

High Court Amendment Rules (No 2) 2000

PURSUANT to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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- 1 Title**
- (1) These rules are the High Court Amendment Rules (No 2) 2000.
- (2) In these rules, the High Court Rules from time to time set out in Schedule 2 of the Judicature Act 1908 are called the “High Court Rules”.

- 2 Commencement**
- These rules come into force on 1 January 2001.

3 Affidavit evidence of petitioning creditor

Rule 839(2) of the High Court Rules is amended by omitting the words “at least 3 days”, and substituting the words “not earlier than the third day”.

4 New Schedule 3 substituted

The High Court Rules are amended by revoking Schedule 3, and substituting Schedule 3 set out in the Schedule of these rules.

5 Transitional provision relating to application of new Schedule 3

- (1) Costs for a step in proceedings taken on or after 1 January 2000 and before the commencement of these rules must be determined in accordance with Schedule 3 of the High Court Rules as in force immediately before the commencement of these rules.
 - (2) If the application of subclause (1) would, in the opinion of the Court, lead to an unjust result, the Court may have regard to what the determination of costs would be for the particular step in the proceeding in accordance with Schedule 3 of the High Court Rules as substituted by rule 4 of these rules.
 - (3) Costs for a step in proceedings taken on or after 1 January 2001 must be determined in accordance with Schedule 3 of the High Court Rules as substituted by rule 4 of these rules.
 - (4) If the application of subclause (3) would, in the opinion of the Court, lead to an unjust result, the Court may have regard to what the determination of costs would be for the particular step in the proceeding in accordance with Schedule 3 of the High Court Rules as in force immediately before the commencement of these rules.
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Schedule r 4
New Schedule 3 Substituted in High
Court Rules
Third Schedule r 48B
Time Allocations

	General civil proceedings	Allocated days or part days		
		A	B	C
1	Commencement of proceedings by plaintiff (receiving instructions, researching facts and law, and preparing, filing, and serving statement of claim and notice of proceeding or equivalent or originating application)	1.6	3	10
2	Commencement of defence by defendant (receiving instructions, researching facts and law, and preparing, filing, and serving statement of defence or notice of opposition)	1	2	6
3	Other pleadings and notices:			
3.1	Counterclaim	.8	1.6	4.8
3.2	Cross-notice between defendants	.6	1.2	4
3.3	Commencement of proceedings against third parties, including notice and statement of claim	1.2	2.4	7

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
3.4	Notice of appearance with protest to jurisdiction	.3	.6	2
3.5	Notice of appearance	.2	.2	.2
3.6	Pleading in response to other party's amended pleading (payable regardless of outcome except where formal or consented to)	.3	.6	2
4	Interlocutory proceedings and related steps:			
4.1	Notice to answer interrogatories	.4	1	4
4.2	Answer to interrogatories	.4	1	4
4.3	Notice to admit facts	.4	.8	2.4
4.4	Admission of facts	.4	.8	2.4
4.5	List of documents on discovery	.7	1.5	6
4.6	Production of documents for inspection	.3	1	3
4.7	Inspection of documents	.5	1.5	6
4.8	Payment into Court	.3	.3	.3
4.9	Filing offer of other relief	.3	.3	.3

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
4.10	Filing and serving memorandum in anticipation of judicial conference or mentions hearing	.2	.4	1
4.11	Appearance at judicial conference	.3	.3	.7
4.12	Preparing and filing interlocutory application (excluding summary judgment application) and supporting affidavits	.3	.6	2
4.13	Preparing and filing opposition to interlocutory application (excluding summary judgment application) and supporting affidavits	.3	.6	2
4.14	Preparation for hearing of defended interlocutory application (excluding summary judgment application)	The time occupied by the hearing measured in quarter days		
4.15	Appearance at hearing of defended interlocutory application (excluding judgment summary application) for sole or principal counsel	Appearance in Court measured in quarter days		
4.16	Second and subsequent counsel if allowed by Court	50% of allowance for appearance for principal counsel		

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
4.17	Appearance at mentions hearing or callover	.2	.2	.2
4.18	Sealing order or judgment	.2	.2	.2
5	Summary judgment application (additional to costs in items 1 to 3):			
5.1	Preparing and filing summary judgment application and supporting affidavits	.3	.6	2
5.2	Preparing and filing opposition and supporting affidavits	.3	.6	2
5.3	Arguing defended summary judgment application for sole or principal counsel		Appearance in Court measured in quarter days	
5.4	Second and subsequent counsel if allowed by Court		50% of allowance for appearance for principal counsel	
6	Obtaining judgment without appearance (additional to costs in items 1 to 5)	.3	.3	.5
7	Preparation for hearing following setting down or direction for trial if trial does not eventuate:			

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
7.1	Plaintiff's preparation of affidavits or written or oral statements of evidence to be used at hearing	1.5	2.5	5
7.2	Plaintiff's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation	1.5	2.5	5
7.3	Defendant's preparation of affidavits or written or oral statements of evidence to be used at hearing	1	2	4
7.4	Defendant's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation	1	2	4
8	Preparation for hearing if case proceeds to hearing	Twice the time occupied by the hearing measured in half days		
9	Appearance at hearing:			
9.1	For sole or principal counsel	Appearance in Court measured in half days		
9.2	Second and subsequent counsel if allowed by Court	50% of allowance for principal counsel		

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
10	Execution of judgment or order			
10.1	Charging order without application	.3	.3	1
10.2	Charging order with application, including any unopposed order	.5	.5	1.4
10.3	Writ of sale	.5	.5	.7
10.4	Other execution process	.5	.5	.7
11	Other steps in the proceeding not specifically mentioned	As allowed by Court		
12	Disbursements:			
12.1	Fees of Court	As paid		
12.2	Witnesses 'and interpreters' fees, allowances, and travelling expenses	In accordance with Witnesses and Interpreters Fees Regulations 1974		
12.3	Reasonable agency charges, including those incurred in preparing for trial	If and to the extent allowed by Court		
12.4	Reasonable expenses incurred in effecting service of any document	As paid		

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
12.5	Reasonable expenses incurred in binding necessary number of copies of common bundle of documents	As paid		
12.6	Ordering, paginating, preparing index for, and photocopying necessary number of copies of common bundle of documents	Cost per page as stipulated		
12.7	Other necessary payments	As paid		
Appeals and Reviews of Masters		Allocated days or part days		
		A	B	C
13	Commencement of appeal or review (including assessing original decision, noting appealable or reviewable points, and filing and serving notice of appeal and points of appeal or notice of application)	.2	.5	1.5
14	Preparation for judicial conference	.1	.2	.4
15	Appearance at judicial conference	.1	.2	.4

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
16	Preparation for appeal or review	The time occupied by the hearing measured in quarter days		
17	Appearance at hearing	Appearance in Court measured in quarter days		
Bankruptcy proceedings		Allocated days or part days		
(additional to costs in items 1 to 12 if allowed by Court)		A	B	C
18	Preparing, filing, and serving bankruptcy notice	.1	.2	.6
19	Preparing bankruptcy petition and other documents	.2	.4	1.2
20	Appearance at hearing	.2	.4	1.2
21	Supporting party on bankruptcy	.2	.4	1.2
Company liquidation proceedings		Allocated days or part days		
(additional to costs in items 1 to 12 if allowed by Court)		A	B	C
22	Preparing and issuing statutory demand	.1	.2	.6
23	Preparing statement of claim and other documents	.3	.6	1.8

Third Schedule—*continued*

General civil proceedings		Allocated days or part days		
24	Appearance at hearing	.2	.4	1.2
25	Supporting party on liquidation	.2	.4	1.2

Marie Shroff,
Clerk of the Executive Council.

Explanatory Note

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the High Court Rules. The rules come into force on 1 January 2001.

Rule 3 amends rule 839(2) of the High Court Rules. At present, a petitioning creditor's supporting affidavit must be sworn at least 3 days before the date of the hearing of the petition. The effect of the amendment is to require the affidavit to be sworn not earlier than the third day before the date of hearing of the petition. This will ensure the most up to date information is included. This reinstates the position under the original rule 34A of the Insolvency Rules 1970.

Rule 4 substitutes a *new Schedule 3* for the existing Schedule 3 of the High Court Rules. Schedule 3 sets out the time allocations for steps in proceedings for the purposes of determining awards of costs. In essence, costs are assessed on the basis of applying the appropriate daily recovery rate specified for the particular category of proceedings in Schedule 2 of the High Court Rules to the time allocated for each step in the proceedings specified in Schedule 3 of the High Court Rules.

The main changes to Schedule 3 are—

- item 1 (commencement of proceedings by plaintiff) and item 2 (commencement of defence by defendant) are amended to make it clear that those items include originating applications:
- item 4 (interlocutory proceedings and related steps) is amended to provide for preparation for the hearing of a

defended interlocutory application. The time allowed is the same as the hearing time; that is, the appearance in Court measured in quarter days:

- item 4 is also amended to provide for second or subsequent counsel if allowed by the Court on the same basis as for the hearing of the proceedings; that is, 50% of the allowance for principal counsel:
- item 5 (summary judgment) is amended to provide for second or subsequent counsel:
- item 7 (preparation for hearing) is split into 2 separate parts for both plaintiffs and defendants. The first comprises preparation of affidavits or statements of evidence, and the second comprises preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation. The existing time allocations are divided equally for both parts:
- a new item (appeals and reviews of Masters) is included and covers commencement of the appeal or review, preparation and appearance at a judicial conference, and preparation for, and appearance at, the hearing of the appeal or review:
- changes to the numbering of the items listed in the Schedule.

Rule 5 is a transitional rule. It provides that, in the case of steps taken in proceedings after the commencement of the new costs regime on 1 January 2000 and before the commencement of the *new Schedule 3* on 1 January 2001, costs must be determined on the basis of the Schedule 3 in force in that period. If, however, the Court considers that a determination of costs on that basis would be unjust, it may determine costs on the basis of the *new Schedule 3*.

For steps taken after the commencement of the *new Schedule 3*, costs must be determined on the basis of the *new Schedule 3*. Likewise, if the Court considers that a determination of costs on the basis of the *new Schedule 3* would lead to an unjust result, it may determine costs on the basis of the former Schedule 3.