be issued.

(2) Writs for the seizure and sale of movable property shall be passed to a bailiff for execution, and the provisions of Part 54 shall apply.

(3) When on the hearing of an application by a person claiming property seized under a writ the judgment creditor, though given notice, does not appear, the property claimed shall be delivered back to the person in whose possession it was when seized.

Part 49

Execution by Sale of Immovable Property

49.1 Execution by Sale of Immovable Property

(1) Every application under Part V of the Civil Procedure Law, Cap. 6, for the sale of immovable property shall be by summons and set out the property sought to be sold, giving the registration number, the locality, the kind of property, and its extent ; it shall also set out the items making up the amount sought to be recovered, and shall have attached thereto the receipts or other evidence in support of any items for disbursements. There shall also be attached to the application an office copy of the judgment or order sought to be executed and the Land Registry Office certificates showing that the property sought to be sold stands registered in the debtor's name.

(2) The application shall be supported by affidavit verifying the sum stated to be still due under the judgment or order and all sums claimed as expenses incidental to the execution thereof the affidavit shall set forth in detail the number of the debtor's family, the house accommodation left, and (where necessary) the land to be exempted as requisite for the support of the debtor and his or her family, and shall also state that to the best of the applicant's belief sufficient provision is made for the needs of the debtor and his or her family in these respects.

(3) A copy of the application and the affidavit in support thereof shall be served upon the debtor.

(4) The writ of sale shall describe clearly the property to be sold and the property to be exempted, and embody any special directions given in regard to the sale. The order directing the issue of the writ shall be drawn up before the writ is issued.

Part 50

Attachment and Sequestration

50.1 Attachment and Sequestration

(1) Where any order is issued by any Court directing any act to be done or prohibiting the doing of any act there shall be endorsed by the Registrar on the copy of it, to be served on the person required to obey it, a memorandum in the words or to the effect following: 'If you, the within-named A.B., neglect to obey this order, by the time therein limited, you will be liable to be arrested and to have your property sequestered.'

(2) An office copy of the order shall be served on the person to whom the order is directed. The service shall, unless otherwise directed by the Court or a Judge, be personal.

(3)

(a) Where such an order had been issued by any Court and the person directed to do or prohibited from doing an act (hereinafter referred to as 'the respondent') refuses or neglects to do or abstain from doing it, according to the directions of such order, the person in whose favour such order has been given (hereinafter referred to as 'the applicant') may apply to the Court for a writ of attachment.

(b) Such an application shall be supported by affidavit and an office copy thereof shall, unless otherwise directed by the Court or a Judge, be served on the respondent personally. But the Court or a Judge, if satisfied that the delay caused by proceeding in the aforesaid way would or might entail irreparable or serious mischief, may make an order without notice upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court of Judge may think just; and any party affected by such order may move to set it aside.

(4) On the return day of the summons, if the respondent does not attend and the Court is satisfied that the respondent had been duly served, the Court may order that a writ of attachment be issued against the respondent.

(5) The Court may enlarge the time for the appearance of the respondent, or may, on the return day of the summons, direct that the writ of attachment shall issue only until after a certain time and in the event of the respondent's continued disobedience at that time to the order in respect of which the respondent has been guilty of disobedience.

(6) If the respondent shall not establish sufficient excuse for not attending on the return day of the summons, or if the respondent attends and does not show cause to the satisfaction of the Court why the respondent should not be punished for disobedience, the Court may order the respondent to pay such fine, or to be committed to prison for such time as the Court directs.

(7) The Court may order that a person committed to prison for disobedience to an order shall be detained in prison till he or she has obeyed such order in all things that are to be immediately performed and given such security as the Court thinks fit to obey the other parts of the order, if any, at the time or times when are to be performed.

(8) Whenever any such order or commitment shall have been made the Registrar shall issue, under the seal of the Court, a warrant of commitment directed to the proper officer of the Court who by such warrant shall be empowered to take the body of the person against whom such order shall have been made, and all police officers within their several jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of every gaol or prison mentioned in

any such order shall be bound to receive and keep therein the person against whom such order of commitment shall have been made until he or she shall be discharged by due course of law.

(9) Where any person in custody under a warrant desires to apply for his or her discharge, he or she shall file an affidavit showing that he or she has purged or is desirous of purging his or her contempt, and shall, not less than one clear day before the application is made, serve on the party at whose instance the warrant of attachment was issued, an office copy of the affidavit, together with notice of his or her intention to make the application.

(10) In case the respondent against whom a writ of attachment has issued is not and cannot be found, the Court may make an order that a writ of sequestration be issued against his or her property. The said writ shall bind his or her immovable property from the date of the order in the same manner, and to the same extent in every respect, as an order for sequestration in a civil action.

(11) The writ of sequestration shall be directed to two or more persons to be appointed by the Court for that purpose, who shall be commanded and empowered to enter upon all the immovable property of the person against whom the writ shall issue, and collect, take, and get into their hands not only the rents and profits of his or her said immovable property, but also all his or her goods, chattels, and movable property, and detain and keep the same under sequestration in their hands until he or she shall appear before the Court and purge his or her contempt, or the Court shall make other order to the contrary. And the Court may order payment out of the proceeds of such sequestration of all charges attending the execution thereof, including such reasonable remuneration to the persons appointed to carry out the same as the Court shall think fit to allow.

(12) In all proceedings against any person for disobedience of the order of a Court, the Court before which such proceedings are taken shall make such order as to the costs thereby occasioned as to the Court shall seem just.

(13) A writ of attachment shall be in Form 39A, and a writ of sequestration shall be in Form 39B.

Part 51

Execution by Attachment of Debt or Property

51.1 Execution by Attachment of Debt or Property

(1) Whenever in any proceedings to obtain an attachment under Part VII of the Civil Procedure Law, Cap. 6, it is suggested by the garnishee that the debt or property sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or Judge may order such third person to appear and state the nature and particulars of the third party's claim upon such debt or property.

(2) After hearing the allegations of any third person under such order as in the preceding rule mentioned, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from the garnishee, with the costs of the garnishee proceedings, or may make such other order as such Court or Judge shall think fit upon such terms with respect to the lien or charge (if any) of such third person and the costs as the Court or Judge shall think just and reasonable.

(3) A writ of attachment may be issued by the Registrar upon presentation of an office copy of the order directing the issue of the writ.

Part 52

Writ of Possession

52.1 Writ of Possession

(1)

(a) Where a judgment or order of a Court for the recovery or delivery of possession of any immovable property is sought to be enforced by a writ of possession, the writ may be issued by leave of the Court or a Judge obtained on an application without notice by the plaintiff supported by an affidavit. The affidavit shall be in Form 39C and the writ in Form 39D.

(b) Such leave shall not be given unless it is shown that all person in actual possession of the whole or any part of the property have received such notice of the proceedings as may be considered sufficient to enable them to apply to the Court for relief or otherwise.

(2) Upon any judgment or order for the recovery of any property and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the option of the successful party.

(3) Every writ of possession shall be passed to a bailiff for execution; and, where costs are to be recovered under the same writ, the provisions of Part 54 shall be observed in so far as they are applicable except that every writ of possession issued shall be entered in a separate register.

Part 53

Writ of Delivery

53.1 Writ of Delivery

(1) Where it is sought to enforce a judgment or order for the recovery or delivery of any movable property by writ of delivery, the Court or a Judge may, upon an application without notice of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property upon paying its assessed value, if any, and that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the deputy sheriff shall distrain all the movable and immovable property of the defendant till the defendant deliver the property; or, at the option of the plaintiff, that the deputy sheriff cause to be levied, be seizure and sale of the defendant's movable property, the assessed value, if any, of the property which cannot be found. The application for the writ of delivery shall be accompanied by a copy of the judgment or order sought to be enforced.

(2) A writ of delivery shall be in Form 39E; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to levy, by seizure and sale of the defendant's movable property, the damages and costs awarded, and interest.

(3) Every writ of delivery shall be passed to a bailiff for execution; and, where damages or costs are to be recovered under the same writ, the provisions of Part 54 shall be observed in so far as they are applicable except that every writ of delivery issued shall be entered in a separate register.

Part 54

Bailiffs

54.1 Bailiffs

(1) Every bailiff shall have power to do all things necessary for the execution of a writ for the seizure and sale of movable property, and upon receipt of the writ he or she shall take all steps necessary for its prompt and due execution.

(2) Every writ for the seizure and sale of movable property shall, before it is handed to the bailiff, be registered by the registry officer in charge of writs (hereinafter called " the writ clerk ") in the register of writs, which shall be initialed by the bailiff, and after it is handed to him or her it shall be entered in the bailiff's book, which shall be initialed by the writ clerk; and the number of the book and the page thereof shall be endorsed on the writ.

(3) The bailiff's book shall be in Form 40 with numbered pages. A register of these books shall be kept by the writ clerk; and when a book is issued to a bailiff, the Registrar shall number the book and initial it, and the bailiff shall initial the register, and when he or she completes his or her book, he or she shall return it to the Registrar.

(4) The bailiff shall issue receipts out of a counterfoil receipt book for all moneys he or she receives and obtain the payer's signature on the counterfoil of the receipt issued. The bailiff shall enter the serial numbers of the counterfoils of such receipts in the bailiff 's book; and the writ clerk shall check, at least once a month, these counterfoils with the bailiff 's book and initial in both books the entries checked, and shall satisfy himself that all moneys received have been promptly paid out. If the writ clerk discovers any cases in which the bailiff has kept money more than two days, he or she shall report the fact to the Registrar; and the Registrar, if satisfied with the bailiff's explanation of the delay, shall make a note to that effect in the bailiff's book.

(5) The bailiff shall pay promptly into the Treasury or to the judgment creditor (according to the direction given in the writ) the net proceeds of the sale, and shall in the one case affix the Treasury receipt to the appropriate page of the bailiff's book, noting on the page its number and date, and in the other take the payee's receipt on the page itself. But this Rule shall be read subject to section 45 (2) of the Bankruptcy Law, Cap. 5, as regards execution for an amount exceeding χίλια ευρώ (€1,000) in respect of a judgment.

(6) Όταν η εκτέλεση συμπληρωθεί, ο Δικαστικός Επιδότης θα επιστρέψει το ένταλμα το οποίο οπισθογραφεί ως προς τις λεπτομέρειες της εκτέλεσης. Η οπισθογράφηση θα καταδεικνύει το ποσό το οποίο εισπράχθηκε και το καθαρό ποσό που κατατέθηκε ή θα κατατεθεί στο Γενικό Λογιστήριο. Οταν επιστρέφονται εντάλματα, ο γραφέας υπεύθυνος για τα εντάλματα πρέπει να ικανοποιηθεί, τόσο για το ποσό το οποίο έχει εισπραχθεί όσο και για το ότι αυτό έχει καταβληθεί από τον Επιδότη και πρέπει να προβεί σε σημείωση ως προς αυτά τα γεγονότα τόσο στο ένταλμα όσο και στο βιβλίο του Επιδότη πριν καταχωρήσει το ένταλμα.

(7) Τουλαχιστο μια φορά το μήνα ο γραφέας ενταλμάτων θα επιθεωρεί το μητρώο ενταλμάτων και το βιβλίο του κάθε Δικαστικού Επιδότη και θα εφοδιάζει τον Πρωτοκολλητή με κατάλογο των εκκρεμούντων ενταλμάτων: και ο Πρωτοκολλητής θα λαμβάνει όλα τα κατάλληλα μέτρα για να εξασφαλίσει ότι τα εντάλματα αυτά θα εκτελεστούν και επιστραφούν ταχέως.

(8) Κατά την πρώτη επίσκεψη στα υποστατικά, ο Δικαστικός Επιδότης θα προβαίνει στις προσφερόμενες ενέργειες ως η ένορκη δήλωση σύμφωνα με τον Τύπο 2, την οποία θα υπογράφει και θα καταχωρεί αμελλητί.

Form ….Σύμφωνα με τον Κανονισμό (8)
Εγώ ο …
Δικαστικός Επιδότης/Ανώτερος Δικαστικός Επιδότης ορκίζομαι και λέγω τα ακόλουθα:
1. Την … … … … … … … … … … παρέλαβα το ένταλμα κινητής περιουσίας στην αγωγή του
Επαρχιακού Δικαστηρίου … … … … … … … … … …
με αριθμό … … … … … … και με αριθμό εντάλματος … … … … … … … … … …
2. Την ……επισκέφθηκα τα υποστατικά του εξ αποφάσεως χρεώστη … … …και
(α) *Διενήργησα κατάσχεση της πιο κάτω κινητής περιουσίας … … … … … … … …
Δε μετακίνησα την πιο πάνω κατασχεθείσα περιουσία / το πιο πάνω μέρος της* αλλά τη σήμανα καταλλήλως επειδή δεν παρεχόταν δυνατότητα μετακίνησης*/φύλαξης * της.
*Η πιο πάνω κατασχεθείσα περιουσία είναι κατά την κρίση μου αρκετή για την κάλυψη του ποσού του εντάλματος.
*Η πιο πάνω περιουσία δεν είναι κατά την κρίση μου αρκετή για την κάλυψη του ποσού του εντάλματος αλλά δεν υπήρχε στα υποστατικά του εξ αποφάσεως χρεώστη άλλη περιουσία υποκείμενη σε κατάσχεση.
(β) *Δε διενήργησα κατάσχεση επειδή δεν υπήρχε στα υποστατικά του εξ αποφάσεως χρεώστη περιουσία υποκείμενη σε κατάσχεση.
3. *Στα υποστατικά του εξ αποφάσεως χρεώστη υπήρχε η πιο κάτω κινητή περιουσία που υπόκειται σε κατάσχεση … … … … … … … … … … … … … … … … … …
4. *Στα υποστατικά του εξ αποφάσεως χρεώστη υπήρχε η πιο κάτω κινητή περιουσία που δεν υπόκειται σε κατάσχεση.
5. *Στα υποστατικά του εξ αποφάσεως χρεώστη δεν υπήρχε οποιαδήποτε κινητή περιουσία.
Ο ενόρκως δηλών
Δικαστικός Επιδότης/
Ανώτερος Δικαστικός Επιδότης.
Ορκίστηκε και υπέγραψε ενώπιόν μου
στο Επαρχιακό Δικαστήριο
… … … … σήμερα … … … … 19 …
Πρωτοκολλητής

(9)

(a) Η εκτέλεση εντάλματος θα διενεργείται από δύο Δικαστικούς Επιδότες, εκτός αν ο οικείος Πρωτοκολλητής διατάξει διαφορετικά και θα κατάσχεται τόση από την κινητή περιουσία του εξ αποφάσεως χρεώστη όση κατά την κρίση των Δικαστικών Επιδοτών ή του Δικαστικού Επιδότη, ως ήθελε είναι η περίπτωση, για την κάλυψη του ποσού του εντάλματος και των εξόδων της κατάσχεσης και θα τίθεται στην κατοχή του Ανώτερου Δικαστικού Επιδότη και ελλείψει τούτου, του αρχαιότερου δικαστικού επιδότη που θα ορίζεται προς τούτο από τον Πρωτοκολλητή. Νοείται ότι όταν δεν παρέχεται δυνατότητα άμεσης μετακίνησης ή φύλαξης κατασχεθείσας κινητής περιουσίας, αυτή σημαίνεται καταλλήλως και καταγράφεται σε έντυπο σύμφωνα με τον Τύπο 1 που υπογράφεται από το διενεργούντα την κατάσχεση και τον εξ αποφάσεως χρεώστη. Αν ο εξ αποφάσεως χρεώστης αρνείται να υπογράψει, ο διενεργών την κατάσχεση καταγράφει την άρνηση του. Το πιο πάνω έντυπο καταχωρείται στο φάκελλο και αντίγραφο του αποστέλλεται αμελλητί στον εξ αποφάσεως πιστωτή. Κινητή περιουσία τελούσα υπό κατάσχεση σύμφωνα με την παρούσα επιφύλαξη, μετακινείται και τίθεται υπό τη φύλαξη του Ανώτερου

Δικαστικού Επιδότη και ελλείψει τούτου, του αρχαιότερου Δικαστικού Επιδότη που θα ορίζεται προς τούτο από το Πρωτοκολλητείο, εντός ενός μηνός από την κατάσχεση.

Form ….
ΕΝΤΥΠΟ ΓΙΑ ΚΙΝΗΤΗ ΠΕΡΙΟΥΣΙΑ ΠΟΥ ΚΑΤΑΣΧΕΤΑΙ ΚΑΙ
ΔΕ ΜΕΤΑΚΙΝΕΙΤΑΙ
Επιφύλαξη στον Κανονισμό 9(a) της rule X8
Η πιο κάτω κινητή περιουσία κατασχέθηκε και σημάνθηκε καταλλήλως χωρίς να μετακινηθεί επειδή δεν
παρεχόταν δυνατότητα μετακίνησης/φύλαξης της
Ημερομηνία … … … … …
… … … … … … … … … … … …
Υπογραφή του διενεργούντος την
κατάσχεση
… … … … … … … … … … … …
Υπογραφή του εξ αποφάσεως χρεώστη*
* Σε περίπτωση άρνησης του εξ αποφάσεως χρεώστη να υπογράψει το έντυπο, το γεγονός καταγράφεται.
ΕΝΟΡΚΗ ΔΗΛΩΣΗ

(b) Ο Ανώτερος Δικαστικός Επιδότης και ελλείψει τούτου, ο αρχαιότερος Δικαστικός Επιδότης θα διατηρεί την κατασχεθείσα περιουσία υπό ασφαλή φύλαξη και θα την πωλεί με δημόσιο πλειστηριασμό στην παρουσία Πρωτοκολλητή, στον υψηλότερο πλειοδότη, αφού πρώτα γνωστοποιήσει τη σκοπούμενη πώληση, όσο σύντομα είναι εφικτό μετά την πάροδο τριών ημερών από την κατάσχεση.

(c) Ο Ανώτερος Δικαστικός Επιδότης και ελλείψει τούτου, ο αρχαιότερος Δικαστικός Επιδότης θα τηρεί λογαριασμό (που θα είναι γνωστός ως ο «Λογαριασμός του Δικαστικού Επιδότη») που θα αποκαλύπτει τα ονόματα των αγοραστών και τα ποσά στα οποία διατέθηκε η κατασχεθείσα περιουσία. Σε σχέση με την κατάσχεση και πώληση, ο Δικαστικός Επιδότης θα εισπράττει δικαιώματα ίσα με το ποσοστό 5% της τιμής στην οποία διατίθενται (υψηλότερη προσφορά) νοουμένου ότι τα δικαιώματα τα οποία θα εισπράττονται δε θα υπολείπονται του ποσού των εννιά ευρώ €9. Τα δικαιώματα αυτά θα κατατίθενται αμέσως σε ειδικό κυβερνητικό λογαριασμό.

(d) Εάν δεν καταστεί δυνατή η πώληση ο Πρωτοκολλητής μπορεί να επιτρέψει την είσπραξη από το Δικαστικό Επιδότη των εξόδων στα οποία έχει εύλογα προβεί σε σχέση με την κατάσχεση και αυτά θα καταβληθούν από τον εξ αποφάσεως πιστωτή ή με την πώληση των κατασχεθέντων αντικειμένων, ως οι οδηγίες του Πρωτοκολλητή και τα έξοδα αυτά θα κατατίθενται αμέσως σε ειδικό κυβερνητικό λογαριασμό.

(e) Ο λογαριασμός εξόδων Δικαστικού Επιδότη θα παραδίδεται από τον Ανώτερο Δικαστικό Επιδότη στο Δικαστικό Επιδότη και ελλείψει τούτου, τον αρχαιότερο Δικαστικό Επιδότη ή Επιδότες οι οποίοι διενήργησαν την κατάσχεση προς ενημέρωση του σχετικού μητρώου, και θα ελέγχεται από τον Πρωτοκολλητή.

(f) Ο τελικός έλεγχος της εκτελέσεως του εντάλματος θα διενεργείται από τον Πρωτοκολλητή.

(10)

(a) Στην περίπτωση που δεν υποβάλλεται προσφορά σε πλειστηριασμό για την πώληση κατασχεθείσας περιουσίας ή στην περίπτωση που η τιμή προσφοράς είναι καταφανώς χαμηλή και ανεπαρκής, ο Δικαστικός Επιδότης ή ο Πρωτοκολλητής μπορεί, ασκώντας

τη διακριτική του ευχέρεια, να αναστείλει τη συνέχιση της πώλησης και να διατάξει οπως η περιουσία μετακινηθεί από το Δικαστικό Επιδότη στην κυρια πόλη ή άλλη πόλη ή χωριό της επαρχίας για να τεθεί σε πλειστηριασμό. Σε τέτοια περίπτωση ο Δικαστικός Επιδότης θα δικαιούται να επιβαρύνει το προϊόν της πώλησης με εύλογη δαπάνη την οποία συνεπάγεται η μετακίνηση καθώς και για αποιαδήποτε απώλεια χρόνου με ποσό το οποίο δε θα υπερβαίνει τις δέκα λίρες την ημέρα, ή άλλη εύλογη δαπάνη που προκαλείται από το νέο πλειστηριασμό.

(b) Εάν ο εξ αποφάσεως πιστωτής επιθυμεί όπως η περιουσία μετακινηθεί σε πόλη ή χωριό άλλης επαρχίας, ο Πρωτοκολλητής μπορεί να επιτρέψει τη μετακίνησή της με δαπάνη του πιστωτή, η οποία δε θα μπορεί να ανακτηθεί από αυτόν.

(11) All the expenses and the charges legally payable under these rules shall be added to the amount recoverable under the writ, unless the Court or a Judge shall otherwise order.

(12) The execution of a writ shall not be suspended unless the Court or a Judge so orders or the judgment creditor or the judgment creditor's advocate withdraws the writ by writing under the judgment creditor's hand. The notice of withdrawal should where practicable be endorsed on the writ itself and should specify the ground of withdrawal with details (if such is the case) of the amount received or arrangement arrived at ; and where the writ is withdrawn because the creditor admits that the property seized belongs to a third person claiming the same, an inventory thereof signed by the bailiff shall be attached to the writ.

(13) If the property seized is claimed by a third person then:

(a) If the bailiff or the deputy sheriff is of opinion that the claim is without foundation, he or she shall inform the claimant in writing that the claimant may within three days of the seizure apply to the Court for an order to stay the sale and avail himself of section 21 of the Civil Procedure Law, Cap. 6.

(b) If the bailiff or the deputy sheriff is of opinion that there is some foundation for the claim, he or she shall give notice in Form 41 to the judgment creditor or his or her advocate, and, if the seizure is not abandoned, shall interplead upon the creditor furnishing the security mentioned in the notice, or, if such security be not furnished within the time specified in the notice, may withdraw from possession. The interpleader shall be made by summons without affidavit but with notice thereof given to all persons affected by the seizure.

(14)

(a) If a bailiff seizes property belonging to the judgment debtor from a hotel or workshop, he or she shall ask in writing (Form 42) the, person in charge of the hotel or workshop whether there is any claim for hotel dues or for work done on the property seized; and the person in charge shall forthwith inform the bailiff in writing (Form 43) whether there is any such claim and give the details thereof.

(b) Upon a claim being made as aforesaid, the bailiff shall inquire of the judgment creditor and the judgment debtor whether they admit it. If they do, the bailiff shall take their admission in writing and pay the amount of the lien of the person in charge of the hotel or workshop out of the net proceeds of the sale. If either of them does not admit the claim in writing, the bailiff shall pay the net proceeds into the Treasury as a deposit, and the deputy sheriff shall interplead by summons without affidavit but with notice thereof to all interested persons.

(15) If goods are seized in a shop or store under the lease of the judgment debtor and kept there under seizure and the rent for the time they are so kept has not been paid, the landlord shall be paid the rent for such time out of the proceeds of the sale of such goods. And if no sale takes

place, such rent shall be paid by the judgment creditor or by sale of such goods, as the Registrar may direct.

Part 55

Receivers

55.1 Receivers

(1) Every summons by a separate judgment creditor of a partner for an order charging his or her interest in the partnership property and profits under section 25 of the General and Limited Partnership and Trade Names Law Cap. 116, or for such other orders or directions as are thereby authorized to be made or given, shall be served on the judgment debtor and on his or her partners, or such of them as are in Cyprus ; and such service shall be good service on all the partners, and all orders made on such summons shall be similarly served.

(2) Every application which shall be made by any partner of the judgment debtor under section 25 of the General and Limited Partnership and Trade Names Law Cap. 116, shall be made by summons, and such summons shall be served on the judgment creditor and on the judgment debtor, and on such of the other partners as shall not concur in the application and as shall be in Cyprus, and such service shall be good service on all the partners and all orders made on such summons shall be similarly served.

(3) In every case in which an application is made for the appointment of a receiver under section 25 (2) of the General and Limited Partnership and Trade Names Law Cap. 116, the Court or a Judge, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of the appointment, and may, if they or he or she shall so think fit, direct any inquiries on these or other matters before making the appointment.

(4) Except as provided in the next following rule, where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security by recognizance or otherwise as the Court or a Judge may direct in a form approved by them or him or her, and with or without sureties as they or he or she may direct, to be taken before the Registrar, duly to account for what he or she shall receive as such receiver, and to pay the same as the Court or Judge shall direct ; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance.

(5) Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up.

(6) When a receiver is appointed with a direction that he or she shall pass accounts, the Court or Judge shall fix the days upon which he or she shall (annually, or at longer or shorter periods) leave and pass such accounts, and also the days upon which he or she shall pay the balances appearing on the accounts so left, or such part thereof as shall be certified as proper to be paid by him or her. And with respect to any such receiver as shall neglect to leave and pass his or her accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time, when the receiver's subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also if he or she shall think fit, charge the receiver

with interest at the rate of four per centum per annum upon the balances so neglected to be paid during the time the same shall appear to have remained in the hands of any such receiver.

(7) Receivers' accounts shall be in such form as the Court or a Judge may direct.

(8) Every receiver shall leave in the office of the Registrar his or her account, together with an affidavit verifying the same. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

(9) In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at chambers to show cause why such account or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs.

(10) A certificate of the Registrar stating the result of a receiver's account shall from time to time be taken.

Part 56

Enforcement of Extra-Judicial Orders

56.1 Enforcement of Extra-Judicial Orders

(1) Whenever provision is made in any Law enabling enforcement by a Court of an order made under the Law, or the removal of such order into a Court for enforcement, application may be made to the Court or a Judge, without notice, to enter the order in its book of orders, and upon leave being given the order sought to be enforced may be entered in the book of civil orders in the case of an order removed into the Supreme Court, and in the book of orders on originating applications in the case of an order removed into the District Court.

(2) The application shall be accompanied by the order sought to be enforced and any certificate or other document which may by Law be required, and shall be numbered and filed as an originating application.

(3) It shall not be necessary to draw up the leave given under Part 56.1(1); but the order sought to be enforced when entered shall be signed by a Judge of the Court, and thereupon may be enforced as an order of the Court.

Part 57

Claims on Controlled Goods and Executed Goods

57.1 Claims on Controlled Goods and Executed Goods

(1) If the property seized is claimed by a third person then:

(a) If the bailiff or the deputy sheriff is of opinion that the claim is without foundation, he or she shall inform the claimant in writing that he or she may within three days of the seizure apply to the Court for an order to stay the sale and avail himself of section 20 of the Civil Procedure Law, Cap. 7.

(b) If the bailiff or the deputy sheriff is of opinion that there is some foundation for the claim, he or she shall give notice in Form 41 to the judgment creditor or the judgment creditor's advocate, and, if the seizure is not abandoned, shall interplead upon the creditor furnishing the security mentioned in the notice, or, if such security be not furnished within the time specified in the notice, may withdraw from possession. The interpleader shall be made by summons without affidavit but with notice thereof given to all persons affected by the seizure.

Part 58

Miscellaneous Provisions in relation to Execution

58.1 Post-Judgement Disclosure

(1) For the purpose of execution where the Court considered it is just and expedient, disclosure can be ordered after judgement as well as before.

58.2 Execution and the Motor Vehicle Registry

(1) For the purpose of execution, where the Court considered it is just and expedient, the Court Bailiff can be permitted direct access to the Motor Vehicle Registry.

Part 59

Registry Hours and Court Vacation

59.1 Registry hours

(1) The court's registries must be open from 8.30 am to 1 pm on every day that is not a court holiday.

59.2 Court Sittings

(1) Αι κατωτέρω αναφερόμενοι περίοδοι θα είναι αι υπό του Ανωτάτου Δικαστηρίου τηρούμεναι διακοπαί:

(α) θεριναί διακοπαί: από της 10ης Ιουλίου μέχρι της 9ης Σεπτεμβρίου, αμφοτέρων των ημερομηνιών συμπεριλαμβανομένων.

(β) διακοπαί Χριστουγέννων: από της 24ης Δεκεμβρίου μέχρι της 6ης Ιανουαρίου, αμφοτέρων των ημερομηνιών συμπεριλαμβανομένων

(γ) διακοπαί του Πάσχα: από της Μεγάλης Πέμπτης προ του Ελληνορθοδόξου Πάσχα μέχρι της Κυριακής του Θωμά, αμφοτέρων των ημερών συμπεριλαμβανομένων:

Νοείται ότι δύνανται να γίνωνται συνεδρίαι κατά την διάρκειαν οιασδήποτε των ως άνω διακοπών δυνάμει οδηγιών-

(ι) του Ανωτάτου Δικαστηρίου, δια την ακρόασιν οιασδήποτε υποθέσεως ή δί άλλην διαδικασίαν,

(ιι) οιουδήποτε δικαστού του Δικαστηρίου, δια την ακρόασιν υπ' αυτού οιασδήποτε υποθέσεως ή δί' άλλην διαδικασίαν υπαγομένην εις την αρμοδιότητα ενός Δικαστού του Δικαστηρίου.

(2) Αι εν τω Κανονισμώ 1 αναφερόμενοι περίοδοι θα είναι επίσης αι υπό των Επαρχιακών Δικαστηρίων τηρούμεναι διακοπαί:

Provided that a judge may sit on a court holiday if he or she considers it desirable to do so in order to dispose of business

(3) Η ακρόασις πολιτικών αγωγών εις τα Επαρχιακά Δικαστήρια θα δύναται να διακόπτηται επί τρεις ημέρας κατά την διάρειαν του Βαϊραμιού Ραμαζάν και επί τρεις ημέρας κατά την διάρκειαν του του Βαϊραμιού Κουρπάν και κατά την ημέραν των Γενεθλίων του Προφήτου, όσον αφορά εις τους Τούρκους διαδίκους.

Save where the Court otherwise orders, the time of the period mentioned in rule 59.2(1)(a), shall not be reckoned in the computation of the times prescribed by these rules or by any order or direction for amending, serving, delivering, or filing any pleading, except to the extent of the last seven days of that period.

Part 60

Old Proceedings

Drafting Note:
Below are two possible Parts that could be included on transitional arrangements. The Expert Group recommends the simpler one – option 2.

Option 1

60.1 Transitional Arrangement

(1) The Civil Procedure Rules of 2019 do not apply to proceedings commenced before the commencement date in which a trial date has been fixed unless that date is adjourned.

(2) In proceedings commenced before the commencement date, an application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard.

(3) Where a trial date has not been fixed in proceedings that commenced before the commencement date:

(a) the Registry must fix a date, time and place for a case management conference under Part 17 after a defence has been filed and give all parties at least 28 days notice of the conference; and

(b) these Rules apply from the date of the case management conference given under paragraph (a).

60.2 Exercise of discretion

(1) Where in proceedings commenced before the commencement date the court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular rule 1.2 (the Objective) and Part 28 (Case Management).

Option 2

60.1 Transitional Arrangement

(1) These rules apply to proceedings commenced on or after ### XXXX (the commencement date)

60.2 Exercise of discretion

(1) Where in proceedings commenced before the commencement date the court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular rule 1.2 (the Objective) and Part 28 (Case Management).