

CAYMAN ISLANDS



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**GRAND COURT LAW (2008 REVISION)**  
**THE GRAND COURT (AMENDMENT) RULES 2012**

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### THE GRAND COURT (AMENDMENT) RULES 2012

These Rules are made by the Rules Committee pursuant to Section 19(3) of the Grand Court Law (2008 Revision).

#### 1. Citation, Commencement and Interpretation.

- (1) These Rules shall be referred to as the Grand Court (Amendment) Rules 2012.
- (2) These Rules shall come into operation on the 1st day of October 2012 referred to in these Rules as the "Commencement Date".
- (3) These Rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.
- (4) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 (Revised Edition) shall have the same meaning in these Rules as they have in the Grand Court Rules 1995 (Revised Edition).

#### 2. Revocation and Replacement of Orders 7, 11 and 38

- (1) GCR Orders 7, 11 and 38 is hereby revoked and replaced by the Orders attached hereto.

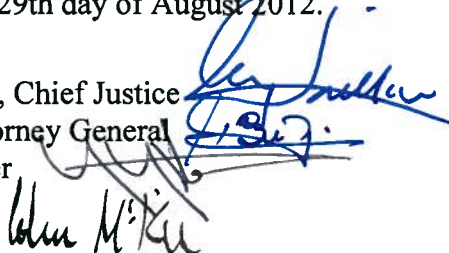
Made by the Rules Committee on the 29th day of August 2012.

The Honourable Anthony Smellie QC, Chief Justice

The Honourable Sam Bulgin QC, Attorney General

Graham Ritchie QC, Legal Practitioner

Colin D. McKie, Legal Practitioner



**ORDER 7****ORIGINATING SUMMONSES: GENERAL PROVISIONS****Application (O.7, r.1)**

1. The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Law.

**Form of summons, etc. (O.7, r.2)**

2. (1) Every originating summons (other than an ex parte summons) shall be in Form No. 2 of Appendix I or, if so authorised or required, in Form No. 3 of Appendix I and every ex parte originating summons shall be in Form No. 4 of Appendix I.  
(2) The party taking out an originating summons (other than an ex parte summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

**Contents of summons (O.7, r.3)**

3. (1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that the relief or remedy.  
(2) Order 6, rules 3 and 5, shall apply in relation to an originating summons as they apply in relation to a writ.

**Office copy of summons (O.7, r.4)**

4. Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

**No rule (O.7, r.5)****Duration and renewal of summons (O.7, r.6)**

6. Order 6, rule 8, shall apply in relation to an originating summons as it applies in relation to a writ.

**Ex parte Originating Summonses (O.7, r.7)**

7. Rules 2(1) and 3(1) shall, so far as applicable, apply to ex parte originating summonses; but, save as aforesaid, the foregoing Rules of this Order shall not apply to ex parte originating summonses.

**ORDER 11****SERVICE OF PROCESS, ETC. OUT OF THE JURISDICTION****Principal cases in which service of writ out of jurisdiction is permissible (O.11, r.1)**

1. (1) Provided that the writ does not contain any claim mentioned in Order 75, rule 1(3) service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ -
  - (a) relief is sought against a person who –
    - (i) has the right to reside permanently in the Islands; or
    - (ii) has a right to work in the Islands; or
    - (iii) resident in and the nature and circumstances of his residence indicate that he has a substantial connection with the Islands;
  - (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing) provided that a claim for an interlocutory injunction shall not of itself be a sufficient ground for service of a writ out of the jurisdiction;
  - (c) the claim is brought against a person who has been or will be duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
  - (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which -
    - (i) was made within the jurisdiction; or
    - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
    - (iii) is by its terms, or by implication, governed by the law of the Islands; or
    - (iv) contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract;

- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
  - (f) the claim is founded on a tort, fraud or breach of duty whether statutory at law or in equity and the damage was sustained, or resulted from an act committed, within the jurisdiction;
  - (ff) the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction or who is or was a partner of a partnership, whether general or limited, which is governed by the laws of the Islands and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto;
  - (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
  - (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
  - (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
  - (j) the claim is brought for any relief or remedy in respect of any trust, whether express, implied or constructive, that is governed by or ought to be executed according to the laws of the Islands or in respect of the status, rights or duties of any trustee thereof in relation thereto;
  - (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
  - (l) the claim is brought in a probate action within the meaning of Order 76; or
  - (m) the claim is brought to enforce any judgment or arbitral award.
- (2) Service of a writ out of the jurisdiction is permissible without the leave of the Court if every claim made in the action begun by the writ is one which by virtue of a Law or these Rules the Court has power to hear and determine notwithstanding that

the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within the jurisdiction, including, for the avoidance of doubt, applications made pursuant to section 48 of the Trusts Law (2011 Revision) or Order 85.

- (3) Where a writ is to be served out of the jurisdiction pursuant to an order under paragraph (1), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be such time as may be fixed by the Court.
- (4) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be 28 days.

**No rules (O.11, rr.2-3)**

**Application for, and grant of, leave to serve writ out of jurisdiction (O.11, r.4)**

4. (1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating -
  - (a) the grounds on which the application is made;
  - (b) that in the deponent's belief the plaintiff has a good cause of action;
  - (c) in what place or country the defendant is, or probably may be found;
  - (d) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try; and
  - (e) if service is not to be effected personally the method or methods of service which are in accordance with the law of the country in which service is to be effected.
- (2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.
- (3) An order granting leave to serve a writ out of the jurisdiction under rule 1 must limit a time within which the defendant to be served must acknowledge service.

**Service of writ abroad; general (O.11, r.5)**

5. (1) Subject to the following provisions of this rule, Order 10, rule 1(1), (2), (3) and (4) and Order 65, rule 4, shall apply in relation to the service of a writ, notwithstanding that the writ is to be served out of the jurisdiction, save that the

accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.

- (2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.
- (3) A writ which is to be served out of the jurisdiction -
  - (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
  - (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.
- (4) An official certificate stating that a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate -
  - (a) by a British consular authority in that country; or
  - (b) the government or judicial authorities of that country; or
  - (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.
- (5) An official certificate by the Secretary of State stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.
- (6) A document purporting to be such a certificate as is mentioned in paragraphs (4) and (5) shall, until the contrary is proved, be deemed to be such a certificate.
- (7) In this rule and rule 6 "the Hague Convention" means the convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

**Service of writ abroad through foreign governments, judicial authorities and British consuls (O.11, r.6)**

6. (1) Save where a writ is to be served pursuant to paragraph (3), this rule does not apply to service in -
  - (a) the United Kingdom, including the Isle of Man and the Channel Islands;



- (b) any independent Commonwealth country;
  - (c) any associated state;
  - (d) any dependent territory of the United Kingdom; or
  - (e) the Republic of Ireland.
- (2) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Court, the writ may be served -
- (a) through the judicial authorities of that country; or
  - (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).
- (3) Where in accordance with these Rules a writ is to be served on a defendant in any country which is party to the Hague Convention, the writ may be served -
- (a) through the authority designated under the Convention in respect of that country; or
  - (b) if the law of that country permits -
    - (i) through the judicial authorities of that country; or
    - (ii) through a British consular authority in that country.
- (4) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Court, the writ may be served -
- (a) through the government of that country, where the government is willing to effect service; or
  - (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.
- (5) A person who wishes to serve a writ by a method specified in paragraph (2), (3) or (4) must deliver to the Clerk of the Court a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

- (6) Every copy of a writ delivered under paragraph (5) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

- (7) Every translation delivered under paragraph (6) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.
- (8) Documents duly delivered under paragraph (5) shall be sent by the Clerk of the Court to the Governor with a request that he forward them to the Secretary of State asking the Secretary of State to arrange for the writ to be served by the method indicated in the request delivered under paragraph (5) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

**Service of process on a foreign state (O.11, r.7)**

7. (1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in Section 14 of the State Immunity Act 1978, wishes to have the writ served on that State, he must deliver with the Clerk of the Court -
- (a) a request for service to be arranged by the Secretary of State;
  - (b) a copy of the writ; and
  - (c) except where the official language of the State is, or the official languages of that State include, English, a translation of the writ in the official language or one of the official languages of the State.
- (2) Rule 6(7) shall apply in relation to a translation delivered under paragraph (1) of this rule as it applies in relation to a translation delivered under paragraph (6) of that rule.
- (3) Documents duly delivered under this rule shall be sent by the Clerk of the Court to the Governor with a request that the Secretary of State be asked to arrange for the writ to be served on the State or the government in question, as the case may be.

- (4) Where Section 12(6) of the State Immunity Act 1978 applies and the State has agreed to a method of service other than that provided by the preceding paragraph, the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

**Undertaking to pay expenses of Governor (O.11, r.8)**

8. Every request delivered under rule 6(5) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Governor in respect of the service requested including the expenses incurred by him in making any request of the Secretary of State and, on receiving due notification of the amount of those expenses, to pay that amount to the Financial Secretary and to produce a receipt for such payment to the Clerk of the Court.

**Service of originating summons, petition, notice of motion, etc. (O.11, r.9)**

9.
  - (1) Subject to Order 73, rule 5, and Order 102, rule 16, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to the service of a writ.
  - (2) Service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these Rules or under any Law be served without leave.
  - (3) Rule 4(1) and (2) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.
  - (4) An order under this rule granting leave to serve an originating summons out of the jurisdiction must limit a time within which the defendant to be served with the summons must acknowledge service.
  - (5) Rules 5, 6 and 8 shall apply in relation to any document in respect of which leave to serve out of the jurisdiction has been granted under this rule as they apply in relation to a writ.

**ORDER 38****EVIDENCE****I. GENERAL RULES****General rule: witnesses to be examined orally (O.38, r.1)**

1. Subject to the provisions of these Rules and of the Law, and any other law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open Court.

**Interpretation (O.38, r.1A)**

- 1A. In this Order "the Law" means the Evidence Law (2011 Revision), as amended, and any expressions used in this Order and in the Law have the same meanings in this Order as they have in the Law.

**Evidence by affidavit (O.38, r.2)**

2.
  - (1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.
  - (2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for that purpose.
  - (3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without leave of the Court.

**Exchange of witnesses' statements (O.38, r.2A)**

- 2A.
  - (1) The powers of the Court under this rule may be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving

costs, having regard to all the circumstances of the case, including (but not limited to)-

- (a) the extent to which the facts are in dispute or have been admitted;
  - (b) the extent to which the issues of fact are defined by the pleadings;
  - (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.
- (2) At the summons for directions in an action commenced by writ the Court may direct every party to serve on the other parties, within 14 weeks (or such other period as the Court may specify) of the hearing of the summons and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.

- (3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.
- (4) Statements served under this rule shall –
- (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief;
  - (a) sufficiently identify any documents referred to therein; and
  - (b) where they are to be served by more than one party, be exchanged simultaneously.
- (5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the Court may direct the party wishing to adduce that witness' evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.
- (6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.
- (7) Subject to paragraph (9), where the party serving the statement does call such a witness at a trial –

- (a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;
- (b) the party may not without the consent of the other parties or the leave of the Court adduce evidence from that witness, the substance of which is not included in the statement served, except –
  - (i) where the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;
  - (ii) in relation to new matters which have arisen since the statement was served on the other party;
- (c) whether or not the statement or any part of it referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.

(8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

(9) Where any statement served is one to which the Law applies, paragraphs (6) and (7) shall take effect subject to the provisions of that Law and Parts III and IV of this Order.

The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under the Law; and where a statement or any part thereof would be admissible in evidence by virtue only of the Law the appropriate notice under Part III or Part IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. Where such a notice is served a counter-notice shall be deemed to have been served under Order 38, rule 26(1).

(10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without leave of the Court.

(11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served –

- (a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or
- (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).

- (12) Subject to paragraph (13), the Judge shall, if any person so requests during the course of the trial, direct that any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a) shall be open to public inspection.

A request under this paragraph shall be made orally or in writing.

- (13) The Judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available –

- (a) in the interests of justice or national security;
- (b) because of the nature of any expert medical evidence in the statement; or
- (c) for any other sufficient reason.

- (14) Where a direction is made under paragraph (12) the Judge shall direct the Clerk of the Court to –

- (a) prepare a certificate which shall be attached to a copy ("the certified copy") of that witness statement; and
- (b) make the certified copy available for inspection.

- (15) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the direction is given until the end of 7 days after the conclusion of the trial.

- (16) In this rule –

- (a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;
- (b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

- (17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.

**Evidence of particular facts (O.38, r.3)**

3. (1) Without prejudice to rule 30, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such a manner as may be specified by the order.
- (2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial -
  - (a) by statement on oath of information or belief; or
  - (b) by the production of documents or entries in books; or
  - (c) by copies of documents or entries in books; or
  - (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specific newspaper which contains a statement of that fact.

**Limitation of expert evidence (O.38, r.4)**

4. The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

**Limitation of plans, etc. in evidence (O.38, r.5)**

5. Unless, at or before the trial, the Court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

**Revocation or variation of orders under rules 2 to 5 (O.38, r.6)**

6. Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

**Evidence of finding on foreign law (O.38, r.7)**

7. (1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law contained in a judgment of the Court or the Court of Appeal where such judgment is in citable form shall -
  - (a) in the case of an action to which Order 25, rule 1, applies, within 14 days after the pleadings in the action are deemed to be closed; and



- (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained,

or in either case, within such other period as the Court may specify, serve notice of his intention on every other party to the proceedings,

- (2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.
- (3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

**Application to trials of issues, references, etc. (O.38, r.8)**

8. The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

**Depositions: when receivable in evidence at trial (O.38, r.9)**

9. (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless –
- (a) the deposition was taken in pursuance of an order under Order 39, rule 1; and
- (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.
- (2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.
- (3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

**Court documents admissible or receivable in evidence (O.38, r.10)**

10. (1) Certified copies of writs, records, pleadings and documents filed in the Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

- (2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of the Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, the Court shall be deemed to be a office copy of that document without further proof unless the contrary is shown.

**Evidence of consent of new trustee to act (O.38, r.11)**

11. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

**Evidence at trial may be used in subsequent proceedings (O.38, r.12)**

12. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

**Order to produce document at proceeding other than trial (O.38, r.13)**

13. (1) At any stage in a cause or matter the Court may order any person to attend any proceeding in the cause or matter and produce any document, to be specified or described in that order, the production of which appears to the Court to be necessary for the purpose of that proceeding.
- (2) No person shall be compelled by an order under paragraph (1) to produce any document at the proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

**II. WRITS OF SUBPOENA**

**Form and issue of writ of subpoena (O.38, r.14)**

14. (1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum must be in Form No. 18 of Appendix I.
- (2) Issue of a writ of subpoena takes place upon its being sealed by the Clerk of the Court.
- (3) Before a writ of subpoena is issued a praecipe for the issue of the writ must be filed; and the praecipe must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that party's attorney.

**More than one name may be included in one writ of subpoena (O.38, r.15)**

15. The names of two or more persons may be included in one writ of subpoena ad testificandum.

**Amendment of writ of subpoena (O.38, r.16)**

16. Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ resealed in correct form by filing a second praecipe under rule 14(3) indorsed with the words "Amended and re-sealed".

**Service of writ of subpoena (O.38, r.17)**

17. A writ of subpoena must be served personally and the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than 4 days or such other period as the Court may fix, before the day on which attendance before the Court is required.

**Duration of writ of subpoena (O.38, r.18)**

18. A writ of subpoena continues to have effect until the conclusion of the trial or other proceeding at which the attendance of the witness is required.

**Inspection of banker's books (O.38, r.19)**

19. (1) An application under Section 8 of the Law for an order that a party be at liberty to inspect and take copies of any matter in a banker's book shall be made by summons to a Judge in Chambers.
- (2) An application under paragraph (1) may be made ex parte.
- (3) The application shall be supported by an affidavit stating –
- (a) the nature of the proceedings and the reasons why the inspection is necessary;
  - (b) how the entries of which inspection is sought will be admissible in evidence at the trial of the action;
  - (c) the period over which it is proposed that the inspection should extend; and
  - (d) where the accountholder has consented to the inspection and, if not, whether any relevant directions have been made under Section 4 of the Confidential Relationships (Preservation) Law (1995 Revision).

### III. HEARSAY EVIDENCE

#### Application (O.38, r.20)

20. This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

#### Notice of intention to give certain statements in evidence (O.38, r.21)

21. (1) Subject to the provisions of this rule, a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement which is admissible in evidence by virtue of Section 45, 47 or 48 of the Law must –
- (a) in the case of a cause or matter which is required to be set down for trial or hearing or adjourned into Court, within 21 days after it is set down or so adjourned, or within such other period as the Court may specify; and
  - (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained, or within such other period as the Court may specify,
- serve on every other party to the cause or matter notice of his desire to do so, and the notice must comply with the provisions of rule 22, 23 or 24, as the circumstances of the case require.
- (2) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any act stated therein by virtue not only of the said Section 45, 47 or 48 but by virtue also of any other Law.
  - (3) Paragraph (1) shall not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.
  - (4) Where by virtue of any provision of these Rules or of any order or direction of the Court the evidence in any proceedings is to be given by affidavit then, without prejudice to paragraph (2), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings, but nothing in this paragraph shall affect the operation of Order 41, rule 5, or the powers of the Court under Order 38, rule 3.
  - (5) Order 65, rule 9, shall not apply to a notice under this rule but the Court may direct that the notice need not be served on any party who at the time when service is to be effected is in default as to entry of appearance or who has no address for service.

**Statement admissible by virtue of Section 45 of the Law: contents of notice (O.38, r.22)**

22. (1) If the statement is admissible by virtue of Section 45 of the Law, and was made otherwise than in a document, the notice must contain particulars of –
- (a) the time, place and circumstances at or in which the statement was made;
  - (b) the person by whom and the person to whom, the statement was made; and
  - (c) the substance of the statement or if material, the words used.
- (2) If the statement is admissible by virtue of the said Section 45 and was made in a document, a copy or transcript of the document, or of the relevant part thereof, must be annexed to the notice, and the notice must contain such (if any) of the particulars mentioned in paragraphs 1(a) and (b) as are not apparent on the face of the document or part.
- (3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

**Statement admissible by virtue of Section 47 of the Law: contents of notice (O.38, r.23)**

23. (1) If the statement is admissible by virtue of Section 47 of the Law, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain –
- (a) particulars of -
    - (i) the person by whom the record containing the statement was compiled;
    - (ii) the person who originally supplied the information from which the record was compiled; and
    - (iii) any other person through whom that information was supplied to the compiler of that record,

and, in the case of any such person as is referred to in (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;
  - (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and

- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.
- (2) If the party given the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

**Statement admissible by virtue of Section 48 of the Law: contents of notice (O.38, r.24)**

24. (1) If the statement is contained in a document produced by a computer and is admissible by virtue of Section 48 of the Law, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of –
- (a) a person who occupied a responsible position in relation to the management of the relevant activities for the purpose of which the computer was used regularly during the material period to store or process information;
  - (b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;
  - (c) a person who occupied such a position in relation to the operation of the computer during the material period,

and where there are two or more persons who fall within any of the foregoing subparagraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the trial or hearing, the person, particulars of whom are to be contained in the notice, must be such one of those persons as is at the date so capable.

- (2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.
- (3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

**Reasons for not calling a person as a witness (O.38, r.25)**

25. The reasons referred to in rules 22(3), 23(2) and 24(3) are that the person in question is dead, or beyond the seas or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of a reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

**Counter-notice requiring person to be called as a witness (O.38, r.26)**

26. (1) Subject to paragraphs (2) and (3), any party to a cause or matter on whom a notice under rule 21 is served may within 21 days after service of the notice on him serve on the party who gave the notice a counter notice requiring that party to call as a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.
- (2) Where any notice under rule 21 contains a statement that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.
- (3) Where a statement to which a notice under rule 21 relates is one to which rule 28 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the Court under rule 28 for directions with respect to the admissibility of that statement.
- (4) If any party to a cause or matter by whom a notice under rule 21 is served fails to comply with a counter-notice duly served on him under this rule, then unless any of the reasons specified in rule 25 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the Court under rule 29, the statement to which the notice under rule 21 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of Section 32, 34 or 35 of the Law, as the case may be.

**Determination of question whether person can or should be called as a witness (O.38, r.27)**

27. (1) Where in any cause or matter a question arises whether any of the reasons specified in rule 25 applies in relation to a person, particulars of whom are contained in a notice under rule 21, the Court may, on the application of any party to the cause or matter, determine the question before the trial or hearing of the cause or matter or give directions for it to be determined before the trial or hearing and for the manner in which it is to be so determined.

- (2) Unless the Court otherwise directs, the summons by which an application under paragraph (1) is made must be served by the party making the application on every other party to the cause or matter.
- (3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

**Directions with respect to statement made in previous proceedings (O.38, r.28)**

28. Where a party to a cause or matter has given notice in accordance with rule 21 that he desires to give in evidence at the trial or hearing of the cause or matter -
- (a) a statement falling within Section 45(1) of the Law which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or
  - (b) a statement falling within Section 47(1) of the said Law which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal).

any party to the cause or matter may apply to the Court for directions under this rule, and the Court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

**Power of Court to allow statement to be given in evidence (O.38, r.29)**

29. (1) Without prejudice to Sections 45(2)(a) and 47(2)(a) of the Law and rule 28, the Court may, if it thinks it just to do so, allow a statement falling within Section 45(1), 47(1) or 48(1) to be given in evidence at the trial or hearing of a cause or matter notwithstanding -
- (a) that the statement is one in relation to which rule 21(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule; or
  - (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 26.
- (2) Without prejudice to the generality of paragraph (1), the Court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige



the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or person who is or was at the material time the servant or agent of an opposite party.

**Restriction on adducing evidence as to credibility of maker, etc., of certain statements (O.38, r.30)**

30. Where -

- (a) a notice given under rule 21 in a cause or matter relates to a statement which is admissible by virtue of Section 45 or 47 of the Law; and
- (b) the person who made the statement, or, as the case may be, the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter; and
- (c) none of the reasons mentioned in rule 25 applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the cause or matter shall be entitled, except with the leave of the Court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of Section 50 of the Law unless he gave a counter-notice under rule 26 in respect of that person or applied under rule 28 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

**Notice required of intention to give evidence of certain inconsistent statements (O.38, r.31)**

- 31. (1) Where a person, particulars of whom were contained in a notice given under rule 21 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in Section 50(b) of the Law must, not more than 21 days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.
- (2) Rule 22(1) and (2) shall apply to a notice under this rule as if the notice were a notice under rule 21 and the statement to which the notice relates were a statement admissible by virtue of Section 45 of the Law.
- (3) The Court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in the said Section 50(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

**Costs (O.38, r.32)**

32. If -

- (a) a party to a cause or matter serves a counter-notice under rule 26 in respect of any person who is called as a witness at the trial of the cause or matter in compliance with a requirement of the counter-notice; and
- (b) it appears to the Court that it was unreasonable to require that person to be called as a witness,

then the Court may direct that any costs to that party in respect of the preparations and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

**Certain powers exercisable in Chambers (O.38, r.33)**

33. The jurisdiction of the Court under Section 45(2)(a), 45(3), 47(2)(a) and 49(1) of the Law may be exercised in Chambers.

**Statements of opinion (O.38, r.34)**

34. When a party to a cause or matter desires to give in evidence by virtue of Part IV of the Law a statement of opinion other than a statement to which Part IV of this Order applies, the provisions of rules 20 to 23 and 25 to 33 shall apply with such modifications as the Court may direct or the circumstances may require.

**IV. EXPERT EVIDENCE****Interpretation (O.38, r.35)**

35. In this Part of this Order a reference to a summons for directions includes a reference to any summons or application to which, under any of these Rules, Order 25, rules 2 to 7, apply.

**Restrictions on adducing expert evidence (O.38, r.36)**

36. (1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under rule 37 or 41 (whichever is appropriate) or has complied with automatic directions taking effect under Order 25, rule 8(1)(b).

- (2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these Rules (except Order 45, rule 5) of a direction given under this Part of this Order.

**Direction that expert report be disclosed (O.38, r.37)**

37. Where in any cause or matter an application is made under rule 36(1) in respect of oral expert evidence, then unless the Court considers that there are special reasons for it not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify.

**Meeting of experts (O.38, r.38)**

38. In any cause or matter the Court may, if it thinks fit, direct that there be a meeting "without prejudice" of such experts within such periods before or after the disclosure of their reports as the Court may specify, for the purpose of identifying those parts of their evidence which are in issue. Where such a meeting takes place the experts may prepare a joint statement indicating those parts of their evidence on which they are, and those on which they are not, in agreement.

**Disclosure of part of expert evidence (O.38, r.39)**

39. Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 relating to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

**No rule (O.38, r.40)**

**Expert evidence contained in statement (O.38, r.41)**

41. Where an application is made under rule 36 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement cannot or should not be called as a witness, the Court may direct that the provisions of rules 20 to 23 and 25 to 33 shall apply with such modifications as the Court thinks fit.

**Putting in evidence expert report disclosed by another party (O.38, r.42)**

42. A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this Part of this Order.

**Time for putting expert report in evidence (O.38, r.43)**

43. Where a party to any cause or matter calls as a witness the maker of a report which has been disclosed in accordance with a direction given under rule 37, the report may be put in evidence at the commencement of its maker's examination in chief or at such other time as the Court may direct.