

## **Rules of Court (Amendment No. 2) Rules 2005**

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**No. S 310**

### **SUPREME COURT OF JUDICATURE ACT (CHAPTER 322)**

## RULES OF COURT (AMENDMENT NO. 2) RULES 2005

In exercise of the powers conferred on us by section 80 of the Supreme Court of Judicature Act and all other powers enabling us under any written law, we, the Rules Committee, hereby make the following Rules:

### **Citation and commencement**

**1.—**(1) These Rules may be cited as the Rules of Court (Amendment No. 2) Rules 2005 and shall come into operation on 15th June 2005.

(2) Rules 4 and 12(a) shall apply to the taking of an account or the making of an inquiry ordered by the Court on or after 15th June 2005.

(3) Rule 8 shall apply to any bill of costs filed on or after 15th June 2005.

(4) Rules 6(b), 7(b), 10, 11 and 12(b) and (c) shall apply to any deposit lodged in Court before, on or after 15th June 2005.

### **Deletion and substitution of Order 38A**

**2.** Order 38A of the Rules of Court (R 5) (referred to in these Rules as the principal Rules) is deleted and the following Order substituted therefor:

“ORDER 38A

### OFFICIAL RECORD OF HEARING

#### **Record of hearing (O. 38A, r. 1)**

**1.—**(1) An official record shall be made of every hearing and the official record of hearing shall consist of the following:

- (a) in a hearing where an audio recording system is used, the audio recording; and
- (b) in a hearing where an audio recording system is not used, the notes of hearing recorded in such manner as the Registrar or the Court may determine.

(2) Any party may apply for a copy or a transcript of the official record of

hearing on payment of such fees as the Registrar may determine.

(3) The costs of producing a copy or a transcript of the official record of hearing may be claimed as an item of disbursement unless otherwise ordered by the Court.

### **Certification of transcript (O. 38A, r. 2)**

2. The authenticity of a transcript of the official record of hearing shall be certified in such manner as the Registrar may determine.

### **Duration for which record is to be kept (O. 38A, r. 3)**

3. Every official record of hearing shall be kept for a period of 5 years.”.

## **Amendment of Order 39**

3. Order 39, Rule 11 of the principal Rules is amended —

(a) by deleting paragraph (1) and substituting the following paragraph:

“(1) The deposition of any person examined before the examiner shall be recorded under Order 38A, Rule 1(1) but, subject to paragraph (2) and Rule 10(1), the deposition taken under Order 38A, Rule 1(1)(b) need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.”;

(b) by deleting paragraph (3); and

(c) by deleting the words “original deposition of any person” in paragraph (4) and substituting the words “official record of hearing or transcript of the official record of hearing, as the case may be”.

## **Amendment of Order 43**

4. Order 43 of the principal Rules is amended —

(a) by inserting, immediately after paragraph (2) of Rule 3, the following paragraphs:

“(3) Where the Court orders an account to be taken and no provision is made in the order for the manner in which the account is to be taken, the party entitled to the account shall, within one month from the date of the order, apply to the Registrar for directions and

the provisions of Order 25, Rule 3 shall, with the necessary modifications, apply.

(4) On the hearing of the application for directions under paragraph (3), the Registrar may, in addition to making such orders as are necessary and appropriate, give directions as to the time by which the account referred to in Rule 4, a notice referred to in Rule 5 or a notice of appointment for the taking of the account shall be filed.

(5) Notwithstanding Order 62, Rule 10, a notice of appointment for the taking of the account referred to in paragraph (4) shall, not later than 7 days after it has been filed, be served on the party making the account.

(6) If the party entitled to the account does not file the application for directions within the period referred to in paragraph (3), any other party may do so or apply for the Court to exercise its powers under Rule 7.”; and

(b) by inserting, immediately after Rule 5, the following Rule:

**“Filing documents prior to the taking of accounts or making of inquiries (O. 43, r. 5A)**

**5A.—**(1) The following documents shall be filed not less than 5 days before the taking of an account or making of an inquiry:

- (a) the originals of the affidavits of the evidence-in-chief of all witnesses, including the affidavit verifying the accounts; and
- (b) a bundle of all the documents that will be relied on or referred to in the course of the taking of the account or making of the inquiry by any party, including any documents that are exhibited to the affidavits of the evidence-in-chief of all witnesses.

(2) Each party shall file the affidavits of evidence-in-chief of that party’s witnesses.

(3) The contents of the bundle of documents referred to in paragraph (1)(b) shall be agreed on between the parties as far as possible, and this bundle of agreed documents shall be filed by the accounting party lodging the account pursuant to Rule 4(3).

(4) If the parties are unable to agree on the inclusion of certain documents, those documents on which agreement cannot be reached shall be included in separate bundles, and each such bundle shall be filed by the party that intends to rely on or refer to the documents in that bundle at the same time as the bundle of documents referred to in paragraph (3).

(5) For the purposes of this Rule, all documents contained in bundles shall be arranged chronologically or in some logical order and shall be paginated.

(6) The contents and format of every bundle of documents filed pursuant to this Rule shall comply with the requirements laid down in any practice directions for the time being issued by the Registrar.”.

#### **Amendment of Order 48**

5. Order 48 of the principal Rules is amended by deleting Rule 3 and substituting the following Rule:

**“Registrar to make record of debtor’s statement (O. 48, r. 3)**

3. The Registrar conducting the examination shall cause to be recorded under Order 38A, Rule 1(1), the statement made by the judgment debtor or other person at the examination.”.

#### **Amendment of Order 55D**

6. Order 55D of the principal Rules is amended —

- (a) by deleting the words “certified copy of the notes of evidence” in Rule 5(4) and substituting the words “copy of the certified transcript of the official record of hearing”; and
- (b) by inserting, immediately after paragraph (5) of Rule 6, the following paragraph:

“(5A) Where an appeal is deemed to have been withdrawn pursuant to paragraph (5) and all the parties to the appeal consent to the payment of any sum lodged in Court as security for the costs of the appeal to the appellant, the appellant shall file the document signifying such consent signed by the parties or by their solicitor, and in such event any sum lodged in Court as security for the costs