# 民事訴訟程序須知

## What should be noted about civil proceedings

- This leaflet is designed to provide you with a brief outline of the practice and procedure of civil proceedings in the High Court and the District Court.
- You should read Rules of the High Court (or Rules of the District Court, as the case may be) for full details.
- The Civil Justice Reform has come into effect on 2nd April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 "Civil Justice Reform: Transitional Arrangements" of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

**What should be noted about civil proceedings**

1. **To start civil proceedings**

1.1 The one who sues is called the plaintiff and the other party being sued is called the defendant. To start the suit, the plaintiff has to apply to the court to issue a document called a writ of summons or an originating summons, which has to be served on the defendant.

1.2 A writ of summons is suitable for cases where there is a serious dispute as to facts. An originating summons is suitable for cases where there is no dispute as to facts, the argument is on points of law or solely relates to the interpretation of certain terms in a legal document. The defendant who has received the writ or the originating summons has to acknowledge service of it. Therefore the writ or the originating summons has to be served on the defendant with the acknowledgement of service.

1.3 You may obtain the writ of summons, the originating summons and the acknowledgement of service from the Resource Centre for Unrepresented Litigants, the Registries of the High Court and the District Court.

1.4 You may also read the charts in Leaflet 3 “What are the stages in a civil action” of this series for an overview of an action begun by writ and proceedings begun by originating summons.

1.5 Before issuing the writ, the plaintiff should ascertain the name of the defendant and his last known address. If the defendant is a limited company, the plaintiff should make a company search to obtain updated information about its name and its registered office. If the defendant is a business, the plaintiff should make the business registration search at the Inland Revenue Department to ascertain the trade name and the principal place of business.

## 2. Service of the writ or originating summons

2.1 Generally there are three alternative ways of service on the defendant or each of the defendants who is within the territory of the HKSAR, namely,

(a) by personal service: handing a sealed (i.e., sealed with the court's seal) copy of the document to and leaving it with the addressee personally;

(b) service by post: posting a sealed copy of document by registered post addressed to the addressee at his usual or last known address; or

(c) service by inserting a sealed copy of the document enclosed in a sealed (i.e., not open) envelope addressed to the addressee through the letter box of the addressee.

2.2 Where the defendant is a limited company, you can serve the document by posting it or leaving it at its registered office.

2.3 Where the defendant is an individual or a business run by a sole proprietor or partnership, you can adopt any one of the three ways of service. However, for service on a partnership business, you can also serve the document on any one of the partners or on the person having control or management of the business at the principal place of business of the partnership, or you can mail it to that address by registered post.

2.4 You have to prove by affidavit or affirmation (i.e. a document by which you have to make an oath) the service of the writ or originating summons. In the affidavit, you have to state that the sealed copy of the writ or originating summons has been served on a date (including the day of the week) by you personally on the defendant. If the service was by post or by insertion through the letter box, the affidavit will have to state that the document has not been returned through the post and that it will come to the defendant's knowledge within 7 days from the date of posting. If you have an agent to serve the document, your agent has to make such an affidavit.

2.5 The plaintiff should pay attention to the instructions in the writ or the originating summons. In particular, the plaintiff should state the address for service. The defendant should also pay attention to the instructions and warnings on the acknowledgement of service. The defendant should state clearly the address for service on the acknowledgement of service.

2.6 Under normal circumstances, you cannot serve the writ or originating summons outside Hong Kong unless you have obtained the permission of the court. You should apply for permission before you serve the writ. For this application, you should consult your own legal advisor. You may refer to Order 11 of Rules of the High Court or the same Order in Rules of the District Court.

2.7 Every writ or originating summons served on a defendant must be accompanied by three copies of acknowledgment of service. The defendant should read the acknowledgment of service carefully and complete them. Two copies of the acknowledgement of service should be filed with the court within the time prescribed. The defendant can keep one copy for record.

## 3. Acknowledgment of service

3.1 The defendant who has received the writ or the originating summons is required to acknowledge service of it and to state whether he intends to contest within 14 days. The copies of acknowledgement of service have to be filed with the court and the Registry will send a copy to the plaintiff. If the defendant fails to do so, in case of an action begun by a writ of summons, the plaintiff may apply to court for judgment against the defendant without a trial. In case of an originating summons, the matter should proceed to hearing on the assumption that the defendant does not intend to defend.

3.2 After 2 April 2009, if the plaintiff's claim is only for payment of money, the defendant may admit the plaintiff's claim using the form enclosed with the writ. This can save time and costs. In such form, the defendant may also make a request for time to pay the

admitted sum, including any proposal for payment by instalments. If you want to know more about this procedure, you can read Leaflet 7 "How to shorten legal proceedings: Order 13A admissions in monetary claims" of this series.

**Where the parties are limited companies**

4.1 For proceedings in the High Court, if any of the parties is a limited company, it has to be represented by a solicitor unless leave is granted by the Registrar for a director to represent the company. You may rely on the reason that the company is unable to afford to pay for the service of a solicitor or for some other good reasons. The application has to be made to the Registrar. It has to be supported by affidavit or affirmation made by its director exhibiting a board resolution of the company authorizing the director to represent the company in the proceedings. If the application is on the ground that the company is unable to afford the service of a solicitor, the audited accounts and current bank accounts of the company showing the current financial position of the company should be exhibited to the supporting affidavit or affirmation. If the application is based on some other good reasons, then such reasons should be stated and the exhibits in support must be exhibited. Whether to grant the leave or not is purely the discretion of the Registrar. The applicant cannot appeal against this decision. You may make enquiries about the application from our staff at Resource Centre for Unrepresented Litigants or at the Registry of High Court.

4.2 If the proceedings are in the District Court, the authorized director of the plaintiff has to file an affidavit or affirmation stating that he or she has been duly authorized by the board of directors to represent the company in the proceedings, exhibiting a copy of the board resolution duly certified by its secretary. For a corporate defendant, a person duly authorized by the defendant may act for the defendant.

**The evidence and burden of proof**

5.1 Each party to the proceedings must collect evidence to support his case. Generally speaking, the burden of proof is on the party who makes the allegation. But this is always subject to the directions of the court, which may in appropriate cases order the other party to adduce the evidence. Evidence can be in various forms, including oral evidence from witnesses, documents, photographs, things or materials, audio or video tapes or discs or electronic data contained in any tapes or discs etc.

5.2 It will be advisable for the plaintiff to obtain all the evidence, in particular, statements in writing from the witnesses (those persons who have personal knowledge of the facts relevant to the case and will attend court to give evidence) at an early stage. The defendant should likewise prepare his own witnesses' statements after receiving the statement of claim (a document attached to the writ in which the plaintiff sets out the account of the facts and the claims against the defendant). As to how witness statements should be prepared, please see the "sample court forms" file available at the Resource Centre for Unrepresented Litigants or at the Judiciary website.

5.3 After the court proceedings have started and before the matter goes to trial by the judge, you may have to go through other proceedings before trial (see below). These include case management conference, application for amendment to the statement of claim or defence etc. generally called "the pleadings", extension of time for complying with the rules or the directions of the court, further and better particulars of the pleadings etc. These are called interlocutory proceedings. They are designed to ensure that preparations are properly done and evidence is put in place for the matter to be tried by the Court.

**The proceedings before trial**

6.1 There are two kinds of proceedings before trial (also referred to as interlocutory proceedings). The first one is called Case Management Conference or directions hearing. In such hearing, the court would give a timetable about the progress of the case. The court would set various deadlines for the parties to comply with the things that they have to do before the trial, including the filing of witness statements and lists containing the documents relevant to the case. The court can also fix the trial date in such hearing. For more details, please read the part about case management in Leaflet 3 "What are the stages in a civil action" of this series.

6.2 The second kind of interlocutory proceedings is about particular application taken out by a party before the trial. The usual applications for these proceedings include:

(1) application for extension of time for complying with certain direction under the rules or the court order;

(2) application for an order that unless the other party complies with the rules or the directions of the court, judgment may be entered against him;

(3) application to set aside judgment obtained by the plaintiff because the defendant has failed to comply with rules or court order;

(4) application for amendment to the pleadings;

(5) application for summary judgment (judgment without a full trial) by the plaintiff because the defendant has no defence;

(6) application for further and better particulars of the pleadings of the other;

(7) application for striking out the pleadings or part of the pleadings of the other party (for reason that they are bad pleadings i.e. they show no good reason for the claims or defence); and

(8) application for documents to be disclosed (discovery of documents) from the other party.

6.3 The above applications are more frequently used. There are other applications that involve more technical issues and arguments, which are time consuming and will incur costs. It is not advisable to take out such proceedings unless upon legal advice. It is also not advisable for litigants in person to consider making use of the proceedings to take tactical advantage. The court does not approve of any unnecessary proceedings, the purpose of which is to delay the matter. The matter will proceed more expeditiously without unnecessary applications before trial.

6.4 Interlocutory applications

Interlocutory applications are usually made by summonses, supported by affidavits or affirmations, which have to be filed with the court and served on the other party. You have to prove service of the documents by affidavit or affirmation. For details on preparations of affidavit or affirmation, please see the "sample court forms" file that can be obtained from the staff of Resource Centre for Unrepresented Litigants or at the Judiciary website.

The other party to the application may file affidavit or affirmation to oppose the application. Such affidavit or affirmation has to be filed with the court and served on the other party.

The applicant may, upon receiving the affidavit or affirmation in opposition, file and serve further affidavit or affirmation in reply to the oppositions. There should be no further affidavit or affirmation from either party unless there is a court order granting permission to any party to do so.

6.5 Hearing of interlocutory application

The summons will be heard by a master or a judge on a date fixed by the court. At the hearing, no witness should be called to give evidence unless the court has specifically ordered it. The court will only consider the evidence in the affidavits or affirmations and arguments from the parties. The procedures of the hearing are those described under "Trial or hearing not involving oral evidence" section in Leaflet 5 "How is a trial or hearing conducted in court" of this series.

At the end of the hearing, the master or the judge will make an order or pass a judgment. The master or the judge will usually order costs against the party who fails in the hearing. The costs may be ordered to be paid at the end of the main trial or to be paid forthwith.

In some cases, a master may determine an interlocutory application without an oral hearing.

Judiciary

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