

如何縮短法律程序：「附帶條款和解提議」及「附帶條款付款」

How to shorten legal proceedings : Sanctioned offers and sanctioned payments

- This leaflet is designed to provide you with a brief outline of the practice and procedure of the High Court and the District Court on Sanctioned Offers and Sanctioned Payments.
- You should read Order 22 of the Rules of the High Court (or Rules of the District Court, as the case may be) and the Practice Direction 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: Sanctioned Offers and Sanctioned Payments

Introduction

1. Court action should be your last resort. Even after the commencement of the action, you should still seriously consider if the dispute with the other side can be settled. If settled, the dispute will come to an end without going through the trial process. It will save time and costs.

2. One of the ways to settle is by sanctioned offers and sanctioned payments made under Order 22 of Rules of the High Court, Cap. 4A (or Rules of the District Court, Cap. 336H, as the case may be). Generally speaking, a party (called “the Offeror”) may, after the commencement of the action, make a sanctioned offer or sanctioned payment to the other side (called “the Offeree”). If the Offeree refuses to accept the offer or payment and it is not bettered when judgment is obtained, he may be liable for enhanced interest (up to 10% above judgment rate) and the Offeror’s costs assessed on an indemnity basis. This procedure aims at encouraging the parties to take possible settlement seriously and providing an incentive for them to settle disputes at an early stage. It does not prohibit a party from making an offer to settle in any way he chooses. However, if the offer does not comply with the provisions in Order 22, the consequences specified in the rules will not apply.

3. This leaflet sets out a brief summary of the provisions for your easy reference. You are strongly advised to read Order 22 carefully before deciding to make, accept or refuse a sanctioned offer or sanctioned payment, as it may give rise to important consequences.

What is a sanctioned offer and sanctioned payment?

4. Sanctioned offer means an offer made (otherwise than by way of a payment into court) in accordance with Order 22.

5. Sanctioned payment means an offer made by way of a payment into court in accordance with Order 22.

Who can make a sanctioned offer or sanctioned payment?

6. A plaintiff can only make a sanctioned offer.

7. Depending on circumstances, a defendant can make a sanctioned offer or a sanctioned payment or both.

When to make a sanctioned offer or sanctioned payment?

8. A sanctioned offer can be made at any time after the commencement of the action.

9. A sanctioned payment may only be made after the proceedings have commenced.

How to make a sanctioned offer or sanctioned payment?

10. A sanctioned offer must be in writing. There is no prescribed form but if the offer includes the payment of a sum of money, the Offeror should make a sanctioned payment by Form No. 23 as well. The Offeror must serve the offer on the Offeree.

11. The Offeror making a sanctioned payment must file with court a notice in Form No.23 and serve it on the Offeree.

What should be stated in the sanctioned offer or sanctioned payment?

12. The sanctioned offer or the sanctioned payment must state, among other things, if it relates to the whole claim or to part of it or to any issue arising from it and if so, to which part or issue.

Can a sanctioned offer and a sanctioned payment be withdrawn?

13. A sanctioned offer and a sanctioned payment may not be withdrawn or diminished before the expiry of 28 days from the date when it is made unless the court grants leave to do so.

How to accept a sanctioned offer or a sanctioned payment?

14. A sanctioned offer or a sanctioned payment may be accepted without leave by service of a written notice of acceptance (for a sanctioned payment, in Form 24) within 28 days after the offer or payment is made, if it is made not less than 28 days before trial. Otherwise, leave is required unless the parties have agreed on the liability for costs.

What are the consequences of acceptance?

15. If a sanctioned offer or sanctioned payment relates to the whole claim is accepted, the claim is stayed. For a sanctioned offer, the stay is upon the terms of the offer and either party may apply to enforce those terms.

16. If a sanctioned offer or sanctioned payment relating only to a part of the claim or an issue arising from the claim is accepted, the claim is stayed as to that part or issue.

17. Normally, the plaintiff will get his costs of the proceedings up to the date of the acceptance.

What are the consequences of non-acceptance?

18. The consequences of non-acceptance of a sanctioned offer or sanctioned payment depend on the outcome of the proceedings.

19. If a plaintiff has made a sanctioned offer which is not accepted, and he obtains a judgment better than the offer, the defendant may have to pay the plaintiff's costs on an indemnity basis, enhanced interest (up to 10% above judgment rate) on those costs and enhanced interest (up to 10% above judgment rate) on any sum awarded to the plaintiff.

20. On the other hand, if a defendant has made a sanctioned offer or sanctioned payment which is not accepted, and the plaintiff fails to obtain a judgment better than the offer or payment, the plaintiff may have to pay the defendant's costs on an indemnity basis and enhanced interest (up to 10% above judgment rate) on those costs. In addition, the court may disallow interest on the whole or part of the sum or damages awarded to the plaintiff.

Judiciary
March 2009