

如何縮短法律程序：在金錢申索中按第13A號命令作出「承認」

**How to shorten legal proceedings : Order 13A admissions
in monetary claims**

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and District Court on making admissions under Order 13A in monetary claims.
- You should read Order 13A of 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.

**How to shorten legal proceedings:
Order 13A Admissions in Monetary Claims**

Introduction

1. A new set of procedure has been introduced under the Civil Justice Reform to encourage the plaintiff and the defendant to consider settling their disputes at an early stage of the proceedings, that is after the writ of summons or the originating summons or the counterclaim is served and before the defence is served and filed in the court. It is intended at the end to save the time of litigation and the costs of the parties.

2. This leaflet gives a brief summary of the provisions under the new Order 13A of Rules of the High Court, Cap. 4A and Rules of the District Court, Cap. 336H, which came into effect on 2 April 2009. The new Order affects actions commenced before and after this date. You are advised to read carefully the provisions in Order 13A before deciding whether and how to make admissions in accordance with them.

3. All the prescribed forms under Order 13A are available at the High Court and District Court Registry and can also be downloaded from the Judiciary website. You should read the prescribed forms carefully. If you have any query in how to fill up the forms, you may consult the staff at the Resource Centre for Unrepresented Litigants. While the staff there will explain how you can fill up the relevant forms, they cannot give you any legal advice. In case of doubt, you should consult a lawyer.

Application

4. Order 13A applies only to a monetary claim, i.e. the only remedy sought is the payment of money, whether the amount claimed is a liquidated sum or an unliquidated sum. Whether a sum is liquidated or unliquidated is a question of law, which you should seek explanation and clarification from lawyers. In general, a claim for a liquidated sum refers to a claim for a specific sum of money. Its amount is either already ascertained or capable of being ascertained as a mere matter of arithmetic calculation. On the other hand, a claim for an unliquidated sum refers to a claim for an unascertained sum that involves investigation beyond calculation and assessment by the court. For the purpose of Order 13A, the amount of a claim is treated as unliquidated if the claim consists of a claim for a liquidated amount of money and also a claim for an unliquidated amount of money.

5. Order 13A does not apply to other kinds of claim such as those seeking injunctive or declaratory relief or possession of land, in which cases, parties can make admission in the pleadings or such other ways as allowed by the law.

6. Order 13A also applies to a counterclaim brought by a defendant. In this leaflet, the matters stated about a plaintiff apply to a defendant who makes a counterclaim, and the matters stated about a defendant apply to a defendant to a counterclaim.

7. For cases where Order 13A applies, the plaintiff must attach an appropriate form of admission when he serves a writ of summons or originating summons on the defendant. For a claim for a liquidated amount, **Form No. 16** should be attached. If the claim is for an unliquidated amount, **Form No. 16C** should be attached.

Making an admission

8. Upon being served with the writ of summons or the originating summons, a defendant may make an admission. In a liquidated claim, a defendant may admit the whole or part of the claim. In a claim for an unliquidated amount of money, a defendant may make an admission of liability to pay the whole of the plaintiff's claim or, while admitting the liability to pay, offer a liquidated amount of money in satisfaction of the plaintiff's claim.

9. At the same time when filing an admission in appropriate form, a defendant may make a request for time to pay, i.e. a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.

10. You should consider carefully before making an admission. Once an admission is made, it cannot be amended or withdrawn without permission of the court.

Time for making the admission

11. In cases where a defendant is served with a writ of summons, the appropriate admission form should be filed and served by a defendant within the period fixed by the Rules for service of the defence, i.e. within 28 days after the time limited for acknowledging service of the writ or after the service of the statement of claim, whichever is later. In any event, no admission in accordance with Order 13A can be made after a default judgment is obtained by the plaintiff against the defendant.

12. Where a defendant is served with an originating summons, he may file and serve the appropriate admission form within 28 days after the plaintiff serves the supporting affidavit on him. No admission can be made in these cases after the date fixed for hearing of the originating summons.

Procedure subsequent to an admission

13. The plaintiff may request to enter judgment within 14 days after the defendant files the admission form. If the plaintiff fails to respond to an admission made by the defendant by filing the appropriate prescribed form within the aforesaid time, his claim will be stayed until such form is filed.

If the defendant has not requested time for payment

14. *Liquidated claim:* if the defendant admits the whole claim, the plaintiff may obtain judgment for the whole claim admitted by filing a request in **Form No. 16A**. If the defendant admits only part of the claim in satisfaction of the whole claim, the plaintiff may accept such amount in satisfaction of the whole claim by filing **Form No. 16B** to request for judgment to be entered. Upon receipt of the request, the court shall enter judgment accordingly. The plaintiff may also indicate in the form that he does not accept the defendant's part admission, in which case, the proceedings will continue as usual.

15. *Unliquidated claim:* if the defendant admits liability only without making any offer to pay an amount in satisfaction of the claim, the plaintiff may obtain judgment by filing a request in **Form No. 16D**. Upon receipt of the request, the court shall enter judgment for an amount to be decided by the court. If the defendant admits liability with an offer to pay a liquidated amount of money in satisfaction of the plaintiff's claim, the plaintiff shall state in a reply in **Form No. 16E** whether he accepts the amount in satisfaction of the claim. If he accepts, he may in the same form request for judgment on the accepted sum. If the plaintiff indicates in the form that he does not accept the offer, he may request for judgment to be entered for an amount to be decided by the court. In either case, the court will enter judgment accordingly.

16. The plaintiff may also specify in his request for judgment (a) the date by which the whole of the judgment debt is to be paid; or (b) the times and rate at which the judgment debt is to be paid by instalments. The court shall then enter judgment for the amount to be paid by the specified date or at the times and rate as specified in the request. If no time is specified for payment, the judgment debt shall be paid immediately.

If the defendant requests for time to pay

17. A defendant may make a request for time to pay in either of the following situations:

- (a) A defendant who makes admission of the whole of a claim for liquidated amount of money,
- (b) A defendant who makes admission of part of a claim for liquidated amount of money, or
- (c) A defendant who makes admission of liability to pay a claim for unliquidated amount of money and offers to pay a liquidated amount of money in satisfaction of the claim.

The defendant may state in the appropriate admission form his proposal as to the date of payment of the sum admitted or a proposal to pay by instalments at the times and rate specified.

18. If the plaintiff accepts the defendant's request for time to pay, he may obtain judgment by filing an appropriate form of request for judgment (as explained above). Upon receipt of the request, the court shall enter judgment for the appropriate amount and costs and the amount shall be paid by the date or at the time and rate as specified in the defendant's request.

19. If the plaintiff does not accept the defendant's request, he shall state his non-acceptance in an appropriate form of request for judgment to be filed in the court. The plaintiff may make his own proposal as to time to pay. After the court receives the plaintiff's notice, it shall enter judgment for the amount admitted to be paid by the date or at the times and rate of payment as determined by the court. The court may initially determine the date or the times and rate of payment without a hearing after considering the information in the defendant's admission, the reasons why the plaintiff does not accept the defendant's proposal and all other relevant matters. Either party may apply to the court for re-determination if the first determination was made without a hearing.

20. Unless the court otherwise orders, execution of the judgment for payment by instalments at the times and rate specified is stayed pending payment by the defendant. If the defendant makes default in payment, the stay of execution will cease and the plaintiff may enforce payment of the whole unpaid balance under the judgment immediately.

A brief summary of what the plaintiff and the defendant have to do under Order 13A

If you are the plaintiff (or the defendant who makes a counterclaim):

- You should attach to the writ of summons or the originating summons (or counterclaim) an appropriate form of admission: **Form No. 16** for a claim (or counterclaim) for liquidated amount; **Form No. 16C** for a claim (or counterclaim) for an unliquidated amount.
- Within 14 days after receipt of the admission form from the other party, you have to respond to the admission by filing the appropriate form; otherwise, your claim (or counterclaim) will be stayed until the said form is filed.
- In a liquidated claim (or counterclaim), if the other party admits the whole claim (or counterclaim), you may request for judgment by filing **Form No. 16A**. If only part of the claim (or counterclaim) is admitted, you may accept such amount in satisfaction of the whole claim (or counterclaim) and request for judgment to be entered by filing **Form No. 16B**. On the other hand, you may reject the admission of part of the claim (or counterclaim), in which case the proceedings will continue as usual.
- In an unliquidated claim (or counterclaim), if the other party admits liability only without offering to pay any amount, you may request for judgment for an amount to be decided by the court by filing **Form No. 16D**. If the other party offers to pay a liquidated amount of money in satisfaction of your claim (or counterclaim), you may accept such offer in satisfaction of your claim (or counterclaim) and request for judgment on the accepted sum by filing **Form No. 16E**. You may decide not to accept the offer and request for judgment for an amount to be decided by the court.

- If the other party requests for time to pay, you may accept the request and may obtain judgment with time given to the defendant to pay as requested. You may also reject the defendant's request but make your own proposal as to the time to pay. The court may make an initial determination on the date or times and rate of payment without a hearing. You may apply for a re-determination if the determination is made without a hearing.

If you are the defendant (or the party served with a counterclaim):

- Upon receipt of the writ of summons or the originating summons (or the counterclaim), you may consider making an admission by filling up the appropriate form of admission as attached to the writ or originating summons (or counterclaim). You must consider carefully before making an admission. Once it is made, it cannot be amended or withdrawn without permission of the court.
- You may request for time to pay the claim (or counterclaim) by making a proposal as to the date of payment or by instalments in the admission form.
- You must file the appropriate admission form with the Court Registry and serve it on the plaintiff within 28 days after the time limited for acknowledging service or the service of the statement of claim (or counterclaim), whichever is later in case of an action begun by writ.
- For an Originating Summons, the admission form must be filed and served within 28 days after the plaintiff serves the supporting affidavit on you.
- You may receive a response of the other party in respect of your admission when he files the appropriate form in court. If no response is received, the claim (or counterclaim) will be stayed until the other party files and serves on you such response.
- If the other party requests for judgment, after the court approves the judgment, a sealed copy judgment will be served on you.
- If the other party accepts your request for time to pay the admitted claim (or counterclaim), a judgment will be entered against you with the time for payment as proposed. You have to pay the amount at the time and rate as stated in the judgment; otherwise, the other party may enforce payment of the whole unpaid balance under the judgment immediately.

Judiciary
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