

Solomon Islands Courts (Civil Procedure) Rules 2007

Subordinate Law SL 2008-

We, members of the Rules Committee established under section 90 of the Constitution, make the following rules of court, to commence on 1 March 2008, other than Chapter 15.1 (Bankruptcy) and Chapter 15.10 (Foreign Judgments).

Dated twenty ninth of January 2008

Chief Justice

President of the Court Of Appeal

Attorney-General

Member

Member

I make:

1. the rules of court in relation to Magistrates' Courts pursuant to section 76 of the Magistrates' Courts Act [Cap. 20];
2. the rules in Chapter 15.1 (Bankruptcy) under section 115 of the Bankruptcy Act [Cap 3];and
3. the rules in Chapter 15.10 (Foreign Judgments) under section 5 of the Foreign Judgments (Reciprocal Enforcement) Act [Cap 13]).

Dated twenty ninth of January 2008

Chief Justice

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Chapter 1 Preliminary

Title

1.1 These rules are the Solomon Islands Courts (Civil Procedure) Rules 2007.

Commencement

1.2 These rules shall commence on 1 January 2008.

Overriding objective

1.3. The overriding objective of these rules is to enable the courts to deal with cases justly with minimum delay and expense.

1.4 Dealing with cases justly includes, so far as is practicable:

- (a) ensuring that all parties address the real issues of the proceedings; and
- (b) saving expense; and
- (c) dealing with the case in ways that are proportionate:
 - (i) to the importance of the case; and
 - (ii) to the complexity of the issues; and
 - (iii) to the amount of money involved; and
 - (iv) to the financial position of each party; and
- (d) ensuring that the case is dealt with speedily and fairly; and
- (e) allocating to each case an appropriate share of the court's resources, while taking into account the need to allocate resources to other cases.

Courts to apply overriding objective

1.5 The courts must give effect to the overriding objective when they:

- (a) do any act under these rules; or
- (b) interpret these rules.

Courts' duty to manage cases

1.6 In particular, the courts must actively manage cases.

1.7 Active case management includes:

- (a) encouraging the parties to co-operate with each other during the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and resolving the others without a hearing;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging parties to use an alternative dispute resolution procedure if the court considers it appropriate, and facilitating its use;

- (f) helping the parties to settle the whole or part of the case;
- (g) fixing a timetable for the case or otherwise controlling its progress, and monitoring compliance by the parties;
- (h) considering whether the likely benefits of taking a particular step justify the costs of taking it;
- (i) dealing with as many aspects of the case as it can at the one time;
- (j) dealing with the case without the parties needing to be at court;
- (k) taking advantage of available technology;
- (l) giving directions to ensure that the trial of a case goes ahead quickly and efficiently.

Duties of the parties

- 1.8** The parties to a proceeding and their representatives must help the court to act in accordance with the overriding objective. They must avoid undue delay, expense and technicality and consider options for primary dispute resolution as early as possible.

Application of these Rules

- 1.9** These rules apply in all civil proceedings in the High Court and the Magistrate's Court except:
- (a) a proceeding for which other rules made under an enactment are in force, or
 - (b) where these rules state they only apply in either the High Court or in the Magistrate's Court.

- 1.10** In these rules, a reference to '**court**' is a reference to either the High Court or the Magistrate's Court or both, depending on the context of the provision.

Position if no provision in rules

- 1.11** If these rules do not deal with a proceeding or a step in a proceeding:
- (a) the old rules do not apply; and
 - (b) the court is to give whatever directions are necessary to ensure the matter is determined justly.

Interpretation

- 1.12** Some words used in these rules have a particular meaning. They are defined in Schedule 4.
- 1.13** The notes in these rules do not form part of the rules and are for information only.

Note The Interpretation and General Provisions Act (Cap.85) applies to these rules and may extend the meaning of some words.

Court may dispense with rules

- 1.14** A court may in the interests of justice dispense with compliance, or full compliance, with any of these rules at any time.

- 1.15** If, in a proceeding, the court gives a direction or makes an order that is inconsistent with any of these rules, the direction or order of the court prevails in that proceeding.

Failure to comply with these rules

- 1.16** A failure to comply with these rules or a direction of the court is an irregularity and does not make a proceeding, or a document, step taken or order made in a proceeding, a nullity.
- 1.17** If there has been a failure to comply with these rules or a direction of the court, the court may:
- (a) set aside all or part of the proceeding; or
 - (b) set aside a step taken in the proceeding; or
 - (c) declare a document or a step taken to be ineffectual; or
 - (d) declare a document or a step taken to be effectual; or
 - (e) make another order that could be made under these rules; or
 - (f) make another order dealing with the proceeding generally that the court considers appropriate.
- 1.18** If a written application is made for an order under rule 1.17, it must set out details of the failure to comply with these rules or a direction of the court.

Practice directions

- 1.19** Subject to these rules, the Chief Justice may issue practice directions in relation to civil proceedings to which these rules apply.

Chapter 2 Starting Proceedings

Chapter 2.1 Written Claims and Applications

Kinds of proceedings

- 2.1** Unless otherwise provided, these rules provide for two types of civil proceedings:
- (a) claims; and
 - (b) applications.

Note A claim shall be used to start proceedings. An application shall be used to seek an interlocutory order before, during or after proceedings,

How to start a proceeding

- 2.2** Unless otherwise provided, a proceeding is started by filing a claim.

Note The rules provide for making oral claims in limited circumstances and for an application before the commencement of proceedings.

Where to start a proceeding - High Court

- 2.3** A proceeding in the High Court is started by filing a claim in the office of the High Court at Honiara or other place designated as a court office by the Chief Justice.

Where to start a proceeding - Magistrate's Court

- 2.4** A proceeding in the Magistrate's Court is started by filing a claim in the office of the Magistrate's Court in the district where:
- (a) the claimant or defendant resides; or
 - (b) the actions that led to the proceeding happened; or
 - (c) the property the subject of the claim is located.

Note The offices are at Auki (Malaita District), Gizo (Western District), Honiara (Central District), Kirakira (Eastern District) and Lata (Eastern Outer Islands District).

- 2.5** Notwithstanding rule 2.4 a registrar of the High Court or a magistrate may allow the issue of proceedings in another district if satisfied that the matter can be more conveniently or fairly dealt with in that district.

Change of district – Magistrate's Court

- 2.6** A magistrate may change the district where a proceeding is dealt with if satisfied that the matter can be more conveniently or fairly dealt with in another district.
- 2.7** A defendant who wishes to object to the place where a proceeding is to be dealt with must state this in the response or defence.

Applications for interlocutory orders

- 2.8** A party may apply during a proceeding for an interlocutory order.
- 2.9** The application must:

- (a) be signed by the person or the person's legal practitioner; and
- (b) name as defendant anyone whose interests are affected by the order sought.

Note Example application in Schedule 2 Part B.

2.10 Nothing in this Chapter prevents:

- (a) a party to a proceeding making an oral application during the proceeding; or
- (b) the court making an order on an oral application made during the proceeding.

Note Applications during a proceeding are dealt with more fully in Chapter 7.

Chapter 2.2 Oral Claims

Starting proceedings in the High Court by oral claim

2.11 Rules 2.12 to 2.13 apply only in relation to the High Court.

2.12 The court may allow a proceeding to be started by oral claim if it is necessary or reasonable to start the proceeding that way.

2.13 The claimant must file a written claim in the same terms as the oral claim:

- (a) as soon as practicable after the oral claim is made; or
- (b) in accordance with any order of the court.

Note Oral interlocutory applications in a proceeding are dealt with in rule 7.13

Chapter 2.3 Classification of proceedings

2.14 The claimant must, in the claim, assign the proceeding to one of the following categories:

- (a) a complex claim that needs case management directions (a ***category A proceeding***), including a claim for defamation, a customary land claim, a commercial dispute, a building or technical dispute, and a claim for damages for death or personal injury;
- (b) a claim for payment of a specific sum of money the amount of which is worked out or capable of being worked out by calculation, and includes a claim for interest up to judgment (in these rules called '**a money claim**') (a ***category B proceeding***);
- (c) any other claim (a ***category C proceeding***).

2.15 Despite rule 2.14 the court may, at any time before the trial and on application by a party or on its own initiative, change the category to which the proceeding is assigned under this Chapter.

2.16 If the court changes the category to which the proceeding is assigned on its own initiative, the registrar must tell the parties of the change.

Chapter 3 Parties

Who is a party to a proceeding

- 3.1** A person is a party to a proceeding if he or she:
- (a) is named as a claimant or defendant or a third party, or becomes a party; and
 - (b) has not been removed from the proceedings.
- 3.2** There can be more than one claimant, or defendant or third party in the one proceeding.
- 3.3** Parties are to be named separately, and:
- (a) where a claim is brought by or against a party in other than his personal capacity (such as a trustee or representative capacity), that capacity shall be described in the application; and
 - (b) where a claim is brought by or against a party in more than one capacity, that party shall be named separately for each capacity.

Note Parties with a common interest shall be named separately. Their common interest shall be described as a fact in the statement of case.

Adding parties

- 3.4** A person may be made a party without leave of the court before the claim has been served by endorsing that person's name on the original and service copies of the claim.
- 3.5** The court may order that a person becomes a party to a proceeding if the person's presence as a party is necessary to enable the court to make a decision fairly and effectively in the proceeding. A person who does not consent to be added as a claimant shall be added as a defendant.
- 3.6** A person affected by a proceeding may apply to the court for an order that the person be made a party to the proceeding.

Removing parties

- 3.7** The court may order that a party to a proceeding is no longer a party if:
- (a) the person's presence is not necessary to enable the court to make a decision fairly and effectively in the proceeding; or
 - (b) for any other reason the court considers that the person should not be a party to the proceeding.

Joining and separating claims

- 3.8** The court may order that several claims against the one person be included in the one proceeding if:
- (a) a common question of law or fact is involved in all the claims; or
 - (b) the claims arise out of the same transaction or event; or

- (c) for any other reason the court considers the claims should be included in the proceeding.

3.9 The court may order that several claims against the one person be treated and heard as separate proceedings if:

- (a) the claims can be more effectively dealt with separately; or
- (b) for any other reason the court considers the claims should be heard as separate proceedings.

Consolidating proceedings

3.10 The court may order that several proceedings be heard together if:

- (a) the same question is involved in each proceeding; or
- (b) the decision in one proceeding will affect the other; or
- (c) for any other reason the court considers the proceedings should be heard together.

Amending documents after change of party

3.11 After an order is made changing the parties to a proceeding, the person who applied for the order must:

- (a) file an amended claim showing:
 - (i) the relevant change in the parties; and
 - (ii) the date of the order; and
- (b) serve the amended claim on any new party; and
- (c) serve the amended claim on all continuing parties.

3.12 The amended claim must be filed and served:

- (a) within the time fixed by the order; or
- (b) if no time was fixed - within 14 days of the date of the order.

3.13 If the order added or substituted a defendant, everything done in the proceeding before the order was made has the same effect for the new defendant as for the old defendant, unless the court orders otherwise.

Third parties

3.14 If a defendant claims a contribution, indemnity or other remedy against a person not a party to the proceeding, or another defendant, the defendant may file and serve a notice (a '**third party notice**') on that person stating:

- (a) that the defendant claims the contribution, indemnity or other remedy; and
- (b) that the person, if not already a party, is a party to the proceeding from the date of service.

Note Example third party notice in Schedule 2 Part B.

3.15 The defendant must obtain the leave of the court if the third party notice is filed after the defence has been filed.

- 3.16** The third party becomes a party to the proceeding with the same rights and obligations in the proceeding as if the defendant had started a proceeding against the person.

Persons under a disability

- 3.17** A person is under a disability if the person:
- (a) is a child; or
 - (b) is a person who does not understand the nature and possible consequences of the proceedings or who is not capable of conducting the proceedings or giving instructions for the conduct of the proceedings.

Note A child is a person under the age of 18 years.

- 3.18** The court may appoint a person to be the litigation guardian of a person under a disability.
- 3.19** A person under a disability may start or defend a proceeding only by acting through the person's litigation guardian.
- 3.20** In all civil proceedings, anything required to be done by a person under a disability may be done only by the person's litigation guardian.
- 3.21** A litigation guardian for a claimant is liable for any costs for which the claimant would have been liable if the claimant were not a person under a disability.
- 3.22** An order for costs against the claimant or the litigation guardian for a claimant may be enforced against the litigation guardian.
- 3.23** A litigation guardian for a defendant is not liable for any costs in a proceeding unless the costs are incurred because of the litigation guardian's negligence or misconduct.
- 3.24** Unless a person is appointed as a litigation guardian by the court, a person becomes the litigation guardian of a person under a disability for a proceeding by filing:
- (a) a sworn statement by the legal practitioner for the person under a disability, or someone else with knowledge of the facts, swearing that the person:
 - (i) has agreed to be the litigation guardian; and
 - (ii) is a proper person to be the litigation guardian; and
 - (iii) has no interest in the proceeding that is adverse to the interest of the person under a disability; and
 - (b) if the person under a disability is a claimant in the proceeding-an undertaking by the person that the person will be liable for any costs that the person under a disability might otherwise be required to pay in the proceeding.

Death of party

- 3.25** If:

- (a) the claimant dies during a proceeding; and
 - (b) the proceeding involves a cause of action that continues after death;
- then:
- (c) the proceeding may be continued by the claimant's personal representative; and
 - (d) the court may give whatever directions are necessary to allow the personal representative to continue the proceeding.

3.26 If, at the start of a proceeding:

- (a) the defendant is dead; and
 - (b) no personal representative has been appointed; and
 - (c) the cause of action continues after the defendant's death;
- then:
- (d) if the claimant knows the person is dead, the claim must name the 'estate of [person's name], deceased'; and
 - (e) after a personal representative is appointed, all documents in the proceeding must name the personal representative as defendant.

Conduct of proceedings if a party becomes bankrupt, under a disability or dies during a proceeding

3.27 If a party becomes bankrupt, becomes a person under a disability or dies during a proceeding, a person may take another step in the proceeding for or against the party only:

- (a) with the court's leave; and
- (b) in accordance with the court's directions.

3.28 If a party becomes bankrupt or dies, the court may:

- (a) order the party's trustee or personal representative or, if there is no personal representative, someone else, to be substituted as a party; and
- (b) make other orders about the proceeding.

3.29 The court may require notice to be given to anyone with an interest in the deceased party's estate before making an order under rule 3.28.

3.30 If:

- (a) the court orders someone, other than a personal representative to be substituted for a deceased party; and
- (b) another person is later appointed as personal representative;

the first person must give all documents in the proceeding to the personal representative as soon as practicable, and the personal representative may apply to be substituted for the first person as the relevant party.

Partners

3.31 One partner may start a proceeding in the partnership name.

- 3.32** A proceeding against persons who are alleged to be partners may be brought and continued against the persons in the partnership name.
- 3.33** A party to proceedings against a partnership may by written notice require the partnership, within not less than 2 days of the date of service, to give the names of all partners.
- 3.34** The notice must be served:
- (a) at the place of business of the partnership; or
 - (b) on one of the partners personally.
- 3.35** If the partnership does not give this information, the court may:
- (a) order the proceeding be suspended (stayed) until the information is given; or
 - (b) order a document that has been filed be struck out; or
 - (c) make any other order it considers appropriate.
- 3.36** If a judgment is given against a partnership, the court may by order allow enforcement against individual partners.

Representative party

- 3.37** A proceeding may be started and continued by or against one or more persons who have the same interest in the subject matter of the proceeding as representing all of the persons who have the same interest and could have been parties in the proceeding.
- 3.38** At any stage of the proceeding the court may appoint one or more parties named in the proceeding, or another person, to represent, for the proceeding, the persons having the same interest.
- 3.39** When appointing a person who is not a party, the court must also order that the person is to become a party.
- 3.40** An order made in a proceeding against a representative party may be enforced against a person not named as a party only with the court's leave.
- 3.41** An application for leave to enforce the order must be served on the person against whom enforcement is sought as if the application were a claim.

Representation of community, tribe, line or group

- 3.42** Any person entitled in custom to represent a community, tribe, line or group within Solomon Islands may sue or be sued on behalf of as representing the community, line or group, but the court, on the application of any party, or on its own initiative, may require that person to provide proof of their entitlement in custom to act as such a representative before any further step in the proceeding may take place.

Representation of beneficiaries of a trust

- 3.43** A claim may be brought against trustees, executors or administrators of an estate in that capacity without joining the beneficiary and any judgment or

order made in the proceedings is binding on all beneficiaries unless the court makes another order.

Business Names

3.44 Where a claim is made against any person in respect of anything done or omitted or suffered in the course of, or otherwise relating to, a business carried on within Solomon Islands by that person under a business name:

- (a) if the business name is registered in a register, which register discloses the name and residential address of the person, as the owner of the business - a proceeding shall only be commenced against that person in his or her own name or pursuant to the rules relating to partnerships; and

Note Partnerships are dealt with in rules 3.31-3.36.

- (b) if the business name is not registered in a register referred to in paragraph (a) - a proceeding may be commenced against that person trading under that business name.

3.45 Where a proceeding is commenced against a person in a business name pursuant to paragraph 3.44(b):

- (a) that business name shall, for the purpose of the proceeding, be a sufficient designation of that person in any process; and
- (b) any judgment or order made in the proceeding may be enforced against that person.

Chapter 4 Starting proceedings

Note This Chapter must be read in conjunction with rules 5.5, 5.6, 5.7, 5.43 and 5.44.

Claim starting proceedings to be sealed

- 4.1** The registrar must seal the original and filed copies of any written claim that starts new proceedings.

Numbering etc of proceedings

- 4.2** When:
- (a) a claim is issued; or
 - (b) an interlocutory application is issued before the filing of a claim,
- the registrar must give a distinguishing number or other unique identifier to the proceeding.
- 4.3** The registrar must ensure that the original and each copy sealed under rule 4.1 are endorsed with:
- (a) the distinguishing number or other unique identifier given to the proceeding; and
 - (b) the date when:
 - (i) the process was filed in the court; or
 - (ii) if the proceeding had been started by an oral claim - the claim was made.

Notice to Defendant - category A and B proceedings

- 4.4** A claim filed in a category A or category B proceeding shall contain a notice to advise the defendant that:
- (a) the defendant must file a response within the time limited by rule 5.37, unless the defendant files a defence within that time; and
 - (b) the defendant must file a defence within the time limited by rule 5.37; and
 - (c) if the defendant files a document in the proceeding the registrar will notify the parties of a first court hearing when the defendant will be required to attend or be represented in court; and
 - (d) if the defendant does not file a document in the proceeding the claimant may obtain judgment against the defendant.

Note Categories of proceedings are defined in Chapter 2.3.

Allocation of first court hearing—category C proceedings

- 4.5** When a claim is filed in a category C proceeding the registrar must fix a date for the first hearing of the claim which shall be:
- (a) not more than 45 days after the filing date if there is no defendant in the proceeding; or

- (b) within 28 days after the filing date, if all parties to the proceeding consent to a shortened time for the first court hearing and it is convenient for the court; or
- (c) not less than 28 days and no more than 45 days after the filing date in any other proceeding.

Note Categories of proceedings are defined in Chapter 2.3.

Claim - legal practitioner's statement about filing

4.6 Rules 4.7 and 4.8 apply if:

- (a) it appears from a claim that the claimant is represented by a legal practitioner; and
- (b) a defendant to the proceeding asks the legal practitioner in writing whether the process was filed by the legal practitioner.

4.7 The legal practitioner must within 7 days, tell the defendant in writing whether the process was filed by the legal practitioner.

4.8 If the legal practitioner tells the defendant that the legal practitioner did not file the process or fails to respond to a request under rule 4.6(b), the defendant may apply to the court to stay the proceeding and the court may stay the proceeding.

Rejecting documents—noncompliance with rules etc

4.9 The registrar may reject a document that is filed in the court if:

- (a) the document does not comply substantially with the requirements of these rules; or
- (b) there is an approved form for the document and the document is not properly completed; or
- (c) a fee is payable for filing the document and the fee has not been paid; or
- (d) the address for service stated in the document is manifestly inconvenient for a party or the court; or
- (e) the document does not otherwise comply with these rules; or
- (f) the document does not disclose a cause of action.

Rejecting documents—abuse of process etc

4.10 Rules 4.11 to 4.13 apply if a document that is filed in the court appears to the registrar or the court on its face to be an abuse of the court's process or to be frivolous or vexatious.

4.11 The registrar of the High Court may reject the document or refer the document to a judge for directions about how to deal with it.

4.12 The civil clerk of the Magistrate's Court may refer the document to a magistrate for directions about how to deal with it.

4.13 A judge or magistrate may direct the registrar or clerk:

- (a) to accept the document; or
- (b) to reject the document; or
- (c) to reject the document unless the court gives leave to accept the document.

Rejecting document—registrar to give notice etc

4.14 If the registrar or a judge or magistrate rejects a document:

- (a) the registrar or the civil clerk must give notice of the rejection, and of the grounds of the rejection, to the person who filed the document in the court; and
- (b) the registrar or the civil clerk must return the document and copies of the document filed with the document; and
- (c) the document is taken not to have been filed.

Filed documents initially rejected

4.15 Rules 4.16 to 4.19 apply to a document if:

- (a) the registrar rejects the document under this division; but
- (b) either:
 - (i) the registrar subsequently accepts the document; or
 - (ii) the court subsequently directs the registrar to accept the document.

4.16 The registrar must record the filing of the document in the court and, if appropriate, seal or stamp the document.

4.17 If the registrar records the filing of the document, the registrar must return any copies of the document filed with the document for sealing or stamping.

4.18 Provided the document has not been amended it is taken to have been filed in the court on the day it would have been filed if the registrar had not rejected the document.

Chapter 5 Statement of Case

What are statements of the case

- 5.1** A statement of case is set out in a claim, a defence, a counterclaim, a reply or a third party notice.
- 5.2** The purpose of the statement of case is to:
- (a) set out the facts about what happened between the parties, as each party sees them; and
 - (b) show the areas where the parties agree; and
 - (c) show the areas where the parties disagree (called the ‘**issues between the parties**’) that need to be decided by the court.

Content of statements of case

- 5.3** Each statement of case must:
- (a) be as brief as the nature of the case permits; and
 - (b) set out all the relevant facts on which the party relies, but not the evidence to prove them; and
 - (c) identify any statute or principle of law on which the party relies, but not contain the legal arguments about it; and
 - (d) if the party is relying on custom law, state the custom law;
 - (e) state specifically any fact that is relied upon to support any allegation of fraud, breach of trust or other improper conduct;
 - (f) state specifically any fact that if not stated specifically would take another party by surprise; and
 - (g) if the statement of case was prepared by a legal practitioner state the name of the legal practitioner.
- 5.4** If the statement of case is set out in a claim or a counterclaim, it must also set out the remedies or orders sought.

Claim

Note Rules 5.5-5.7 should be read in conjunction with Chapter 4.

- 5.5** A claim must:
- (a) specifically state the relief claimed by the claimant; and
 - (b) contain a statement of case; and
 - (c) set out the address that is to be the claimant’s address for service of documents; and
 - (d) have with it a form of response that may be completed by the defendant.

- 5.6** A post office address, or where the party is represented by a legal practitioner a legal practitioner's pigeonhole at the High Court, are suitable addresses for the service of documents.
- 5.7** A claim filed in the Magistrate's Court must also show the facts that give the court jurisdiction to decide the claim.

Matters to be state in Response

- 5.8** Unless the defendant files a defence he or she must file and serve a response within the period required by Rule 5.37. 'A response' includes a conditional response and an unconditional response is taken to constitute submission to the jurisdiction of the Court.
- 5.9** The response must be completed and signed.

Note Example response in Schedule 2 Part B.

- 5.10** The defendant need not file a response if he or she files and serves a defence within 14 days of the date of service of the claim.

Defence

- 5.11** If the defendant intends to contest the claim, the defendant must file and serve a defence on the claimant within the period required by Rule 5.37.
- 5.12** The defence must contain a statement of case.
- 5.13** A defendant must not deny the claimant's claim generally, but must deal with each fact in the claim.
- 5.14** If the defendant does not agree with a fact that the claimant has stated in the claim, the defendant must file and serve a defence that:
- (a) denies the fact; and
 - (b) states what the defendant alleges happened.
- 5.15** Subject to rule 5.16, if the defendant does not deny a particular fact, the defendant is taken to agree with it.
- 5.16** Rule 5.15 does not apply if the defendant does not know about a particular fact and cannot reasonably find out about it, and says so in the defence.

Note Example defence in Schedule 2 Part B.

Reply

- 5.17** If a claimant does not file and serve a reply, the claimant is taken to deny all the facts alleged in the defence.
- 5.18** If a claimant wishes to allege further relevant facts after the defence has been filed and served, the claimant must file and serve a reply.
- 5.19** The claimant's reply must:
- (a) contain a statement of case limited to matters raised for the first time in the defence; and
 - (b) state what the claimant alleges happened.

- 5.20** If the claimant's reply does not deal with a particular fact, the claimant is taken to deny it.

Note Further facts not in response to the defence should be alleged by way of amendment to the statement of the case in the application.

Matters to be stated in a defence or reply

- 5.21** In a defence or a reply, the statement of case must specifically mention a matter that:
- (a) makes another party's claim or defence not maintainable; or
 - (b) shows a transaction is void or voidable; or
 - (c) raises a question of fact not arising out of a previous statement of case.

Counterclaim

- 5.22** If a defendant in a proceeding wants to make a claim against the claimant (a '**counterclaim**') instead of bringing a separate proceeding, the defendant must include details of it in the defence.

- 5.23** A counterclaim must contain a statement of case.

- 5.24** That part of the defence dealing with the counterclaim must:

- (a) be shown clearly as the counterclaim; and
- (b) set out details of the counterclaim as if it were a claim.

- 5.25** If the defendant has counterclaimed:

- (a) the claimant may include an answer to the counterclaim in the claimant's reply; and
- (b) rules 5.11 to 5.16 inclusive apply to the answer as if the reply were a defence.

- 5.26** If the claimant defends the counterclaim:

- (a) the defendant may file a reply to answer dealing with the answer; and
- (b) rules 5.17 to 5.20 inclusive apply to the defendant's reply to answer.

- 5.27** Rules 5.22 to 5.26 apply to the conduct of a counterclaim (whether the counterclaim is against a person who was a party before the counterclaim was made or not) as if:

- (a) the counterclaim is a claim, and the person making it a claimant in an original proceeding; and
- (b) the party against whom the counterclaim is made is a defendant to an original proceeding.

Counterclaim against additional party

- 5.28** A defendant may make a counterclaim against a person other than the claimant if:

- (a) the claimant is also a party to the counterclaim; and
- (b) either:

- (i) the defendant alleges the other party is liable with the claimant for the counterclaim; or
- (ii) the relief the defendant claims against the other person is related to or connected with the original subject matter of the proceeding.

5.29 The defendant must serve the defence and counterclaim, and the claim, on the other party within the time allowed for service under rule 5.37.

5.30 The other person becomes a party to the proceeding on being served with the defence and counterclaim.

Note If the defendant claims against a non-party and does not claim against the claimant, the defendant must proceed under rule 3.14.

Damages

5.31 If damages are claimed in a claim or counterclaim, the claim or counterclaim must also state the nature and amount of the damages claimed, including special, aggravated and exemplary damages.

5.32 If general damages are claimed, the following particulars must be included:

- (a) the nature of the loss or damage suffered; and
- (b) the exact circumstances in which the loss or damage was suffered; and
- (c) the basis on which the amount claimed has been or should be worked out or estimated.

5.33 In addition, the statement of case must include any matter about the assessment of damages that, if not included, may take the other party by surprise.

Amendment of statement of case

5.34 A party may amend a statement of case to:

- (a) better identify the issues between the parties; or
- (b) correct a mistake or defect; or
- (c) provide better facts about each issue.

5.35 The amendment may only be made with the leave of the court or the consent of the parties.

5.36 In deciding whether to allow an amendment, the court must have regard to whether another party would be prejudiced in a way that cannot be remedied by:

- (a) awarding costs; or
- (b) extending the time for anything to be done; or
- (c) adjourning the proceedings.

Times for filing documents

5.37 The following documents must be filed within the following times:

- (a) if the claim was served on the defendant within 20km by public road of the main Post Office of Honiara or of the main Post Office in a provincial capital the defendant's response must be filed and served within 14 days of the date of service of the claim, however a response need not be filed if the defendant's defence was filed within this time;
- (b) if the claim was served on the defendant more than 20km from the main Post Office of Honiara and more than 20km by public road from the main Post Office in any provincial capital the defendant's response must be filed and served within 28 days of the date of service of the claim, however a response need not be filed if the defendant's defence was filed within this time;
- (c) if the claim was served on the defendant within 20km by public road of the main Post Office of Honiara or of the main Post Office in a provincial capital the defence must be filed and served within 28 days of the date of service of the claim;
- (d) if the claim was served on the defendant more than 20km by public road from the main Post Office of Honiara and more than 20km by public road from the main Post Office in any provincial capital the defence must be filed and served within 42 days of the date of service of the claim;
- (e) the claimant's reply must be filed and served within 14 days after the date of service of the defence;
- (f) if the defendant has made a counterclaim against the claimant or a third party – the claimant's answer or third party's defence must be filed and served within 28 days of the date of service of the counterclaim;
- (g) if the defendant has made a counterclaim against the claimant or a third party - the defendant's reply to answer or reply to the third party's defence must be filed and served within 14 days after the service of the answer or defence.

5.38 Each document must be served as set out in Chapter 6 (Service).

Late filing of documents

5.39 A party may file a document after the time fixed by Rule 5.37.

5.40 The court may decide whether or not the document is effective for the proceeding.

5.41 In deciding whether a late filed document is effective, the court may have regard to:

- (a) the reasons why the document was filed late; and
- (b) any additional expense or inconvenience incurred by the other parties to the proceeding, and the disadvantage to the first party if the late filing is not allowed.

5.42 When deciding whether a late filed document is effective, the court may:

- (a) make any order that is appropriate for the proceeding; and

- (b) make an order about the costs incurred by a party because of the late filing.

Renewal of claim

5.43 If a claim is not served within 3 months of the date endorsed by the registrar under rule 4.3:

- (a) the claimant may apply to the Registrar to have the claim renewed within one month after the expiry of that period; and
- (b) if the claimant does not do this, the claim ceases to be of any effect.

Where the Registrar agrees to renew a claim under this sub-rule the claim may be renewed for a further three months and the Registrar shall endorse the claim accordingly.

5.44 If paragraph 5.43(b) applies the registrar shall note in the register that the claim is no longer of any effect.

Note Rules 5.43-5.44 should be read in conjunction with Chapter 4.

Party may file sworn statement instead of statement of case

5.45 A party who is required to file a statement of his or her case may set out the facts that are relevant to his or her case in a sworn statement instead of setting those facts out in the claim, defence or reply.

5.46 If the relevant facts are set out in a sworn statement the sworn statement shall be filed and served with the claim, defence or reply.

Further pleadings by leave

5.47 Pleadings subsequent to a reply to an answer shall not be filed without the leave of the court.

Chapter 6 Service

Note Service in Admiralty proceedings *against property* on ships is dealt with in Chapter 15.4

Who serves a document

- 6.1** If these rules require a document to be served, the party who filed the document is responsible for ensuring that the document is served.
- 6.2** The party responsible for service may apply to the court for an order that the document be served by a Sheriff or other person.

Note **Sheriff** is defined in the dictionary

- 6.3** The court may order that the document be served by the Sheriff or other person if the court is satisfied that the circumstances of the proceeding require it.

Service of claim

- 6.4** A sealed copy of the claim and response form referred to in rule 5.5 must be served on the defendant personally, unless:
- (a) rule 6.33 applies (substituted service); or
 - (b) the court orders that the claim may be served in another way.

Time for serving claim

- 6.5** The claim and response form must be served on the defendant within 3 months of the date on which the claim was filed.

Note A claim can be renewed under rule 5.43

- 6.6** An address for service is the address at which documents in a proceeding (other than a claim) can be served on the party giving the address.
- 6.7** Every document filed must state an address for service for the party filing the document.
- 6.8** A filing party's address for service must be:
- (a) a home or place of business located within the boundaries of Honiara City; or
 - (b) a home or place of business located within 4 kilometres of the main Post Office in a provincial capital; or
 - (c) at a post office or postal agency; or

Note Post offices and postal agencies are established under section 6 of the Post Office Act [Cap 113].

- (d) if the party is represented by a legal practitioner, the address of the legal practitioner's office.
- 6.9** If a party's address for service changes, the party must give the court and the other parties notice in writing of the new address. The notice must include:
- (a) the number of the proceeding; and
 - (b) the names of the parties, and
 - (c) the new address for service.

- 6.10** It shall be sufficient notice for the purpose of rule 6.9 for the party to file a document in the registry in which the new address for service is noted.
- 6.11** The notice must be filed with the court and served on each other party.
- 6.12** Service of a document at the last known address given as a party's address for service is effective service unless a notice of change of address for service has been given to the party serving the document.

Service of other documents

- 6.13** A document other than a claim may be served:
- (a) on a party personally; or
 - (b) by leaving it at the party's address for service; or
 - (c) by sending it to the party's address for service:
 - (i) by prepaid post; or
 - (ii) by fax; or
 - (iii) if the party has given an address for service by email, by email; or
 - (d) in any other manner ordered by the court.

Note Under section 370 of the Companies Act [Cap 175] a document may be served on a company by leaving it at or sending it by post to the registered office of the company.

Service by filing

- 6.14** If a defendant:
- (a) has not filed a response or defence; or
 - (b) has not given an address for service; and
 - (c) a document is not required to be served personally;
- the document may be served on the defendant by:
- (i) filing it in the court; and
 - (ii) sending a sealed or stamped copy by prepaid post, addressed to the defendant, at the defendant's last-known address.
- 6.15** A document filed under rule 6.14 must state on its first page that it is filed under that rule.

Service by fax

- 6.16** A document served by fax must include a cover page stating the following:
- (a) the sender's name and address;
 - (b) the name of the person to be served;
 - (c) the date and time of transmission;
 - (d) the total number of pages, including the cover page, transmitted;
 - (e) the phone number from which the document is transmitted;

- (f) the name and phone number of a person to contact if there is a problem with the transmission;
- (g) that the transmission is for service under these rules.

6.17 A sworn statement of service of a document by fax must include, as an annexure, the transmission advice, generated by the sender's fax machine, indicating the transmission was successful.

Service by email

6.18 An emailed document must be capable of being printed by the recipient with the content and in the form in which it was created.

6.19 The electronic communication for the emailed document must include the following:

- (a) the name and phone number of a person to contact if there is a problem with the electronic communication;
- (b) that the electronic communication is for service under these rules.

6.20 If these rules require or allow the emailed document to be signed, it is sufficient compliance if the person who serves the emailed document:

- (a) identifies himself or herself in the electronic communication by stating his or her name and business address; and
- (b) states in the electronic communication that the original of the emailed document was signed and by whom.

6.21 If these rules require or allow service of a sealed or stamped copy of a document, it is sufficient compliance if:

- (a) the emailed document is a copy of a document that was sealed or stamped; and
- (b) the person who serves the emailed document states in the electronic communication that the original of the emailed document was sealed or stamped.

6.22 If the emailed document is a copy of a sworn statement, the original sworn statement is taken to have been sworn if:

- (a) the original sworn statement was properly sworn; and
- (b) the person who serves the copy of the sworn statement states in the email that the original was properly sworn.

Time for serving other documents

6.23 Rule 6.24 does not apply to the service of a claim.

6.24 All other documents must be served within the times required by rule 5.37.

Late service of documents

6.25 Notwithstanding rule 6.24, a party may serve a document after the time fixed by rule 5.37.

- 6.26** The court may decide whether or not the late served document is effective for the proceeding.
- 6.27** In deciding whether a late served document is effective, the court may have regard to:
- (a) the reasons why the document was served late; and
 - (b) any additional expense or inconvenience incurred by the other parties to the proceeding; and
 - (c) the disadvantage to the first party if the late service is not allowed.
- 6.28** If the court decides the service of the document is not effective, the court may:
- (a) make any order that is appropriate for the proceeding; and
 - (b) make an order about the costs incurred by a party because of the late service.

What is personal service

- 6.29** A document is served personally on an individual:
- (a) by giving a copy of it to the individual; or
 - (b) if the individual does not accept the document, by putting it down in the person's presence and telling the person what it is.
- 6.30** A document is served personally on a corporation:
- (a) by giving a copy of the document to an officer of the corporation; or
 - (b) by leaving a copy of the document at the registered office of the corporation; or
 - (c) if the corporation does not have a registered office in Solomon Islands, by leaving a copy of the document at the principal place of business, or principal office, of the corporation in Solomon Islands; or
 - (d) if the corporation is in liquidation or under any other form of administration, on the liquidator or other person administering the corporation.
- 6.31** All documents required to be served on the Solomon Islands Government for the purpose of or in connection with any civil proceedings by or against the Solomon Islands Government shall be served upon the office of the Attorney-General or upon another public officer or Government department expressly authorised by a written law to institute or defend the proceedings in question on behalf of the Solomon Islands Government.

Substituted service

- 6.32** If it is not practical for a party to serve a document personally, the party may apply to the court for an order that the document be served in another way for the purpose of bringing the document to the notice of the person to be served (called '**substituted service**').
- 6.33** The court may order that the document be served:

- (a) by serving it on a chief or a minister of the church who lives in the area where it is believed the person named in the document is living; or
- (b) by putting a notice in a newspaper circulating in the area where the person lives; or
- (c) by arranging for an announcement about the document to be broadcast on the local radio; or
- (d) in any other way that the court is satisfied will ensure that the person to be served knows about the document and its contents.

6.34 A notice in the paper, or an announcement on the radio:

- (a) must be addressed to the person; and
- (b) must give the person's name and last known address and the claimant's name and address for service; and
- (c) must say where a copy of the document can be picked up by the person; and
- (d) if the document requires the person to go to a court, must say the time, date and place of the court where the person is to go.

Service on person under a disability

6.35 A document to be served on a child must be served:

- (a) if the child is a party to the proceeding and has a litigation guardian, on the litigation guardian; and
- (b) if the child is not a party to the proceeding, on the child's parent or guardian, or on a person who appears to be acting in the position of the child's parent or guardian.

6.36 If the child is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the child must:

- (a) apply to the court to appoint a litigation guardian for the child; and
- (b) serve the document on the litigation guardian.

6.37 A document to be served on a person with impaired capacity must be served:

- (a) if the person is a party to the proceeding and has a litigation guardian, on the litigation guardian; and
- (b) if the person is not a party to the proceeding, on the person's guardian, or on a person who appears to be acting in the position of the person's guardian.

6.38 If the person with impaired capacity is a party to a proceeding but does not have a litigation guardian, the person wishing to serve the person must:

- (a) apply to the court to appoint a litigation guardian for the person; and
- (b) serve the document on the litigation guardian.

Service relating to deceased estate

- 6.39** In a proceeding in which the estate of a deceased person is a party, all documents must be served on one of the personal representative of the estate.

Service on partnership

- 6.40** A claim against a partnership must be served:
- (a) on a partner; or
 - (b) at the principal place of business of the partnership.
- 6.41** If a claim is served as required by rule 6.40, each partner who was a partner when the claim was issued is taken to have been served.

Evidence of service

- 6.42** If a defendant files a response or a defence to a claim, the claimant need not file a sworn statement giving proof of service of the claim.
- 6.43** If a party on whom another document is served does not subsequently file a document required by these rules to be filed, the party serving the first document cannot take any further action in the proceeding unless he or she files a sworn statement setting out details of the time and manner in which the first document was served.
- 6.44** If a document is served in accordance with an order made under rule 6.33 (dealing with substituted service), the sworn statement must:
- (a) for service on a chief or a minister of the church, name the chief or minister and give details of how and when the claim was served on the chief or minister; and
 - (b) for service through a newspaper or by radio, give details of the service, including the date and a copy of the notice or of the announcement; and
 - (c) for service in any other way, give details of how and when the document was served.

Service outside Solomon Islands

- 6.45** A party may apply to the High Court for an order that a claim in the High Court be served outside Solomon Islands.
- 6.46** The court may order that a claim or other process be served outside Solomon Islands, on such terms and conditions as it considers appropriate, if the court is satisfied that the court has jurisdiction in the proceeding, the party seeking leave has a good and arguable case for the relief sought by the party in the proceeding, and:
- (a) the claim concerns land or other property in Solomon Islands; or
 - (b) an Act of Parliament, deed, will, contract, obligation or liability affecting land or other property in Solomon Islands is sought to be interpreted, rectified, set aside or enforced; or
 - (c) the claim is against a person who is domiciled or ordinarily resident in Solomon Islands; or

- (d) the claim is for the administration of an estate of a person who was domiciled in Solomon Islands at the date of the person's death; or
- (e) the claim is for the execution of a trust, the person to be served is the trustee, and the trust concerns property in Solomon Islands; or
- (f) the claim concerns a contract made in Solomon Islands or governed by the law of Solomon Islands; or
- (g) the claim is based on a breach of contract committed in Solomon Islands, whether or not the contract was made in Solomon Islands; or
- (h) the claim is based on a tort committed in Solomon Islands; or
- (i) the claim is for damage suffered in Solomon Islands, whether or not the tort causing the damage happened in Solomon Islands; or
- (j) the claim is for an amount payable under an Act of Parliament to a government body in Solomon Islands; or
- (k) the proceeding is brought against a person in Solomon Islands and the other person outside Solomon Islands is a necessary party to the proceeding; or
- (l) the proceeding is for an injunction ordering the person to do or not do anything in Solomon Islands (whether or not damages are also claimed); or
- (m) for any other reason the court is satisfied that it is necessary for the claim to be served on a person outside Solomon Islands; or
- (n) the claim is an Admiralty claim.

6.47 Rules 6.45 to 6.50 also apply to service of a counterclaim and a third party notice.

6.48 The court may give directions extending the time for serving the claim, and filing a response and defence to the claim.

6.49 The claimant must also serve on the person a copy of the order and each sworn statement made in support of the order.

6.50 The claimant must file a sworn statement giving proof of the service.

Sealed copy

6.51 If these rules require a copy of a filed document to be served, the copy must be a sealed copy.

Chapter 7 Interlocutory Applications

What is an interlocutory order

- 7.1** An interlocutory order is an order that does not finally determine the rights, duties and obligations of the parties to a proceeding.
- 7.2** A party may apply for an interlocutory order:
- (a) at any stage:
 - (i) subject to rules 7.9 to 7.12 inclusive, before a proceeding has started; or
 - (ii) during a proceeding; or
 - (iii) after a proceeding has been dealt with; and
 - (b) whether or not the party mentioned an interlocutory order in his or her claim, response, or pleading.

Applying for an interlocutory order during or after a proceeding

- 7.3** A party may apply for any interlocutory order that the court has power to make.
- 7.4** An application for interlocutory orders should, if practicable, be made by filing a written application.
- 7.5** A written application must:
- (a) state what the applicant applies for; and
 - (b) have with it a sworn statement by the applicant setting out the facts that support the making of the orders sought, unless:
 - (i) there are no questions of fact that need to be decided in making the order sought; or
 - (ii) the facts relied on in the application are already known to the court.

Note Example application in Schedule 2 Part B.

Service of application

- 7.6** An application must be served on each other party to the proceeding unless:
- (a) the matter is so urgent that the court decides the application should be dealt with in the absence of the other party; or
 - (b) the court orders for some other reason that there is no need to serve it.
- 7.7** The application must be served at least 3 days before the time set for hearing, unless the court orders otherwise.

Hearing of interlocutory application

- 7.8** An application made during a proceeding is not to be dealt with in open court unless:

- (a) it is in the public interest that the matter be dealt with in open court; or
- (b) the court is of the opinion for other reasons that the matter should be dealt with in open court.

Application for interlocutory orders before a proceeding is started

7.9 A person may apply for an interlocutory order before a proceeding has started by filing an application.

7.10 The application must:

- (a) set out the substance of the applicant's application; and
- (b) have a brief statement of the evidence on which the applicant will rely; and
- (c) set out the reasons why it is appropriate that the order be made before a proceeding has started; and
- (d) have with it a sworn statement in support of the application.

7.11 The court may make the order if it is satisfied that:

- (a) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and
- (b) the balance of convenience favours the making of the order.

7.12 When making the order, the court may also order that the applicant file a claim by the time stated in the order.

Urgent interlocutory applications

7.13 The court may allow an oral application to be made if:

- (a) the application is for urgent relief; and
- (b) the applicant undertakes to file a written application within the time directed by the court; and
- (c) the court considers it appropriate:
 - (i) because of the need to protect persons or property; or
 - (ii) to prevent the removal of persons or property from Solomon Islands; or
 - (iii) because of other circumstances that justify making the order.

Order to protect property (freezing order)

7.14 In rules 7.15 to 7.22 '**owner**', for assets, includes the person entitled to possession and control of the assets.

7.15 The High Court may make an order (a '**freezing order**') restraining a person from removing assets from Solomon Islands or dealing with assets in or outside Solomon Islands.

7.16 The court may make a freezing order whether or not the owner of the assets is a party to an existing proceeding.

7.17 The court may make the order if:

- (a) the court has already given judgment in favour of the applicant and the freezing order is ancillary to it; or
- (b) the court is satisfied that:
 - (i) the applicant has a good and arguable case; and
 - (ii) a judgment or order in the matter is likely to involve the assets, or enforcement of a judgment or order may involve the assets; and
 - (iii) the assets are likely to be removed from Solomon Islands, or dealing with them should be restrained.

7.18 The application must:

- (a) describe the assets and their value and location; and
- (b) include the name and address of the owner of the assets, if known, and the identity of anyone else who may be affected by the order and how they may be affected; and
- (c) if a proceeding has not been started, set out:
 - (i) the name and address of anyone else likely to be a defendant; and
 - (ii) the basis of the applicant's claim; and
 - (iii) the amount or nature of the claim; and
 - (iv) what has been done to recover the amount of the claim, or to get the relief claimed; and
 - (v) any possible defences to the claim; and
- (d) in any case, set out:
 - (i) how the assets to be subject to the order will form part of any judgment or its enforcement; and
 - (ii) what will be done to preserve the assets; and
 - (iii) if the application has not been made on notice, the reason for this; and
- (e) include the usual undertaking as to damages; and
- (f) have with it:
 - (i) a sworn statement in support of the application; and
 - (ii) a draft freezing order.

Note 'Usual undertaking as to damages' is defined in the Dictionary at Schedule 4.

7.19 The sworn statement must include the following:

- (a) why the applicant believes:
 - (i) the assets may be removed from Solomon Islands; or

- (ii) dealing with the assets should be restrained; and
- (b) if the court has already made a judgment or order, why the applicant believes the judgment or order already made may not be able to be satisfied, or may be thwarted, if the freezing order is not made; and
- (c) if a proceeding has not been started and the name and address of the owner of the assets, and anyone else likely to be a defendant, are not known, what has been done to find out those names and addresses; and
- (d) in any case:
 - (i) how the assets to be subject to the order will form part of any judgment or its enforcement; and
 - (ii) what will be done to preserve the assets; and
 - (iii) if the application has not been made on notice, the reason for this.

7.20 If the name and address of the owner of the assets is not known, the application may be served as follows:

- (a) for service on a ship, by attaching it to the mast or other conspicuous place on the ship; or
- (b) for service on an aircraft, by attaching it to the pilot controls or other conspicuous place on the aircraft; or
- (c) in any case, as the court directs.

7.21 When making the freezing order, the court must also:

- (a) fix a date on which the person to whom the order is granted is to report back to the court on what has been done under the order; and
- (b) if a proceeding has not been started, order that:
 - (i) the applicant file a claim by the time stated in the order; and
 - (ii) if the defendant is not known, the defendant be described in the claim as “person unknown”; and
 - (iii) if the name and address of the defendant or potential defendant is known, fix a time for serving the claim on him or her.

7.22 The court may set aside or vary a freezing order.

Order to seize documents or objects (seizing order)

7.23 The High Court may make an order (a ‘**seizing order**’) authorising the applicant to seize documents and/or objects in another person’s possession.

7.24 The court may make a seizing order:

- (a) without notice to the defendant or potential defendant; and
- (b) if the matter is extremely urgent, before a proceeding has been started.

7.25 The court may make the seizing order only if it is satisfied that:

- (a) the order is required to preserve documents and/or objects as evidence; and
- (b) there is a real possibility that, unless the order is made, the defendant or potential defendant is likely to destroy, alter or conceal the documents and/or objects or remove them from Solomon Islands; and
- (c) the applicant has an extremely strong case; and
- (d) if the documents or objects are not seized, there is the likelihood of serious potential or actual harm to the applicant's interests; and
- (e) there is clear evidence that the documents and/or objects are in the defendant's possession.

7.26 An application for a seizing order must:

- (a) describe the documents and/or objects, or kinds of documents and/or objects, to be covered by the seizing order; and
- (b) give the address of the premises for which the seizing order is sought; and
- (c) set out the basis of the applicant's application; and
- (d) set out proposals for the matters listed in rule 7.28; and
- (e) include the usual undertaking as to damages; and
- (f) have with it:
 - (i) a sworn statement in support of the application; and
 - (ii) a draft seizing order.

7.27 The sworn statement must include the following:

- (a) why the order is required to preserve the documents and/or objects as evidence; and
- (b) the basis for the applicant's belief that:
 - (i) there is a real possibility that, unless the order is made, the defendant or potential defendant is likely to destroy, alter or conceal the documents and/or objects or remove them from Solomon Islands; and
 - (ii) if the documents and/or objects are not seized, there is the likelihood of serious potential or actual harm to the applicant's interests; and
- (c) verification of the facts that support the applicant's application; and
- (d) the evidence that the documents or objects are in the defendant's possession; and
- (e) the damage the applicant is likely to suffer if the order is not made.

7.28 The seizing order must include provisions about:

- (a) service of the order on the defendant or potential defendant; and

- (b) who is to carry out the order, including the appointment of independent legal practitioners to supervise the implementation of the order; and
- (c) the hours when the order may be carried out; and
- (d) the name of a neutral person who is to be present when the order is carried out and provisions in relation to payment of their costs; and
- (e) access to buildings, vehicles, aircraft and vessels; and
- (f) making a record of seized documents and objects; and
- (g) how and where the documents and/or objects are to be stored; and
- (h) the time given for copying and returning documents, and returning objects; and
- (i) how long the order stays in force; and
- (j) fixing a date on which the person to whom the order is granted is to report back to the court on what has been done under the order.

7.29 The seizing order may also:

- (a) require the defendant to give the information stated in the order about the proceeding; and
- (b) include another order restraining, for not more than 7 days, anyone served with that order from telling anyone else about the seizing order, except for the purpose of obtaining legal advice.

7.30 The High Court may set aside or vary a seizing order.

Receivers

7.31 The High Court may appoint a person to be the receiver of a defendant's property.

7.32 In deciding whether to appoint a receiver, the court must consider:

- (a) the amount of the claim; and
- (b) the amount likely to be obtained by the receiver; and
- (c) the probable costs of appointing and paying a receiver.

7.33 A person may be appointed as a receiver only if the person consents to the appointment.

7.34 The court may require the receiver to give security acceptable to the court for performing his or her duties.

7.35 The sworn statement in support of the application for the appointment of a receiver must:

- (a) describe the defendant's property; and
- (b) give the reasons why the appointment of a receiver is necessary to preserve the defendant's property.

7.36 The order appointing the receiver must:

- (a) specify the receiver's duties; and

- (b) state the period of the receiver's appointment; and
- (c) specify what the receiver is to be paid; and
- (d) require the receiver to file accounts and give copies to the parties, and at the times, the court requires; and
- (e) contain anything else the court requires.

7.37 The High Court may set aside or vary an order appointing a receiver.

Injunction

7.38 The court may grant an injunction by an interlocutory order when it appears to the court to be just or convenient so to do and the order may be made on such terms or conditions as the court thinks just. The usual undertaking as to damages must be given by the relevant party unless the court otherwise orders. The court may attach a penal notice to an injunction.

Declaration

7.39 The court may make an interim declaration by an interlocutory order when it appears to the court to be just or convenient to do so and the order may be made unconditionally or on such terms or conditions as the court thinks just.

Service of order

7.40 The applicant must serve a copy of an interlocutory order on:

- (a) the defendant; and
- (c) anyone else who is required to comply with the order.

Urgency

7.41 If a claim asks for urgent relief, the claimant must:

- (a) state this in the claim; and
- (b) inform the court staff separately in writing at the time that the claim is urgent and state the reasons for seeking urgent relief.

Chapter 8 Pre-trial procedure

Chapter 8.1 Category A and B proceedings

First Court Hearing

- 8.1** If a defendant files a response or defence in a category A or B proceeding, the registrar must set a date for a first court hearing and tell the parties the date set unless a date for the hearing of an application has previously been fixed, in which case that date shall be the first court hearing for the purposes of rule 8.3.

Note Example Notice of Hearing in Category A or B proceedings in Schedule 2 Part B.

- 8.2** The date for the first court hearing must be not later than 28 days after the day the response or defence is filed, unless the court otherwise orders.

- 8.3** At a first court hearing, the court may make the orders that it considers appropriate for the proper conduct of the proceeding until trial, including;

- (a) giving directions in relation to:
 - (i) requests for particulars;
 - (ii) filing further pleadings;
 - (iii) amending pleadings;
 - (iv) challenges to any pleading;
 - (v) disclosure of documents, either in full or limited to particular issues;
 - (vi) disclosure of information;
 - (vii) alternative dispute resolution, including mediation;
 - (viii) statements of agreed facts;
 - (ix) evidence by sworn statement;
 - (x) service or exchange of expert reports;
 - (xi) conduct of the trial;
- (b) fixing a date for a conference;
- (c) making an order for costs for or against a party;
- (d) adjourning the hearing to a specific date.

- 8.5** The court may at any time amend or revoke a direction made under rule 8.3 on application by a party or on its own initiative.

- 8.6** The powers of the court under rules 8.1 to 8.5 are additional to any other powers of the court.

Conferences

- 8.7** The purpose of conferences is to enable the court to actively manage the proceeding after the first court hearing.

- 8.8** The same judge or magistrate must preside at all conferences held in a particular proceeding, as far as is practicable.
- 8.9** A party who is represented by a legal practitioner need not attend a conference in person unless the court orders him or her to attend.
- 8.10** A court may arrange a conference at any time.
- 8.11** At a conference, including a trial preparation conference, the court may:
- (a) deal with any applications or fix a date for hearing them; and
 - (b) make orders:
 - (i) adding or removing parties; and
 - (ii) about whether it is necessary to employ experts dealing with evidence; and
 - (iii) for the medical examination of a party; and
 - (iv) about disclosure of information and documents; and
 - (v) that a party give security for costs; and
 - (vi) that statements of the case be amended or that further statements of the case be filed; and
 - (vii) about any other matter necessary for the proper management of the case.
- 8.12** At any conference the court:
- (a) must check whether all orders made at previous conferences have been complied with; and
 - (b) if they have not been complied with, must make whatever orders are necessary to ensure compliance; and
 - (c) may vary existing orders; and
 - (d) may make an order for costs; and
 - (e) may make any other orders, on its own initiative or on the application of a party, that it considers necessary in the interests of justice to continue the progress of the proceeding.

Trial Preparation Conference

- 8.13** The court will set a date for a trial preparation conference unless, in the court's opinion, the proceeding can be set down for trial without further conferences or unless there is an application pending under Chapter 9.
- 8.14** The purpose of the trial preparation conference is:
- (a) to identify precisely what are the issues between the parties that are to be determined in a trial; and
 - (b) to identify the evidence needed to prove these matters; and
 - (c) otherwise to ensure the matter is ready to be tried; and

- (d) to see whether the matter can be resolved by alternative dispute resolution.

8.15 At the trial preparation conference, the parties should be in a position to:

- (a) assist the court in finally defining the issues to be determined at a trial; and
- (b) tell the court the number of witnesses each proposes to call, and any special considerations about the taking of evidence; and
- (c) give estimates of the time the hearing is likely to take; and
- (d) agree on facts that have been admitted (and which will therefore not need to be proved); and
- (e) discuss whether expert witnesses will be called; and
- (f) report on compliance with orders made at earlier conferences; and
- (g) deal with any other matters that can reasonably be dealt with before the trial.

8.16 In particular, at the trial preparation conference the court may:

- (a) fix dates for the exchange of proofs of evidence and agreed bundles of disclosed documents, if this has not been done; and
- (b) give directions for the further preparation for trial; and
- (c) if possible, decide any preliminary legal issues that need to be resolved before the trial, or fix a date for hearing these; and
- (d) fix a date for the trial.

Time for compliance with orders made at conferences

8.17 When the court makes an order at a conference, the court must also:

- (a) fix the date and time within which the order is to be complied with; and
- (b) record the order in writing.

Effect of non-compliance with orders made at conferences

8.18 If:

- (a) a party does not comply with an order made at a conference by the time fixed for complying; and
- (b) another party incurs expense because of this;

the court may order costs against the non-complying party or his or her legal practitioner.

8.19 If a party or his or her legal practitioner has failed to comply with an order made at a conference without reasonable excuse, the court may order that the party's claim, defence, counterclaim or third party notice be struck out.

8.20 A court may set the proceeding down for trial although some orders made at a conference have not been complied with.

Agreed facts

- 8.21** If the parties agree on facts at a conference, the court must direct one of the parties to write down the agreed facts and send a copy to the court and each other party and shall require each party to sign the statement of agreed facts.

Conferences by telephone, email etc

- 8.22** A conference may be held by telephone, email or other means if the court and all parties are able to participate.
- 8.23** The court shall make directions for the conduct of such a conference.

Conference not to be in open court

- 8.24** A conference is not to be held in open court unless:
- (a) it is in the public interest that the conference be held in open court; or
 - (b) the court is of the opinion for other reasons that the conference should be held in open court.

Chapter 8.2 *Category C proceedings*

- 8.25** The date fixed by the registrar under rule 4.5 shall be the first court hearing in Category C proceedings.
- 8.26** Rules 8.3 to 8.24 shall apply in defended Category C proceedings.

Chapter 9 Ending proceedings early

Stay of proceeding on payment of amount or return of goods

- 9.1** If a proceeding is for a money claim or the return of goods the proceeding is stayed if, within the time allowed for filing any response or defence, the defendant:
- (a) pays the claimant:
 - (i) the amount claimed; and
 - (ii) any amounts claimed for interest; and
 - (iii) the amount applying under Schedule 3, Part 1 plus any filing and service fees actually paid; or
 - (b) returns the goods or pays the value of the goods, and pays:
 - (i) any amounts claimed for interest; and
 - (ii) the amount applying under Schedule 3, Part 1 plus any filing and service fees actually paid.
- 9.2** If the proceeding is in the High Court, and could properly have been brought in the Magistrate's Court, the amount payable by the defendant under subparagraph 9.1(a)(iii) is the relevant amount for the Magistrate's Court.

Assessment of costs for stayed debt etc proceeding

- 9.3** Rule 9.4 applies if a proceeding is stayed under rule 9.1.
- 9.4** The claimant may have the claimant's costs assessed if:
- (a) the claimant claims for costs and disbursements (other than any filing and service fees actually paid) more than the amount applying under schedule 3, part 1; or
 - (b) the claimant claims assessed costs.
- 9.5** If the proceeding is in the High Court, and could properly have been brought in the Magistrate's Court, the costs amount mentioned in rule 9.4(a) is the amount applying under schedule 3, part 1 for the Magistrate's Court.

Judgment on acknowledgment of money claim

- 9.6** The defendant may file a statement acknowledging:
- (a) the amount claimed; and
 - (b) if interest is claimed - interest.
- 9.7** Rule 9.6 does not apply if the defendant has filed a defence or the claimant has filed an application for default judgment in accordance with these rules.
- 9.8** On the filing of a statement under rule 9.6 the court may enter judgment for the claimant for:
- (a) the amount claimed; and
 - (b) if interest is claimed:

- (i) interest worked out in accordance with the rate stated in the claim to the date of judgment; or
- (ii) if no rate of interest is stated in the claim - interest to the date of judgment, or a lump sum instead of that interest, decided by the court; and
- (c) if costs are claimed:
 - (i) if the claimant has claimed costs and disbursements not more than the amount applying under Schedule 3, Part 1 (plus any filing and service fees actually paid) - the amount claimed for costs and disbursements; or
 - (ii) in any other case - costs to be agreed or assessed.

9.9 The court may enter judgment for the claimant without a hearing.

9.10 If the proceeding is in the High Court, and could properly have been brought in the Magistrate's Court, the amount mentioned in rule 9.8(c)(i) is the amount applying under schedule 3, part 1 for the Magistrate's Court.

9.11 Judgment entered under rule 9.8 fully discharges all the claimant's claims in the proceeding.

9.12 If default judgment against the defendant has been set aside under rule 9.54, the defendant must not file a statement acknowledging the amount claimed without the court's leave.

Note Chapter 7 (Interlocutory Applications) applies to an application for leave

Default by claimant—dismissal of proceeding

9.13 A defendant in a proceeding may apply to the court for an order dismissing the proceeding for want of prosecution if the claimant:

- (a) is required to take a step in the proceeding required by these rules, or to comply with an order of the court, not later than the end of a particular time; and
- (b) does not do what is required before the end of that time.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

9.14 The court may dismiss the proceeding or make any other order it considers appropriate.

9.15 An order dismissing the proceeding for want of prosecution may be set aside only on appeal or if the parties agree to it being set aside.

9.16 However, the court may amend or set aside an order dismissing the proceeding for want of prosecution made in the absence of the claimant without the need for an appeal.

Default by defendant

9.17 If a defendant:

- (a) does not file and serve either a response or a defence within the time required in rule 5.37; or

- (b) files a response within that time but does not file and serve a defence within the time required in rule 5.37;

then the claimant may file a sworn statement (a ‘**proof of service**’) that the claim and response form was served on the defendant as required by Chapter 6; and

- (i) may apply to the court for default judgment to be entered under this Chapter against the defendant; and
- (ii) may carry on the proceeding against any other party to the proceeding.

9.18 An application for default judgment:

- (a) in a category B proceeding; or
- (b) for unliquidated monetary claims (including claims for damages); or
- (c) in respect of the detention of goods; or
- (d) for recovery or delivery of possession of land in a claim for possession of real property;

shall be made by filing a draft judgment and a sworn statement in support of the application.

Note Additional requirements for applications for default judgment in Category B matters are dealt with in rules 9.23-9.27; for unliquidated monetary claims (including damages) in rules 9.30-9.33; for possession of land in rules 9.34-9.36; and for detention of goods in rules 9.37-9.42.

9.19 The draft judgment and sworn statement mentioned in rule 9.18 need not be served on anyone unless the court otherwise orders on its own initiative.

Note Chapter 7 (Interlocutory Applications) does not apply to an application referred to in rule 9.18.

9.20 Default judgment must not be given in the Magistrate’s Court before the first hearing date.

9.21 In the Magistrate’s Court the request for default judgment may be made orally.

9.22 The court may enter judgment under this Chapter (other than rule 9.45) in favour of the claimant without a hearing.

Note Judgment under rule 9.22 may be entered by the registrar under rule 19.1

Default – category B proceeding

9.23 The claimant in a Category B proceeding may apply for judgment against the defendant for the amount specified in the claim together with interest and costs.

9.24 The court may enter judgment under rule 9.22 for the claimant for:

- (a) the amount claimed by the claimant; and
- (b) interest from the date of filing the claim at a rate fixed by the court under rule 17.65; and
- (c) costs.

9.25 The sworn statement in support mentioned in rule 9.18 must:

- (a) state the amount owing to the claimant, in relation to the claim for relief, at the time the application was filed; and
- (b) give particulars of any reduction of the amount owing and costs, because of any payments made, or credits accrued, since the application was filed; and
- (c) state the amount claimed for interest, the date from which the amount is claimed and how the amount is worked out; and
- (d) state the costs claimed.

9.26 If interest is claimed, the court may award:

- (a) interest worked out in accordance with the rate stated in the claim to the date of judgment; or
- (b) interest to the date of judgment, fixed by the court under rule 17.65 or a lump sum instead of that interest.

9.27 If the period for which interest is to be awarded is not stated in the claim, interest is recoverable only from the date of the issue of the claim.

Default judgment in money claims - assessment of costs

9.28 If:

- (a) a claimant's application for default judgment is only for a debt or liquidated demand, with or without interest; and
- (b) the court enters judgment for the claimant under rule 9.22;

then the claimant's costs and disbursements (plus any filing and service fees actually paid) must be allowed without assessment if the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than the costs amount applying, from time to time, under schedule 3, part 2 (Costs amount - money claim default judgment).

9.29 The claimant's costs and disbursements must be agreed or determined by the court or assessed if the costs and disbursements claimed (other than any filing and service fees actually paid) are more than the costs amount applying under schedule 3, part 2.

Default—unliquidated monetary claims

9.30 Rule 9.31 applies if the claim was for an amount to be determined by the court.

9.31 The claimant may file a request for judgment to be entered against the defendant under rule 9.22 for an amount to be assessed by the court.

9.32 In the High Court the sworn statement in support mentioned in rule 9.18 must state:

- (a) that the proceeding has not been settled with the defendant; and
- (b) give particulars of any matters which the court should consider in making its assessment; and
- (c) any amounts paid or credited in relation to the claim.

9.33 The court may:

- (a) give judgment for the claimant for an amount to be determined; and
- (b) either:
 - (i) determine the amount of damages; or
 - (ii) if there is not enough information before the court to do this, fix a date for a conference or hearing to determine the amount of damages.

Default - claim for possession of land**9.34** If a claim is for the recovery of possession of land only, the court may enter judgment for the claimant under rule 9.22 for:

- (a) recovery of possession of the land as against the defendant; and
- (b) the following costs:
 - (i) costs for issuing the claim;
 - (ii) costs for obtaining judgment;
 - (iii) any other fees and payments, to the extent they have been reasonably incurred and paid.

9.35 If, before judgment is entered, a person files an application under rule 3.5 for the person to be included as a defendant, the court must not enter judgment under rule 9.34 until it disposes of the application.**9.36** The sworn statement in support mentioned in rule 9.18 must:

- (a) to the extent that it is practicable identify anyone (other than the parties to the proceeding) who is in actual possession of the land or any part of it:
 - (i) at the time the application was filed; or
 - (ii) if the claim for possession arises from an amendment to the application - at the time the amendment was made; and
- (b) for each person mentioned in paragraph (a), whether positively identified or not, state:
 - (i) that the person's actual possession of the land is not to be disturbed; or
 - (ii) that the person no longer actually possesses any part of the land; and
- (c) if the claim for possession of the land arises from a failure to pay an amount - give particulars of the failure; and
- (d) state the costs claimed.

Default - detention of goods**9.37** If a claim is in relation to the detention of goods only, the court may enter judgment for the claimant against the defendant under rule 9.22 in accordance with the claimant's claim, for either:

- (a) the return of the goods to the claimant, or payment to the claimant of the value of the goods and costs; or
- (b) payment to the claimant of the value of the goods and costs.

Note 'Value' is defined in 9.42

9.38 The sworn statement in support mentioned in rule 9.18 must:

- (a) give particulars of any demand for delivery of the goods; and
- (b) state which goods have, and which have not, been delivered to the claimant in accordance with the demand or since the originating claim or counterclaim was filed; and
- (c) give particulars of any payments the defendant has made to the claimant for the goods, or state that no payments have been made, since the originating claim or counterclaim was filed; and
- (d) state the costs claimed.

9.39 If the court enters judgment under paragraph 9.37(a), and the claimant subsequently applies for an order under this rule, the court may make an order for the return of the goods to the claimant without the option of the defendant paying the value of the goods.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

Note 'Value' is defined in 9.42

9.40 If the court enters judgment for the return of goods, it may state a date by which the return must take place.

9.41 If the court enters judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the court may, on the claimant's application, order the defendant to pay the value of the goods to the claimant.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

Note 'Value' is defined in 9.42

9.42 In rules 9.37 to 9.42 '*value*', of the goods, means the value as assessed by, or in accordance with the directions of, the court.

Default judgment in detention of goods claims—assessment of costs

9.43 If:

- (a) a claimant's application for default judgment is only in relation to detention of goods, with or without interest; and
- (b) the court enters judgment for the claimant under rule 9.22;

the claimant's costs and disbursements (plus any filing and service fees actually paid) must be allowed without assessment if the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than the costs amount applying, from time to time, under schedule 3, part 2 (Costs amount - money claim default judgment).

- 9.44** The claimant's costs and disbursements must be agreed or determined by the court or assessed if the costs and disbursements claimed (other than any filing and service fees actually paid) are more than the costs amount applying under schedule 3, part 2.

Default—other claims

- 9.45** If a defendant is in default as described in rule 9.17(a) or (b) and the claimant is not entitled to apply for judgment under rule 9.23, rule 9.31, rule 9.34 or rule 9.37 the court may enter judgment for the claimant in the terms set out in the claim and may make any other orders it considers appropriate.
- 9.46** An application for default judgment under rule 9.45 must be made by filing an application.
- 9.47** The sworn statement must state:
- (a) that the proceeding has not been settled with the defendant; and
 - (b) the costs claimed.

Assessing the amount of damages

- 9.48** An assessment of the amount of damages should be conducted as nearly as possible in the same way as a trial.
- 9.49** However, the court may give directions about:
- (a) the procedures to be followed before the determination takes place; and
 - (b) disclosure of information and documents; and
 - (c) filing of statements of the case; and
 - (d) the service of documents; and
 - (e) the conduct of the determination generally.
- 9.50** After damages have been determined, the claimant must enter judgment setting out the amount of damages and serve a copy of the judgment on the defendant, unless the defendant was present when the damages were determined.
- 9.51** If:
- (a) the documents required under rule 9.18, and a sworn statement as to the precise amount claimed, have been served on the defendant; and
 - (b) the sworn statement provides sufficient information for the court to determine the amount for which judgment is to be entered; and
 - (c) the defendant does not challenge that information;
- the court may determine damages without conducting a trial.

Setting aside default judgment

- 9.52** A defendant against whom default judgment has been entered may apply to the court to have the judgment set aside.
- 9.53** The application:

- (a) must set out the reasons why the defendant did not defend the claim; and
- (b) must, if the application is made more than three months after the judgment was entered, explain the delay—and the court shall not set the judgment aside unless it is satisfied that it is in the interests of justice so to do; and
- (c) must give details of the defendant's defence to the claim; and
- (d) must have with it a sworn statement in support of the application.

9.54 The court may set aside the default judgment if it is satisfied that:

- (a) the defendant has shown reasonable cause for the delay in defending the claim; and
- (b) the defendant has a meritorious defence, either about his or her liability for the claim or about the amount of the claim; and
- (c) there is no substantial prejudice to another party in setting aside the judgment that could not be rectified by a costs order.

9.55 At the hearing of the application, the court may:

- (a) give directions about the filing of the defence and other statements of the case; and
- (b) make an order about the payment of the costs incurred to date; and
- (c) consider whether an order for security for costs should be made; and
- (d) make any other order necessary for the proper progress of the proceeding.

9.56 These rules apply to the proceeding as if it were a contested proceeding.

Summary judgment

9.57 The claimant may apply to the court for a summary judgment where the defendant has filed a response or a defence but the claimant believes that the defendant does not have any real prospect of defending the claimant's claim.

9.58 A defendant may apply to the court for a summary judgment against the claimant where the defendant has filed a defence and believes that there is no real prospect of any part of the claim succeeding.

9.59 A claimant's application for summary judgment must have with it a sworn statement that:

- (a) verifies the facts stated in the claim; and
- (b) states that the claimant believes there is no defence to the claim; and
- (c) states the specific orders that are sought by the claimant.

9.60 If the claimant is applying for summary judgment the claimant must:

- (a) file the application and sworn statement; and
- (b) serve a sealed copy of the application and sworn statement on the defendant not less than 14 days before the hearing date.

- 9.61** A defendant's application for summary judgment must have with it a sworn statement that:
- (a) verifies the facts stated in the defence; and
 - (b) states that the defendant believes there is no real prospect of any part of the claim succeeding; and
 - (c) states the specific orders that are sought by the defendant in addition to dismissal of the claim.
- 9.62** A party wishing to oppose an application for summary judgment:
- (a) may (if a defendant) file a sworn statement setting out the reasons why the defendant has an arguable defence or (if a claimant) why there is a real prospect of any part of the claimant's claim succeeding; and
 - (b) must serve the statement on the other party at least 7 days before the hearing date.
- 9.63** The applicant for summary judgment may file another sworn statement in reply to any matter raised in the other party's sworn statement and must serve it on the other party at least 2 days before the hearing date.
- 9.64** If the court is satisfied that:
- (a) the defendant has no arguable defence to the claim or part of the claim or that there is no real prospect of the claim succeeding; and
 - (b) there is no need for a trial of the claim or that part of the claim;
- the court may:
- (c) give summary judgment for the applicant; and
 - (d) if the court gives summary judgment for only part of the claim, give leave to defend the balance of the claim; and
 - (e) make any other orders the court thinks appropriate.
- 9.65** If the court refuses to give summary judgment, or gives summary judgment for only part of the claim, it may order the party opposing the application for summary judgment to give security for costs within the time stated in the order.
- 9.66** The court must not give summary judgment if it is satisfied that there is a real dispute between the parties about a material fact.

Discontinuing proceeding

- 9.67** The claimant may discontinue his or her claim at any time and for any reason.
- 9.68** To discontinue, the claimant must:
- (a) file a notice of discontinuance; and
 - (b) serve the notice on all other parties.
- 9.69** If there are several defendants:
- (a) the claimant may discontinue against one or some only; and

- (b) the claimant's claim continues in force against the others.

9.70 If the claimant discontinues:

- (a) the claimant may not revive the claim without the leave of the court; and
- (b) a defendant's counter-claim continues in force; and
- (c) the party against whom the claimant discontinued may apply to the court for costs against the claimant.

Striking out

9.71 Rules 9.72 to 9.74 apply if the claimant does not:

- (a) take the steps in a proceeding that are required by these rules to ensure the proceeding continues; or
- (b) comply with an order of the court made during a proceeding.

9.72 The court may strike out a proceeding:

- (a) at a conference, in the High Court; or
- (b) at a hearing; or
- (c) as set out in rule 19.5; or
- (d) without notice, if there has been no step taken in the proceeding for 12 months.

9.73 If no steps have been taken in a proceeding for 6 months, the court may:

- (a) give the claimant notice to appear on the date in the notice to show cause why the proceeding should not be struck out; and
- (b) if the claimant does not appear, or does not show cause, strike out the proceeding, including any interlocutory relief that has been ordered.

Note Example notice to show cause why proceeding should not be struck out in Schedule 2 Part B

9.74 After a proceeding has been struck out, the registrar must send a notice to the parties telling them that the proceeding has been struck out.

Frivolous➡ and vexatious proceedings

9.75 If in any proceedings it appears to the court that in relation to the proceedings generally or in relation to any claim for relief in the proceedings:

- (a) the proceedings are frivolous or vexatious; or
- (b) no reasonable cause of action is disclosed; or
- (c) the proceedings are an abuse of the process of the court;

the court may, on the application of a party or on its own initiative, order that the proceedings be dismissed generally or in relation to that claim.

9.76 The court may receive evidence on the hearing of an application for an order under rule 9.75

Chapter 10 Assisted Resolution

Chapter 10.1 Assisted Resolution – general

Definitions

10.1 In Chapter 10:

‘mediation’ means a structured negotiation process in which the mediator, as an impartial and independent party, helps the parties to a dispute to achieve their own resolution of the dispute;

‘neutral evaluation’ means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an opinion about the likely outcome of the proceeding, including any likely findings of liability or the award of damages;

Costs of mediation or neutral evaluation

10.2 The costs of mediation or neutral evaluation, including the costs payable to the mediator or neutral evaluator, are payable:

- (a) by the parties in the proportions they agree amongst themselves; or
- (b) if the court makes an order as to the payment of those costs, by one or more of the parties in the way stated in the order

Duty of parties to take part in mediation or neutral evaluation

10.3 A party to a proceeding, or part of a proceeding, referred for mediation or neutral evaluation has a duty to take part, genuinely and constructively, in the mediation or neutral evaluation.

10.4 The court may have regard to failure by a party to take part, genuinely and constructively, in a mediation or neutral evaluation when deciding whether and how to award costs in a proceeding.

Privileged information and documents

10.5 Anything said during mediation or neutral evaluation, or document produced during mediation or neutral evaluation, has the same privilege in relation to defamation as if it had been said or produced during a proceeding before the court.

10.6 Evidence of anything said during mediation or neutral evaluation is not admissible in a proceeding before court except for the purpose of deciding whether and how to award costs in a proceeding.

10.7 A document prepared for, or in the course of or as a result of, mediation or neutral evaluation is not admissible in a proceeding before a court except for the purpose of deciding whether and how to award costs in a proceeding.

- 10.8** Rules 10.6 and 10.7 do not apply to evidence or a document if the parties to the mediation or neutral evaluation consent to the admission of the evidence or document.

Secrecy

- 10.9** A mediator or neutral evaluator must not disclose to any person who is not a party to the mediation or neutral evaluation information obtained during the mediation or neutral evaluation except:
- (a) in connection with the mediators' duties under Chapter 10; or
 - (b) if the mediator or neutral evaluator believes on reasonable grounds that disclosing the information is necessary to prevent or minimise the danger of injury to a person or damage to property; or
 - (c) if all parties consent; or
 - (d) if disclosing the information is required by another law of Solomon Islands although the information need not be disclosed under a requirement imposed by a summons unless the court otherwise orders.

Chapter 10.2 Mediation

Purpose of Chapter 10.2

- 10.10** Chapter 10.2 allows the court to refer matters for mediation.
- 10.11** Chapter 10.2 does not prevent the parties to a proceeding from agreeing to or arranging mediation otherwise than under this Chapter and the parties may agree that all or any part of Chapter 10.2 shall apply to a mediation agreed or arranged by them.

Referral by court

- 10.12** The court may by order refer a matter for mediation if the court considers mediation may help resolve some or all of the issues in dispute.
- 10.13** The court may make an order on application by a party to the proceeding or on its own initiative.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under these rules.

- 10.14** The court may make a mediation order at a conference or at any other stage of a proceeding.
- 10.15** The mediator may be, but need not be, a person whose name is on a list of mediators.

Who may be mediators

- 10.16** The Chief Justice may keep a list of persons whom the Chief Justice considers to be suitable to be mediators.

Content of mediation order

- 10.17** The mediation order must set out information about:
- (a) the statements of the case; and

- (b) the issues between the parties; and
- (c) any other relevant matters;

in order to inform the mediator about the dispute and the present stage of the proceeding between the parties.

10.18 The court may include in the order directions about:

- (a) the mediator's role; and
- (b) time deadlines; and
- (c) any other matters relevant to the particular case.

Mediator's role

10.19 During the mediation, the mediator may see the parties together or separately and with or without their legal practitioners.

Mediator's powers

10.20 A mediator may:

- (a) ask a party to answer questions; and
- (b) ask a party to produce documents or objects in the party's possession; and
- (c) visit places and inspect places and objects; and
- (d) ask a party to do particular things; and
- (e) ask questions of an expert witness to the proceeding.

10.21 A mediator may at any time ask for guidance and directions from the court.

Settlement

10.22 If a settlement is reached, it must be:

- (a) written down, signed and dated by the mediator and the parties; and
- (b) filed with the court.

10.23 The court may approve the settlement and may make orders to give effect to any agreement or arrangement arising out of mediation.

10.24 These orders do not constitute a formal judgment against a party but may be enforced as a judgment under Chapter 21.

10.25 Rule 10.22 does not affect the enforceability of any other agreement or arrangement that may be made between the parties about the matters the subject of mediation.

Proceeding suspended during mediation

10.26 If a matter is referred to mediation by the court under this Chapter, the proceeding about that matter is suspended during the mediation.

Liability of mediators

- 10.27** A mediator is not liable for anything done or omitted to be done during mediation if the thing was done, or omitted to be done, in good faith for the purposes of the mediation.

Chapter 10.3 Arbitration

Proceedings under Arbitration Act to be commenced by claim

- 10.28** A proceeding under the Arbitration Act [Cap 2] must be started by application.

Leave to appeal under Arbitration Act, s 22(2)(b)

- 10.29** An application for leave to appeal to the High Court under the Arbitration Act, section 22 (2) (b) must include, or be accompanied by, a statement of:

- (a) the nature of the case; and
- (b) the questions of law involved; and
- (c) the reasons why leave should be given.

- 10.30** The application must be made not later than 21 days after:

- (a) if, by agreement of the parties to the submission or reference, the award is made without including a statement of reasons - the day the statement of reasons is given to the applicant; or
- (b) otherwise - the day notice of the award is given to the applicant.

- 10.31** If leave to appeal to the High Court is granted then the appeal must be started no later than 21 days after the day leave is granted by the court.

Appeal under Arbitration Act, s 22

- 10.32** An appeal to the High Court mentioned in the Arbitration Act, section 22(2)(a) must be started not later than 21 days after:

- (a) if, by agreement of the parties to the arbitration agreement, the award is made without including a statement of reasons - the day the statement of reasons is given to the appellant; or
- (b) otherwise - the day notice of the award is given to the appellant.

Application for leave to enforce award

- 10.33** An application for leave under the Arbitration Act, section 14 to enforce an award:

- (a) must be supported by a sworn statement that states:
 - (i) the extent to which the award has not been complied with at the date the application is made; and
 - (ii) the usual, or last-known home or business address of the person against whom it is sought to enforce the award or, if the person is a corporation, its last-known registered office; and
- (b) may be made without giving notice to anyone.

- 10.34** If leave is given, any party to the award may enter judgment in terms of the award.

Chapter 10.4 *Neutral Evaluation*

Purpose

- 10.35** Chapter 10.4 does not prevent the parties to a proceeding from agreeing to, and arranging for neutral evaluation of any matter otherwise than under Chapter 10 and the parties may agree that all or any part of Chapter 10.4 shall apply to a neutral evaluation agreed or arranged by them and in particular:
- (a) if the results of a neutral evaluation are accepted it can be registered as a judgment and enforced as such; and
 - (b) if not accepted, proceedings continue but the other party is to be at risk of costs, including in appropriate cases, indemnity costs, if that party does not obtain a more favourable judgment; and
 - (c) if proceedings continue, the particulars of the neutral evaluation are not to be disclosed to the court except in relation to the question of costs.

Neutral evaluation—appointment of evaluator

- 10.36** The following persons can be an evaluator:
- (a) the registrar of the High Court; or
 - (b) someone else that the court considers has the skills and qualifications to be an evaluator and appoints as an evaluator.

Neutral evaluation—referral by court

- 10.37** The court may, by order, refer a proceeding, or any part of a proceeding, for neutral evaluation.
- 10.38** The court may make an order on application by a party to the proceeding or on its own initiative.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under these rules.

- 10.39** If the court refers a proceeding or part of a proceeding for neutral evaluation, the neutral evaluation must be undertaken only by an evaluator appointed by the court.

Neutral evaluation—agreements and arrangements arising from sessions

- 10.40** The court may make orders to give effect to an agreement or arrangement between the parties arising out of a neutral evaluation and such orders may be enforced as a judgment under Chapter 21.
- 10.41** This Chapter does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of neutral evaluation, in relation to the matters that are the subject of the neutral evaluation.

Chapter 11 Disclosure

Chapter 11.1 Disclosure of documents in the High Court

Application of Chapter 11.1

11.1 Chapter 11.1 applies only in the High Court.

Duty to disclose documents

11.2 A party must disclose a document if:

- (a) the party is relying on the document; or
- (b) the party is aware of the document, and the document to a material extent adversely affects that party's case or supports another party's case.

11.3 A party that is not an individual is aware of a document if any of its officers or employees are aware of it.

Disclosure is limited to documents within party's knowledge, after reasonable search

11.4 A party is only required to disclose a document:

- (a) that they are, after a reasonable search, aware of at the time of disclosure; and
- (b) if they are relying on the document or the document is or has been in their possession or power.

Copies

11.5 A party need only disclose a copy of a document if the copy has been changed from the original or a previous copy in any way, whether by adding, removing, changing or obliterating anything.

11.6 A copied document need not be disclosed if the original or another copy has already been disclosed.

How to disclose documents

11.7 A party discloses documents by:

- (a) making a sworn statement that:
 - (i) lists the documents; and
 - (ii) states that the party understands the obligation to disclose documents; and
 - (iii) states that, to the best of the party's knowledge, they have disclosed all documents that they must disclose; and
 - (iv) states which documents, if any, are intended to be relied upon but which are no longer in the party's possession or power and gives information as to the current whereabouts of the documents, if known, or the circumstances by which the party lost such possession or power; and

- (v) for documents claimed as privileged, states that the documents are privileged, giving the reasons for claiming privilege; and
 - (b) filing and serving a copy of the statement on each other party.
- 11.8** For a list of documents from a person who is not an individual, the sworn statement must:
 - (a) be made by a responsible officer or employee; and
 - (b) give the name and position of the person who identified the individuals who may be aware of documents that should be disclosed; and
 - (c) give the name and position of the individuals who have been asked whether they are aware of any of those documents.
- 11.9** If a party claims a document should not be disclosed on the grounds of public interest, the party must make an application for an order dispensing with the disclosure of that document on the ground that disclosure would damage the public interest.
- 11.10** A party who believes a list is not accurate, or that documents claimed as privileged are not privileged, may apply for an order to correct the list.
- 11.11** A party need not list the documents if the court orders that they are not to be disclosed.

Mistaken disclosure of privileged document

- 11.12** If a privileged document is mistakenly disclosed the following provisions apply:
 - (a) if the mistaken disclosure is to a legal practitioner, they must not use it if, because of the way and circumstances it was disclosed, a legal practitioner would realise that:
 - (i) the document is privileged; and
 - (ii) it was disclosed by mistake.
 - (b) in any case, if a privileged document is mistakenly disclosed by a party, that party may apply to the court for the recall of the document and an order preventing any other party making use of the document.

Inspecting and copying disclosed documents

- 11.13** A party (the ‘**inspecting party**’) may inspect and ask for copies of the documents on a list served by another party except:
 - (a) documents that are no longer in the other party’s possession or power; or
 - (b) documents that are privileged.
- 11.14** The inspecting party:
 - (a) must give the other party reasonable notice; and
 - (b) if they want a copy of a document, must pay the reasonable costs of copying the document.

Duty of disclosure is continuous

- 11.15** The duty to disclose documents continues throughout a proceeding.
- 11.16** If a party becomes aware of documents that must be disclosed, but have not been disclosed, the party must disclose the documents.
- 11.17** The party must disclose the documents:
- (a) within 7 days of becoming aware of the documents, and in any case before the trial starts; or
 - (b) if the party becomes aware of the documents after the trial has started, as soon as practicable after becoming aware of the documents.

Disclosure of specific documents

- 11.18** The court may order disclosure of specific documents or of a class of documents if the court is satisfied that disclosure is necessary to:
- (a) decide the matter fairly; or
 - (b) save costs.
- 11.19** The court must consider:
- (a) the likely benefit of disclosure; and
 - (b) the likely disadvantages of disclosure; and
 - (c) whether the party who would have to disclose the documents has sufficient financial resources to do so.
- 11.20** The court may order that the documents be disclosed in stages.

Application to limit disclosure

- 11.21** The court may order that a party need not disclose some or any documents if the court is satisfied that:
- (a) the documents are not relevant to the issues between the parties; or
 - (b) disclosure is not necessary to decide the matter fairly; or
 - (c) the costs of disclosure would outweigh the benefits; or
 - (d) for any other reason, the court is satisfied that the documents need not be disclosed.

Documents referred to in statements of the case

- 11.22** A party may inspect and ask for a copy of a document mentioned in a statement of the case, sworn statement, expert's report or document filed in the court.

Disclosure before proceedings start

- 11.23** A person may apply for an order for disclosure of documents before proceedings have started.
- 11.24** The application must have with it a sworn statement setting out the reasons why the documents should be disclosed.

11.25 The court must consider:

- (a) the likely benefits of disclosure; and
- (b) the likely disadvantages of disclosure; and
- (c) whether the party who would have to disclose the documents has sufficient financial resources to do so.

11.26 The court must not order documents be disclosed unless the court is satisfied that:

- (a) the person in possession and control of the document has had an opportunity to be heard; and
- (b) the applicant and person in possession and control of the document are likely to be parties to the proceedings; and
- (c) the documents are relevant to an issue that is likely to arise in the proceedings; and
- (d) disclosure before proceedings have started is necessary to decide the proceedings fairly or to save costs.

11.27 The order may state the time and place of disclosure.

Disclosure by someone who is not a party

11.28 A party may apply for an order that documents be disclosed by a person who is not a party to the proceedings.

11.29 The application must have with it a sworn statement setting out the reasons why the documents should be disclosed.

11.30 The court must consider:

- (a) the likely benefits of disclosure; and
- (b) the likely disadvantages of disclosure; and
- (c) whether the party who would have to disclose the documents has sufficient financial resources to do so.

11.31 The court must not order documents be disclosed unless the court is satisfied that:

- (a) the person in possession and control of the document has had an opportunity to be heard; and
- (b) the documents are relevant to an issue in the proceedings; and
- (c) disclosure is necessary to decide the proceedings fairly or to save costs.

11.32 The order may state the time and place of disclosure and require that the applicant pay the non-party's costs of making disclosure.

Failure to disclose documents

11.33 A party who fails to disclose a document may not rely on the document unless the court allows it.

- 11.34** If a party fails to disclose a document as required by this Chapter, another party may apply for an order that the person disclose the document.
- 11.35** An order that a party must disclose a document must be served on them and if the party fails to disclose the document within 7 days of the date of service of the order, the court may:
- (a) order that all or part of the proceedings be stayed or dismissed; or
 - (b) give judgment against the person; or
 - (c) make any other order the court thinks fit.
- 11.36** These rules do not affect the power of the court to punish for contempt of court.

Use of disclosed documents

- 11.37** A party to whom a document is disclosed may only use the document for the purposes of the proceeding unless the document has been:
- (a) read to or by the court; or
 - (b) referred to in open court.
- 11.38** A party, or person in possession or control of a document, may apply for an order restricting or prohibiting use of the document even if it has been:
- (a) read to or by the court; or
 - (b) referred to in open court.
- 11.39** The court may make an order restricting or prohibiting use of the document if it is satisfied that the benefits of restricting or prohibiting the use of the document outweigh the benefits of allowing the document to be used.

Agreed bundle of documents

- 11.40** Where relevant copies of documents are provided as part of the court book the originals of all documents to be used at the trial need not be brought to the trial unless the court otherwise orders or a party has given not less than 7 days notice that the original document is to be produced at trial.
- 11.41** The documents that the parties have agreed must be gathered together, indexed and numbered.
- 11.42** If the parties do not agree about the disclosure of some documents or their use at the trial, the party in possession of the documents must bring the documents to the trial.

Note This rule must be read in conjunction with Chapter 12.

Chapter 11.2 Disclosure of information in the High Court

- 11.43** Chapter 11.2 applies only in the High Court.

Written questions

- 11.44** A party may make an application for leave to ask another party a set of written questions, telling the court the matters the questions will cover.

- 11.45** If the court makes an order the set of written questions must be served on the party to whom they are directed and on all other parties.

Time for answering

- 11.46** A person who is asked written questions must answer them.

- 11.47** The written questions must be answered:

- (a) within 14 days of the questions being served on the party; or
- (b) within the period fixed by the court.

Form of answer

- 11.48** The questions must be answered in writing.

- 11.49** The answers must:

- (a) set out each question, followed by the answer; and
- (b) be verified by a sworn statement made by the party answering the questions.

- 11.50** The answer must:

- (a) answer the substance of each question, without evasion or resorting to technicalities; or
- (b) object to answering the question.

Objections

- 11.51** An objection must:

- (a) set out the grounds for the objection; and
- (b) briefly state the facts on which the objection is based.

- 11.52** A person may object to answering a written question only on the following grounds:

- (a) the question does not relate to a matter at issue, or likely to be at issue, between the parties; or
- (b) the question is not reasonably necessary to enable the court to decide the matters at issue between the parties; or
- (c) there is likely to be a simpler and cheaper way available at the trial to prove the matters asked about; or
- (d) the question is vexatious or oppressive; or
- (e) privilege; or
- (f) the answer is not known.

- 11.53** The objection is to be dealt with at a conference.

- 11.54** If the judge agrees with the objection, the question need not be answered.

Failure to answer written questions

- 11.55** If a person does not answer, or does not give a sufficient answer, to a written question, the court may order the person to:
- (a) answer the question; or
 - (b) attend court to answer the question on oath.
- 11.56** If the person does not comply with the order, the court may:
- (a) order that all or part of the proceedings be stayed or dismissed; or
 - (b) give judgment against the person; or
 - (c) make any other order the court thinks fit.
- 11.57** These rules do not affect the power of the court to punish for contempt of court.

Chapter 11.3 *Disclosure of documents in the Magistrates' Courts*

- 11.58** Chapter 11.3 applies only in the Magistrate's Court.

Disclosure of documents

- 11.59** A party to a proceeding must disclose the documents the party intends to rely on at the trial.
- 11.60** A party discloses a document by giving a copy of the document to each other party at least 14 days before the trial.

Disclosure of particular documents

- 11.61** A party may apply for an order that another party disclose particular documents.
- 11.62** The magistrate may order that the documents be disclosed if:
- (a) the magistrate is satisfied the documents are relevant to the issues in the proceedings and disclosure is necessary to decide the proceedings fairly or to save costs; or
 - (b) for any other reason the magistrate is satisfied that the documents should be disclosed.
- 11.63** If the magistrate orders that documents are to be disclosed, the magistrate may also order that Chapter 11.1 applies to the extent ordered.

Chapter 11.4 *Disclosure to identify potential defendant*

- 11.64** If:
- (a) a potential claimant has, or is likely to have, a cause of action against someone (the *potential defendant*); and
 - (b) either:
 - (i) the potential claimant wants to start a proceeding in the court against the potential defendant for the cause of action; or

- (ii) the following provisions apply:
 - (A) the potential claimant is a party to a proceeding in the court; and
 - (B) the potential defendant is not a party to the proceeding; and
 - (C) the potential claimant wants to make a claim for relief in the proceeding against the potential defendant for the cause of action; and
 - (D) the claim for relief could properly have been made in the proceeding against the potential defendant if the potential defendant were a party; and
- (c) the potential claimant, after making reasonable inquiries, cannot ascertain the identity or whereabouts of the potential defendant sufficiently to start the proceeding, or make the claim for relief, against the potential defendant; and
- (d) someone else (the *other person*) may have information, or may have or have had possession of a document or thing, that tends to help in ascertaining the identity or whereabouts of the potential defendant;

the potential claimant may apply to the court by claim or application, as appropriate, for an order under rule 11.65 and any other order that might be appropriate against the other person.

11.65 The court may issue a summons requiring the other person:

- (a) to attend before the court to be examined in relation to the identity or whereabouts of the potential defendant (an *order for attendance*); or
- (b) to produce to the court any document or thing that is, or has been, in the other person's possession relating to the identity or whereabouts of the potential defendant; or
- (c) to make and serve on the potential claimant a list of the documents or things that are, or have been, in the other person's possession relating to the identity or whereabouts of the potential defendant; or
- (d) to produce for inspection by the potential claimant any document or thing that is, or has been, in the other person's possession relating to the identity or whereabouts of the potential defendant.

11.66 If the court issues a summons requiring attendance the court may:

- (a) order that the other person must produce to the court on the examination any document or thing that is in the other person's possession relating to the identity or whereabouts of the potential defendant; and
- (b) in the case of the High Court, direct that the examination by the court be held before the registrar.

- 11.67** The application must be supported by a sworn statement stating the facts on which the potential claimant relies, and stating the kinds of information, documents or things in relation to which the application is made.
- 11.68** Rules 13.56, 13.59, 13.60, 13.62, 13.63, 13.64, 13.65, 13.66, 13.67 and 13.68 (relating to compliance with summons) and rules 13.82 and 13.83 (costs and expenses of compliance with summons) apply, with necessary changes, in relation to a summons under rule 11.65.
- 11.69** In this Chapter:
- identity or whereabouts*, of the potential defendant, includes:
- (a) whether the potential defendant is an individual or a corporation; and
 - (b) for an individual - the potential defendant's name, home address or other whereabouts, occupation and sex; and
 - (c) for a corporation - the potential defendant's registered office, business address or other whereabouts.

Chapter 11.5 *Disclosure to identify right to claim relief*

- 11.70** If:
- (a) a potential claimant has, or is likely to have, a cause of action against someone (the *potential defendant*); and
 - (b) either:
 - (i) the potential claimant, after making reasonable inquiries, cannot obtain sufficient information to decide whether to start a proceeding in the court against the potential defendant for the cause of action; or
 - (ii) the following provisions apply:
 - (A) the potential claimant is a party to a proceeding in the court; and
 - (B) the potential defendant is not a party to the proceeding; and
 - (C) the potential claimant, after making reasonable inquiries, cannot obtain sufficient information to decide whether to make a claim for relief in the proceeding against the potential defendant for the cause of action; and
 - (D) the claim for relief could properly have been made in the proceeding against the potential defendant if the potential defendant were a party; and
 - (c) the potential claimant has reasonable grounds for believing that the potential defendant has or has had possession of a document or thing that can help in deciding whether to start the proceeding, or make the claim for relief, against the potential defendant; and

- (d) inspection of the document or thing by the potential claimant would help in making the decision;

the claimant may apply to the court by claim or application, as appropriate, for an order under rule 11.72 and any other order that might be appropriate against the potential defendant.

- 11.71** The claim or application must be supported by a sworn statement stating the facts on which the potential claimant relies, and stating the kinds of documents or things in relation to which the application is made.
- 11.72** The court may order the potential defendant to produce the document or thing to the potential claimant.
- 11.73** An order to produce in relation to any document or thing held by a corporation may be addressed to any appropriate officer or former officer of the corporation.
- 11.74** An order to produce does not require the person against whom the order is made to produce any document that, on the ground of privilege, the person could not be required to produce if the applicant for the order had:
 - (a) started a proceeding against the person; or
 - (b) made the person a party to the proceeding.

Chapter 12 Trial

Court book – High Court

12.1 If the High Court has set a date for trial, the claimant must, not later than 14 days before the trial date, file a copy of the most recent version of the following documents bound or stapled together (the *court book*):

- (a) the claim; and
- (b) each pleading in the proceeding; and

Note **Pleading** is defined in the dictionary.

- (c) any directions for particulars of a party's pleading, and the particulars filed in response to such a direction.

12.2 The following documents may be included in a court book if all the active parties to the proceeding agree:

- (a) expert reports, including medical reports; and
- (b) disclosure documents; and
- (c) any sworn statement to be used at trial.

12.3 Any documents included in a court book by agreement of the parties under rule 12.2 are deemed to be in evidence and need not be proved.

Court book – Magistrates' Courts

12.4 A magistrate may order that a claimant must, not later than 14 days before the trial date, file a copy of the court book.

Conduct of trial

12.5 The court may give directions for a particular trial about the order of evidence and addresses and the conduct of the trial generally. Such directions may, in the interests of justice, dispense with compliance or full compliance with any of the rules. If a direction is inconsistent with any of the rules, the direction prevails in that proceeding.

12.6 At the trial:

- (a) the claimant's case is presented first if the claimant has the burden of proof on any question; and
- (b) the defendant's case is presented first if the defendant has the burden of proof on every question.

12.7 Evidence is to be brought, and addresses made, in the following order:

- (a) the party who presents their case first (the '**first party**') makes an address opening the proceeding and, if evidence is to be given orally, brings evidence in support of their case;
- (b) the other parties cross-examine the first party's witnesses;
- (c) the first party re-examines their witnesses;

- (d) the second party then makes an address opening their case and, if evidence is to be given orally, brings evidence in support of their case;
- (e) the other parties cross-examine the second party's witnesses;
- (f) the second party re-examines their witnesses;
- (g) if there are any other parties, they in turn make their opening addresses, bring their evidence in support, cross-examine each other's witnesses and re-examine their witnesses;
- (h) the first party then makes a closing address;
- (i) the other parties in turn make their closing addresses;
- (j) the first party may make an address in reply on questions of law.

12.8 Despite these rules, the court may allow a party other than the claimant to make an address opening their case before any evidence is given.

Trial in open court

12.9 The trial of a proceeding must be held in open court unless the court orders otherwise.

Adjournment

12.10 The court may at or before a trial adjourn the trial.

Preliminary issues

12.11 The court may hear legal argument on preliminary issues of fact or law between the parties if it appears likely that, if the issues are resolved, the proceeding or part of the proceeding will be resolved without a trial, or the costs of the proceedings or the issues in dispute are likely to be substantially reduced.

Hearing of question of law only

12.12 If the parties have agreed on the facts but there remains a question of law in dispute, the court may hear argument from the parties about the question of law.

Court may hear evidence early

12.13 Despite rules 12.14 and 12.15, if a witness may not be available at the time of the trial, the court may hear the witness's evidence before the trial, in accordance with rules 13.21 to 13.25 (giving evidence before trial).

Giving of evidence

12.14 A witness's evidence is to be given as provided in Chapter 13 (Evidence).

12.15 The witness must attend at the trial, if required under Chapter 13 (Evidence), and may be examined on their evidence by all other parties to the proceeding.

Referee

12.16 If a proceeding in the High Court raises questions of a complex technical nature, the court may by order appoint a person qualified and experienced in that field as a referee to hear and determine those questions.

- 12.17** The court may give the referee power to:
- (a) give directions about preparing for the hearing, including directions about written submissions, disclosure of documents and information, compiling bundles of diagrams and sketches and dealing with technical information; and
 - (b) issue summonses requiring persons to attend the hearing and give evidence, give evidence and produce documents or produce documents; and
 - (c) hear argument and oral evidence as the court does at a trial; and
 - (d) inspect objects and places; and
 - (e) adjourn the hearing from time to time; and
 - (f) deal with any matters incidental to the hearing.
- 12.18** The referee may refer a matter to the judge for assistance or determination.
- 12.19** The court may not give the referee any power of enforcement or punishment.
- 12.20** The costs of a referee hearing and determining questions are:
- (a) to be shared equally between the parties; or
 - (b) if the court makes an order as to the payment of those costs, by one or more of the parties in the way stated in the order.
- 12.21** The referee must give the referee's findings to the judge in the form, and in the time, set out in the order of appointment.
- 12.22** The judge must give each party a copy of the referee's findings.
- 12.23** The judge may accept all, some or none of the referee's findings.

Failure to attend

- 12.24** If a defendant does not attend when the trial starts:
- (a) the court may adjourn the proceeding to another date; or
 - (b) the claimant, with leave of the court, may call evidence to establish that the claimant is entitled to judgment against the defendant and the court may, after hearing the claimant and considering any court book and any sworn statements, give judgment for the claimant.
- 12.25** If a claimant does not attend when the trial starts:
- (a) the court may adjourn the proceeding to another date; or
 - (b) the court may dismiss the claimant's claim and give judgment for the defendant; or
 - (c) the defendant, with leave of the court, may call evidence to establish that the defendant is entitled to judgment under a counterclaim against the claimant and the court may, after hearing the claimant and considering any court book and any sworn statements, give judgment, including judgment on the counterclaim, for the defendant.

- 12.26** If neither the claimant nor the defendant attend when the trial starts, the court may, on its own initiative, order that the proceeding (including any counterclaim by the defendant) be struck out and make no order for costs.
- 12.27** If the claimant or defendant or both the claimant and defendant do not attend when the trial starts, the court may adjourn the proceedings, may give directions about further dealing with the proceeding and may consider the question of costs.

View by court

- 12.28** On application by a party or on its own initiative, the court may inspect a place, process or thing, and witness any demonstration about an issue which arises in the proceeding.

Re-opening a proceeding

- 12.29** The court may by order allow a party to re-open a proceeding after trial but before judgment if the court is satisfied that it is necessary to do so in order for substantial justice to be done.

Judgment

- 12.30** After the trial, the court must give judgment.
- 12.31** If judgment has not been delivered within 3 months of the date when the trial finished, the registrar must list the proceedings for mention before the judge who conducted the trial and the judge must report on the finalisation of the proceedings.
- 12.32** If judgment has not been delivered within 3 months of the date the judge reported on finalisation under rules 12.31 or this rule, the registrar must list the proceedings for mention before the judge and the judge must give a further report on the finalisation of the proceedings.

Court clerk or Associate to record hearing times and outcomes

- 12.33** The court clerk, judge's associate or other officer present at a hearing of a proceeding must, on each day of the hearing, record the times when the hearing starts and ends.
- 12.34** If the costs of a party to the proceeding are to be assessed, the recorded times must be provided to the registrar at the assessment.
- 12.35** The court clerk or judge's associate must, as directed by the judge or magistrate, record:
- (a) the orders made by the judge about judgment; and
 - (b) the certificates (if any) given by the judge; and
 - (c) anything else directed by the judge.

Chapter 13 Evidence

Definition for this Chapter

13.1 In Chapter 13:

‘appeal period’ in relation to a proceeding, means 28 days after the day judgment is given in the proceeding;

‘document’ includes an object and a publication;

‘summoned document or thing’ means a document or thing, produced in a proceeding because of a summons.

How to give evidence – Magistrate’s Court

13.2 Evidence in the Magistrate’s Court is to be given orally.

13.3 However, a magistrate may order that evidence in a particular case, or particular evidence, be given by sworn statement.

How to give evidence – High Court

13.4 Evidence in the High Court is to be given at trial orally and for any other purpose by sworn statement.

13.5 However, a judge may order that:

- (a) evidence at trial in a particular case, or particular evidence, be given by sworn statement; or
- (b) evidence for any other purpose in a particular case, or particular evidence, be given orally.

Use of sworn statement in proceedings

13.6 A sworn statement, including any annexure, that is tendered in court or included in the bundle of agreed documents becomes evidence in the proceeding unless the court has ruled it inadmissible in whole or part - when that part that is inadmissible does not become evidence.

13.7 The sworn statement need not be read aloud during the trial unless the court orders, but before the sworn statement is tendered (unless no notice is given under rule 13.9) the witness shall be required to confirm at trial, on oath or affirmation, the truth of the sworn statement and may clarify any matter contained in it.

13.8 A witness may be cross-examined and re-examined on the contents of the witness’s sworn statement.

13.9 A party who wishes to cross-examine a witness must give the other party notice of this:

- (a) at least 7 days before the trial; or
- (b) within another period ordered by the court.

13.10 Another party may require that the original of a document annexed to a sworn statement be produced in court and must give the other party notice of this:

- (a) at least 7 days before the trial; or
- (b) within another period ordered by the court.

Giving evidence by telephone, video or in other ways

- 13.11** The court may allow a witness to give evidence by telephone, by video or by another form of communication (called ‘**evidence by link**’) if the court is satisfied that it is not practicable for the witness to come to court to give oral evidence or to be cross-examined or if the parties agree.
- 13.12** The court may do this whether the witness is in or outside Solomon Islands.
- 13.13** The application for evidence to be given by link must:
- (a) be made in an application; and
 - (b) have with it a sworn statement setting out:
 - (i) the name and address of the witness and the place where he or she will be giving evidence; and
 - (ii) the matters the witness will be giving evidence about; and
 - (iii) why the witness cannot or should not be required to come to court, and any other reason why the evidence needs to be given by link; and
 - (iv) the type of link to be used and the specific facility to be used; and
 - (v) any other matter that will help the court to make a decision, including information about the cost of the link.

Note Chapter 7 (Interlocutory Applications) applies to an application for evidence to be given by link.

- 13.14** The court must take the following into account in deciding whether to allow the evidence to be given by link:
- (a) the public interest in the proper conduct of the trial and in establishing the truth of a matter by clear and open means; and
 - (b) the question of fairness to the parties and balancing their competing interests; and
 - (c) any compelling or overriding reason why the witness should come to court; and
 - (d) the importance of the evidence to the proceeding; and
 - (e) whether or not the reason for seeking the evidence to be given by link is genuine and reasonable, having regard to:
 - (i) how inconvenient it is for the witness to come to court; and
 - (ii) the cost of the witness coming to court, particularly in relation to the amount claimed in the proceeding; and
 - (iii) any other relevant matter; and

- (f) whether the link will be reliable and of good quality; and
- (g) whether or not an essential element in the proceeding can be decided before the evidence is given; and
- (h) whether the kind of link will make examination of the witness difficult; and
- (i) for evidence to be given by telephone, that it is not practicable for the witness to give evidence in a way that allows for the witness to be identified visually; and
- (j) any other relevant matter.

13.15 For evidence given by telephone:

- (a) if practicable, a fax machine or other suitable device should be available at each end of the link, for the purpose of putting documents to a witness in the course of evidence; and
- (b) the court must be satisfied, when the evidence is being given:
 - (i) of the identity of the witness; and
 - (ii) that the witness is giving evidence freely.

13.16 The court may take into account a certificate by a magistrate, police officer or chief who was present when the witness gave telephone evidence that:

- (a) the person was present when the witness gave the evidence; and
- (b) the person knows the witness; and
- (c) the witness seemed to give the evidence freely.

13.17 Unless the court otherwise orders, for evidence given by video or another link showing the witness:

- (a) the witness should sit at a plain table or desk, with only the required documents and exhibits in front of him or her; and
- (b) the link should show a reasonable part of the room but still be close enough to enable the court to see the witness clearly and assess him or her; and
- (c) no-one else should be in the room with the witness except a technical person to help with the link or a court officer, or a legal practitioner for any party.

13.18 The court may end the giving of evidence by link if the court considers:

- (a) the quality of the link is unacceptable; or
- (b) to continue would cause unfairness to a party.

13.19 The court may give directions about giving evidence by link, including about:

- (a) which party is to arrange and pay for the link - including an order that all or some of the parties each contribute a part of the cost of the link; and

- (b) when and where the evidence will be given by the witness and heard by the court; and
- (c) when and where the evidence will be given.

13.20 Evidence taken by link for the purpose of a proceeding is taken to be evidence given in court during the proceeding.

Giving evidence before trial

13.21 A party may apply to the court for an order that a witness give evidence before trial.

13.22 The court may order that the witness give evidence if the court is satisfied that:

- (a) the witness can give evidence that will be relevant to a party's case; and
- (b) the witness's evidence is admissible; and
- (c) the witness may not be available to give evidence at the trial because:
 - (i) of the witness's state of health or medical condition; or
 - (ii) the witness is leaving Solomon Islands either permanently or for an extended period of time; or
 - (iii) of any other reason.

13.23 The witness:

- (a) must give the evidence to the court, in the presence of the legal practitioners for each party, if any; and
- (b) may be cross-examined and re-examined.

13.24 The court may allow a person giving evidence before trial to give evidence by telephone, by video or by another form of communication under rule 13.11 and it shall be sufficient if the legal practitioners for each party, if any, are present via this form of communication.

13.25 Evidence given before trial has the same value as evidence given during a trial.

Evidence by children

13.26 If a child is required to give evidence, the court must take whatever steps are necessary to enable the child to give evidence without intimidation, restraint or influence.

13.27 In particular, the court may do one or more of the following:

- (a) allow the child to give evidence screened from the rest of the court (but not from the judge or magistrate or other presiding judicial officer);
- (b) sit in a place other than the court-room;
- (c) allow only the parties' legal practitioners to be present while the child gives evidence;
- (d) appoint a person to be with the child while the child gives evidence; and

- (e) do anything else that may assist the child to give evidence.

Evidence by other vulnerable persons

- 13.28** If the court is satisfied that a witness may be unable to give evidence without intimidation, restraint or influence, the court may take any of the steps set out in rule 13.27 to ensure the witness is able to give evidence without intimidation, restraint or influence.

Expert witnesses

- 13.29** A party who intends to call a witness to give evidence as an expert must:
- (a) tell every other party; and
 - (b) give them a copy of the witness's report.
- 13.30** In the Magistrate's Court, rule 13.29 must be complied with at least 21 days before the trial date, or if the report is a response to an existing report, within 14 days before the trial date or such other date approved by the court.
- 13.31** In the High Court, rule 13.29 must be complied with at, or in accordance with orders made at a conference before a date is fixed for trial.
- 13.32** Any expert report not given to every other party within the times specified in 13.30 and 13.31 must be given to every other party as soon as practicable and the report cannot be relied upon without the leave of the court.
- 13.33** A party may only call one expert witness in a field unless the court orders otherwise.

Court-appointed experts

- 13.34** The court may appoint a person as an expert witness if a question arises that needs an expert to decide it.
- 13.35** The court may:
- (a) direct the expert to inquire into the question and report back to the court within the time the court specifies; and
 - (b) give the expert instructions about the terms of reference and the report.
- 13.36** The expert's costs are payable by the parties equally unless the court orders otherwise.
- 13.37** If the court appoints an expert, a party may not call another person as an expert witness in that field unless the court orders otherwise.

Court may direct experts to meet

- 13.38** The court may, on its own initiative or on a party's application, give one or more of the following directions:
- (a) a direction that the expert witnesses meet:
 - (i) to identify the matters on which they agree; and
 - (ii) to identify the matters on which they disagree and the reasons why; and

- (iii) to try to resolve any disagreement;
- (b) a direction that the expert witnesses produce for the court's use a document identifying:
 - (i) the matters on which they agree; and
 - (ii) the matters on which they disagree; and
 - (iii) the reasons for any failure to reach agreement on any matter;
- (c) a direction that:
 - (i) the expert witnesses give evidence at the trial after all or certain factual evidence relevant to an issue has been given; and
 - (ii) each party intending to call one or more expert witnesses close the party's case in relation to an issue, subject only to presenting the evidence of the expert witnesses later in the trial;
- (d) a direction that, after all or certain factual evidence has been given, a party who called an expert witness file and serve on each other active party a sworn statement or statement by the expert witness stating whether, in light of factual evidence given at the trial, the expert witness wishes to modify any opinion given earlier;
- (e) a direction that:
 - (i) each expert witness be sworn one immediately after another; and
 - (ii) when giving evidence, an expert witness occupy a position in the courtroom (not necessarily in the witness box) that is appropriate to the giving of evidence;
- (f) a direction that each expert witness give an oral explanation of his or her opinion, or opinions, on a question;
- (g) a direction that each expert witness give his or her opinion about the opinion, or opinions, given by another expert witness;
- (h) a direction that the expert witnesses be cross-examined, or re-examined, in a certain way or sequence, including, for example, by putting to each expert witness, in turn, each question relevant to one subject or issue at a time, until the cross-examination, or re-examination, of all the expert witnesses is finished;
- (i) a direction that any expert witness giving evidence in accordance with a direction under paragraph (h) be allowed to ask questions of any other expert witness who is also giving evidence in accordance with a direction under that paragraph;
- (j) any other directions about giving evidence in accordance with a direction under paragraph (h) that the court considers appropriate.

Note Chapter 7 (Interlocutory Applications) applies to an application for a direction or leave under this rule.

- 13.39** Rule 13.38 does not limit the directions that the court may give on its own initiative or on a party's application.
- 13.40** If the court directs expert witnesses to meet under paragraph 13.38(a), it may:
- (a) set the agenda; and
 - (b) state the matters the expert witnesses must discuss; and
 - (c) direct whether or not legal representatives may be present; and
 - (d) give directions about the form of any report to be produced to give effect to a direction under paragraph 13.38(b); and
 - (e) give any other directions it considers appropriate.
- 13.41** If expert witnesses have met and produced a document identifying the matters on which they agree, a party affected must not adduce expert evidence inconsistent with a matter agreed unless the court gives leave for the evidence to be adduced.

Documents, plans, photographs, video or audio recordings and models

- 13.42** Unless the court otherwise orders, if a party intends to tender a document, (including a plan, photograph, video or audio recording or model) at a trial, the party must give all other parties an opportunity to:
- (a) inspect any document the party intends to tender; and
 - (b) agree to its admission without proof;
- at least 7 days before the day the trial starts

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

- 13.43** An application for an order under rule 13.42 need not be served on another party and the court may direct that the application and any supporting evidence be placed in a sealed container, for example, an envelope.
- 13.44** The container may be opened only if the court orders it to be opened.
- 13.45** Non-compliance with rule 13.44 does not affect the admissibility of a plan, photograph, video or audio recording, or model.
- 13.46** Compliance or noncompliance with rule 13.44 may be taken into account on the question of costs.
- 13.47** In this Chapter:
model includes a model, simulation or image generated by a computer.

Medical evidence

- 13.48** In a claim for damages for personal injury or any other claim where the medical evidence is relevant, a party (**'the requesting party'**) can request that another party be examined, on reasonable notice, by a medical practitioner chosen by the requesting party.
- 13.49** If the person does not attend and allow the examination without reasonable excuse, the court may:
- (a) order the proceedings be stayed until the person does so; or

- (b) take the circumstances of the person's refusal into account when considering any evidence.

Summons to give evidence and produce documents

- 13.50** The registrar may, on the application of a party, issue a summons requiring a person to attend court to give evidence, or to produce documents unless the court has ordered that the summons not be issued.

Note Example summons to attend and/or produce in Schedule 2 Part B.

- 13.51** The order that a summons not be issued, or not be issued without leave, may be made:

- (a) at a conference; and
- (b) at a party's request or on the court's initiative.

- 13.52** The summons must:

- (a) give the full name, address and occupation of the witness; and
- (b) if it is a summons to produce documents, clearly identify the documents; and
- (c) state when and where the witness is to attend court; and
- (d) state the last day on which the summons may be served on the witness, which shall be:
 - (i) 5 days before the date stated in the summons for compliance with it; or
 - (ii) if the court sets a different date - the date set.

Summons for non-party production - issue

- 13.53** The registrar may only issue a summons requiring a person who is not a party to the proceeding to produce a document (a *summons for non-party production*) if it:

- (a) relates to a matter in issue in the proceeding; and
- (b) is in the person's possession or power; and
- (c) the person could be required to produce at the trial of the proceeding.

- 13.54** A party may not apply for a summons for non-party production if there is available to the party another reasonably simple and inexpensive way of proving the matter sought to be proved by the document.

- 13.55** A matter is *in issue* until it is:

- (a) admitted or taken to be admitted; or
- (b) withdrawn, struck out or otherwise disposed of.

Service of summons

- 13.56** A summons under rule 13.50 must be served personally, unless the court orders otherwise.

- 13.57** A summons for non-party production is taken to be served personally on a medical expert if, at a place where the expert's practice is carried on:
- (a) it is given to a person apparently engaged (whether as employee or otherwise) in the practice and apparently at least 18 years old; or
 - (b) if a person mentioned in paragraph (a) does not accept the notice - the notice is put down in the person's presence and the person is told in general terms what it is.
- 13.58** A copy of the notice must be served on each other active party to the proceeding not later than 2 days after the day the notice is served on the respondent.

Travelling costs

- 13.59** At the time of service:
- (a) the person must be given enough money to meet the reasonable costs of travelling to comply with the order, including, if it is appropriate, reasonable meal and accommodation costs; or
 - (b) the person must be given a transport ticket to comply with the order and, if appropriate, enough money to meet other reasonable costs of travelling including reasonable meal and accommodation costs.
- 13.60** However, if the summons is not served personally, it is sufficient if the person is reimbursed the reasonable costs of travelling to comply with the order when the person attends court in answer to the summons.
- 13.61** A person, other than a party, who gives evidence for a party without being summoned is entitled to be reimbursed his or her reasonable costs of travelling to give the evidence by the party as if the person had been summoned.

Producing documents or objects

- 13.62** A person summoned to produce documents may do so by giving the documents to the court office at the place stated in the summons at least 2 days before the date stated in the summons.
- 13.63** The court officer must, if asked to do so, give the person a receipt for the documents.
- 13.64** If a person who is summoned to produce documents is not a party, the person is entitled to be paid or reimbursed the reasonable costs of producing the documents.

Failure to comply with summons

- 13.65** Failure to attend court as required by a summons to attend and give evidence, or produce documents, without a lawful excuse is contempt of court.
- 13.66** A person who fails to attend court as required by a summons to attend and give evidence, or produce documents, without a lawful excuse may be dealt with for contempt of court.
- 13.67** A person need not comply with the requirements of a summons to attend and give evidence unless reasonable travelling costs under rule 13.59 have been

handed or tendered to the person a reasonable time before the date when attendance is required.

- 13.68** A person need not comply with the requirements of a summons unless it is served on or before the date stated in the summons as the last date for service of the summons.

Return and inspection of documents produced in response to summons

- 13.69** The court may give directions, on application or its own initiative, in relation to the removal from and return to the court, and the inspection, copying and disposal, of any document or thing that has been produced to the court in response to a summons.

Note Chapter 7 (Interlocutory Applications) applies to an application for directions under this rule.

- 13.70** On the request of a party, made orally on the return date for the summons or in writing after the return date, the registrar must tell the party whether production in response to a summons has happened and, if so, include a description, in general terms, of the documents and things produced.
- 13.71** Unless the court otherwise orders, the registrar may allow the parties to inspect at the registry any document or thing produced unless the person summoned, a party or someone else having sufficient interest objects to the inspection.
- 13.72** If objection is made under rule 13.71 to a document or thing being inspected by any party to the proceeding, the objector must tell the court about the objection and the grounds of the objection.
- 13.73** The objection mentioned in rule 13.72 must be made orally to the court on the return date for the summons or in writing to the court before the return date.
- 13.74** If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may tell the court on the return date for the summons or in writing about the objection and the grounds of the objection.
- 13.75** If the court receives an objection under rule 13.72 or rule 13.74, the registrar:
- (a) must not allow any, or any further, inspection of the document or thing the subject of the objection; and
 - (b) must refer the objection to the court for hearing and decision.
- 13.76** The registrar must tell the issuing party in writing about:
- (a) the objection; and
 - (b) the date, time and place the objection will be heard.
- 13.77** The issuing party must, a reasonable time before the date the objection will be heard, tell the person summoned, the objector and each other active party in writing about:
- (a) the objection; and
 - (b) the date, time and place the objection will be heard.

Disposal before end of hearing of summoned documents and things produced

- 13.78** Unless the court otherwise orders, the registrar may return to the addressee any document or thing produced in the proceeding in response to the summons.
- 13.79** The registrar must not return any document or thing under rule 13.78 unless the registrar has given the issuing party at least 14 days notice of the registrar's intention to do so and that period has ended.
- 13.80** If the person summoned has told the court that a document or copy of a document produced need not be returned and may be destroyed, the registrar may, unless the court otherwise orders, destroy the document or copy instead of returning it.
- 13.81** The registrar must not destroy a document or copy of a document unless the registrar has first given the issuing party and the addressee at least 14 days notice of the registrar's intention to destroy the document or copy.

Costs and expenses of compliance with summons

- 13.82** If the person summoned is not a party to the proceeding, the court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the summons.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

- 13.83** An amount fixed under rule 13.82 is separate from and additional to:
- (a) any reasonable travelling costs payable under rule 13.59; and
 - (b) any witness expenses payable under rule 13.61.

Registrar to keep record of exhibits, documents and things

- 13.84** Unless the court otherwise orders, the registrar must:
- (a) take charge of a document or thing that is an exhibit in the proceeding; and
 - (b) mark or otherwise label each exhibit so the exhibit has a unique identifier in a sequence of consecutive identifiers allocated to the exhibits of the party that put it into evidence; and
 - (c) prepare a list of the exhibits for the proceeding that shows:
 - (i) the party that put the exhibit into evidence; and
 - (ii) if the exhibit was produced because of a summons - the name of the person summoned.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

- 13.85** The list of exhibits forms part of the record of the proceeding.

- 13.86** The court may treat 2 or more documents as a single exhibit.

Custody of exhibits after proceeding

- 13.87** Unless the court otherwise orders, the registrar must keep exhibits in a proceeding in the court for at least:
- (a) 28 days after the day judgment is given in the proceeding; or

- (b) if an appeal or application for leave to appeal is filed, 28 days after determination of the appeal or application for leave (including any appeal pursuant to the grant of leave).

Note Chapter 7 (Interlocutory Applications) applies to an application for an order otherwise ordering.

Duty of parties to claim exhibits

13.88 The party that put an exhibit into evidence in a proceeding must apply to the registrar for the return of the exhibit as soon as practicable after:

- (a) if an appeal is started in relation to the proceeding within the appeal period (including any period allowed following the grant of leave to appeal) - the appeal is disposed of; or
- (b) in any other case - the appeal period ends.

13.89 If the registrar has the exhibit, the registrar must give it to:

- (a) the applicant for an order under rule 13.88; or
- (b) if the exhibit belongs to someone who is not a party and the application asks for it to be given to the person - the person.

13.90 If the registrar does not have the exhibit, the registrar must get the exhibit and give it to:

- (a) the applicant; or
- (b) if the exhibit is a summoned document or thing produced by someone who is not a party and the application asks for it to be given to the person - the person.

13.91 If a party does not apply for the return of an exhibit (other than a summoned document or thing) put into evidence by the party, the registrar must:

- (a) give the exhibit to the party; or
- (b) if it is not practicable for the registrar to give the exhibit to the party - give notice to the party, the party's legal practitioner, or anyone else who appears to the registrar to be the owner or person entitled to possession of the exhibit, to collect the exhibit from the registry not later than 28 days after the day the notice is given.

13.92 If a party is given a summoned document or thing, the party must return the document or thing to the person summoned.

13.93 Rule 13.88 applies subject to any direction of the court, given on application or its own initiative, in relation to the removal from and return to the court, and the inspection, copying and disposal, of any document or thing that has been tendered as an exhibit or produced to the court in response to a summons.

Return of summoned document or thing after proceedings have ended

13.94 The registrar must:

- (a) return, or arrange for the return of, the document or thing to the person summoned; or

- (b) if it is not practicable for the registrar to return, or arrange for the return of, the document or thing to the person summoned - give notice to the person, or anyone else who appears to the registrar to be the owner or person entitled to possession of the document or thing, to collect the document or thing from the registry not later than 28 days after the day the notice is given.

13.95 If the document or thing was not put into evidence as an exhibit in the proceeding (whether or not it was marked for identification) and rule 13.94(a) applies, it must be returned as soon as practicable after the hearing of the proceeding.

13.96 If the document or thing was put into evidence as an exhibit in the proceeding and rule 13.94(a) applies, it must be returned as soon as practicable after:

- (a) if an appeal is started in relation to the proceeding within the appeal period (including any period allowed following the grant of leave to appeal) - the appeal is disposed of; or
- (b) in any other case - the appeal period ends.

Requirement to give or send exhibit

13.97 If the registrar is required to give an exhibit (including a summoned document or thing) to a person under rule 13.88 (Duty of parties to claim exhibits) or rule 13.94 (Return of summoned document or thing after proceedings have ended), the registrar must give or send the exhibit to the person in a way that seems reasonable to the registrar.

Disposal of exhibits

13.98 Rule 13.99 applies if:

- (a) the registrar has given notice to someone under rule 13.91(b) in relation to an exhibit other than a summoned document or thing or rule 13.94(b) in relation to an exhibit that is a summoned document or thing; and
- (b) at the end of 3 months after the day the notice is given, the exhibit has not been collected from the registry.

13.99 The registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.

13.100 The registrar may apply to the court at any time for an order about the return, destruction or other disposal of an exhibit.

13.101 If the registrar returns, destroys or otherwise disposes of an exhibit, the registrar must ensure a note is placed on the court file specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.

Power to allow removal of exhibits by legal practitioner

13.102 The registrar must not permit a document or thing that the registrar has in relation to a proceeding to be removed from the registry except on application signed by the legal practitioner for a party to the proceeding.

13.103 The registrar may:

- (a) permit the document or thing to be removed from the registry by the legal practitioner on any conditions the registrar considers appropriate; or
- (b) refuse to permit the document or thing to be removed.

13.104 If a legal practitioner removes the document or thing from the registry with the registrar's leave, the legal practitioner is taken to undertake to the court that:

- (a) the document or thing will be kept in the personal custody of the legal practitioner or counsel briefed by the legal practitioner in the proceeding; and
- (b) the document or thing will be returned to the registry in the same condition, order and packaging in which it was removed, when directed by the registrar; and
- (c) the legal practitioner will comply with the conditions (if any) to which the leave is subject.

Evidence taken in Solomon Islands for use in proceedings outside Solomon Islands

13.105 Evidence taken in Solomon Islands for use in a proceeding outside Solomon Islands can only be taken in accordance with this Chapter.

13.106 If the High Court receives a letter of request from a court in another country asking that evidence be taken in Solomon Islands for use in proceedings in the other country, the evidence must be taken in accordance with rules 3.107 to 3.110.

13.107 The letter of request must have with it a sworn statement by an officer of the court of the other country verifying the letter of request.

13.108 The court is to give effect to the letter by:

- (a) issuing a summons to the person named in the letter to appear and give evidence or produce documents or both; and
- (b) hearing the witness's evidence orally; and
- (c) making a written record of the evidence; and
- (d) sending this to the court in the requesting country.

13.109 The written record must be signed by the judge before whom the evidence is given and sealed.

13.110 A person who gives evidence for use in a proceeding outside Solomon Islands is to be treated as if the person is giving evidence in proceedings in the High Court.

Evidence taken outside Solomon Islands for use in proceedings in Solomon Islands

13.111 A party to a proceeding may apply to the High Court to have evidence in the proceeding taken from a witness outside Solomon Islands.

13.112 The application must have with it a sworn statement that:

- (a) shows how the person's evidence is relevant and admissible; and that

- (b) shows why the evidence cannot be obtained from a person in Solomon Islands.

13.113 If the court is satisfied that:

- (a) the person's evidence is relevant and admissible; and
- (b) the evidence cannot be obtained from a person in Solomon Islands; and
- (c) there is an arrangement between Solomon Islands and the country concerned for the taking of evidence in that country for use in civil proceedings in Solomon Islands;

the court must issue a letter of request addressed to a court in the other country asking that court to take the witness's evidence.

13.114 Evidence taken outside Solomon Islands for the purpose of a proceeding is taken to be evidence given in the proceeding

Chapter 14 Sworn Statements

Definitions

- 14.1** In any Act or regulations a reference to an affidavit includes a sworn statement.
- 14.2** In these rules:
 ‘**oath**’ includes affirmation; and
 ‘**sworn**’ includes affirmed.

Time for swearing

- 14.3** A sworn statement for use in any proceeding may be sworn before or after the commencement of the proceeding.

Persons authorised to take a sworn statement.

- 14.4** Sworn statements must be sworn before a judge, magistrate, Notary Public, Commissioner for Oaths, Justice of the Peace, legal practitioner with a current practising certificate, or officer authorised to administer oaths under the provisions of any Act or regulations.
- 14.5** A person authorised under the previous rule to take a sworn statement must not do so for any proceedings in which the person is legal practitioner to any of the parties or clerk to any such legal practitioner, or in which the person is interested.
- 14.6** The maximum fees which may be charged by a person taking a sworn statement under these rules are:
- | | | |
|-----|-----------------------------------|-------------|
| (a) | for taking an oath or affirmation | \$5.00; and |
| (b) | for marking an annexure | \$1.00. |

Contents of sworn statement

- 14.7** A sworn statement must only contain facts that the deponent is able of their own knowledge to prove.
- 14.8** Despite rule 14.7 a sworn statement to be used in an application may contain statements of information and belief provided the sources of the information or grounds for the belief are also set out in the sworn statement.

Form of sworn statement

- 14.9** A sworn statement must be substantially in accordance with the form in Schedule 2 and made in the first person.

Note Example sworn statement in Schedule 2 Part B.

- 14.10** The body of a sworn statement shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.
- 14.11** Each page of a sworn statement, including any annexure, shall be numbered legibly and distinctively, beginning on the first page of the sworn statement with the numeral ‘1’.

- 14.12** Each annexure to a sworn statement shall be identified sequentially on the first page of each annexure by:
- (a) a letter of the alphabet, beginning with the letter ‘A’ for the first annexure; or
 - (b) the initials of the deponent followed by a number, beginning with the number ‘1’ for the first annexure, or where the deponent has made more than one sworn statement in a proceeding, beginning with the number next after the last number in the deponent’s most recent sworn statement.
- 14.13** The full name of the deponent and the date on which the sworn statement was sworn shall appear on the first visible page of a sworn statement.
- 14.14** A sworn statement must contain an authorising part at the end of the body of the sworn statement that:
- (a) states whether the sworn statement was sworn or affirmed; and
 - (b) states the place the person made the sworn statement; and
 - (c) states the person making the sworn statement understands the sworn statement is to be used in court proceedings and that if they make a false statement they may commit perjury and be liable to a substantial penalty; and
 - (d) is signed by the person taking the sworn statement, above a statement of the person’s full name, address and capacity to take the sworn statement.
- 14.15** If it appears to the person before whom a sworn statement is sworn that the deponent is illiterate or blind, the person must certify in or below the authorising part that the:
- (a) the sworn statement was read in their presence to the deponent; and
 - (b) the deponent seemed to understand the sworn statement; and
 - (c) the deponent signed the sworn statement in their presence.

Note Example compliance certificate – blind or illiterate deponent in Schedule 2 Part B.

- 14.16** If it appears to the person before whom a sworn statement is sworn that the sworn statement is in a language not understood by the deponent, the person must certify in or below the authorising part that:
- (a) the sworn statement was interpreted to the deponent in a language the deponent understands; and
 - (b) the deponent seemed to understand the sworn statement; and
 - (c) the deponent signed the sworn statement in their presence.

Note Example compliance certificate – language not understood by deponent in Schedule 2 Part B.

- 14.17** If the deponent makes a mark or thumb impression instead of signing, the person before whom the sworn statement is made must certify in or below that authorising part that the deponent made the mark or thumb impression in their presence.

Note Example compliance certificate – mark or thumbprint in Schedule 2 Part B.

14.18 If it appears to the person before whom a sworn statement is sworn that the deponent is by reason of physical incapacity incapable of signing the same, or making a mark or left thumb impression the person must certify in or below the authorising part that:

- (a) the sworn statement was read in their presence to the deponent; and
- (b) the deponent seemed to understand the sworn statement; and
- (c) the deponent signified they swore the sworn statement.

Note Example compliance certificate – physically impaired deponent in Schedule 2 Part B.

14.19 If a sworn statement is made by an illiterate or blind deponent and a certificate in accordance with rule 14.15 does not appear on the sworn statement, the sworn statement may not be used unless the court is satisfied that the sworn statement was read to the deponent and the deponent seemed to understand it.

14.20 Each page of a sworn statement shall be signed by the deponent and by the person before whom it is sworn unless the deponent is physically incapable of signing the sworn statement and there is a certificate under rule 14.18.

Alteration of sworn statement

14.21 If there is any interlineation, erasure or other alteration in the authorising part or body of a sworn statement:

- (a) the sworn statement may nevertheless be filed, unless the court otherwise orders; but
- (b) the sworn statement may not be used without the leave of the court unless the alteration has been initialled by the deponent and the person before whom the sworn statement is sworn also initials the alteration and, in the case of an erasure, re-writes in the margin of the sworn statement any words or figures written on the erasure and signs or initials them.

Annexures

14.22 A copy of a document to be used in conjunction with a sworn statement shall be annexed to the sworn statement, unless the document has been annexed to a previously filed sworn statement and references to the earlier annexure is made in the sworn statement.

14.23 Copies of all documents annexed to a sworn statement must be served with the sworn statement.

14.24 If it is impracticable to copy a document to be used in conjunction with a sworn statement a transcript or diagram of the document shall be annexed to the sworn statement and the sworn statement shall explain why it was impracticable to copy the document.

14.25 A person taking a sworn statement with annexures need not see the original documents and may certify that the copies or transcripts or diagrams were produced to them as true copies or transcripts or diagrams of the original documents.

- 14.26** Another party may require that the original of a document annexed to a sworn statement be produced in court.

Irregularity

- 14.27** Unless the court otherwise orders, a sworn statement may be filed despite any irregularity in form.

Certificate of compliance—sworn statement prepared by legal practitioner

- 14.28** If, according to the court file for a proceeding, a legal practitioner acts for a party in the proceeding, a sworn statement must be accompanied by a certificate of compliance with these Rules (a compliance certificate) signed by the legal practitioner otherwise the sworn statement cannot be accepted for filing without the leave of the court or in the case of the High Court, a registrar of the High Court.

Note Example compliance certificate in Schedule 2 Part B.

- 14.29** A compliance certificate may be endorsed on the sworn statement on or immediately after the last page of the sworn statement.

Use of sworn statement

- 14.30** If the court or a registrar gives leave to file a sworn statement without a compliance certificate under rule 14.28, the sworn statement must not be used in a proceeding without the leave of the court.
- 14.31** A sworn statement must not be used in a proceeding without the leave of the court if:
- (a) it has not been filed; or
 - (b) it has been filed but is irregular in form.

Service of sworn statement

- 14.32** A party intending to use a sworn statement must serve it on each other interested party not later than a reasonable time before the occasion for using it arises.
- 14.33** The court may give directions concerning the service of sworn statements.

Scandal etc

- 14.34** If there is scandalous or oppressive matter in a sworn statement, the court may order that the sworn statement be taken off the file.

Cross-examination

- 14.35** A party may by notice require the attendance for cross-examination of a person making a sworn statement.
- 14.36** A notice to attend must be made to the party filing or proposing to use the sworn statement, not later than a reasonable time before the hearing at which the sworn statement is proposed to be used.
- 14.37** If the attendance of a person is required and they do not attend, their sworn statement may not be used without the leave of the court.

- 14.38** If a person making a sworn statement is cross-examined, the party using the sworn statement may re-examine the person.

Chapter 15 Particular Proceedings

Chapter 15.1 Bankruptcy

Note Section 115 of the Bankruptcy Act [Cap 3] provides that Bankruptcy Rules shall be made by the Chief Justice

Definitions

15.1.1 In Chapter 15.1:

‘a bankrupt’ means a debtor in relation to whom a receiving order has been made;

‘bankruptcy notice’ means a bankruptcy notice issued by the registrar under section 4 of the Bankruptcy Act [Cap 3];

‘bankruptcy petition’ means a petition for a receiving order presented by a creditor under section 5 of the Bankruptcy Act;

‘creditor’s petition’ means a bankruptcy petition presented by a creditor under section 5 of the Bankruptcy Act;

‘debtor’s petition’ means a bankruptcy petition presented by a debtor under section 5 of the Bankruptcy Act;

Bankruptcy Notice

15.1.2 The registrar may issue a bankruptcy notice on the application of a creditor who has obtained against a debtor a final judgment or final order, being a judgment or order the execution of which has not been stayed.

15.1.3 The notice shall be in accordance with the form set out in Schedule 2.

Note Example bankruptcy notice in Schedule 2 Part B.

15.1.4 A bankruptcy notice is not invalidated by reason only that the sum specified in the notice as the amount due to the creditor exceeds the amount in fact due, unless the debtor, within the time allowed for payment, gives notice to the creditor that he or she disputes the validity of the notice on the ground of the misstatement.

15.1.5 Where the amount specified in a bankruptcy notice exceeds the amount in fact due and the debtor does not give notice to the creditor in accordance with rule 15.1.4, he or she shall be deemed to have complied with the notice if, within the time allowed for payment, he or she takes action as would have constituted compliance with the notice if the amount due had been correctly specified in it. Where the debtor does give notice in accordance with rule 15.1.4, an application to set aside the notice must be filed within 14 days of service of the notice and until the application is heard, the time for the bankruptcy notice is automatically extended.

15.1.6 Where, before the expiration of the time fixed for compliance with the requirements of a bankruptcy notice, or any extension of that time under rule 15.1.5:

- (a) proceedings to set aside a judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; or
- (b) an application has been made to the court to set aside the bankruptcy notice;

the court may, subject to rule 15.1.7, extend the time for compliance with the bankruptcy notice.

15.1.7 Where:

- (a) a debtor applies to the court for an extension of the time for complying with a bankruptcy notice on the ground that proceedings to set aside a judgment or order in respect of which the bankruptcy notice was issued have been instituted by the debtor; and
- (b) the court is of the opinion that the proceedings to set aside the judgment or order:
 - (i) have not been instituted *bona fide*; or
 - (ii) are not being prosecuted with due diligence;

the court shall not extend the time for compliance with the bankruptcy notice.

15.1.8 Where, before the expiration of the time fixed for compliance with the requirements of a bankruptcy notice, the debtor has applied to the court for an order setting aside the bankruptcy notice on the ground that the debtor has a counterclaim, set-off or cross demand being a counterclaim, set-off or cross demand that he or she could not have set up in the action or proceeding in which the judgment or order was obtained, and the court has not, before the expiration of that time, determined the debtor's application, that time shall be deemed to have been extended, immediately before its expiration, until and including the day on which the court determines the application.

Creditors Petition

15.1.9 Where:

- (a) a debtor has committed an act of bankruptcy; and
- (b) at the time when the act of bankruptcy was committed, the debtor:
 - (i) was personally present or ordinarily resident in Solomon Islands;
 - (ii) had a dwelling-house or place of business in Solomon Islands;
 - (iii) was carrying on business in Solomon Islands, either personally or by means of an agent or manager; or
 - (iv) was a member of a firm or partnership carrying on business in Solomon Islands by means of a partner or partners or of an agent or manager;

the court may, on a creditor's petition presented not more than 3 months after the act of bankruptcy relied on in the petition, make a receiving order against the estate of the debtor.

15.1.10 Upon the making of a receiving order against the estate of a debtor, the debtor becomes a bankrupt, and continues to be a bankrupt until:

- (a) he or she is discharged; or
- (b) his or her bankruptcy is annulled.

Debtor's Petition

15.1.11 A debtor may present to the registrar a petition against himself or herself.

15.1.12 A petition presented by a debtor under this section:

- (a) shall be in accordance with the form set out in Schedule 2; and
- (b) shall be accompanied by both a statement of the debtor's affairs and a copy of that statement, which statement shall be filed no later than 3 days after the day on which the petition is filed.

15.1.13 The registrar must reject a debtor's petition unless satisfied that, at the time when the petition is presented, the debtor:

- (a) was personally present or ordinarily resident in Solomon Islands; or
- (b) had a dwelling-house or place of business in Solomon Islands; or
- (c) was carrying on business in Solomon Islands, either personally or by means of an agent or manager; or
- (d) was a member of a firm or partnership carrying on business in Solomon Islands by means of a partner or partners or of an agent or manager.

15.1.14 The registrar may reject a debtor's petition if:

- (a) the petition does not comply substantially with the approved form; or
- (b) the petition is not accompanied by a statement of affairs; or
- (c) the registrar thinks that the statement of affairs accompanying the petition is inadequate; or
- (d) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that, if the debtor did not become a bankrupt, the debtor would be likely (either immediately or within a reasonable time) to be able to pay all the debts specified in the statement of affairs, and at least one of the following applies:
 - (i) it appears from the information in the statement of affairs (and any additional information supplied by the debtor) that the debtor is unwilling to pay one or more debts to a particular creditor or creditors, or is unwilling to pay creditors in general;
 - (ii) before the current petition was presented, the debtor previously became a bankrupt on a debtor's petition at least 3 times, or at least once in the 5 years before presentation of the current petition.

15.1.15 The registrar is not required to consider in each case whether there is a discretion to reject under rule 15.1.14.

- 15.1.16** The registrar must refer a debtor's petition to the court for a direction to accept or reject it if there is a creditor's petition pending against the debtor including a petition against a group of debtors (whether they are joint debtors or members of a partnership) that includes the debtor against whom the debtor's petition is presented.
- 15.1.17** If the court directs the registrar to accept the debtor's petition, the court must specify the time of the commencement of the bankruptcy that results from acceptance of the debtor's petition.
- 15.1.18** The registrar must accept a debtor's petition, unless the registrar rejects it under rule 15.1.14 or is directed by the court to reject it.
- 15.1.19** Where the registrar accepts a petition presented under this section:
- (a) he or she shall endorse the petition accordingly; and
 - (b) upon the registrar endorsing the petition, the debtor who presented the petition becomes a bankrupt by force of section 10 of the Bankruptcy Act.
- 15.1.20** If a person is the trustee of the estate of a debtor who becomes a bankrupt under rule 15.1.19, the registrar must:
- (a) notify the trustee of the bankruptcy; and
 - (b) give the trustee a copy of the statement of affairs that accompanied the debtor's petition.
- 15.1.21** A person who becomes a bankrupt by force of rule 15.1.19 continues to be a bankrupt until:
- (a) he or she is discharged; or
 - (b) his or her bankruptcy is annulled.
- 15.1.22** A person who states in writing that he or she is a creditor of a bankrupt who has become a bankrupt by force of this section may on payment of the prescribed fee, inspect, personally or by an agent, the statement of affairs that accompanied the petition presented by the bankrupt, and may obtain a copy of, or take extracts from, the statement.
- 15.1.23** A bankrupt who has become a bankrupt by force of rule 15.1.19 may, without fee and either personally or by an agent:
- (a) inspect the bankrupt's statement of affairs; and
 - (b) obtain a copy of, or make extracts from, the bankrupt's statement of affairs.
- 15.1.24** The registrar may refuse to allow a person access under rule 15.1.22 or 15.1.23 to particular information in a bankrupt's statement of affairs on the ground that access to that information would jeopardise, or be likely to jeopardise, the safety of any person.

Opposition to application, interim application or petition

15.1.25 In rule 15.1.26:

application includes a petition or an application.

- 15.1.26** A person who intends to oppose an application in bankruptcy proceedings must, at least 3 days before the date fixed for the hearing of the application or, with the leave of the court, at the hearing:
- (a) file a notice of address for service; and
 - (b) file a notice stating the grounds of opposition; and
 - (c) file a sworn statement in support of the grounds of opposition; and
 - (d) serve the notices and supporting sworn statement on the applicant.

Substituted service of bankruptcy notice or petition

- 15.1.27** An application for an order for substituted service of a bankruptcy notice or petition must be accompanied by:
- (a) a copy of the bankruptcy notice or petition; and
 - (b) a sworn statement stating the grounds in support of the application.

Setting aside bankruptcy notice

- 15.1.28** An application to set aside a bankruptcy notice must be accompanied by:
- (a) a copy of the bankruptcy notice; and
 - (b) a sworn statement stating:
 - (i) the grounds in support of the application; and
 - (ii) the date when the bankruptcy notice was served on the applicant; and
 - (c) a copy of any application to set aside the judgment or order in relation to which the bankruptcy notice was issued and any material in support of that application.
- 15.1.29** If the application is based on the ground that the debtor has a counterclaim, set-off or cross demand mentioned in rule 15.1.8, the sworn statement must also state:
- (a) the full details of the counterclaim, set-off or cross demand; and
 - (b) the amount of the counterclaim, set-off or cross demand and the amount by which it exceeds the amount claimed in the bankruptcy notice; and
 - (c) why the counterclaim, set-off or cross demand was not raised in the proceeding that resulted in the judgment or order in relation to which the bankruptcy notice was issued.
- 15.1.30** The application and supporting documents must be served on the respondent creditor within 3 days after the application is filed.

Chapter 15.2 Divorce

Definitions

15.2.1 In Chapter 15.2:

‘applied law’ means the Matrimonial Causes Act 1950 (UK);

‘communication’ includes an admission.

Claims under the Islanders Divorce Act [Cap 170]

Note The Islanders Divorce Act applies to marriages between islanders whose marriage has been registered under the Islanders Marriage Act [Cap 171] or the Pacific Islands Marriages Order in Council 1907.

15.2.2 A claim for divorce, nullity of marriage or judicial separation under the Islanders Divorce Act shall be made to the High Court in the form of petition in schedule 1 of that Act.

Note Form A in Schedule 1 to the Islanders Divorce Act [Cap 170].

Claim made under applied law

15.2.3 A claim for divorce or, nullity of marriage or judicial separation made under the applied law shall be made in the form set out in Schedule 2.

Registrar to allocate hearing date

15.2.4 On receipt of a claim for divorce, nullity of marriage or judicial separation the registrar shall set a date for the court hearing that is:

- (a) if the respondent resides in Honiara or has provided a written consent to accept service - not less than 28 days from the date of filing; or
- (b) in any other case - not less than 42 days from the date of filing.

Certificate of Decree Absolute under Islanders Divorce Act

15.2.5 The registrar shall issue a certificate that a decree nisi of dissolution of or nullity of marriage under the Islanders Divorce Act has become absolute three months after the decree nisi is pronounced.

Certificate of Decree Absolute under applied law

15.2.6 The registrar shall issue a certificate that a decree nisi of dissolution of or nullity of marriage under the applied law has become absolute six months after, or such shorter period as the court may fix, the decree nisi is pronounced.

Ancillary proceedings

15.2.7 Proceedings for maintenance or for settlement of matrimonial property or in relation to the children of a marriage shall be commenced by application

Note Applications for ancillary financial relief are brought under the Matrimonial Causes Act 1950 as amended by the Matrimonial Causes (Property and Maintenance) Act 1958 and applications for ancillary relief in relation to children of a marriage are brought under the Matrimonial Causes Act 1950 as amended by the Matrimonial Causes (Children) Act 1958.

Referral to mediation

- 15.2.8** The court may refer the parties to proceedings under the Islanders Divorce Act or the Matrimonial Causes Act or the Affiliation, Separation and Maintenance Act [Cap. 1] to a mediator approved in writing by the Chief Justice for the purpose of helping parties affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other.
- 15.2.9** The mediator is to be independent of all of the parties involved in the mediation.
- 15.2.10** A mediator must not disclose a communication made to him or her while conducting a mediation, unless:
- (a) it is in connection with the mediator's role under this Chapter; or
 - (b) the mediator believes on reasonable grounds that disclosing the communication is necessary to protect a child from risk of harm (whether physical or psychological); or
 - (c) the mediator believes on reasonable grounds that disclosing the communication is necessary prevent or minimise the danger of injury to a person or damage to property; or
 - (d) if all parties consent; or
 - (e) if disclosing the information is required by another law of Solomon Islands although the information need not be disclosed under a requirement imposed by summons unless the court otherwise orders.
- 15.2.11** Evidence of anything said, or any admission made, by or in the company of a mediator conducting a mediation is not admissible in any court.
- 15.2.12** Rule 15.2.11 does not apply to:
- (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
 - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;
- unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

Safety or welfare of a child

- 15.2.13** In any proceedings which involve the safety or welfare of a child the court may direct the Sheriff as the court sees fit.

Note For example, where a court has made an order in relation to the custody of a child but a party fails to hand over the child the court may direct the Sheriff to take temporary custody of the child and deliver the child to the custodial party.

Chapter 15.3 *Judicial Review of Executive or Legislative Action*

Definitions

15.3.1 In Chapter 15.3:

- ‘mandatory order’** (formerly called an order of mandamus) means an order that a person do something.
- ‘prohibiting order’** (formerly called an order of prohibition) means an order that a person not do something.
- ‘quashing order’** (formerly called an order of certiorari) means an order that the decision of a decision-maker is quashed.

Application of Chapter

15.3.2 A claim for judicial review must be commenced in the High Court.

15.3.3 Chapter 15.3 applies to claims for judicial review and does not derogate from the court’s inherent powers.

Claim for judicial review

15.3.4 A claim for a mandatory order, a prohibiting order or a quashing order or for a declaration in relation to an Act or subsidiary legislation shall be made by a claim to the High Court for judicial review.

15.3.5 A claim for an interim declaration or injunction may be made in proceedings for judicial review and the court may grant an interim declaration or injunction if it considers that it would be just and convenient to do so having regard to:

- (a) the nature of the matters in which relief may be granted by way of judicial review; and
- (b) the nature of the persons and bodies against whom relief may be granted by such an order; and
- (c) all the circumstances of the case.

15.3.6 A claim for judicial review must:

- (a) set out the grounds for making the claim; and
- (b) have with it a sworn statement verifying the facts in which the claim is founded.

15.3.7 A claim for judicial review must name as defendant:

- (a) for declaratory or other relief in relation to an Act or subsidiary legislation, the Attorney General; and
- (b) for an order that a person do or not do something, the person; and
- (c) for an order about a decision, the person who made or should have made the decision.

Time for filing claim for a quashing order

- 15.3.8** A claim for a quashing order must be made within 6 months of the decision.
- 15.3.9** The court may extend the time within or outside of the prescribed period for making a claim if it is satisfied that substantial justice requires it.

Serving claim

- 15.3.10** The claim and sworn statement must be served on the defendant within 28 days of filing.
- 15.3.11** The claim must also be served on:
- (a) any other person who is directly affected by the claim within 28 days of filing; and
 - (b) any other person the court orders to be included as a party, within 28 days of the order, or such other period set by the order.

Defence

- 15.3.12** The defendant must file a defence within 14 days of service of the claim.
- 15.3.13** Any other person served with the claim who wants to take part in the proceeding must file a defence within 14 days of service of the claim and the court shall consider whether to grant leave for that person to take part in the proceeding.
- 15.3.14** The defence must provide detailed grounds for disputing or supporting the claim, including in relation to any decision that has been made a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision and it must be served on the claimant within 14 days of service of the claim.
- 15.3.15** With the defence the defendant or other person must file a sworn statement supporting the grounds.

Court to be satisfied of claimant's case

- 15.3.16** As soon as practicable after the defence has been filed and served, the court must call a conference.
- 15.3.17** At the conference, the court must consider the matters in rule 15.3.18.
- 15.3.18** The court will not hear the claim unless it is satisfied that:
- (a) the claimant has an arguable case; and
 - (b) the claimant is directly affected by the subject matter of the claim; and
 - (c) there has been no undue delay in making the claim; and
 - (d) there is no other remedy that resolves the matter fully and directly.
- 15.3.19** To be satisfied, the court may at the conference:
- (a) consider the papers filed in the proceeding; and
 - (b) hear argument from the parties.

15.3.20 If the court is not satisfied about the matters in rule 15.3.18, the court must decline to hear the claim and strike it out.

15.3.21 If the court is satisfied about the matters in rule 15.3.18, the court may determine the claim or may give directions and fix a date for the trial.

Habeas Corpus - Order for release of a person from unlawful restraint

15.3.22 Any person may make a claim to the High Court for a writ of habeas corpus for the release of a person who is being held under unlawful restraint.

Note Example claim for a writ of habeas corpus in Schedule 2 Part B

15.3.23 A claim for the release of a person who is held under unlawful restraint shall be filed with a sworn statement, sworn by the person detained or a person who is applying on behalf of the person detained. The claim need not be served on any other person.

15.3.24 The claim must name as defendant the person who, to the best of the claimant's knowledge, is responsible for holding the first person.

15.3.25 At the first hearing of the claim the court may make an order:

- (a) that the person be released from unlawful restraint; or
- (b) order that:
 - (i) the claim and sworn statement be served on the defendant and on anyone else named in the order; and
 - (ii) the defendant and anyone else served file a defence within the time stated in the order; and
 - (iii) the claim be further heard at the date and time stated in the order; and
 - (iv) the defendant bring the person being held to the court at the time stated in the order; and
 - (v) any other steps stated in the order be taken to deal with the claim; or
- (c) dismiss the claim.

15.3.26 At any further hearing of the claim, the court may do any of the following:

- (a) hear evidence in support of the claim;
- (b) let the defendant show cause why the person should not be released;
- (c) if it considers the restraint of the person is unlawful, order the person be released or held in another place;
- (d) dismiss the claim;
- (e) if the court is satisfied someone other than the defendant has custody of the person being held, adjourn the proceeding and make orders about the service of the claim and other matters the court thinks appropriate to deal with the claim;
- (f) make any other orders it thinks appropriate.

- 15.3.27** Unless the court otherwise orders, the first hearing in relation to a claim of habeas corpus shall take precedence over all other business of the court.

Chapter 15.4 Admiralty

Definitions

15.4.1 In this chapter:

- ‘**Admiralty claim**’ means a claim within the Admiralty jurisdiction of the High Court;
- ‘**claim against a person**’ means an *in personam* claim – a claim in an admiralty action against a person;
- ‘**claim against property**’ means a claim in an admiralty action against property;
- ‘**caution against arrest**’ means a caution entered in the Register under rule 15.4.33;
- ‘**caution against release**’ means a caution entered in the Register under rule 15.4.39;
- ‘**collision claim**’ means a claim arising out of a collision between 2 or more ships;
- ‘**limitation claim**’ means a claim for the limitation of liability in connection with a ship or other property;
- ‘**salvage claim**’ means a claim –
 - (a) for or in the nature of salvage; and
 - (b) for the apportionment of salvage; and
 - (c) arising out of or connected with any contract for salvage services;
- ‘**the Register**’ means the Register of cautions against arrest and release, which is maintained in the registry of the High Court and open to inspection;
- ‘**the Marshal**’ means the Admiralty Marshal, who is the Sheriff of the High Court, and includes a substitute appointed by the Marshal; and
- ‘**ship**’ includes any vessel used in navigation;

Admiralty claims

15.4.2 The following claims must be started in the High Court:

- (a) a claim:
 - (i) against a thing; and
 - (ii) for damage done or received by a ship; and
 - (iii) concerning the ownership of a ship; and
 - (iv) under the Shipping Act 1998; and
 - (v) for loss of life or personal injury at sea or in connection with a ship; and
 - (vi) by a master or member of a crew for wages; and
 - (vii) in the nature of towage; and
 - (viii) in the nature of pilotage; and
- (b) a collision claim; and

Note Solomon Islands is a party to the Conventions for the Unification of Certain Rules of Law respecting Collisions between Vessels and Assistance and Salvage at Sea, done at Brussels, September 23rd,

1910 and the International Convention on the International Regulations for Preventing Collisions at Sea as amended, done at London on 20 October 1972.

- (c) a limitation claim; and

Note Solomon Islands is a party to the International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships done at Brussels on 10 October 1957. Solomon Islands is not a party to the Convention on Limitation of Liability for Maritime Claims done at London on 19 November 1976 or the 1979 Protocol amending the 1957 Brussels Convention or the 1996 Protocol amending the 1976 London Convention. The Shipping Act 1998, however, gives the provisions of the Convention on Limitation of Liability for Maritime Claims, 1976, the force of law in Solomon Islands.

- (d) a salvage claim.

Note Solomon Islands is a party to the Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea done at Brussels on 23 September 1910. Solomon Islands is not a party to the International Convention on Salvage, 1989 done at London on 28 April 1989.

Claims against a thing

15.4.3 A claim against property is started by the issue of a claim in which the claimant states:

- (a) the facts that give rise to the claim; and
- (b) the precise orders sought.

Note Example claim against property in Schedule 2 Part B.

15.4.4 A claim in a proceeding against property is effective for service for 12 months after it is issued and may not be served after that time without the leave of the court.

15.4.5 The claim against property must be served by the claimant unless the ship is under arrest or the claim against property is to be served with a warrant of arrest, in which case the claim against property shall be served by the Marshal.

15.4.6 An acknowledgement of service, which identifies the person acknowledging service, must be lodged by each person who acknowledges service within 21 days of the date of service.

Special provisions relating to collision claims

15.4.7 A collision claim need not contain particulars of the claim.

15.4.8 An acknowledgment of service must be filed.

15.4.9 A party who wishes to dispute the court's jurisdiction must make an application to set aside service of the claim within 2 months after filing an acknowledgment of service.

15.4.10 Every party must:

- (a) within 2 months after the defendant files an acknowledgment of service; or
 - (b) if the defendant disputes the jurisdiction of the court, and the application to set aside service of the claim is refused, within the period specified by the court when determining that application;
- file at the court a completed collision statement of case.

Note A collision statement of case was previously referred to as a preliminary act and the common law relating to preliminary acts may be applied by the court.

15.4.11 A collision statement of case must be:

- (a) in the form set out in Schedule 2; and
- (b) verified by a sworn statement.

Note Example collision claim in Schedule 2 Part B.

15.4.12 A claim in a collision claim may not be served out of the jurisdiction unless:

- (a) the defendant's habitual place of residence or place of business is outside the Solomon Islands; or
- (b) the cause of action arose outside Solomon Islands; or
- (c) an action arising out of the same incident or incidents is proceeding in the High Court or has been heard and determined in the court; or
- (d) the court has jurisdiction over the claim under any applicable convention; or
- (e) the defendant has submitted to or agreed to submit to the jurisdiction; and

the court gives leave.

15.4.13 If leave to serve a claim out of the jurisdiction is given, the court will specify the period within which the defendant may file a response or a defence and, if appropriate, a collision statement of case.

15.4.14 If, in a collision claim against property ('the original claim'):

- (a) (i) a counterclaim; or
- (ii) a cross claim against property; arising out of the same collision or occurrence is made; and
- (b) (i) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and
- (ii) the party bringing the counterclaim or cross claim is unable to arrest a ship or otherwise obtain security,

the party bringing the counterclaim or cross claim may apply to the court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.

15.4.15 If a party to a claim to establish liability for a collision claim (other than a claim for loss of life or personal injury):

- (a) makes an offer to settle in the form set out in rule 15.4.17 at least 21 days before the start of the trial; and
- (b) that offer is not accepted; and
- (c) the maker of the offer obtains at trial an apportionment equal to or more favourable than the offer,

rule 15.4.16 shall apply.

15.4.16 If rule 15.4.15 applies the parties will, unless the court considers it unjust, be entitled to the following costs:

- (a) the maker of the offer will be entitled to:
 - (i) all costs from 21 days after the offer was made; and
 - (ii) costs before then in the percentage to which the maker of the offer would have been entitled had the offer been accepted; and
- (b) all other parties to whom the offer was made:
 - (i) will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted; but
 - (ii) will not be entitled to their costs thereafter.

15.4.17 An offer under rule 15.4.15 must be in writing and must contain:

- (a) an offer to settle liability at stated percentages;
- (b) an offer to pay costs in accordance with the same percentages;
- (c) a term that the offer remains open for 21 days after the date it is made; and
- (d) a term that, unless the court orders otherwise, on expiry of 21 days the offer remains open on the same terms except that the person receiving the offer should pay all the costs from that date until acceptance.

Arrest

Note Solomon Islands is a party to the International Convention Relating to the Arrest of Sea-Going Ships, done at Brussels on 10 May 1952. Solomon Islands is not a party to the International Convention on the Arrest of Ships done at Geneva on 10 March 1999.

15.4.18 In a claim against property:

- (a) a claimant; or
- (b) a judgment creditor;

may apply to have the property proceeded against arrested.

15.4.19 A party making an application for arrest must:

- (a) request a search to be made in the Register before the warrant is issued to determine whether there is a caution against arrest in force with respect to that property; and
- (b) file a sworn statement stating:
 - (i) if the property to be arrested is a ship, the name of the ship and its port of registry, or if the property to be arrested is other property, a description of the property; and
 - (ii) short particulars of the claim; and
 - (iii) details of any searches that have been made in the Register; and
 - (iv) details of any cautions in force; and

- (v) details of the documents that have been served on each person who has lodged a caution; and
- (vi) details about when each document was served; and
- (vii) details about any amount paid into court or security provided; and
- (viii) if the claim is a salvage claim, the details of the person holding salvage money.

15.4.20 A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court in any jurisdiction exercising admiralty jurisdiction against a thing, has changed since the application was issued.

15.4.21 The court may require a party making an application for arrest to give an undertaking to submit to such order (if any) as the court may consider to be just for the payment of compensation, to be assessed by the court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the arrest or any continuation (with or without variation) thereof before a warrant must be issued.

15.4.22 A warrant of arrest is valid for 12 months but may only be executed if the application:

- (a) has been served; or
- (b) remains valid for service at the date of execution.

Note An application in a proceeding against a thing remains valid for service for 12 months after issue: rule 15.4.4

15.4.23 Property may only be arrested by the Marshal or the Marshal's substitute.

15.4.24 Subject to these rules, a Marshal who arrests a ship or other property has the custody of the ship or property.

15.4.25 The Marshal must, unless the court otherwise orders, take all appropriate steps to retain safe custody of, and to preserve, the ship or property, including:

- (a) removing from the ship, or storing, cargo that is under arrest; and
- (b) removing cargo from a ship that is under arrest and storing it; and
- (c) removing, storing or disposing of perishable goods that are under arrest or are in a ship that is under arrest; and
- (d) moving the ship that is under arrest; and
- (e) immobilising or preventing from sailing in such manner as the Marshal may consider appropriate.

15.4.26 The Marshall is not to insure property that is under arrest.

15.4.27 An application for an arrest warrant constitutes an undertaking to the court:

- (a) if the application is made by the applicant personally - by the applicant; or

- (b) if the application is made by a solicitor on behalf of the applicant - by the solicitor;

to pay to the Marshal, on demand, an amount equal to the amount of the fees and expenses of the Marshal in relation to the arrest.

- 15.4.28** If an application against property form has been issued and security sought, any person who has filed an acknowledgment of service may apply for an order specifying the amount and form of security to be provided.

Security in application against property

- 15.4.29** If security has been given in an application against a thing to:

- (a) obtain the release of property under arrest; or
- (b) prevent the arrest of property;

the court may make an order relating to security.

- 15.4.30** The court may order that the:

- (a) amount of security be reduced and may stay the application until the order is complied with; or
- (b) claimant may arrest or re-arrest the property proceeded against to obtain further security.

- 15.4.31** The court may not make an order allowing the claimant to arrest or re-arrest the property if the total security provided exceeds the value of the property at the time:

- (a) of the original arrest; or
- (b) security was first given (if the property was not arrested).

Cautions against arrest

- 15.4.32** Any person may file a request for a caution against arrest.

- 15.4.33** When a request is filed the court will enter the caution in the Register if the person filing the request undertakes to:

- (a) file an acknowledgment of service; and
- (b) give sufficient security to satisfy the application with interest and costs.

- 15.4.34** A caution against arrest:

- (a) is valid for 12 months after the date it is entered in the Register; but
- (b) may be renewed for a further 12 months by filing a further request.

- 15.4.35** Rules 15.4.32 and 15.4.33 apply to a further request under rule 15.4.34(b).

- 15.4.36** Property may be arrested if a caution against arrest has been entered in the Register but the court may order that:

- (a) the arrest be discharged; and
- (b) the party procuring the arrest pay compensation to the owner of or other persons interested in the arrested property.

Release and cautions against release

15.4.37 If property is under arrest:

- (a) a claim against property form may be served upon it; and
- (b) it may be arrested by any other person claiming to have a claim against property action against it.

15.4.38 Any person who:

- (a) claims to have a claim against property right against any property under arrest; and
- (b) wishes to be given notice of any application in respect of that property or its proceeds of sale;

may file a request for a caution against release.

15.4.39 When a request for a caution against release is filed, a caution against release will be entered in the Register.

15.4.40 Property will be released from arrest if:

- (a) it is sold by the court; or
- (b) the court orders release on an application made by any party; or
- (c) the arresting party and all persons who have entered cautions against release file a request for release; or
- (d) any party files:
 - (i) a request for release (containing an undertaking to pay the fees and expenses incurred by the Marshal in relation to the arrest); and
 - (ii) consents to the release given by the arresting party and all persons who have entered cautions against release.

15.4.41 If the release of any property is delayed by the entry of a caution against release, any person who has an interest in the property may apply for an order that the person who entered the caution pay damages for losses suffered by the applicant because of the delay.

15.4.42 The court may not make an order if it is satisfied that there was good reason to request the entry of and maintain the caution.

15.4.43 Any person:

- (a) interested in property under arrest or in the proceeds of sale of such property; or
 - (b) whose interests are affected by any order sought or made;
- may be made a party to any claim against property against the property or proceeds of sale.

15.4.44 If:

- (a) (i) a ship is not under arrest but cargo on board her is; or

- (ii) a ship is under arrest but cargo on board her is not; and
- (b) persons interested in the ship or cargo wish to discharge the cargo; they may, without being made parties, request the Marshal to authorise steps to discharge the cargo from the ship.

15.4.45 If:

- (a) the Marshal considers a request to authorise steps to discharge the cargo reasonable; and
- (b) the applicant gives an undertaking in writing acceptable to the Marshal to pay:
 - (i) the Marshal's fees; and
 - (ii) all expenses to be incurred by the Marshal or on the Marshal's behalf on demand;

the Marshal shall apply to the court for an order to permit the discharge of the cargo.

15.4.46 If persons interested in the ship or cargo are unable or unwilling to give an undertaking to pay the Marshal's fees and expense they may:

- (a) be made parties to the claim; and
- (b) apply to the court for an order for:
 - (i) discharge of the cargo from the ship; and
 - (ii) directions as to the fees and expenses of the Marshal with regard to the discharge and storage of the cargo.

Judgment in default**15.4.47** In a claim against property (other than a collision claim) the claimant may obtain judgment in default of:

- (a) an acknowledgment of service only if:
 - (i) the defendant has not filed an acknowledgment of service; and
 - (ii) the time for doing so has expired; and
- (b) defence only if:
 - (i) a defence has not been filed; and
 - (ii) the relevant time limit for doing so has expired.

15.4.48 In a collision claim, a party who has filed a collision statement of case within the time specified by rule 15.4.10 may obtain judgment in default of a collision statement of case only if:

- (a) the party against whom judgment is sought has not filed a collision statement of case; and
- (b) the time for doing so has expired.

15.4.49 An application for judgment in default:

- (a) in a claim against property must be made by filing:
 - (i) an application; and
 - (ii) a certificate proving service of the application; and
 - (iii) evidence proving the application to the satisfaction of the court; and
- (b) must be made in accordance with Chapter 9 (Ending Proceedings Early) with any necessary modifications.

15.4.50 An application seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the Register.

15.4.51 The court may set aside or vary any judgment in default entered under this chapter.

15.4.52 The claimant may apply to the court for judgment against a party at whose instance a caution against arrest was entered if:

- (a) the application has been served on that party; and
- (b) the sum claimed in the application does not exceed the amount specified in the undertaking given by that party in accordance with sub-paragraph 15.4.33(a)(ii); and
- (c) that party has not fulfilled an undertaking given under sub-paragraph 15.4.33(a)(ii).

Sale by the court, priorities and payment out

15.4.53 An application for an order for the survey, appraisalment or sale of a ship may be made in an application against property at any stage by any party.

15.4.54 If the court makes an order for sale, it may:

- (a) set a time within which notice of applications or claims against the proceeds of sale must be filed; and
- (b) fix the time and manner in which notice of such an application or claim must be advertised.

15.4.55 Any party with a judgment against the property or proceeds of sale may at any time after the later of the times referred to in rule 15.4.54 apply to the court for the determination of the order of priority of claims against the property or the proceeds of sale.

15.4.56 An application for the determination of the order of priority of claims must be served on all persons who have filed a claim against the property or the proceeds of sale.

15.4.57 Payment out of the proceeds of sale will be made only to judgment creditors and:

- (a) in accordance with the determination of priorities; or
- (b) as the court orders.

Limitation claims

15.4.58 A limitation claim must be commenced as an action against a person.

15.4.59 A limitation claim is started by the issue of a limitation claim form. The claim shall state:

- (a) the relationship of the claimant to the ship; and
- (b) the name and port of registry of the ship; and
- (c) the relationship of the defendant to the circumstances out of which the liability in respect of which the claimant claims to be entitled to limit liability arose; and
- (d) the date of the circumstances out of which the liability in respect of which the claimant claims to be entitled to limit liability arose; and
- (e) a short, factual description of the circumstances out of which the liability in respect of which the claimant claims to be entitled to limit liability arose; and
- (f) a short statement of grounds for limiting liability; and
- (g) the precise orders sought.

15.4.60 The claimant and at least one defendant must be named in the claim form, but all other defendants may be described.

15.4.61 The claim form:

- (a) must be served on all named defendants and any other defendant who requests service; and
- (b) may be served on any other defendant.

15.4.62 The claim may not be served out of the jurisdiction unless:

- (a) at least one of the conditions in rule 15.4.12 is satisfied; or
- (b) the court has jurisdiction over the claim under any applicable convention; and

the court grants leave.

15.4.63 Every defendant upon whom a claim form is served must:

- (a) within 28 days of service (or if the claim form is served out of the jurisdiction, within the time determined by the court), file:
 - (i) a response; or
 - (ii) a notice that they admit the right of the claimant to limit liability; or
- (b) if they wish to:
 - (i) dispute the jurisdiction of the court; or
 - (ii) argue that the court should not exercise its jurisdiction;

file within 28 days of service (or if the claim form is served out of the jurisdiction, within the time determined by the court) an application to set aside service of the claim.

- 15.4.64** If a defendant files a conditional response disputing the jurisdiction of the court or arguing the court should not exercise its jurisdiction the defendant will not be treated as having accepted that the court has jurisdiction to hear the claim until the application to set aside service of the claim has been determined.
- 15.4.65** If one or more named defendants admit the right to limit liability:
- (a) the claimant may apply for a restricted limitation order; and
 - (b) the court will issue an order limiting liability only against those named defendants who have admitted the claimant's right to limit liability.
- 15.4.66** A restricted limitation order:
- (a) may be obtained against any named defendant who fails to file a defence within the time specified for doing so; and
 - (b) need not be advertised, but a copy must be served on the defendants to whom it applies.
- 15.4.67** If all the defendants upon whom the claim form has been served admit the claimant's right to limit liability:
- (a) the claimant may apply to the court in chambers for a general limitation order; and
 - (b) the court will issue a limitation order.
- 15.4.68** If one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit liability, the claimant may apply for a general limitation order.
- 15.4.69** When a limitation order is granted the court:
- (a) may:
 - (i) order that any proceedings relating to any application arising out of the occurrence be stayed; or
 - (ii) order the claimant to establish a limitation fund if one has not been established or make such other arrangements for payment of applications against which liability is limited; or
 - (iii) if the order is a restricted limitation order, distribute the limitation fund; and
 - (b) will, if the order is a general limitation order, give directions as to advertisement of the order and set a time within which notice of applications against the fund must be filed or an application made to set aside the order.
- 15.4.70** When the court grants a general limitation order the claimant must:
- (a) advertise it in such manner and within such time as the court directs; and

- (b) file:
 - (i) a declaration that the order has been advertised as the court directs; and
 - (ii) copies of the advertisements.

15.4.71 No later than the time set in the order for filing applications, each of the defendants who wishes to assert a claim must file and serve their statement of case on:

- (a) the limiting party; and
- (b) all other defendants except if the court orders otherwise.

15.4.72 Any person other than a defendant upon whom the claim form has been served may apply to the court within the time fixed in the order to have a general limitation order set aside.

15.4.73 An application under rule 15.4.72 must be supported by a declaration:

- (a) stating that the applicant has a claim against the applicant arising out of the occurrence; and
- (b) setting out grounds for contending that the applicant is not entitled to the order, either in the amount of limitation or at all.

15.4.74 The applicant may constitute a limitation fund by making a payment into court.

15.4.75 A limitation fund may be established before or after a limitation application has been started.

15.4.76 If a limitation application is not commenced within 75 days after the date the fund was established:

- (a) the fund will lapse; and
- (b) all money in court (including interest) will be repaid to the person who made the payment into court.

15.4.77 Money paid into court under rule 15.4.74 will not be paid out except under an order of the court.

15.4.78 A limitation application for:

- (a) a restricted order may be brought by counterclaim; and
- (b) a general order may only be brought by counterclaim with the leave of the court.

Stay of proceedings

15.4.79 If the court orders a stay of any claim against property:

- (a) any property under arrest in the claim remains under arrest; and
 - (b) any security representing the property remains in force;
- unless the court orders otherwise.

Assessors

15.4.80 The court may sit with assessors when hearing:

- (a) collision claims; or
- (b) other claims involving issues of navigation or seamanship;

and if the court sits with assessors the parties will not be permitted to call expert witnesses unless the court orders otherwise.

- 15.4.81** Unless the court otherwise orders, the parties will be jointly and severally liable to each assessor to pay the amount fixed by the court for the assessor's remuneration.

Service of originating process or a warrant of arrest on a vessel

- 15.4.82** The originating claim in a proceeding commenced as an action against a thing or a warrant of arrest:

- (a) against a ship; or
- (b) against other property that is, at the time of service, on board a ship;

must be served by securely attaching a sealed copy of the process to a mast, or some other conspicuous part, of the ship.

- 15.4.83** The originating claim in a proceeding commenced as an action against a thing or a warrant of arrest against property that is not, at the time of service, on board a ship must be served by securely attaching a sealed copy of the process to the property or to a package or container containing the property.

- 15.4.84** If access to a ship or property cannot reasonably be obtained, process may be served on the ship or property by:

- (a) handing a sealed copy of the process to a person apparently in charge of the ship or property; or
- (b) if the person refuses to accept service - putting a sealed copy of the process down in the presence of the person and telling the person what the document is.

- 15.4.85** In this chapter *sealed copy of the process* includes a copy, transmitted by electronic means, of a sealed copy of the process.

- 15.4.86** Any other document that is required to be served in admiralty proceedings, including any document that is to be given to a person to enable the person to exercise a power, or perform a function, may be served in any manner provided for in these rules.

Chapter 15.5 Company Winding Up

Note Section 209 of the Companies Act [Cap 175] provides that High Court has exclusive jurisdiction in winding up proceedings.

Rules have been made under the Companies Act in relation to the conduct of winding up proceedings—the Companies (Winding Up) Rules (LN19/1963).

Chapter 15.6 Electoral

Note The Electoral Rules 1976 (LN50/1976) provide the procedure in relation to proceedings concerning national elections.

Chapter 15.7 *Probate and Administration of Estates*

Note The following subordinate legislation has been made under the Wills, Probate and Administration Act [Cap 33]: The Grants of Probate And Administration (Order of Priority) Regulations [LN26/1996], The Grants in Small Estates Regulations [LN27/1996], the Administration of Insolvent Estates Regulations [LN 28/1996], the Grants of Probate And Administration (Fees) Regulations [LN 29/1996], the Statutory Trusts Regulations [LN 30/1996] and the Administration of Assets Of Solvent Estates Regulations [LN 31/1996].

Chapter 15.8 *Workmen's Compensation*

Note Rules of court have been made under the Workmen's Compensation Act [Cap 78]: the Workmen's Compensation (Rules of Court) Rules (LN113/1968)

Chapter 15.9 Declaratory Proceedings

- 15.9.1** No objection to a proceeding may be made on the ground that a merely declaratory judgment or order is sought, and the court may make binding declarations of right regardless of whether any consequential relief is or could be claimed.
- 15.9.2** Proceedings for the determination of any question of construction arising under a deed, will or other written instrument may be made by filing a claim.
- 15.9.3** A person claiming any legal or equitable right which depends on the construction of any provision of a written law may apply for the determination of the question of construction and a declaration as to the right by filing a claim.
- 15.9.4** The court may order that an application under Chapter 15.9 be served on any person.

Chapter 15.10 Applications Under the Foreign Judgment (Reciprocal Enforcement) Act [Cap 13]

Application

- 15.10.1** An application under the provisions of the Foreign Judgments (Reciprocal Enforcement) Act [Cap 13] for leave to have a judgment obtained in a superior Court in the United Kingdom or in any part of the Commonwealth or in a foreign country to which the Act has been extended, registered in the High Court must be made to the High Court.

Note Example application for leave to have a foreign judgment registered in the High Court in Schedule 2 Part B

- 15.10.2** An application must have with it a sworn statement that:
- (a) annexes the judgment or a verified or certified or otherwise authenticated copy of the judgment; and
 - (b) states that to the best of the information and belief of the deponent the judgment creditor is entitled to enforce the judgment; and
 - (c) states, so far as the deponent can, the full name, title, trade and business or last known address or place of business of the judgment creditor and judgment debtor.
- 15.10.3** An application may seek orders from the court that the application need not be served on the judgment debtor and the application may be dealt with in the absence of the judgment debtor.

The Order

- 15.10.4** Any order giving leave to register must be drawn up by or on behalf of the judgment creditor.
- 15.10.5** An order giving leave to register must be served on the judgment debtor unless the court has ordered that the application need not be served on the judgment debtor and the application may be dealt with in the absence of the judgment debtor.
- 15.10.6** The order giving leave to register the judgment must state the time within which the judgment debtor is to be entitled to apply to set aside the registration.
- 15.10.7** The time within which the judgment debtor is entitled to apply to set aside the registration will ordinarily be the relevant time for filing of a response under rule 5.37.
- 15.10.8** If the judgment debtor is or ordinarily resides out of the jurisdiction of the court the time within which the judgment debtor is entitled to apply to set aside the registration will depend on the distance from Honiara, of the place where the judgment debtor resides and the postal facilities between those places.

The Register

- 15.10.9** The register of judgments ordered to be registered under the Act must be kept by the Registrar of the High Court.
- 15.10.10** The register must be arranged in alphabetical order in the surname of the judgment debtor and the register must include:
- (a) the date of the order for registration; and
 - (b) the date of the registration; and
 - (c) the name, title, trade or business and usual or last known place of residence or business of the judgment debtor and judgment creditor; and
 - (d) the amount for which the judgment is signed; and
 - (e) any special directions in the order about registration and/or enforcement.

Notice of Registration

- 15.10.11** Notice in writing of the registration of the judgment must be served personally on the judgment debtor within a reasonable time after registration.
- 15.10.12** The notice of registration must:
- (a) contain full particulars of the judgment registered and of the order for registration; and
 - (b) contain the full name and address of the judgment creditor or of his or her advocate or agent on whom at which service of any application issued by the judgment debtor may be served; and
 - (c) state that the defendant is entitled, if he or she has grounds for doing so, to apply to set aside the registration; and
 - (d) state the number of days for applying to set aside the registration limited by the order giving leave to register.
- 15.10.13** The party serving the notice must, within 3 days after service, write on the notice, or a copy of the notice, the date of service or the judgment is not enforceable.
- 15.10.14** Every sworn statement of service must state the day on which the date of service was written on the notice or a copy of the notice.
- 15.10.15** Rules 15.10.13 and 15.10.14 apply to substituted as well as other service.
- 15.10.16** The court may order that the period for writing the date of service on the notice or copy of the notice be extended.

Application to Set Aside Registration

- 15.10.17** The judgment debtor may, within the time limited by the order giving leave to register after service on him or her of the notice of the registration of the judgment, apply to the court to set aside the registration or to suspend enforcement of the judgment.

15.10.18 On an application to set aside registration the court may, if satisfied that:

- (a) under the Foreign Judgments (Reciprocal Enforcement) Act [Cap 13] the matter is one where no judgment can be ordered to be registered; or
- (b) or that it is not just or convenient that the judgment should be enforced within the jurisdiction of the court; or
- (c) for other sufficient reason,

order that the registration be set aside or that enforcement of the judgment be suspended on such terms as the court thinks fit, either altogether or until such time as the court directs.

15.10.19 Despite these rules the court may allow an application to set aside registration to be made after the time specified in the order giving leave to register.

Enforcement

15.10.20 A judgment registered under the Foreign Judgments (Reciprocal Enforcement) Act [Cap 13] may not be enforced until after the time limited by the order for the judgment debtor to apply to set aside registration of the judgment and, if such an application is made, until that application is determined.

15.10.21 Any party seeking to enforce a judgment registered under the Foreign Judgments (Reciprocal Enforcement) Act [Cap 13] must produce to the Registrar a sworn statement of service of the notice of registration.

Certified Copy of Judgment

15.10.22 An application under the Foreign Judgments (Reciprocal Enforcement) Act [Cap 13] for a certified copy of a judgment obtained in the court must be made by application and the sworn statement must:

- (a) include the particulars of the judgment; and
- (b) show that the judgment debtor is resident or usually carries on business in the United Kingdom, or in some (stating what) part of the Commonwealth, or in some (stating what) foreign country to which the Act extends; and
- (c) state that to the deponent's best information and belief the title, trade, business or corporation of the judgment creditor and judgment debtor and their usual or last known places of residence or business.

15.10.23 The certified copy of the judgment shall be an office copy and shall be sealed with the seal of the court and shall be certified by the Registrar of the court as follows:

"I certify that the above copy judgment is a true copy of a judgment obtained in the High Court of Solomon Islands and this copy is issued in accordance with the provisions of the Foreign Judgments (Reciprocal Enforcement) Act [Cap 13].

Signed.....

Registrar."

Chapter 15.11 *Enforcement of protective provisions of the Constitution*

Claims for redress under section 18 (1) of the Constitution

- 15.11.1** A claim for redress under the provisions of section 18 (1) of the Constitution must be made to the High Court.

Leave to commence a claim

- 15.11.2** A claim for redress under section 18 (1) of the Constitution for a prospective breach may only be commenced by leave of the court.
- 15.11.3** An application for leave shall be made ex parte and shall be heard by a judge in chambers.
- 15.11.4** An application for leave shall be accompanied by a draft of the claim for redress under section 18 (1) of the Constitution referred to in rule 15.11.8.
- 15.11.5** A claimant shall give one days notice to the Registry of the application for leave and shall file the draft of the claim when giving such notice.

When leave to commence a claim is not required

- 15.11.6** Subject to rule 15.11.7, where a claim relates to a breach that is alleged to have already taken place or to still exist, leave of the court is not required to commence an action.
- 15.11.7** In relation to any claim under rule 15.11.6, unless leave is granted by the court for the making of an application out of time, a claim must be commenced within one year of the alleged contravention of the Constitution.

Procedure

- 15.11.8** A claim for redress under section 18 (1) of the Constitution is started by the issue of a claim in which the claimant states:
- (a) the facts that give rise to the claim; and
 - (b) the sections of the Constitution alleged to have been contravened.
- 15.11.9** The provisions of these Rules generally shall apply with appropriate modifications to a claim under this Chapter.

Powers of judge

- 15.11.10** In addition to powers generally under these Rules a judge on hearing a claim under rule 15.11.6 or, an application for leave to claim under rule 15.11.2, for redress under section 18 (1) of the Constitution may:
- (a) grant leave, if required, and make any interim orders and directions that the court considers appropriate; or

- (b) refuse leave, if required, and dismiss the application or claim as frivolous or vexatious: or
- (c) refuse leave, if required, and decline to exercise the powers under section 18 (2) of the Constitution if satisfied that adequate means of redress of the contravention alleged have been, or are, available to the person concerned; or
- (d) refuse to hear the claim if it has been made outside the time limit in 15.11.7 without reasonable cause.

And in making an order the court may impose such terms as to costs or the giving of security as it thinks fit. Provided that no order as to costs or the giving of security shall be made against any person who is detained.

Service of the claim

- 15.11.11** Subject to any order of the court, a claim shall be served in accordance with these Rules on all persons directly affected, and where proceedings of a court are involved, service shall be effected on the Registrar of that court and the other parties to the proceedings.

Hearing

- 15.11.12** The hearing of the claim shall be in open court.
- 15.11.13** Any person who desires to be heard in opposition to the claim who appears to the court to be a proper person to be heard shall be heard, notwithstanding that that person has not been served with a claim and if heard, the court may make an order for costs against that person in relation to costs incurred as a result of that person's intervention, should the redress be granted.

Questions referred under section 18 (3) of the Constitution

- 15.11.14** Where any question of the possible contravention of sections 3 to 16 of the Constitution is referred to the High Court under section 18 (3) of the Constitution, the court referring the question shall state the question in writing and shall forward the question and a copy of the relevant proceedings to the Registrar of the High Court within 14 days of the decision or request to refer.
- 15.11.15** The Registrar of the High Court shall refer the request to a judge of the High Court for the judge to review in chambers and to give all necessary directions and make such interim orders as are necessary to enable the matter to be listed for hearing.

Chapter 15.12 Crown Proceedings

Definition of Crown

15.12.1 The following definitions apply in this Chapter:

‘Civil proceedings by or against the Crown’ includes civil proceedings to which the Attorney-General, or any National or Provincial Government department, or any National or Provincial public officer is a party, excepting proceedings where the Attorney-General is acting upon the relation of some other person.

‘Crown’ includes the Crown in right of Solomon Islands and subject to any written law to the contrary, the Provincial Executive of any Province, whether as claimant or defendant in right of the Attorney-General, a Government department or a public officer.

Note On the status of the Provincial Executive see *Premier of Isabel Province v Earthmovers Group of Companies* [2005] SBCA 14; CA-CAC 005 of 2005 (4 August 2005).

Crown proceedings

15.12.2 This Chapter contains rules for civil proceedings by or against the Crown, and other civil proceedings to which the Crown is a party.

Application of the Civil Procedure Rules

15.12.3 These Rules and any Practice Directions apply to civil proceedings by or against the Crown and to other civil proceedings to which the Crown is a party unless this Chapter, a Practice Direction or any other enactment provides otherwise.

Action on behalf of the Crown

15.12.4 (1) Where by reason of a rule, practice direction or court order the Crown is permitted or required to do any of the following:

- (a) make a witness statement;
- (b) swear a sworn statement;
- (c) verify a document by a statement of truth;
- (d) make a disclosure statement;
- (e) discharge any other procedural obligation

that function may be performed by an appropriate officer acting on behalf of the Crown.

15.12.4 (2) For the purposes of rule 15.12.3, the court may if necessary, nominate an appropriate officer.

Disclosure by the Crown

- 15.12.5** Subject to rule 15.12.6 and following, the provisions of ‘Chapter 11 – Disclosure’ apply to the Crown subject to any order or direction of the court.
- 15.12.6** Where the Governor-General acting in his discretion is of the opinion that the disclosure of the existence of a document will be injurious to the public interest, a certificate signed by the Governor-General may be provided to the court to the effect that the existence of documents is not to be disclosed by virtue of section 27 (3) of the Crown Proceedings Act [Cap 8].
- 15.12.7** The certificate of the Governor-General given under rule 15.12.6 shall be conclusive of the matter and no action or appeal shall lie in relation to the making of it.
- 15.12.8** The certificate of the Governor-General shall simply state that the Governor-General has formed the opinion under section 27 (3) of the Crown Proceedings Act [Cap 8] in relation to the matter before the court, without revealing details of the documents concerned.
- 15.12.9** The Attorney-General is to inform the Governor-General of matters where a claim under 15.12.6 of injury to the public interest by disclosure may arise.
- 15.12.10** The Governor-General is to be provided with a copy of any relevant documents and information sufficient to make a determination whether the public interest would be injured by disclosure of the existence of those documents.
- 15.12.11** The Governor-General is to provide the Attorney-General with written advice indicating the documents in relation to which he has formed the opinion that disclosure would be injurious to the public interest.
- 15.12.12** The Attorney-General is to ensure that only those documents covered by the opinion of the Governor-General are suppressed.

Counterclaims and set offs

- 15.12.13** In a claim by the Crown for taxes, duties or penalties, another party cannot make a counterclaim, or other third party claim, or raise a defence of set-off.
- 15.12.14** In any other claim by the Crown, another party cannot make a counterclaim, or other third party claim, or raise a defence of set-off which is based on a claim for repayment of taxes, duties or penalties.
- 15.12.15** In proceedings by or against the Crown in the name of the Attorney-General, no counterclaim, or other third party claim, can be made or defence of set-off raised without the leave of the court.
- 15.12.16** The Crown when sued in the name of a Government Department, shall not, without the leave of the court, be entitled to apply any set-off or counterclaim if the subject matter relates to another Department.
- 15.12.17** The Crown when sued in the name of the Attorney-General, shall not be entitled to apply any set-off or counterclaim without the leave of the court.

Service on behalf of the Crown

- 15.12.18** To avoid doubt, the rules for service including for service on a person not resident in Solomon Islands apply to the Crown, subject to any order of the court.

Service on the Crown

- 15.12.19** To avoid doubt, all documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall be served upon the office of the Attorney-General or upon such other public officer or Government department as may by any written law be expressly authorised to institute or defend the proceedings in question on behalf of the Crown.

Note The same rule appears regarding service on the Solomon Islands Government at rule 6.31.

Information may be required by the Crown

- 15.12.20** In relation to any claim brought against the Crown, before the Crown is required to take any step in the proceedings, the claimant must provide to the Crown any information that the Crown may reasonably require from the claimant in relation to the following matters:
- (a) the circumstances in which it is alleged that the liability of the Crown has arisen, and
 - (b) the Departments and officers of the Crown concerned.
- 15.12.21** A request by the Crown and a reply by the claimant under rule 15.12.17 are to be in writing.

Limit on default judgment against the Crown

- 15.12.22** In relation to any claim brought against the Crown, the claimant shall not be entitled to default judgment against the Crown in default of appearance or pleading without the leave of the court obtained on an application to the court in relation to which 7 days notice has been given to the Crown.

No summary judgment without trial against the Crown

- 15.12.23** In relation to any claim brought against the Crown, the claimant shall not be entitled to summary judgment without trial.

Evidence may be taken on commission

- 15.12.24** To avoid doubt, the rules for taking evidence on commission apply to an action by or against the Crown, subject to any order of the court.

Rules relating to appeals

15.12.25 To avoid doubt, the provisions of these Rules for making an appeal to the High Court, whether by case stated or otherwise, apply to an action by or against the Crown, under written laws relating to revenue, subject to any order of the court.

Certificate by the Prime Minister that liability not in respect of Her Majesty's Government in Solomon Islands

15.12.26 Pursuant to section 36 (3) of the Crown Proceedings Act [Cap 8], the Prime Minister may provide a certificate in relation to a matter brought by or against the Crown that either:

- (a) the alleged liability of the Crown arises otherwise than in respect of Her Majesty's Government in Solomon Islands, or
- (b) the proceedings by the Crown are proceedings otherwise than in right of her Majesty's Government in Solomon Islands.

15.12.27 The certificate of the Prime Minister given under rule 15.12.26 shall be conclusive of the matter.

Chapter 16 Appellate Jurisdiction

Note Appeals to the Court of Appeal are conducted under the Court of Appeal Rules (LN66/1983 and LN85/1983)

Chapter 16.1 Appeals in Civil matters

Definitions

16.1 In Chapter 16.1:

‘registrar’ of a tribunal means the person who fulfils the role of a registrar for the entity, and if the entity is a commissioner, Minister or public officer means the commissioner, Minister or public officer or the person nominated by the commissioner for that purpose.

‘tribunal’ includes any tribunal, court of Solomon Islands (other than the Magistrates Court), commission, commissioner, Minister, public officer or other entity where a decision of the entity can be appealed to the High Court;

Application of Chapter

16.2 Subject to rule 16.3, Chapter 16.1 applies to appeals from decisions of a tribunal to the extent that the rules are not inconsistent with the legislation that creates the right to appeal.

16.3 The High Court or registrar of the High Court may make such orders dispensing with the requirements of Chapter 16.1 and such consequential orders as are appropriate in the circumstances.

Special Leave

16.4 Where an appeal to the High Court can only be made by special leave of the Magistrate’s Court or of the High Court an application for special leave may be started by filing an application in a case not later than 14 days after the day the decision appealed from was made, or not later than any further time the court allows on application.

Note: Section 41(2) of the Magistrates’ Courts Act provides that no appeal shall lie, except by special leave of the Magistrate’s Court, or of the High Court, from any order or decision made by consent, ex parte or as to costs only.

16.5 If special leave is granted that appellant must file a notice of a notice of appeal in the High Court not later than 14 days after special leave is granted.

Commencing an appeal

16.6 An appeal from the decision of a Magistrate’s Court or tribunal in a civil matter may be started by filing a notice of appeal in the High Court.

16.7 A notice of appeal must state:

- (a) the Magistrate’s Court’s or tribunal’s name; and
- (b) the court’s or tribunal’s decision and the date of the decision; and

- (c) the decision sought; and
- (d) briefly, but specifically, the grounds relied on in support of the appeal; and
- (e) before taking another step in the proceeding the respondent must file a notice of intention to respond, unless the respondent files a cross-appeal or notice of contention.

16.8 On the hearing of an appeal, the appellant must not, without the court's leave raise any question that is not stated in the notice of appeal

Notice of intention to respond

16.9 A respondent to an appeal may file a notice of intention to respond as if:

- (a) the notice of appeal were a claim; and
- (b) the respondent were a defendant; and
- (c) the appellant were the claimant; and
- (d) any other necessary changes were made.

Other parties

16.10 A person must be included as a respondent to an appeal if the person:

- (a) appeared or was given leave to appear before the Magistrate's court or tribunal in the proceeding in which the decision was made; and
- (b) would be affected by the decision sought by the notice of appeal, or is interested in maintaining the decision under appeal.

16.11 The court may order:

- (a) the inclusion or substitution of anyone as a party to an appeal; or
- (b) the removal of anyone as a party from the appeal.

Time for filing notice of appeal

16.12 A notice of appeal from a decision of the Magistrate's Court or a tribunal must be filed in the court:

- (a) not later than the time provided by the relevant law or any further time the court allows in accordance with the relevant law; or
- (b) if no time is provided by the relevant law - not later than 28 days after the day the decision appealed from was made, or not later than any further time the court allows on application at any time; or

16.13 An application for further time must be accompanied by a sworn statement showing:

- (a) the nature of the case in summary form; and
- (b) each question involved; and
- (c) the reasons why the extension of time should be given.

Notice of appeal to be sealed

- 16.14** The registrar must seal the original and copies of a notice of appeal that is filed in compliance with the rules.

Note The registrar may reject a notice of appeal that is filed if it does not comply with the rules or is an abuse of process.

Date for settlement of appeal papers

- 16.15** The registrar must set a date for settlement of the appeal papers by writing the date on the notice of appeal.

Service of notice of appeal

- 16.16** Unless otherwise provided by these rules or the court otherwise orders, a sealed copy of a notice of appeal must be served personally on each respondent not later than 7 days after the notice is filed and no later than 5 days before the day for settling the appeal papers.
- 16.17** A sealed copy of the notice must also be served on the civil clerk of the Magistrate's Court or the registrar of the tribunal.

Security for costs

- 16.18** Security for the costs of an appeal to the court is not required.
- 16.19** However, the court may, in special circumstances, order that security for the costs of an appeal in a civil proceeding be given.

Stay of decision

- 16.20** (a) An appeal from a decision of a Magistrate's Court or the High Court or another court in a civil proceeding does not operate as a stay of the decision appealed from unless the court orders, or the relevant law or these rules provide, otherwise.
- (b) An appeal from a decision of a tribunal other than the High Court or a court of Solomon Islands in a civil proceeding does not operate as a stay of the decision appealed from unless:
- (i) the court orders, or
 - (ii) the relevant law provides otherwise or
 - (iii) these rules provide otherwise, or
 - (iv) the decision materially affects a proprietary interest.

Documents

- 16.21** Not later than 21 days after the day a notice of appeal from a decision of a Magistrate's Court or tribunal to the court is served on the civil clerk of the Magistrate's Court or the registrar of the tribunal, the appellant must file in the court:
- (a) a copy of the decision appealed from; and
 - (b) if the Magistrate's Court or tribunal has given written reasons for its decision - a copy of the reasons; and

- (c) any transcript, or notes, of the proceeding in the Magistrate's Court or tribunal; and

16.22 After being served with a notice of appeal, the civil clerk of the Magistrate's Court or the registrar of a tribunal must send the registrar of the High Court all documents and exhibits that were before the Magistrate's Court or tribunal in relation to the proceeding from which the appeal is brought.

16.23 When the documents and exhibits mentioned in rule 16.22 have been received by the registrar of the High Court, the registrar must send notice that these have been received to each party to the appeal.

Discontinuance of appeal

16.24 An appellant may discontinue the appeal or part of the appeal at any time by:

- (a) filing a notice of discontinuance; and
- (b) serving a sealed copy of the notice on each other party to the appeal.

16.25 If an appellant files and serves a notice of discontinuance of an appeal or part of an appeal:

- (a) the appeal or part of the appeal is abandoned by the appellant; and
- (b) the notice of discontinuance does not affect any other appellant.

16.26 If rule 16.25 applies, the appellant must pay the costs of the other parties caused by the appeal or part of the appeal, unless the court otherwise orders.

16.27 A party whose costs are payable under rule 16.26 may submit a bill of costs to the registrar of the High Court for assessment.

16.28 The registrar may fix an amount to be paid as costs.

16.29 If the costs payable under rule 16.26, as assessed, are not paid within 14 days after the day the certificate of assessment is served on the party liable to pay the costs, the court may, on application by the party submitting the bill, enter judgment for the costs.

Amending notice of appeal

16.30 Before the date set for settling the appeal papers, an appellant may, without leave, amend a notice of appeal.

16.31 After that date, the court may give leave for a notice of appeal to be amended.

Cross-appeals

16.32 If a respondent to an appeal in the court:

- (a) wants to appeal from all or part of the decision appealed from by the appellant; or
- (b) seeks an amendment of all or part of the decision;

the respondent need not start a substantive appeal, but may instead start a cross-appeal by filing in the court a notice of cross-appeal not later than 28 days after the day the notice of appeal is served on the respondent.

- 16.33** The respondent must serve a sealed copy of the notice of cross-appeal personally on the appellant and each other party to the appeal, unless otherwise provided by these rules.
- 16.34** The notice of cross-appeal must state:
- (a) what part of the decision the respondent cross-appeals from or contends should be amended; and
 - (b) either:
 - (i) the decision that the respondent seeks instead of the decision cross-appealed; or
 - (ii) the amendment of the decision that the respondent seeks; and
 - (c) briefly, but specifically, the grounds relied on in support of the cross-appeal.
- 16.35** On the hearing of a cross-appeal, the respondent bringing the cross-appeal must not, without the court's leave:
- (a) raise any question that is not stated in the notice of cross-appeal; or
 - (b) rely on any ground in support of:
 - (i) the decision sought that is not set out in the notice of cross-appeal; or
 - (ii) an amendment of the decision sought that is not set out in the notice of cross-appeal.

Notice of contention

- 16.36** Rules 16.37 and 16.38 apply if a respondent to an appeal in the court:
- (a) wants to contend that a question of law has been incorrectly decided against the respondent in the decision appealed from by the appellant; but
 - (b) does not seek a discharge or amendment of part of the decision.
- 16.37** The respondent must file a notice of contention in the court and serve a sealed copy of the notice on the appellant.
- 16.38** When the appeal papers are settled the appellant must, at the respondent's request, include in the appeal papers that part of the record of evidence, and any documents, before the Magistrate's Court or tribunal that are relevant to the respondent's contention.

Content of appeal papers

- 16.39** The title page of the appeal papers must give:
- (a) the title of the proceeding; and
 - (b) the Magistrate's Court or tribunal's name; and
 - (c) the names of each party (and the party's legal practitioner (if any)) and their addresses for service.
- 16.40** Following the title page of the appeal papers, there must be:

- (a) an index of the documents to be included in the appeal papers that shows the date and page number of each document; and
- (b) in chronological order, a copy of all documents necessary to enable the questions raised by the appeal to be decided by the court.

Presentation of appeal papers

16.41 The appeal papers must be:

- (a) paginated; and
- (b) clear, legible and securely fastened, but need not be bound or printed.

16.42 The registrar must be satisfied about the presentation of the appeal papers.

Filing appeal papers for settling

16.43 The Registrar may require the appellant to file a copy of the appeal papers for settling together with a certificate by the parties (or their legal practitioners) stating that the copy has been examined, and is correct.

Settlement of appeal papers

16.44 When settling the appeal papers, the court or the registrar may give directions about the conduct of the appeal that the court considers appropriate. Without limiting this power, the court or the registrar may do the following:

- (a) work out what documents [and matters] were before the Magistrate's Court or tribunal;
- (b) decide what documents are to be included in the appeal papers, and the order of inclusion;
- (c) settle the index of the documents to be included in the appeal papers;
- (d) decide the number of copies of the appeal papers required and when they should be served;
- (e) direct the inclusion, substitution or removal of parties;
- (f) get an estimate of the length of the hearing from the parties;
- (g) direct the place, date and kind of hearing

Appeals requiring evidence or production of documents not before the tribunal

16.45 Where the nature of the appeal requires the giving of factual evidence or production of documents not before the tribunal when the decision appealed from was made, (for example, tax appeals), the registrar may give directions as to the following:

- (a) disclosure and production of documents; and
- (b) the filing of sworn statements; and
- (c) the giving of notices to cross-examine deponents; and
- (d) the extent to which Chapters 11, 12, 13 and 14 should apply to the appeal: and
- (e) any other matter relating to the conduct of the appeal.

Setting appeal for hearing

- 16.46** Rules 16.47 and 16.48 apply if the court does not set a date for hearing when the appeal papers are settled.
- 16.47** The registrar may set a hearing date for the appeal when the registrar is satisfied that the appeal is ready for hearing.
- 16.48** The registrar may set the date:
- (a) on the registrar's own initiative; or
 - (b) on application by any party.

Written summary and list for appeal hearing

- 16.49** A party to an appeal that has been set for hearing must prepare a written summary of arguments and a list of authorities, legislation and texts, unless the court otherwise orders.
- 16.50** At least 5 days before the day set for the start of the hearing of the appeal, each appellant must file in the court 2 copies of the appellant's summary and list, and serve a copy of each on each other party to the appeal.
- 16.51** At least 2 days before the day set for the start of the hearing of the appeal, each respondent must file in the court 2 copies of the respondent's summary and list, and serve a copy of each on each other party to the appeal.
- 16.52** At least 1 day before the day set for the start of the hearing of the appeal, each appellant may file in the court 2 copies of a written summary of arguments in reply, and serve a copy on each other party to the appeal.
- 16.53** Rules 16.49 to 16.50 do not apply to appeals from interlocutory judgments.

Summaries of arguments

- 16.54** A party's summary of arguments must state as briefly as possible:
- (a) the issues in the appeal; and
 - (b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and any legislation, authority or finding of fact to be relied on for each step; and
 - (c) if there is to be a challenge to any of the Magistrates' Court's or tribunal's findings of fact -
 - (i) the claimed error (including any failure to make a finding of fact); and
 - (ii) the reasons why the party considers the finding was an error; and
 - (iii) the finding that the party considers should have been made; and
 - (d) for an appellant - a chronology of the facts; and
 - (e) if a respondent disagrees with an appellant's chronology of facts - the respondent's chronology of facts that highlights where the respondent's chronology differs from the appellant's chronology.

List of authorities, legislation and texts

- 16.55** A party's list of authorities, legislation and texts must list any authority, legislation or text that the party expects will be quoted from, or that may be referred to, by the party.
- 16.56** A party's list of authorities, legislation and texts may be divided into 2 parts (parts A and B) and list any authority, legislation or text:
- (a) in part A - that the party expects will be quoted from by the party; and
 - (b) in part B - that may be referred to by the party.
- 16.57** An authority, legislation or text must be identified as follows:
- (a) for an authority - by case, citation and relevant part;
 - (b) for legislation - by provision;
 - (c) for a text - by edition and page number.

New Evidence on Appeal

- 16.58** A party may not adduce new evidence in support of his or her original case without the leave of the court and the court may in the interests of justice allow new evidence to be adduced. This rule does not apply to appeals to which rule 16.46 applies.

Abandonment of ground of appeal

- 16.59** Rules 16.60 to 16.62 apply if an appellant to an appeal to a court wants to abandon a ground of appeal.
- 16.60** The appellant must give notice to each other party to the appeal that the ground of appeal will not be relied on.
- 16.61** The notice must be given:
- (a) as soon as possible; but
 - (b) within a reasonable time before the day set for the hearing.
- 16.62** The court may make any order the court considers appropriate in an appeal in a civil proceeding in relation to costs incurred because of a failure by the appellant to comply with rules 16.60 and 16.61.

General power on appeal

- 16.63** The court may do any one or more of the following:
- (a) amend the grounds of appeal;
 - (b) make any order necessary for determining the real question in issue in the appeal;
 - (c) amend any defect or error in the record of the appeal;
 - (d) direct the Magistrate's Court to enquire into and certify its finding on any questions which the High Court thinks fit to determine before final judgment in the appeal;

- (e) exercise full jurisdiction over the whole proceedings as if the whole proceedings had been instituted in the High Court as a court of first instance and may re-hear the whole case or may remit it to the Magistrate's Court or tribunal to be reheard or otherwise dealt with as the High Court directs.

Powers of High Court on hearing appeals

- 16.64** The court may give any judgment, and make any order that may have been made by the Magistrate's Court or tribunal, and may make such further or other orders as may be appropriate, including any orders as to costs.
- 16.65** The court may give such judgment or make such orders:
 - (a) even if the appellant only appealed part of a decision; and
 - (b) in favour of any or all of the respondents or parties even if such respondents or parties did not appeal from the decision.
- 16.66** The appeal shall not succeed merely because of a misdirection or the improper reception or rejection of evidence unless, in the opinion of the court, substantial wrong or miscarriage has occurred.
- 16.67** The court may entertain any objection to evidence received in the Magistrate's Court even though there was no objection at the time it was offered.

Directions about appeal etc

- 16.68** At any time after the filing of a notice of appeal in the court, the court may give any direction about the conduct of the appeal it considers appropriate, even though the direction may be inconsistent with another provision of these rules.
- 16.69** The court may give a direction about the conduct of the appeal on application by a party to the appeal or on its own initiative.
- 16.70** In deciding whether to give a direction under rule 16.68 or 16.69 the interests of justice are paramount.
- 16.71** If a direction under rule 16.68 or 16.69 is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.
- 16.72** The court may at any time amend or revoke a direction, on application by a party or on its own initiative.

Chapter 16.2 Cases stated

Chapter 16.2.1 Questions referred to High Court

Definitions

- 16.73** In Chapter 16.2.1:
 - 'initiating party'* means:
 - (a) the party who requested that the question be referred; or

- (b) if the question was referred by the referring court or tribunal on its own initiative - the entity that made the decision to which the proceeding before the referring court or tribunal relates;

‘question referred’, to the High Court - a reference to a **question referred** to the High Court includes a reference to a case stated to, or question reserved for, (however described) the High Court;

‘High Court’ means the High Court other than when it sits as a court of appeal;

‘tribunal’ includes an entity (other than a court) that may refer a question to the High Court.

Question referred to High Court - form

16.74 A question referred to the High Court must be in the form of a special case.

16.75 The special case must:

- (a) state the questions to be decided; and
- (b) briefly state the facts, and have attached all documents, necessary to allow the High Court to decide the questions raised by the special case; and
- (c) be divided into paragraphs numbered consecutively.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

Note Example Special case in Schedule 2 Part B.

Special case to High Court - preparation and settling

16.76 Unless the referring court or tribunal otherwise directs, the special case must:

- (a) be prepared in draft by the initiating party after consultation with each other active party; and
- (b) contain an address for service for each active party; and
- (c) be settled by the referring court or tribunal; and
- (d) be served on each active party; and
- (e) be filed in the High Court by the initiating party on behalf of the referring court or tribunal.

Special case to High Court - person under a disability

16.77 If a person under a disability is a party to the special case, the special case must not be set down for hearing without the High Court’s leave.

Note Chapter 7 (Interlocutory Applications) applies to an application for leave.

16.78 The application for leave must be supported by sufficient evidence that the statements contained in the special case are true, as far as they affect the interests of the person with a legal disability.

Special case to High Court - directions hearing

16.79 After the special case is filed under rule 16.76, the registrar must:

- (a) set a date for a directions hearing; and
- (b) tell the parties the date set for the hearing.

Special case to High Court - setting down for hearing

16.80 At the directions hearing, the registrar may:

- (a) if satisfied that all the active parties have been served with the special case, and the special case is ready for hearing:
 - (i) set a date for the hearing of the special case; and
 - (ii) tell the parties the date set for the hearing; and
 - (iii) give directions as to the provision of written summaries of argument and the extent to which rules 16.49 to 16.57 shall apply; or
- (b) adjourn the directions hearing.

Special case to High Court - insufficient statement of case

16.81 If it appears to the High Court that the special case does not state the facts, and have attached the documents, necessary to allow the High Court to decide the questions raised by the special case or otherwise to hear and decide the proceeding on the special case, the High Court may:

- (a) with each active party's agreement, amend the special case; or
- (b) send the special case back to the initiating party for the party to amend the special case in the way stated by the court; or
- (c) for a proceeding that is a civil proceeding - receive evidence, make findings of fact, and amend the special case accordingly.

Special case to High Court - court can draw inferences

16.82 For a special case under this division, the High Court may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at a trial.

Chapter 16.2.2 Cases stated and questions reserved to Court of Appeal

Case stated or question reserved to Court of Appeal - form

16.83 A case stated or question reserved by the High Court to the Court of Appeal must be in the form of a special case.

Note Example special case in Schedule 2 Part B.

16.84 The special case must:

- (a) state the questions to be decided; and
- (b) briefly state the facts, and have attached all documents, necessary to allow the Court of Appeal to decide the questions raised by the special case; and
- (c) be divided into paragraphs numbered consecutively.

Special case to Court of Appeal - —preparation and settling

16.85 Unless the High Court otherwise orders, the special case must be:

- (a) prepared in draft by the party having conduct of the special case after consultation with each other active party; and
- (b) settled by a judge of the High Court; and
- (c) served on each active party; and
- (d) filed in the Court of Appeal.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order otherwise ordering.

Special case to Court of Appeal - setting down for hearing

16.86 On filing of the special case in the Court of Appeal, the registrar of the Court of Appeal, if satisfied that all active parties have been served with the special case, must:

- (a) set a date for hearing of the special case; and
- (b) tell the parties the date set for the hearing, and
- (c) give directions as to the provision of written summaries of argument and the extent to which rules 16.49 to 16.57 shall apply.

Special case to Court of Appeal - court can draw inferences

16.87 For a special case under this division, the Court of Appeal may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at trial.

High Court may make appropriate order

16.88 Once the Court of Appeal has determined a case stated or a question referred to it, the matter is to be remitted back to the High Court for appropriate orders to be made in the proceedings.

Chapter 17 Judgments and orders

Note Order is defined in the dictionary to include a judgment, direction or decision of the court.

Note Example order in Schedule 2 Part B.

When entry of order is required

- 17.1** Subject to rule 17.3 an order must be entered if:
- (a) the order is to be served; or
 - (b) the order is to be enforced; or
 - (c) an appeal from the order has been started, or an application for leave to appeal from the order has been made; or
 - (d) a step is to be taken under the order; or
 - (e) the court directs that the order be entered.
- 17.2** An order need not be entered if, in addition to any provision as to costs, the order merely:
- (a) extends or abridges time; or
 - (b) grants leave or makes a direction:
 - (i) to amend a document (other than an order); or
 - (ii) to file a document; or
 - (iii) for an act to be done by an officer in the employ of the court; or
 - (c) gives directions about the conduct of a proceeding.

Entry of an order

- 17.3** An order may be entered in accordance with rule 17.4 or rule 17.8.

Note Example order in Schedule 2 Part B.

- 17.4** A registrar may enter an order by perfecting the order in accordance with rule 17.10 if:
- (a) the order has been settled in accordance with rule 17.6; and
 - (b) the court or a judge directs, or a party requests, that the order be entered.

Lodgment of orders for entry

- 17.5** If a party wishes to have an order entered, the party may lodge with the registrar a draft of the order.
- 17.6** An order may be settled by the court or a judge, or a registrar, even if no draft of the order has been lodged under rule 17.5.
- 17.7** The court or a judge may give directions to a registrar who is settling an order under rule 17.6.

Courtroom entry

- 17.8** The court or a judge may direct that an order be entered by the order being perfected in court in accordance with rule 17.10 at the time the order is made.

Date of effect

- 17.9** Unless the court otherwise orders, or these rules or the Court of Appeal Rules otherwise provide, an order takes effect from the date the order was made and not the date on which it is perfected.

Authentication of orders

- 17.10** An order is perfected by:
- (a) the court or a judge, or a registrar signing the order; and
 - (b) the court or a judge, or a person at the direction of the court or a judge, or a registrar, sealing the order; and
 - (c) the order being filed in the court.
- 17.11** On request by a party to a proceeding, the registrar must give a copy of a perfected order in the proceeding to the party.
- 17.12** The registrar may give a copy of a perfected order in the proceeding to any person who:
- (a) appears to have a sufficient interest in the proceeding; and
 - (b) pays the prescribed fee (if any).

Service of orders

- 17.13** Unless the court orders or these rules otherwise provide, an order must be served if:
- (a) it is an order perfecting a final judgment against a party to the proceedings; or
 - (b) it is an order made in the absence of a party, and
- in the case of any order required to be served, it shall be served within 7 days of it being perfected or within the time set by the court or prescribed by these rules.

Certificate of judgment

- 17.14** On request by a judgment creditor, the registrar must give to the creditor a certificate setting out the particulars of the judgment.

Judgments—several claims

- 17.15** If:
- (a) there is a claim by a claimant in a proceeding and a counterclaim by a defendant in the proceeding; or
 - (b) there are several claims between the parties to a proceeding,

then the court may give judgment for the balance only of the amounts awarded on the respective claims between 2 or more parties, or in relation to each claim.

Orders—set off between enforceable money orders

17.16 If, in relation to 2 or more money orders of the same court, the enforcement creditor and the enforcement debtor under 1 or more of the orders are the enforcement debtor and enforcement creditor, respectively, under the other orders, the enforcement debtor under an enforceable money order made in a proceeding (the *first order*) may apply to the court for an order in the proceeding that the first order be set off against another enforceable money order of the same court (the *second order*) in which the enforcement debtor is the enforcement creditor.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

17.17 If the court makes an order under rule 17.16:

- (a) if the amount of the first order is less than the amount of the second order - the first order is taken to have been satisfied and the amount of the second order is taken to have been reduced by the amount of the first order; or
- (b) if the amount of the first order is equal to the amount of the second order - both orders are taken to have been satisfied; or
- (c) if the amount of the first order is greater than the amount of the second order - the second order is taken to have been satisfied and the amount of the first order is taken to have been reduced by the amount of the second order.

Judgments—detention of goods

17.18 In a proceeding in relation to the detention of goods, the court may give judgment for the claimant against the defendant in accordance with the claimant's claim for relief, for either:

- (a) the return of the goods to the claimant, or the retention of the goods by the defendant and payment to the claimant of the value of the goods; or
- (b) the return of the goods to the claimant without the option of the defendant retaining the goods; or
- (c) payment to the claimant of the value of the goods.

17.19 If the court gives judgment for the return of goods, it may state a date before which the return must take place.

17.20 If the court gives judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the court may, on the claimant's application, order the defendant to pay the value of the goods to the claimant.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

17.21 If the court gives judgment under paragraph 17.18(a), and the claimant subsequently applies for an order under rule 17.20, the court may nevertheless

make an order for the return of the goods to the claimant without the option of the defendant retaining the goods and paying their value.

17.22 In rules 17.18 to 17.21:

‘*value*’, of the goods, means the value assessed by, or in accordance with the directions of, the court.

Orders—making and effect

17.23 An order of the court is made by the order:

- (a) being pronounced in court by the judicial officer making the order; or
- (b) being recorded, in accordance with the court’s practice, as having been entered.

17.24 An order takes effect on the day that the order is made.

17.25 The court may order that the order takes effect on an earlier or later date or at any earlier or later time.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under rule 17.25.

Orders—filing

17.26 If a judicial officer or associate writes the date and terms of an order on a court file or document on a court file, then, unless the order is perfected under rule 17.10, the writing is sufficient proof of the making of the order, its date and terms.

17.27 An order of the court is filed in the court if a document embodying the order, and the date the order was made, is drawn up, settled and signed by the registrar, and filed in the court and the registrar’s stamp on the document showing the date and time of filing shall be evidence of those matters.

17.28 The party in whose favour an order is made may, not later than 7 days after the day the order is made, file in the court a draft order for settling by the registrar.

17.29 If a draft order is not filed in accordance with rule 17.28, another party to the proceeding may file in the court a draft order for settling by the registrar.

17.30 If a draft order is filed in the court under rule 17.28, the registrar:

- (a) may approve the draft with or without amendment; and
- (b) must enter the order on the filing of the final order in accordance with the approved draft.

Orders—certified duplicate

17.31 Unless the court otherwise orders on its own initiative, the registrar must, on request, give a person a sealed copy of an order entered in a proceeding.

17.32 However, the registrar must not give a copy of the order to a person who is not a party to the proceeding unless the person appears to the registrar to have a sufficient interest in the order.

- 17.33** If a rule, order or practice of the court requires the production or service of a judgment or other order, it is sufficient to produce or serve a copy of the perfected order.

Orders—reasons

- 17.34** The court shall give reasons for an order unless the order is one:

- (a) giving directions for the conduct of the proceedings; or
- (b) enlarging or abridging of time; or
- (c) adding or removing a party; or
- (d) is made by consent of the active parties; and
- (e) does not make any other substantive order,

but nothing in this prevents a court from giving reasons.

- 17.35** The court may give reasons:

- (a) orally at the time of making an order; or
- (b) by publishing the reasons in writing in accordance with rule 17.36 either at the time of making the order or at a subsequent time and rules 12.31 and 12.32 apply to the publication of reasons with necessary amendments.
- (c) The reasons of the court for making any order in a proceeding may, if in writing, be published:
 - (i) by the reasons being delivered in court at the time of making the order by the judge or magistrate by giving a copy of the reasons to each party; or
 - (ii) by a copy of the reasons signed by the judicial officer making the order being given at a subsequent time to an appropriate officer of the court to deliver either in court or out of court to legal practitioners for the parties. .

- 17.36** The reasons of a court for a proposed order may be published before the order is made.

Orders—reservation of decision

- 17.37** At the end of a hearing in a proceeding, the judicial officer may reserve the decision on any question of fact or law, and may deliver the decision on another date or a date to be set.

- 17.38** If a judicial officer reserves a decision in a proceeding, the judicial officer may arrange for written reasons for the decision to be prepared setting out the proposed order, sign them and send them to another judicial officer for delivery of the decision and reasons to the parties.

- 17.39** The other judicial officer must, at a convenient time, deliver the decision and make the orders in court and publish the reasons in accordance with rule 17.35.

- 17.40** The acts of the other judicial officer under rule 17.39 has the same effect as if, at the time of publication, the judicial officer who reserved the decision had

been present in court and made the order proposed in the written reasons, and published the reasons in person.

Note Rule 12.31 provides that the registrar must list proceedings for mention if a decision has not been given after three months.

Orders—time for compliance

- 17.41** An order in a proceeding requiring a person to perform an act must state the time within which the person is required to perform the act.
- 17.42** If an order in a proceeding requires a person to perform an act immediately or immediately on the happening of a stated event or to perform an act but does not state a time for the performance, the court may, by later order, state a time within which the person must perform the act.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

- 17.43** An order requiring a person to perform an act must have written on it or attached to it the following statement or a statement to the same effect:
- ‘If you, [state name of person required to perform act], do not obey this order within the time stated in it, a court proceeding may be taken to compel you to obey it.’
- 17.44** The court may amend a time stated in an order for the performance of an act.

Orders—registrar may make order by consent

- 17.45** The registrar of the High Court may make an order in a proceeding if:
- (a) the parties affected by the order consent to the order; and
 - (b) the registrar considers it appropriate.

Note **Order** is defined in the dictionary to include a judgment, direction or decision of the court.

- 17.46** A party affected by the order may lodge a draft order for settling by the registrar of the High Court.
- 17.47** The draft order must include a statement signed by the parties affected by the order that the parties consent to the order.
- 17.48** If a draft order is filed under rule 17.46, the registrar of the High Court
- (a) may approve the draft with or without amendment; and
 - (b) must enter the order on the filing of the final order in accordance with the approved draft.
- 17.49** An order made under rules 17.45 to 17.48 has effect as if it had been made by the court on the day it is entered by the registrar of the High Court.

Orders—by consent in proceeding

- 17.50** Rules 17.51 to 17.53 apply to an order in a proceeding by consent.
- 17.51** If a party is represented by a legal practitioner in the proceeding, the party’s consent to the order must be given by the party’s practitioner.
- 17.52** If a party acts in person in the proceeding, the party’s consent to the order must be given:

- (a) in person to the judicial officer hearing the proceeding; or
- (b) in writing, witnessed by a legal practitioner.

17.53 However, a party who is a legal practitioner complies with paragraph 17.52(b) if the consent is in writing.

Orders—setting aside etc

17.54 The court may amend or set aside an order before the filing of the order.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

17.55 The court may set aside an order at any time if:

- (a) the order was made in the absence of a party; or
- (b) the order was obtained by fraud; or
- (c) the order is for an injunction or the appointment of a receiver; or
- (d) the order does not reflect the court's intention at the time the order was made; or
- (e) the party who has the benefit of the order consents; or
- (f) for a judgment for specific performance, the court considers it appropriate for reasons that have arisen since the order was made.

17.56 If the court sets aside an order, it may also set aside any order made to enforce the order.

17.57 If the court sets aside an order under 17.54, the setting aside of the order does not affect the title to any property sold under the order before it is set aside.

17.58 Rule 17.54 does not apply to a default judgment.

Note Setting aside a default judgment is governed by rules 9.52 to 9.56.

Order dismissing proceeding—effect

17.59 Rules 17.60 and 17.61 apply to the dismissal of:

- (a) a proceeding, either generally or in relation to any cause of action; or
- (b) a claim, or any part of a claim, for relief in a proceeding.

17.60 Subject to the order for dismissal, the dismissal does not prevent the claimant in the proceeding from starting a fresh proceeding or claiming the same relief in a fresh proceeding.

17.61 However, if the dismissal follows a decision on the merits, the claimant must not claim any relief in relation to the same cause of action in any subsequent proceeding in a court.

Orders—joint liability

17.62 If:

- (a) 2 or more persons are jointly liable in relation to a cause of action in a proceeding; and

- (b) 1 or more, but not all, of the persons jointly liable are served with the originating process;

the court may enter judgment in relation to the cause of action against any 1 or more of the persons served with the originating process, and the judgment may be enforced against anyone against whom judgment is entered.

17.63 If judgment is entered in relation to the cause of action against 1 or more, but not all, of the persons jointly liable in relation to the cause of action:

- (a) the liability of the persons jointly liable against whom judgment is not entered (the *other persons*) is not discharged by the judgment or any enforcement of the judgment; and
- (b) if the judgment is satisfied or partly satisfied - the liability of the other persons is discharged to the extent to which the judgment is satisfied; and
- (c) as between the persons against whom judgment is entered (the judgment parties) and the other persons, the other persons remain liable on any claim for contribution or indemnity by the judgment parties, whether under rule 17.64 or otherwise.

17.64 Rule 17.62 does not affect a person's right to contribution or indemnity in relation to the person's satisfaction of all or part of a liability that the person has (whether jointly, severally or jointly and severally) with anyone else.

Interest up to judgment

17.65 In a proceeding for the recovery of money, including a debt or damages or the value of goods, the court may:

- (a) order that interest be included in the amount for which judgment is given:
 - (i) at the rate of 5 per cent per annum or such other rate it considers appropriate; and
 - (ii) on all or any part of the money; and
 - (iii) for all or any part of the period beginning on the day the cause of action arose, or such later date as the court may decide, and ending on the day before the day judgment is entered; or
- (b) order that a lump sum be included in the amount for which judgment is given instead of interest under paragraph (a).

17.66 However, the court must not order that interest be included, or that an amount be included in a lump sum instead of interest, for:

- (a) compensation for loss or damage to be incurred or suffered after the day judgment is given; or
- (b) on any award of aggravated, exemplary or punitive damages.

17.67 Rule 17.68 applies if:

- (a) a proceeding is started for a debt or liquidated demand; and

- (b) payment of all or part of the debt or liquidated demand is made during the proceeding and before or without judgment being entered in relation to the debt or liquidated demand.

17.68 On application by a party to the proceeding, the court may order that interest be paid:

- (a) at the rate of 5 per cent per annum or such rate it considers appropriate on all or part of the amount paid; and
- (b) for all or any part of the period between the day the cause of action arose and the day of the payment.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this subrule.

17.69 These rules:

- (a) do not authorise the giving of interest on interest awarded under these rules; and
- (b) do not apply in relation to any debt on which interest is payable as of right, whether by agreement or otherwise; and
- (c) do not affect damages recoverable for the dishonour of a bill of exchange.

17.70 In a proceeding for damages, the court must not order the payment of interest under rule 17.65 in relation to a period after the defendant offers (or first offers) an appropriate settlement amount to the claimant unless the special circumstances of the case justify the making of the order.

17.71 For the purposes of rule 17.70, if an amount is offered in settlement of the proceeding and the amount for which judgment is entered in the proceeding (including interest until the day of the offer) does not exceed the amount offered in settlement by more than 10%, the amount offered is an *appropriate settlement amount*.

Interest after judgment

17.72 Unless the court otherwise orders, interest is payable at the rate of 5 per cent per annum on the amount of a judgment debt (other than costs) that is unpaid on and after the day judgment is entered.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order otherwise ordering.

17.73 However, unless the court otherwise orders, interest is not payable on the amount of the judgment debt if the amount is paid in full not later than 28 days after the day the judgment takes effect.

17.74 Interest is not payable on any amount awarded for costs, unless the court otherwise orders.

17.75 The court may order that interest is payable on an amount awarded for costs at the rate of 5 per cent per annum from the day the costs were assessed or another date decided by the court.

Judgment for interest only

17.76 If:

- (a) the defendant in a proceeding satisfies the claimant's claim after the proceeding is started; and
- (b) the claimant would be entitled to judgment on the claim if the defendant had not satisfied the claim,

then the claimant is entitled to apply for a judgment for interest in relation to the amount claimed in accordance with rule 17.68.

Stay of judgment

17.77 An application for a stay of a judgment or order (including an application for a stay of any enforcement proceedings based on a judgment or order) may be made:

- (a) orally at the time the judgment or order is made; or
- (b) subsequently by written application.

17.78 In an application made under rule 17.77 the court may:

- (a) grant the application for the duration of any appeal period (including any period relating to leave to appeal) and, if any appeal is filed (including an application for leave to appeal), until the final determination of the appeal; or
- (b) grant the application for another period ending on the happening of a specified event; or
- (c) dismiss the application.

Chapter 18 Forms and documents

Form of documents

18.1 All documents filed in proceedings shall be set out in the basic template form displayed in Schedule 2 Part A.

Note The basic template has 4 parts.

Part A includes detail of the court in which the proceedings are conducted; the number allocated to the proceedings by the registrar under rule 4.3; the date of filing; the description of the document and the address for service of the person filing the document.

Part B includes details of the parties.

Part C includes all notices that are required to be given under the rules, including notices of hearing dates. Part C may be omitted if there are no notices to be given.

Part D is where the substantive elements of the document are set out e.g. the statement of case or the substance of a sworn statement.

18.2 All documents filed in a proceeding must, unless it is not practical to comply:

- (a) be typewritten in type of no less than 12 point font or in neat legible handwriting of similar size; and
- (b) be set out on one side only of good quality, white, unblemished A4 paper capable of being photocopied to the satisfaction of the registrar; and
- (c) have each page consecutively numbered; and
- (d) be divided into consecutively numbered paragraphs, with each paragraph dealing as far as practicable, with a separate matter; and
- (e) show the address of the party's legal practitioner or, if the party is not represented by a legal practitioner, the party's address; and
- (f) if these rules require the document to be in a form in Schedule 2, be in that form.

Forms

18.3 Examples of the principal forms to be filed in the court are set out in Schedule 2 Part B.

18.4 Unless the court otherwise orders, strict compliance with the form examples set out in Schedule 2 Part B is not required and substantial compliance is sufficient.

Note The registrar may reject a document that does not comply substantially with the requirements of these rules - rule 4.9.

How documents can be filed

18.5 A document may be filed by delivering it to the registry by hand or by post.

18.6 A document is filed when it is accepted by the registrar and stamped with the filing seal of the court and endorsed with the date and time of filing.

Multiple parties to be named in schedule

- 18.7** Where there are more than two claimants the heading of a document may state the full name of the first claimant followed by the words "and others" and similarly with respect to defendants and other parties.
- 18.8** In a claim, an application or a judgment or order or enforcement document, if the heading of the document is in accordance with rule 18.7:
- (a) immediately after the words "and others" in the title to the document there shall follow the words "according to the schedule"; and
 - (b) a schedule stating the full names of all the parties to the proceeding, and dated, shall be part of the document.

Chapter 19 Delegation to Registrars

Functions of registrars

19.1 Unless the court otherwise orders, the registrar of the High Court may exercise the functions of the court to perform such acts as indicated below or make, or refuse to make, any or all of the following orders:

- (a) which are interlocutory (except orders for injunctions or the payment of money into court) and which the court may make, being orders consented to by:
 - (i) the parties to the application for the order, and
 - (ii) any other person who will be required to comply with the order or to suffer anything to be done under the order;
- (b) in respect of the amendment of documents;
- (c) for extension or abridgment of time;
- (d) dispensing with compliance, or full compliance, with any relevant rules under rule 1.14;
- (e) that several claims against the one person be included in the one proceeding under rule 3.8;
- (f) in relation to service under Chapter 6;
- (g) for entering judgment on acknowledgment of a money claim under rule 9.8;
- (h) for entering default judgment under rule 9.22;
- (i) setting aside a default judgment under rules 9.54 and 9.55
- (j) striking out proceedings under rules 9.71 to 9.74;
- (k) issuing a summons to give evidence or produce documents under rule 13.50;
- (l) to allow the parties to inspect a document or thing produced in response to summons under rule 13.71;
- (m) in relation to enforcement under Chapter 21;
- (n) for costs in respect of any order made or refused by the registrar under these rules or in respect of any conference presided over, or scheduled to be presided over, by the registrar;
- (o) for injunction where the parties consent to the orders
- (p) to deliver a judgment on behalf of a judicial officer as provided for in rules 17.38-17.40.

19.2 Rule 19.1 confers functions additional to, and not in derogation from or substitution for, functions conferred otherwise in these rules.

19.3 The registrar of the High Court may delegate any of his or her powers to the deputy registrar of the High Court.

- 19.4** The following provisions apply to a delegation by the registrar of the High Court:
- (a) the delegation may be made either generally or as otherwise provided by the instrument of delegation; and
 - (b) a function or power so delegated, when performed or exercised by the deputy registrar, is taken to be performed or exercised by the registrar; and
 - (d) a delegation by the registrar does not prevent the performance or exercise of a function or power by the registrar.

Striking out proceedings

- 19.5** A registrar of the High Court may, if the registrar thinks fit, at any time on terms strike out any proceedings properly listed before the registrar, and without affecting the generality of the foregoing provisions of this rule, a registrar may so strike out proceedings if:

- (a) no party appears, or
- (b) a defendant does, but the claimant does not, appear.

- 19.6** Where proceedings are struck out under rule 19.5 the registrar may, on the application of any party, order that the proceedings be reinstated on terms, and without affecting the generality of the foregoing provisions of this rule, the proceedings may be so reinstated on terms and conditions as to costs, the staying of the proceedings, and of any subsequent proceedings brought on the same or substantially the same cause of action, until payment of costs, and the priority of the hearing of the proceedings as the registrar thinks fit.

Directions to Registrar

- 19.7** A court may by order direct the registrar or any other officer of the court to do or refrain from doing, in any proceedings, any act relating to the duties of the office.

Reference

- 19.8** A registrar may, of the registrar's own initiative or on application by a party, refer any proceedings before the registrar to the court.

Removal

- 19.9** The court, before the conclusion of any proceedings before the registrar, may, on application by a party or on its own initiative, order that the proceedings be removed into the court.

Disposal

- 19.10** On the reference of any proceedings to the court under rule 19.7, or the removal of any proceedings into the court under rule 19.8, the court may:
- (a) hear and determine any matter in the proceedings in respect of which matter the proceedings were before the registrar, or

- (b) determine any question arising in the proceedings and remit the proceedings to the registrar with directions as the court thinks fit.

Review

- 19.11** Where the registrar gives a direction or makes an order or does any other act in any proceedings, the court may, on application by any party, made within 14 days after the direction, order or act, review the direction, order or act, and may make such order by way of confirmation, variation, discharge or otherwise as the court thinks fit.

Chapter 20 Registries and the Sheriff

Chapter 20.1 Registries

High Court

- 20.1** The registries of the High Court shall be located at places authorised in writing by the Chief Justice.

Magistrates' Courts

- 20.2** The registries of the Magistrates' Courts shall be located at places authorised in writing by the Chief Justice.

Opening of registries

- 20.3** The registries shall be open at times directed by the Chief Justice.
- 20.4** The Chief Justice may fix the periods when the court is closed, except for dealing with urgent claims. Unless the court directs, registries and courts will not be open on Saturdays and Sundays or days gazetted as public holidays.
- 20.5** A registry may be opened for urgent business on the direction of a judge or magistrate.

Court fees

- 20.6** The fees set out in Schedule 1 are payable.
- 20.7** If Solomon Islands is a party to a Convention that provides that fees are not payable for particular proceedings no fees are payable for those proceedings.
- 20.8** The following provisions apply to the payment of fees:
- (a) the fees are payable to an officer of the court; and
 - (b) a filing fee is payable at the time of filing; and
 - (c) if Schedule 1 fixes another time for paying another fee, the fee is payable at that time; and
 - (d) for a filing fee, the officer must write the amount of the fee, and the date and time it was paid, on the original document; and
 - (e) a fee for setting a proceeding down for trial (**'trial fee'**) in the High Court is payable by the claimant, unless the judge orders otherwise; and
 - (f) if a party fails to pay his or her hearing fee by 14 days after the day on which a date for hearing is first fixed by the court, the judge may:
 - (i) order that the party is not to participate in the trial; or
 - (ii) make any other appropriate order, including an order that another party pay the hearing fee; and
 - (g) if a trial is adjourned part heard, the judge may make an order about the proportion of any further trial fees to be paid by each party; and

- (i) no trial fee is refundable.

Waiver of fees for hardship

- 20.9** Any fee that is payable under rule 20.6 may be waived in full or part by a judge, magistrate or registrar on the basis of financial hardship.
- 20.10** The decision of a registrar may be reviewed by a judge or magistrate, but there shall be no appeal or review of the decision of a judge or magistrate.

Records

- 20.11** The registrar of a court must keep a record of all claims filed in the court.
- 20.12** Subject to rules 13.102 to 13.104, the registrar must not allow a document filed or tendered in the court, or a record kept by the court, to be taken out of the court, unless the court orders otherwise.

Filing seal

- 20.13** The registrar of a court must keep a seal showing the name of the court and, for the Magistrate's Court, its location.
- 20.14** The seal must be stamped on each document filed in the court or issued by the court and the date and time of filing must be endorsed on the document.

Copies of documents

- 20.15** A party or a person who has a proper interest in the proceedings may ask the registrar for a copy of a document filed in the court.
- 20.16** If the person pays the fee (if any) prescribed for copies of documents, the registrar must give the person the copy unless the court has otherwise ordered.
- 20.17** The copy must be sealed and have the word "copy" stamped on it.

Delegation

- 20.18** The Chief Justice may delegate his or her powers under the following rules to a person from time to time holding, occupying or performing the duties of the office of registrar of a court:
 - (a) rule 10.16 (dealing with mediators);
 - (b) rule 20.3 (dealing with court office hours);
- 20.19** The following provisions apply to a delegation by the Chief Justice:
 - (a) the delegation may be made either generally or as otherwise provided by the instrument of delegation; and
 - (b) the powers that may be delegated do not include that power to delegate; and
 - (c) a function or power so delegated, when performed or exercised by the delegate, is taken to be performed or exercised by the Chief Justice; and
 - (d) a delegation by the Chief Justice does not prevent the performance or exercise of a function or power by the Chief Justice.

Vexatious litigants

- 20.20** A person may apply to the High Court for an order that another person be declared a vexatious litigant.
- 20.21** A judge or magistrate may refer the question whether a person is a vexatious litigant to the High Court.
- 20.22** The following provisions apply:
- (a) the judge dealing with the matter may first refer it to the registrar; and
 - (b) the registrar may provide the judge with a list of the number and kind of proceedings that the person has started during the past 5 years, and their outcome; and
 - (c) the person must be summoned to appear and to show cause why he or she should not be declared a vexatious litigant.
- 20.23** If the question has been referred by a judge, it must be dealt with by a different judge.
- 20.24** If the High Court is satisfied that a person persistently and without reasonable cause has started vexatious proceedings or proceedings that disclose no reasonable cause of action, the court may declare the person to be a vexatious litigant.
- 20.25** The declaration remains in force for the period stated in the declaration, being 2 years or such longer period as is determined by the court.
- 20.26** A person declared to be a vexatious litigant may not start a proceeding while the declaration is in force without the leave of the court.
- 20.27** If a party persistently makes unmeritorious claims in a proceeding, the court may order that the party may not make any further claims in the proceeding without leave of the court.

Judgment book

- 20.28** The registrar must keep a judgment book.
- 20.29** The judgment book may be kept in electronic form.
- 20.30** The registrar must record in the judgment book:
- (a) the distinguishing number or other unique identifier given to the proceeding for which a judgment is entered under rule 4.2 (Numbering etc of proceedings); and
 - (b) the judgment in the proceeding; and
 - (c) the date the judgment was entered; and
 - (d) the other information the court directs.
- 20.31** The registrar may record any other relevant information in the judgment book.

Chapter 20.2 Sheriff

Chapter 20.2.1 General

Definitions

20.32 In Chapter 20.2, unless the context or subject matter otherwise indicates or requires:

'bill' means bill of fees of the Sheriff;

'fees' includes charges and poundage;

'person interested' in relation to the fees of the Sheriff in respect of the service or execution of any document, means:

- (a) a party who lodges the document with the Sheriff for service or execution; or
- (b) a legal practitioner who gives an undertaking to pay the fees or is otherwise liable to pay the fees; or
- (c) in the case of an enforcement order authorizing the Sheriff to levy the fees on any property, the person upon whose property the levy is authorized.

'Sheriff' has the meaning set out in Schedule 4.

Suspension of execution

20.33 The Sheriff shall not suspend the execution of any process, except upon an absolute instruction in writing to that effect lodged with him or her by the party by whom the process is lodged or that party's legal practitioner.

20.34 A party who has lodged an instruction to suspend the execution of any process, or that party's legal practitioner, may withdraw the instruction by lodging with the Sheriff an instruction to execute the process.

Default

20.35 Where the Sheriff defaults by not executing any process according to its tenor, application may be made for an order directing him or her to execute the same.

Execution: application for directions

20.36 The Sheriff may move the court in the absence of the parties orally or by an application as to whether process should be executed, and the manner in which execution should be made.

Chapter 20.2.2 Sheriff's Fees

Security

20.37 Where a party to any proceeding lodges any document with the Sheriff for service or execution, the Sheriff may, upon lodgement and from time to time after lodgement:

- (a) require the party to deposit with the Sheriff money in an amount fixed by the Sheriff to be applied in or towards satisfaction of the Sheriff's fees; or
- (b) as to the whole or any part of the fees, take an undertaking by the party's legal practitioner to pay them instead of requiring a deposit.

- 20.38** Where a party required to make a deposit under rule 20.37 objects to the amount fixed by the Sheriff, the court may, by order, fix the amount to be deposited.
- 20.39** The Sheriff may defer service or execution of any process until a deposit is made or an undertaking is given in accordance with rule 20.37 or 20.38.
- 20.40** Where it appears that the amount deposited exceeds the fees of the Sheriff, the Sheriff must repay the excess to the party depositing the money or to the party's legal practitioner.

Liability of legal practitioner

- 20.41** Where a party, by his or her legal practitioner, lodges with the Sheriff any process for service or execution the legal practitioner shall be liable for the fees of the Sheriff, whether or not the legal practitioner has given an undertaking pursuant to paragraph 20.37(b).

Bill

- 20.42** The Sheriff shall, on the request of a person interested, furnish the person with a bill.
- 20.43** The Sheriff may serve a bill on any person interested.

Assessment

- 20.44** Subject to rule 20.45, the court may order that the Sheriff's fees be assessed.
- 20.45** Where the court orders that fees be assessed, an application to proceed with the assessment shall be made by the Sheriff to the Registrar of the High Court or to the Magistrate's Court.

Determination

- 20.46** Where a bill is served on or furnished to a person interested by the Sheriff, the amount of fees shown in the bill shall, unless the court otherwise orders, be binding as between the Sheriff and the person interested unless the person interested obtains an order for assessment under rule 20.44.
- 20.47** Where the fees are assessed pursuant to an application by a person interested under rule 20.44, the amount fixed on assessment shall, subject to any alteration on reconsideration review or appeal, be binding as between the Sheriff and the person interested.

Default by legal practitioner

- 20.48** Where in any proceeding a legal practitioner has given an undertaking to pay, or is otherwise liable to pay, any fees of the Sheriff, and the legal practitioner does not pay the fees within 7 days after the amount has become binding as between the legal practitioner and the Sheriff, the court may, on application in the proceeding by the Sheriff, order the legal practitioner to pay the fees to the Sheriff.

Chapter 21 Enforcement

Chapter 21.1 Enforcement - General

Definitions for Chapter 21

21.1 In Chapter 21:

‘enforcement hearing’ means a conference referred to under rule 21.38 or 21.39;

‘enforcement applicant’ means a person in whose favour an order has been made;

‘enforcement respondent’ means a person against whom an order has been made.

‘exempt property’ means property that cannot be divided among a bankrupt’s creditors under the bankruptcy laws of Solomon Islands as in force from time to time;

Enforcement of judgments

21.2 Judgments are enforced by enforcement orders as set out in this Chapter.

Amount recoverable on enforcement

21.3 The costs of enforcing an order are recoverable as part of the order.

21.4 Interest on the amount of a money order is recoverable as part of the order.

Enforcement period

21.5 An enforcement applicant may enforce an order (a money order or a non-money order) at any time within 6 years after the date of the order.

21.6 An enforcement applicant must get the court's leave to enforce an enforcement order if:

- (a) it is more than 6 years since the order was made; or
- (b) there has been a change in the enforcement applicant or enforcement respondent, by assignment, death or otherwise.

21.7 The court may grant leave if it is satisfied in relation to the matters set out in section 39 of the Limitation Act [CAP 18].

Suspension of enforcement

21.8 An enforcement respondent may apply to the court for an order suspending the enforcement of an order.

21.9 The application must be:

- (a) supported by a sworn statement; and

- (b) be filed and served on the enforcement creditor at least 7 working days before the application is to be heard.

21.10 The court may:

- (a) suspend the enforcement of all or part of the order because facts have arisen or been discovered since the order was made or for other reasons; and
- (b) make other orders it considers appropriate, including another enforcement order.

Duration and Renewal of enforcement orders

21.11 An enforcement order remains in force for 1 year after the day it is made unless the order states that it ends at an earlier time.

21.12 An enforcement order may be renewed for further periods of not longer than 1 year at a time.

21.13 An application for renewal of an enforcement order:

- (a) must be made before the order ends; and
- (b) is made by filing in court:
 - (i) a request for the order to be renewed for a stated period not longer than 1 year; and
 - (ii) a sworn statement setting out:
 - (A) the matters required to be included in the sworn statement in support of an application for an enforcement order of that kind; and
 - (B) the reasons why the order has not been enforced during the period that the order has been in force.

21.14 Unless the court otherwise orders, an application for the renewal of an enforcement order must be dealt with without a hearing and in the absence of the parties.

Enforcement—order in partnership name

21.15 An order against partners in the partnership name may be enforced against 1 or more of the following:

- (a) partnership property;
- (b) a partner who filed a defence;
- (c) a person who has admitted being a partner;
- (d) a person who the court has decided is a partner;
- (e) a person who has been individually served as a partner with the originating process and who has not filed a defence.

21.16 On application by a person entitled to enforce an order against partners in the partnership name, the court may amend the order to make it an order against the persons who were partners when the cause of action arose.

Note Chapter 7 (Interlocutory Applications) applies to an application for an amendment or leave under this rule.

- 21.17** On application by a person entitled to enforce an order against partners in the partnership name, the court may give leave for the order to be enforced against one or more of the persons or property referred to in rule 21.15.
- 21.18** The application for leave must be served on the person against whom the order is sought to be enforced.
- 21.19** If, on the hearing of the application for leave, the person denies liability, the court may decide liability summarily or give directions about how liability is to be decided.

Enforcement—against property of partnership

- 21.20** An enforcement order must not be made against property of a partnership except to enforce an order against the partnership.

Enforcement—against property of business

- 21.21** If:
- (a) a proceeding is brought against a person under a business name; and
 - (b) rule 3.44(b) applies to the business name;
- an order in the proceeding may be enforced against any property of the person.
- 21.22** The court may amend an order made in the proceeding to make it an order against the person.

Enforcement throughout Solomon Islands

- 21.23** An enforcement order is enforceable throughout Solomon Islands.
- 21.24** An enforcement order issued in one district of the Magistrates' Courts is enforceable in any other district.

Deceased enforcement debtor

- 21.25** If the enforcement debtor has died, only the assets of their estate can be the subject of the enforcement order.

When enforcement order may not be enforced

- 21.26** An enforcement order may not be enforced on Christmas Day, Easter Sunday or Good Friday.

Chapter 21.2 Enforcement money orders- general

Enforcement order

- 21.27** An enforcement creditor may apply for the issue of an enforcement order to enforce a money order.
- 21.28** However, if an enforcement order is in force to enforce payment under a money order, no other enforcement order may be issued for the money order.

Procedure to apply for Enforcement Order

21.29 The enforcement creditor must file:

- (a) an application; and
- (b) a copy of the money order; and
- (c) 2 copies of the form of enforcement order; and
- (d) a sworn statement made not earlier than 9 days before filing the application, setting out:
 - (i) the date of the money order; and
 - (ii) the amount payable under the order; and
 - (iii) the date and amount of any payment made under the order; and
 - (iv) the costs of previous enforcement; and
 - (v) the interest due at the date of the statement; and
 - (vi) any other details needed to work out the amount payable under the money order at the date of the statement, and how the amount is worked out; and
 - (vii) the daily amount of future interest under the order; and
 - (viii) if the enforcement creditor seeks an instalment order, the amount of each instalment and the time and manner of payment sought by the enforcement creditor; and
 - (ix) any other information needed for the order.

21.30 Unless the court otherwise orders the application must be dealt with without a hearing and in the absence of the parties

21.31 Chapter 7 (Interlocutory applications) does not apply to an application for an enforcement order.

Form of enforcement order

21.32 An enforcement order must state:

- (a) the enforcement debtor's name; and
- (b) the date, within 1 year of the date of the order, the order ends; and
- (c) the amount recoverable under the order, including:
 - (i) costs of the enforcement; and
 - (ii) the amount of interest; and
 - (d) anything else these rules require.

21.33 If the enforcement order is for seizure and sale of property, a warrant for arrest for an enforcement hearing, or an order for commitment, the court must give the enforcement order to the Sheriff.

- 21.34** If the enforcement order is for an instalment order, the court must give the enforcement order to the enforcement creditor and a copy of the enforcement order to the Sheriff.
- 21.35** In any other case (debt or earnings redirection order, charging order, appointment of a receiver); the court must give the enforcement order to the enforcement creditor.
- 21.36** If the enforcement order is for seizure and sale of property, a warrant for arrest for an enforcement hearing or an order for commitment, the enforcement creditor must provide the Sheriff with any information in his or her possession that might assist with enforcement.

Enforcement orders—consecutive and concurrent orders

- 21.37** To remove any doubt, these rules do not prevent the court:
- (a) from making consecutive seizure and sale orders against the same enforcement debtor, or making consecutive debt redirection orders, regular redirection orders, earnings redirection orders or charging orders in relation to the same enforcement debtor, in relation to the same money order; or
 - (b) from making concurrent debt redirection orders, regular redirection orders or earnings redirection orders against different entities, or consecutive debt redirection orders, regular redirection orders or earnings redirection orders against the same entity, in relation to the same money order

Chapter 21.3 Enforcement of money orders – enforcement hearing

Enforcement hearing orders

- 21.38** An enforcement creditor may apply to the court for an order (an **enforcement hearing order**) that the enforcement debtor attend an enforcement hearing and be examined about their financial circumstances and how they propose to pay the amount of the judgment debt and bring sufficient documents to enable them to give a fair and accurate picture of their financial circumstances.

Note Example order that enforcement debtor attend an enforcement hearing in Schedule 2 Part B

- 21.39** An enforcement creditor may apply to the court for an order that another person attend an enforcement hearing and be examined about the enforcement debtor's financial circumstances and bring sufficient documents to give a fair and accurate picture of the enforcement debtor's financial circumstances.
- 21.40** If the court orders an enforcement hearing, it must set a date for the hearing.
- 21.41** If the enforcement debtor or other person is not present when the court orders an enforcement hearing, the enforcement creditor is responsible for ensuring the order is served on the enforcement debtor or other person within a reasonable time before the hearing date.

Enforcement hearing order

21.42 If the enforcement debtor or other person does not appear at the enforcement hearing in answer to an order made under rule 21.38 or 21.39 the court may issue a warrant for their arrest if the court:

- (a) is satisfied that the enforcement debtor or other person was present when the court fixed the date for the enforcement hearing, or was personally served with, or otherwise received, the order for the enforcement hearing within a reasonable time before the hearing date; and
- (b) is not aware of a sufficient cause the enforcement debtor or other person has for not attending the conference.

Examination of enforcement debtor

21.43 At the enforcement hearing, the enforcement creditor may ask the enforcement debtor in evidence given under oath or affirmation about their financial affairs and how they propose to pay the judgment debt.

21.44 The enforcement creditor may also examine any other person summoned to attend the conference.

21.45 The court may then make an enforcement order.

Chapter 21.4 *Enforcement of money orders – instalment orders*

Instalment Order - making

21.46 The court may issue an enforcement order (an **instalment order**) authorising satisfaction of the amount payable under the judgment debt by instalment payments by the enforcement debtor.

21.47 The court may make an instalment order:

- (a) on application by the enforcement debtor when the money order is made; or
- (b) after an enforcement hearing; or
- (c) after suspending another enforcement order; or
- (d) on application by the enforcement creditor for an instalment order under rule 21.29; or
- (e) on application by an enforcement debtor under rule 21.48.

21.48 An application by an enforcement debtor for an instalment order is made by filing in the court:

- (a) a sworn statement of the enforcement debtor's financial position; and
- (b) a draft of the order sought.

Instalment order- relevant considerations

- 21.49** In deciding whether to make an instalment order the court must have regard to the following matters as far as they are known to the court:
- (a) whether the enforcement debtor is employed; and
 - (b) the enforcement debtor's means of satisfying the judgment debt; and
 - (c) whether the judgment debt, including any interest, will be satisfied within a reasonable time; and
 - (d) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants; and
 - (e) other liabilities of the enforcement debtor; and
 - (f) if the applicant is the enforcement debtor, whether having regard to the availability of other enforcement means, making the order would be consistent with the public interest in enforcing orders justly, efficiently and quickly.
- 21.50** In deciding whether to make an instalment order the court may also have regard to any other matters the court considers relevant.
- 21.51** In deciding the amount and timing of instalments, the court must consider whether the instalment order will impose unreasonable hardship on the enforcement debtor.

Service of instalment order

- 21.52** If the court makes an instalment order on the application of the enforcement creditor in the absence of the enforcement debtor, the enforcement creditor is responsible for ensuring a sealed copy of the order is served on the enforcement debtor.
- 21.53** If the court makes an instalment order on the application of the enforcement debtor in the absence of the enforcement creditor, the enforcement debtor is responsible for ensuring a sealed copy of the order is served on the enforcement creditor.

Default in payment

- 21.54** An instalment order ceases to have effect if:
- (a) the enforcement debtor fails to make 2 consecutive payments under the order at the times required by the order; and
 - (b) the enforcement creditor files in the court a sworn statement stating that fact.

Instalment order stays execution of other enforcement orders

- 21.55** Unless the court otherwise orders, an instalment order automatically stays any other enforcement order in relation to the same money order.

Chapter 21.5 Enforcement of money orders – seizure and sale orders

Property that may be seized under enforcement order

- 21.56** The court may issue an enforcement order authorising the Sheriff to seize and sell any real and personal property (other than exempt property) in which an enforcement debtor has a legal or beneficial interest.
- 21.57** The Magistrate's Court may only issue an enforcement order authorising the Sheriff to seize and sell any real property in which an enforcement debtor has a legal or beneficial interest if it is satisfied that the judgment debt cannot be enforced by proceeding further against the personal property of the enforcement debtor.
- 21.58** The court must give the enforcement order to the Sheriff to be enforced.
- 21.59** The Sheriff may seize the property listed in the order and must store it safely until it is sold.
- 21.60** If there are several enforcement orders against the same enforcement debtor, the Sheriff must deal with them in the order they were issued.
- 21.61** The Sheriff may choose not to seize and sell property if the Sheriff believes the costs of enforcement are likely to exceed the amount recovered from the sale of the property.

Order of seizing and selling property

- 21.62** The Sheriff must seize and sell property:
 - (a) in the order that appears to the Sheriff to be best for promptly enforcing the enforcement order without undue expense; and
 - (b) subject to paragraph (a), in the order that appears to the Sheriff to be best for minimising hardship to the enforcement debtor and his or her immediate family.

Sale by public auction

- 21.63** Subject to these rules or unless the court orders otherwise, the Sheriff must sell the seized property by public auction.
- 21.64** The auction must be held:
 - (a) as soon as is practicable; and
 - (b) at the place, and in the circumstances, most likely to get the best price for the property.
- 21.65** The Sheriff must do everything practicable to ensure the property is sold for the best price obtainable.

Advertising sale

- 21.66** The Sheriff must arrange for an advertisement of the auction:

- (a) to be published in a newspaper circulating in the area, if there is one, or to be broadcast on the radio; and
- (b) to be available at the nearest court office and police station.

21.67 Unless the property is perishable, the advertisement must be published between 2 and 4 weeks before the auction.

Postponing sale

21.68 The Sheriff may from time to time postpone the sale of property, or require any auctioneer appointed to sell the property to postpone any such sale, if the Sheriff thinks it proper to postpone the sale to:

- (a) avoid a sacrifice of the reasonable value of the property; or
- (b) comply with a request by the judgment creditor for the postponement.

21.69 The court may order that the sale be postponed to a date the court specifies, on application by the enforcement creditor or the Sheriff.

21.70 A postponement extends the enforcement order to the day after the new date for the auction if it would otherwise end before that date.

Sale by Private Treaty

21.71 If, at a public auction, the highest bid of property to be sold under a seizure and sale order is substantially below their approximate market value, as fixed by the Sheriff, the Sheriff or (if the Sheriff so approves) the auctioneer may sell the property by private treaty.

21.72 The Sheriff must not approve a sale of property by private treaty at a price substantially below a fair value determined by the Sheriff.

21.73 In determining a fair value for the property for the purposes of the previous rule the Sheriff:

- (a) must take into account all the relevant circumstances, including but not limited to:
 - (i) the approximate market value of the property fixed by the Sheriff, and
 - (ii) the amount of the highest bid for the property at the public auction, and
 - (iii) the likelihood or otherwise of there being a higher bid if the property were again put up for sale by public auction, and
- (b) must not determine a fair value that is substantially below the amount of the highest bid for the property at the public auction.

Accounting for proceeds of sale

21.74 As soon as practicable after the sale, the Sheriff must pay the proceeds of the sale to the court.

21.75 The court must:

- (a) first, pay the Sheriff the costs of enforcing the order; and

- (b) then pay any balance, up to the amount of the enforcement order, to the enforcement creditor; and
- (c) then pay any balance remaining to the enforcement debtor.

Return of enforcement order

21.76 If the Sheriff enforces the order or is unable to enforce the order after doing all that is practicable to enforce the order the Sheriff must:

- (a) write on the enforcement order what has been done; and
- (b) file a copy of the endorsed enforcement order in the court; and
- (c) give a copy to the person who obtained the enforcement order.

Chapter 21.6 - Enforcement of money orders – orders for redirection of debts and earnings

Debts that may be redirected

21.77 A court may issue an enforcement order requiring a third person to pay to an enforcement creditor a debt that is:

- (a) certain and payable; and
- (b) payable by the third person to the enforcement debtor; and
- (c) specified in the enforcement order.

21.78 In deciding whether to issue the enforcement order, the court must consider whether, if the debt is paid to the enforcement creditor:

- (a) the enforcement debtor has adequate means to pay:
 - (i) the necessary living expenses of the enforcement debtor and his or her immediate family; and
 - (ii) any other known liabilities; and
- (b) it is appropriate to issue the enforcement order, having regard to the nature and the amount of the debt.

Service and effect of enforcement order

21.79 The enforcement order does not take effect until it is served on the third person.

21.80 When the enforcement order is served, the third person must pay the debt to the enforcement creditor, in accordance with the order. If the enforcement creditor considers that a debt redirection order has not been complied with, the court may:

- (a) on application by the enforcement creditor, hear and decide any question about the liability of the third person to pay the debt to which the order applies, and
- (b) if the court is satisfied that the third person is liable to pay the debt and has not complied with the debt redirection order, the court may make an

order against the third person in favour of the enforcement creditor for the lesser of—

- (i) the amount that has not been paid to the enforcement creditor as required by the debt redirection order; and
- (ii) the unpaid amount of the order debt, and
- (c) the court may refuse to make an order under sub-rule (b) if it considers the order should not be made because of the smallness of either of the amounts mentioned in sub-rule (b) (i) or (ii), or for any other reason, and
- (d) as between the third person and the enforcement debtor, an amount paid to the enforcement creditor by the third person under an order under this rule is taken to have been paid by the third person to the enforcement debtor.

21.81 The judgment creditor is responsible for ensuring that the enforcement order is served on the third party.

Other debtor disputes liability

21.82 If the third person claims the debt is not payable to the enforcement debtor, the third person may apply to the court for directions.

Regular redirection of debts

21.83 If:

- (a) the enforcement debtor has an account with a financial institution; and
- (b) another person (**‘the depositor’**) regularly pays money into the account;

the court may issue an enforcement order directing the institution to make regular payments from that account to the enforcement creditor of amounts specified in the order. The amounts must be less than or equal to the amounts paid into the account by the depositor.

21.84 As well as the matters required to be in an enforcement order by rule 21.32, an enforcement order issued under rule 21.83 must state:

- (a) the institution's name; and
- (b) details of the enforcement debtor's account; and
- (c) the amount to be paid; and
- (d) the enforcement creditor's name and address; and
- (e) how the amount is to be paid to the enforcement creditor; and
- (f) that it does not come into effect, and no payments under it, should be made until 7 days after the order is served on the financial institution.

Service of order for regular redirection

- 21.85** The enforcement creditor is responsible for ensuring the enforcement order for the regular redirection of debts is served personally on the enforcement debtor and the financial institution.
- 21.86** The enforcement order does not come into effect until 7 days after service on the financial institution.

Payment under order

- 21.87** The financial institution must:
- (a) deduct the amount specified in the enforcement order within 2 days after each regular deposit is made; and
 - (b) pay the amount as specified in the enforcement order; and
 - (c) give the enforcement debtor a notice with details of the deduction.
- 21.88** The enforcement debtor:
- (a) must ensure sufficient funds are in the account to cover the deduction; and
 - (b) must not encourage the depositor to stop making the deposits, or do anything else to hinder the regular redirections.
- 21.89** The enforcement debtor must tell the enforcement creditor if:
- (a) the depositor fails to make a deposit; or
 - (b) the enforcement debtor changes his or her account.

Enforcement orders for redirection of earnings

- 21.90** A court may issue an enforcement order requiring particular earnings of the enforcement debtor to be paid by the enforcement debtor's employer to the enforcement creditor.
- 21.91** When it issues the enforcement order, the court must also fix:
- (a) the amount of each deduction; and
 - (b) the minimum amount to be available to the employee as take-home pay.
- 21.92** In deciding whether to issue the enforcement order and fixing the amount of each deduction and the amount of take-home pay, the court must consider whether:
- (a) the enforcement debtor is employed by the employer; and
 - (b) the enforcement debtor has adequate means to pay:
 - (i) the necessary living expenses of the enforcement debtor and his or her immediate family; and
 - (ii) any other known liabilities; and
 - (c) it is appropriate to issue the enforcement order, having regard to the nature and the amount of the debt.

21.93 As well as the matters required to be in an enforcement order by rule 21.32, an enforcement order issued under 21.90 must state:

- (a) the name of the employer; and
- (b) the total amount to be deducted under the order; and
- (c) the amount to be deducted each pay day; and
- (d) the minimum amount to be available to the employee as take-home pay; and
- (e) the name and address of the enforcement creditor, and how the amount is to be paid to the creditor.

Service of enforcement order for redirection of earnings

21.94 The enforcement creditor is responsible for ensuring the enforcement order is served personally on the enforcement debtor and on his or her employer.

21.95 The enforcement creditor is also responsible for ensuring a notice about redirection of earnings, telling the employer of the effect of the order and what the employer must do and substantially in accordance with the form in Schedule 2 is served on the employer.

Note Example notice about redirection of earnings in Schedule 2 Part B.

Payment under enforcement order for redirection of earnings

21.96 On each pay day while the enforcement debtor is employed by the employer, the employer must:

- (a) deduct the amount specified in the enforcement order from the enforcement debtor's earnings (unless the amount remaining to be paid is less than the minimum take home pay specified in the enforcement order); and
- (b) pay the amount to the person specified in the enforcement order; and
- (c) give the enforcement debtor a notice giving details of the deduction.

21.97 In spite of rule 21.96, if the amount to be deducted would leave the employee with less than the take-home pay fixed by the court, the employer must deduct a lesser amount that will leave the employee with the minimum take-home pay fixed in the enforcement order.

21.98 A deduction made under an enforcement order satisfies, to the extent of the deduction, the employer's obligation to pay the enforcement debtor's wages.

If person is not enforcement debtor's employer

21.99 If a person served with an enforcement order for the redirection of an enforcement debtor's earnings is not, or stops being, the debtor's employer, the person must notify the court as soon as practicable.

Setting aside an enforcement order for the regular redirection of debts or earnings

21.100 The enforcement creditor or enforcement debtor may apply for an enforcement order for the redirection of debts or earnings to be set aside, suspended or varied.

- 21.101** The order setting aside, suspending or varying the enforcement order must be served on:
- (a) the enforcement creditor, unless he or she is the applicant; and
 - (b) the enforcement debtor, unless he or she is the applicant; and
 - (c) the debtor, the institution or the enforcement debtor's employer, as the case requires.

Chapter 21.7 *Enforcement of money orders – charging orders*

Enforcement orders for charging orders

- 21.102** The High Court may issue an enforcement order (**a charging order**) charging all or part of the enforcement debtor's legal or equitable interest in any of the following property:
- (a) annuities; or
 - (b) debentures, shares, stocks, bonds and other marketable securities; or
 - (c) interests in managed investment schemes; or
 - (d) units of shares or marketable securities; or
 - (e) real property.

Service of enforcement order charging property

- 21.103** To have effect on a person, the enforcement order must be served personally on:
- (a) the enforcement debtor; and
 - (b) each other person who has an interest in the property; and
 - (c) the person who issued or administers the property; and
 - (d) for partnership property, each of the partners.

Effect of enforcement order charging property

- 21.104** A charging order entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge over the property had been made by the enforcement debtor in favour of the enforcement creditor, but any charging order is subject to the priority of any person who at the date of the charging order, has a charge or other security in his or her favour over property which is subject to the charging order and which is registered under any law.
- 21.105** However, the enforcement creditor must not do anything to enforce the remedies until 3 months after the latest service under rule 21.103.
- 21.106** After being served with the enforcement order, the enforcement debtor must not sell, transfer or otherwise deal with the property.
- 21.107** The court may set aside or restrain a sale, transfer or other dealing in contravention of rule 21.106, unless this would prejudice the rights or interests of a genuine purchaser without notice.

- 21.108** After being served with the enforcement order, the person who issued or administers the property must not sell, transfer or otherwise deal with the property.

Chapter 21.8 Enforcement of money orders – appointment of a receiver

Appointment of receivers

- 21.109** The High Court may issue an enforcement order appointing a receiver.
- 21.110** In deciding whether to appoint a receiver, the court must consider:
- (a) the amount of the enforcement debt; and
 - (b) the amount likely to be obtained by the receiver; and
 - (c) the probable costs of appointing and paying a receiver.
- 21.111** A person must not be appointed as a receiver unless the person consents to the appointment.
- 21.112** The court may require the receiver to give security acceptable to the court for performing his or her duties.
- 21.113** As well as the material required by rule 21.32 the enforcement order must:
- (a) specify the receiver's duties; and
 - (b) state the period of the receiver's appointment; and
 - (c) specify the property of the enforcement debtor that is subject to the enforcement order (if all the property of the enforcement debtor is subject to the order, it is sufficient to state that in the order); and
 - (d) state whether the receiver's powers include the power to manage any of the property; and
 - (e) specify what the receiver is to be paid; and
 - (f) require the receiver to file accounts and give copies to the parties, and at the times, the court requires; and
 - (g) contain anything else the court requires.
- 21.114** While the receiver is appointed, his or her powers operate to the exclusion of the enforcement debtor's powers.

Chapter 21.9 Enforcement of money orders – Order for commitment in the Magistrate's Court

Application of Chapter 21.9

- 21.115** Chapter 21.9 applies only in the Magistrate's Court.

Enforcement hearing summons before commitment

- 21.116** The court must not make an order for commitment of any judgment debtor under section 19(1)(g) of the Magistrates' Courts Act unless an order to attend an enforcement hearing has been personally served upon the judgment debtor.

Provisions if receiving order has been made

- 21.117** If a judgment debtor satisfies the magistrate that a receiving order has been made for the protection of his or her estate, or that the judgment debtor has been adjudged bankrupt, or that a composition order has been made against the judgment debtor, and that the debt was provable in bankruptcy, then no order of commitment may be made.
- 21.118** If an order of commitment has been made and the magistrate who made the order is satisfied that a receiving order has been made against the judgment debtor or that that the judgment debtor has been adjudged bankrupt or that a composition order has been made against the judgment debtor, and that the debt in respect to which the order was made was provable therein, then:
- (a) if the committal order has not yet been executed, the magistrate must cancel the order; and
 - (b) if the committal order has been executed, the magistrate must order the judgment debtor to be discharged.

Order on judgment summons

- 21.119** During an enforcement hearing a magistrate who is of the opinion that an order of commitment ought not to be made may refuse to make the order and may make any other enforcement order within the jurisdiction of the court.
- 21.120** If an order of commitment is made, the magistrate may direct that the execution of the commitment order be suspended to enable the judgment debtor to pay the amount in respect of which the order is made, either by instalments or otherwise. If such an order is made and the judgment debtor was not present in court the court must notify the judgment debtor of the order and direction.

Execution of an order for commitment

- 21.121** An order for commitment is to be executed by the Sheriff and then the Commissioner of Correctional Services.

Effect of payment of amount endorsed on commitment order

- 21.122** If at any time after the issue of a commitment order, the amount endorsed on the order is paid into the court which issued the order, or to the Sheriff, or, if the judgment debtor has been delivered into the custody of the officer-in-charge of any prison, to that officer, the commitment order will cease to have effect and the court, the Sheriff or the officer-in-charge of the prison, as the case may be, must discharge the judgment debtor; and if the amount has been paid to the Sheriff or the officer-in-charge of the prison, the Sheriff or that officer must without delay pay the amount into the court.

Payment out of court

- 21.123** If money is paid into court, the clerk of court, or the magistrate, may deduct all proper costs, charges and expenses and must pay the balance to the enforcement creditor up to the amount of the enforcement order and pay any excess to the enforcement debtor.

Enforcement creditor may obtain discharge of debtor

- 21.124** If the enforcement creditor gives the magistrate or the clerk of court in which the commitment order was issued a request in writing that the enforcement debtor, if in prison, be discharged from custody, the magistrate or the clerk of court must notify the officer-in-charge of the prison and that officer must release the enforcement debtor without delay.
- 21.125** An enforcement creditor may only request the release of an enforcement debtor under the previous rule once in relation any money order.

Chapter 21.10 Enforcement of non-money orders – general

Issue and service of enforcement order

- 21.126** A person applying for an enforcement order to enforce a non-money order must file:
- (a) an application that has with it 2 copies of the enforcement order; and
 - (b) a sworn statement stating that the person against whom the non-money order was made has not complied with the order, and in what way he or she has not complied.
- 21.127** Unless the court or registrar orders otherwise, the enforcement order must be issued without a hearing.
- 21.128** The court or registrar must give the enforcement order to the Sheriff to be enforced.
- 21.129** If there are several enforcement orders under different non-money orders, the Sheriff must deal with them in the order in which they were issued.

Form of order – non-money order

- 21.130** An enforcement order for a non-money order must state:
- (a) the name of the person who must comply with the order; and
 - (b) the date, within 1 year of the date of the order, that the enforcement order ends; and
 - (c) what the order authorises; and
 - (d) any other details these rules require.

Return of enforcement order

- 21.131** If the Sheriff enforces the order or is unable to enforce the order after doing all that is practicable to enforce the order, the Sheriff must:

- (a) write on the enforcement order what has been done; and
- (b) file a copy of the endorsed enforcement order in the court; and
- (c) give a copy to the person who obtained the enforcement order.

Chapter 21.11 Enforcement of non-money orders – order for possession of land

Enforcement order for possession of land

- 21.132** A court may issue an enforcement order for possession of land.
- 21.133** The enforcement order authorises the Sheriff to enter on the land described in the order and deliver possession of the land to the person named in the order as being entitled to possession of the land.
- 21.134** The enforcement order must:
- (a) be served personally on the person against whom the order was made, and on anyone else who seems to be in possession of the land; and
 - (b) be displayed prominently at the entrance to the land.
- 21.135** The enforcement order cannot be enforced until 7 days after the display and the latest service.

Chapter 21.12 Enforcement of non-money orders – order for delivery of goods

Enforcement order for delivery of goods

- 21.136** A court may issue an enforcement order for the delivery of goods if:
- (a) the order for the delivery of the goods does not give the person against whom the order is made the option of keeping the goods and paying the assessed value of the goods; or
 - (b) the order does give the person that option but the person has not paid or given notice to the enforcement creditor that he or she has chosen to pay for the goods within 14 days of service of the original order.
- 21.137** The enforcement order authorises the Sheriff to seize the goods and give them to the person who is entitled to them under the order.
- 21.138** If the order gives the person the option for keeping the goods and paying the assessed value of the goods and the person chooses to do that by notice specified in rule 21.136(b), the order may be enforced in the same way as a money order.

Chapter 21.13 Enforcement of non-money orders – order to do or not do an act

Order to do or not do an act

21.139 Chapter 21.13 applies to an order if:

- (a) it is a non-money order; and
- (b) it requires a person to do an act within a specified time; and
- (c) the person does not do the act within the time.

21.140 Chapter 21.13 also applies to an order that requires a person not to do an act and the person does not comply with the order.

21.141 The order may be enforced in one or more of the following ways:

- (a) by punishing the person for contempt;
- (b) seizing the person's property;
- (c) if the person is a body corporate, punishing an officer for contempt or seizing the officer's property.

21.142 The court may also enforce an order to do an act by:

- (a) appointing another person to do the act; and
- (b) ordering the person required to do the act to pay the costs and expenses caused by not doing the act.

21.143 The costs and expenses may be recovered under an enforcement order for a money order.

Chapter 21.14 Claim by third party

Notice of claim

21.144 A person (the '**third party**') who claims ownership of goods or money seized under an enforcement order must notify the sheriff in writing of the claim.

21.145 The notice may be given to the sheriff personally or by filing it in an office of the court.

21.146 The sheriff must not sell or otherwise dispose of the goods or money for 7 days after being given the notice.

Application by third party

21.147 The third party must file an application for release of the goods or money to the third party within 7 days of giving notice to the sheriff.

21.148 The application must:

- (a) describe the goods or money; and
- (b) state where they were when they were seized; and
- (c) state why the third party claims the goods or money; and
- (d) have with it a sworn statement in support of the application.

- 21.149** The application and sworn statement must be served on the person on whose behalf the enforcement order was issued.
- 21.150** The court may require the third party to give security for the costs of the proceeding.
- 21.151** An enforcement debtor may not make an application under Chapter 21.14.

Chapter 22 Interpleader proceedings

Chapter 22.1 Stakeholder's interpleader

Interpleader—application by stakeholder

- 22.1** Chapter 22.1 applies if:
- (a) a person other than the Sheriff (the '*stakeholder*') is under a liability in relation to a debt or personal property (the '*disputed property*'); and
 - (b) the stakeholder is, or expects to be, sued by 2 or more persons (each of whom is an '*other claimant*') making adverse claims to the disputed property.
- 22.2** If the stakeholder is sued by another claimant in a proceeding in the court in relation to the disputed property, the stakeholder may apply to the court in that proceeding for interpleader relief and include all other claimants in the application.
- 22.3** If rule 22.2 does not apply to the stakeholder, the stakeholder may file a claim for interpleader relief and include each other claimant as a defendant.
- 22.4** An application under rule 22.2 or claim under 22.3 for interpleader relief must be supported by a sworn statement.
- 22.5** The sworn statement must state that the stakeholder:
- (a) claims no interest in the disputed property, other than for charges or costs; and
 - (b) is not in collusion with any other claimant; and
 - (c) is willing to:
 - (i) pay or transfer the disputed property into court; or
 - (ii) dispose of the property as the court directs; or
 - (iii) give security to the value of the property to the court's satisfaction.
- 22.6** A sealed or stamped copy of the application or claim and supporting sworn statements must be served on each of the other claimants.
- 22.7** If another claimant is not a party to the proceeding, the application and supporting sworn statements must be served personally.

Chapter 22.2 Sheriff's interpleader

Interpleader—notice of claim to Sheriff

- 22.8** If:
- (a) the Sheriff seizes or intends to seize personal property (the '*disputed property*') under an enforcement order; and

- (b) a person other than the enforcement debtor (*the interpleader claimant*) claims to be entitled to, or to have an interest in, the disputed property or the proceeds of sale of the disputed property;

the interpleader claimant must give notice of their interpleader claim to the Sheriff.

22.9 The notice must:

- (a) state the interpleader claimant's name and give an address for service; and
- (b) identify each item of the disputed property to which the interpleader claim relates; and
- (c) state the grounds of the interpleader claim.

Interpleader—failure to give notice of interpleader claim

- 22.10** Rules 22.11 to 22.15 apply if the interpleader claimant mentioned in rule 22.8 does not give notice of the interpleader claim under that rule in relation to the disputed property within a reasonable time after becoming aware that the Sheriff has seized or intends to seize the property.
- 22.11** On application by the Sheriff, the court may restrain the interpleader claimant from starting or continuing a proceeding in the court against the Sheriff in relation to anything done, or omitted to be done, by the Sheriff in executing the enforcement order after the time when the person claiming an interest might reasonably have given notice of the claim.
- 22.12** The application must be supported by a sworn statement.
- 22.13** If the Sheriff is sued by a person claiming an interest in a proceeding in the court in relation to the disputed property, the Sheriff may apply to the court for an order under rule 22.11 in that proceeding.
- 22.14** If rule 22.13 does not apply to the Sheriff, the Sheriff may apply to the court for an order under rule 22.11 in the proceeding in which the enforcement order was made.
- 22.15** An application for an order under rule 22.11 and supporting sworn statements must be served on the person claiming an interest personally.

Interpleader—notice to enforcement creditor

- 22.16** The Sheriff must serve a copy of the notice under rule 22.8 on the enforcement creditor not later than 4 days after the day the notice is served on the Sheriff.
- 22.17** The enforcement creditor may serve a notice on the Sheriff stating that the interpleader claim is admitted.
- 22.18** If the enforcement creditor admits the interpleader claim, the enforcement creditor is liable for the Sheriff's costs and expenses of enforcement, including any costs of complying with rule 22.22

Interpleader—admission of claim

- 22.19** Rules 22.20 to 22.26 apply if the enforcement creditor admits the interpleader claimant's claim by serving notice on the Sheriff under rule 22.17.

- 22.20** The enforcement creditor is not liable to the Sheriff for fees or expenses incurred by the Sheriff under the enforcement order after the notice is given to the Sheriff.
- 22.21** The Sheriff must:
- (a) withdraw from possession of the property in relation to which the interpleader claim is admitted (the '*relevant property*'); or
 - (b) if the relevant property has been sold - pay the proceeds of sale into court and tell the enforcement debtor and the interpleader claimant in writing that the proceeds of sale have been paid into court.
- 22.22** On application by the Sheriff, the court may restrain the interpleader claimant from starting or continuing a proceeding in a court against the Sheriff in relation to anything done, or omitted to be done, by the Sheriff in executing the enforcement order in relation to the relevant property.
- 22.23** The application must be supported by a sworn statement to which the notices mentioned in rule 22.8 and rule 22.17 are annexed.
- 22.24** If the Sheriff is sued by the interpleader claimant in a proceeding in the court in relation to the relevant property, the Sheriff may apply to the court for an order under rule 22.22 in that proceeding.
- 22.25** If rule 22.24 does not apply to the Sheriff, the Sheriff may apply to the court for an order under rule 22.22 in:
- (a) the proceeding in which the enforcement order was made; or
 - (b) if a proceeding is pending in which the property's ownership is an issue—the pending proceeding.
- 22.26** An application for an order under rule 22.22 and supporting sworn statements must be served on the interpleader claimant personally.

Interpleader—Sheriff's interpleader application

- 22.27** Rules 22.28 to 22.31 apply if:
- (a) the Sheriff has served notice of the interpleader claimant's claim on the enforcement creditor under rule 22.16; and
 - (b) the enforcement creditor does not, before the end of 4 days after the day the notice is served, serve on the Sheriff a notice under that rule that the enforcement creditor admits the interpleader claim; and
 - (c) the interpleader claimant does not afterwards withdraw the claim.
- 22.28** The Sheriff may apply to the court for interpleader relief.
- 22.29** The application must be supported by a sworn statement to which the notice mentioned in rule 22.8 is annexed.
- 22.30** The application may be made only in the proceeding in which the enforcement order was made.
- 22.31** A sealed copy of the application and supporting sworn statements must be served on the enforcement creditor and interpleader claimant personally.

Interpleader—enforcement debtor's rights not affected

- 22.32** This Chapter does not affect a right of the enforcement debtor to bring a claim against the Sheriff or the enforcement creditor.

Chapter 22.3 *Interpleader orders*

Interpleader—orders

- 22.33** On application under Chapter 22.1 (Stakeholder's interpleader) or Chapter 22.2 (Sheriff interpleader) for interpleader relief, the court may make the orders it considers appropriate for hearing and deciding all matters in dispute.
- 22.34** Without limiting rule 22.33 the court may do any of the following:
- (a) if a proceeding is pending against the stakeholder in relation to any of the disputed property - order that a person claiming an interest in relation to the disputed property be included as a defendant in the proceeding in addition to or in substitution for the stakeholder, or order that the proceeding be stayed or dismissed; and
 - (b) order that a question between persons claiming an interest in the disputed property be stated and tried, direct which of the persons claiming an interest is to be the applicant and which the defendant, and give any necessary directions for the trial; and
 - (c) order that the stakeholder pay or transfer all or any of the property in dispute or the proceeds of sale into court or otherwise dispose of the property or proceeds of sale; and
 - (d) if a person claiming an interest claims to be entitled to any of the disputed property by way of security for a debt - make orders for the sale of all or part of the property and for the application of the proceeds of sale or other appropriate orders as the court sees fit; and
 - (e) decide summarily a question of law or fact arising on the application; and
 - (f) order that a special case be stated on a question of law under Chapter 16.2; and
 - (g) release the stakeholder or Sheriff from further attendance on the stakeholder's or Sheriff undertaking to (i) not dispose of the property otherwise than in accordance with a court order and (ii) abide by the order of the court in relation to that property; and
 - (h) make any order it considers appropriate, including an order finally disposing of all issues arising in the proceeding.

Interpleader—summary disposal of proceeding

- 22.35** The court may, having regard to the value of the disputed property, decide the claims summarily on any conditions it considers just if:
- (a) the consent of the persons claiming an interest; or
 - (b) a person claiming an interest applies to the court for the court to decide the claims summarily.

Interpleader—adverse claims

- 22.36** A stakeholder or Sheriff may still be entitled to relief even if the titles of the person claiming an interest do not have a common origin, but are adverse to and independent of one another.

Interpleader—default by person claiming an interest

- 22.37** Rule 22.38 applies if:
- (a) a person claiming an interest to the disputed property has been given appropriate notice of the hearing of an application for interpleader relief; and
 - (b) the person claiming an interest does not appear at the hearing or does not comply with an order made on an application for interpleader relief.
- 22.38** The court may order that the person claiming an interest, and anyone claiming under that person, be barred from prosecuting the claim against the stakeholder or Sheriff and anyone claiming under the stakeholder or Sheriff.
- 22.39** An order under rule 22.38 does not affect the rights of persons claiming an interest as between themselves.

Interpleader—neutrality of stakeholder

- 22.40** The stakeholder or Sheriff must satisfy the Court by sworn statement or otherwise that they:
- (a) claim no interest in the subject matter in dispute, other than for charges or costs; and
 - (b) are not colluding with any of the persons claiming an interest.
- 22.41** Rule 22.40 does not affect the power of the court in other cases to dismiss an application for interpleader relief or to give judgment against a stakeholder or Sheriff for interpleader relief.

Interpleader order—2 or more proceedings

- 22.42** If:
- (a) an application for interpleader relief is made; and
 - (b) 2 or more proceedings are pending in the court for or about any or all of the disputed property; and
 - (c) the court makes an order in any 2 or more of the proceedings;
- an order is binding on all the parties to all the proceedings to which it applies.

Interpleader—trial

- 22.43** If, in a proceeding for interpleader relief, the court directs the trial of an issue, Chapter 8 (Pre-trial procedures) and Chapter 12 (trial) apply to the trial with all necessary changes and subject to directions the court may give.

Interpleader—disposal of amounts in court

- 22.44** If the Sheriff has paid an amount into court under rule 22.21 (Interpleader - admission of claim), the court may order it be paid out to the person who is entitled to it or make an order under rule 22.33 (Interpleader - orders).

Interpleader—stakeholder's charges and costs

- 22.45** The stakeholder may apply to court at any time after being released from attendance under rule 22.34(g) for any of the following matters:
- (a) fixing the amount of costs and charges recoverable by the stakeholder;
 - (b) that such costs and charges be paid out of any moneys paid into court by the stakeholder;
 - (c) that such costs and charges be paid to the stakeholder by any of the other claimants and specify the shares in which the other claimants are liable to the stakeholder.
- 22.46** An order made against any other claimant under rule 22.45 is a money order enforceable under chapter 21.

Chapter 23 Contempt and failure to comply

Note: Section 121 of the Penal Code [Cap 26] contains offences relating to judicial proceedings and is in addition to and not in derogation of the power of the High Court to punish for contempt.

Chapter 23.1 Failure to comply with an order

- 23.1** Rules 23.2 to 23.5 apply if a party fails to comply with an order made in a proceeding dealing with the progress of the proceeding or steps to be taken in the proceeding.
- 23.2** A party who is entitled to the benefit of the order may require the non-complying party to show cause why an order should not be made against him or her under rule 23.4.
- 23.3** The application:
- (a) must set out details of the failure to comply with the order; and
 - (b) must have with it a sworn statement in support of the application; and
 - (c) must be filed and served, with the sworn statement, on the non-complying party at least 3 business days before the hearing date for the application.
- 23.4** In cases of deliberate or sustained failure the court may make any one or more of the following orders including an order that is self executing in the event of non-compliance within a specified time:
- (a) strike out the pleadings of the non-complying party;
 - (b) extend the time for complying with the order;
 - (c) give directions;
 - (d) make another order.
- 23.5** This does not limit the court's powers to punish for contempt of court.

Chapter 23.2 Contempt

Note: Section 6 of the Magistrates' Court Act [Cap 20] provides that the power of the High Court to deal with any contempt of its authority shall extend to upholding the authority of Magistrates' Courts.

Contempt - General

- 23.6** Contempt proceedings under Chapter 23.2 must be commenced in the High Court.
- 23.7** Rules 23.8 to 23.13 apply where a person deliberately or repeatedly fails to comply with an order of the court or an undertaking given to the court during or at the end of a proceeding or fails to comply with an order to which a penal notice is attached or for any other contempt.
- 23.8** If the failure or contempt happens during a proceeding:
- (a) the court may initiate proceedings for contempt; or

- (b) another party may apply for an order that the first person be punished for contempt.
- 23.9** The court may order the registrar to apply for an order that the first person be punished for contempt.
- 23.10** If the failure happens after the proceeding has ended, another person may apply to reopen the proceeding, and ask that the person be punished for contempt.
- 23.11** The application:
 - (a) must have with it a sworn statement giving details of the contempt; and
 - (b) must be served personally on the person.
- 23.12** On the hearing of proceedings for contempt the court must:
 - (a) explain to the person how the person is alleged to have committed the contempt; and
 - (b) allow the person to make an explanation; and
 - (c) ask the person to give reasons why the person should not be punished for the contempt; and
 - (d) decide the matter in any way the court thinks appropriate; and
 - (e) order that the person be punished or be discharged.
- 23.13** After hearing the matter, the court may do all or any of the following:
 - (a) fine the person;
 - (b) order the person be imprisoned for the period the court decides not exceeding 3 months;
 - (c) for a body corporate, fine the body corporate, or an officer of the body corporate who has caused the body corporate to commit the contempt, or order that the body corporate's property be seized;
 - (d) release the person, whether on conditions or not.

Contempt in face or hearing of the court

- 23.14** For a contempt committed in the face of, or in the hearing of, the court, the procedure under rules 23.15 to 23.17 is an alternative to the procedure under rules 23.7 to 23.13
- 23.15** If it appears to the High Court that a person is guilty of contempt in the face of a court or a court's hearing, the High Court may:
 - (a) direct the person be called upon to answer before the High Court; and
 - (b) issue a warrant for the person to be arrested and brought before the High Court.
- 23.16** When the person is before the High Court, or is brought before the High Court, the High Court must:

- (a) explain to the person how the person is alleged to have committed the contempt; and
- (b) ask the person to give reasons why the person should not be punished for the contempt; and
- (c) decide the matter in any way the court thinks appropriate; and
- (d) order that the person be punished or be discharged.

23.17 If the court cannot deal with the matter straight away, the court may order that the person be kept in custody, be released, or be released on conditions.

Contempt- arrest warrant

23.18 A warrant for the arrest and detention, or the arrest, of a person (the ‘**respondent**’) under this Chapter must be:

- (a) addressed to the Sheriff; and
- (b) be signed by a judicial officer of the court.

23.19 Pending the court’s decision, if the respondent is arrested under a warrant, the respondent must be held in a correctional centre or in any other custody that is satisfactory to the Sheriff.

23.20 The Sheriff may ask a police officer to help in the exercise of the Sheriff’s powers under the warrant and the police officer must give the Sheriff the reasonable help the Sheriff requires, if it is practicable to give help.

23.21 The Sheriff or a police officer may deliver the respondent to the person in charge of any correctional centre and the person must receive and keep the respondent in custody until the court or the Sheriff otherwise directs.

Vacate or revoking an order with respect to contempt

23.22 A court may vacate or revoke an order with respect to contempt of court.

Chapter 24 Costs

General provisions about costs

- 24.1** Despite these rules, the court has a discretion in deciding whether, when and how to award costs.
- 24.2** Subject to the court's discretion, as a general rule, the costs of a proceeding, or part of a proceeding, are payable by the party who is not successful in the proceeding, or part of a proceeding.
- 24.3** However, nothing in this Chapter prevents the parties to a proceeding from agreeing to pay their own costs.
- 24.4** The court may order that:
- (a) one party pay all the other party's costs; or
 - (b) one party pay only some of the other party's costs, either:
 - (i) a specific proportion of the other party's costs; or
 - (ii) the costs of a specific part of the proceeding; or
 - (iii) the costs from or up to a specific day; or
 - (c) the parties pay their own costs.
- 24.5** Unless the court otherwise orders, or the court refers the costs for assessment by a High Court registrar under 24.13, a party entitled to costs in a proceeding is entitled to:
- (a) costs in accordance with Schedule 3: and
 - (b) disbursements properly incurred.

Note Costs where amount claimed paid, default judgment and summary judgment are dealt with in rules 9.1, 9.2, 9.4, 9.8, 9.10, 9.28, 9.29, 9.43 and 9.44

When court may make order for costs

- 24.6** The court may make an order for costs at the end of proceedings.
- 24.7** The court may also make any of the following orders for costs at any stage of the proceedings:
- (a) the costs of an application, or a conference, be costs in the cause, in which case the liability for those costs shall fall on the party or parties who are ultimately unsuccessful in the proceedings; or
 - (b) the costs of an application, or a conference, be reserved, in which case the liability for those costs shall be determined by the court at a later date or at the end of the proceedings; or
 - (c) the costs of an application, or a conference, be paid by a party, in which case those costs shall be paid by that party at the end of the proceedings, unless the court orders otherwise; or

- (d) the costs of an application, or a conference, be a party's costs in the cause, in which case those costs are recoverable at the end of the proceedings, if that party is ultimately successful, but not otherwise; or
- (e) the costs caused by any adjournment be paid in accordance with any of the preceding paragraphs; or
- (f) any other award of costs that the court thinks appropriate, and where the court makes an order under paragraph (c) and orders that the costs be paid other than at the end of the proceedings, the court must also, if practicable, fix the amount of such costs and the time for payment.

Standard basis and indemnity basis for assessed costs

- 24.8** Costs awarded on a standard basis (formerly known as a party and party basis) are all costs necessary for the proper conduct of the proceeding and proportionate to the matters involved in the proceeding.
- 24.9** Costs awarded on an indemnity basis (formerly known as a solicitor and client basis) are all costs reasonably incurred (including counsel's fees) and proportionate to the matters involved in the proceeding, having regard to:
- (a) any costs agreement between the party to whom the costs are payable and the party's legal practitioner; and
 - (b) charges ordinarily payable by a client to a legal practitioner for the work.
- 24.10** Costs are normally to be awarded on a standard basis unless the court orders the costs to be awarded on an indemnity basis.
- 24.11** The court may order costs to be paid on an indemnity basis if the costs are:
- (a) to be paid to a party who sues or is sued as a trustee; or
 - (b) the costs of a proceeding brought for non-compliance with an order of the court; or
 - (c) to be paid out of a fund.
- 24.12** The court may also order some or all of a party's costs be paid on an increased or indemnity basis if:
- (a) the other party deliberately or without good cause prolonged the proceeding; or
 - (b) the other party brought the proceeding in circumstances or at a time that amounted to a misuse of the litigation process; or
 - (c) the other party otherwise deliberately or without good cause engaged in conduct that resulted in increased costs; or
 - (d) in other circumstances (including an offer to settle made and not accepted) if the court thinks it appropriate.

Costs determination

- 24.13** If the court has not made an order for costs against a party on an indemnity basis, but is satisfied there is a reason why costs should not be in accordance with Schedule 3, the court may:
- (a) set the amount of costs, or
 - (b) set the method by which the costs are to be calculated; or
 - (c) if the proceedings are in the High Court, refer the costs for assessment by the registrar; and
 - (d) set a time for the payment of costs,

Otherwise standard costs shall be in accordance with Schedule 3 and the party entitled to such costs may apply for costs to be fixed in accordance with Schedule 3 either orally at the time of the giving of the judgment or by written application at a later time.

Note Chapter 9 provides for costs to be assessed in proceedings ending early if the applicant claims costs that are more than the amount under schedule 3, part 2.

Agreement about costs

- 24.14** If a party entitled to costs and a person liable for costs agree that the costs be set at a certain amount (the ***agreed amount***), either party may file a written agreement to the costs being set at the agreed amount.
- 24.15** The agreement must be signed by the parties or their legal practitioners.
- 24.16** On the filing of the agreement, the agreed amount is taken to be the assessed costs between the parties.

Costs—order against non-party

- 24.17** Unless these rules otherwise provide, the court must not make an order for costs in a proceeding against a person who is not a party to the proceeding except in accordance with rule 24.18.
- 24.18** The court may make an order (including an indemnity costs order):
- (a) for payment by a relator in a proceeding of all or part of the costs of a party to the proceeding; or

Note A relator is a person who starts and carries on a proceeding in the Attorney-General's name. A person may bring a proceeding as relator with the Attorney-General's leave (or fiat) where the proceeding involves the public interest and the person would otherwise not have standing to bring the proceeding.

- (b) for payment by a person of all or part of the costs of a party to a proceeding that were caused by:
 - (i) the person's contravention of an order made by the court in the proceeding that is binding on the person; or
 - (ii) the person's breach of an undertaking given to the court by the person in the proceeding; or
- (c) for payment, by a person who has committed contempt of court or an abuse of the court's process, of all or part of the costs of a party to a proceeding that were caused by the contempt or abuse of process; or

- (d) for costs against a person who purports, without authority, to conduct a proceeding in the name of someone else; or
- (e) for costs against a person who starts or carries on a proceeding, or purports to do so, as an authorised director of a corporation; or
- (f) for costs against a person who is the effective controlling mind of a body corporate against whom a cost order is made; or
- (g) for costs against a person whom the court determines is the real party behind the proceedings notwithstanding that another party is on the record; or
- (h) for costs against a person who has maintained an action without reasonable cause; or
- (i) for costs against any person in relation to the making of a freezing order or a seizing order; or
- (j) for costs against a person in the exercise of its supervisory jurisdiction over its own proceedings and its own officers, including, for example, an order for costs against legal practitioners and court-appointed liquidators and receivers.

Note 1 The court may order a legal practitioner to pay all or part of a party's costs if the costs are incurred because of the practitioner's conduct (see r 24.35 Costs-legal practitioner's delay etc).

Note 2 Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

Costs—failure to comply with summons etc

24.19 If:

- (a) a person is ordered by the court, by summons or otherwise, to attend court:
 - (i) to give evidence; or
 - (ii) to produce a document or thing; or
 - (iii) to answer a charge of contempt; or
 - (iv) for any other purpose; or
- (b) a person is required by a notice for non-party production to produce a document for inspection; and

the order or notice is not complied with, the court may order the person to pay any costs of a party to the proceeding caused by the non-compliance.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

24.20 Rule 24.19 does not limit any power of the court to punish for contempt.

Costs—proceeding removed to another court

24.21 If a proceeding is removed to the court from another court or tribunal (the *first court*) then:

- (a) if the first court has not made an order for costs - the court may make an order for the costs of the proceeding, including the costs before the removal; and

- (b) any order for costs made by the first court may be assessed and enforced as if it were an order of the court.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

- 24.22** Unless the court otherwise orders, the costs up to the time of the removal must be assessed as if the proceeding had remained in the first court.

Self-represented parties

- 24.23** A party who was not represented by a legal practitioner:

- (a) may recover disbursements; but
- (b) is not entitled to recover costs.

Assessment of legal practitioner's costs

- 24.24** The costs of the proceeding do not include the costs of an interlocutory application, unless an order is made under rule 24.7.

- 24.25** A party who amends a document must pay the costs of and caused by the amendment, unless the court otherwise orders.

Legal practitioner appointed litigation guardian

- 24.26** If a legal practitioner is appointed by the court as litigation guardian of a person under a disability then the court may direct that the legal practitioner's costs incurred in exercising the functions of litigation guardian must be paid:

- (a) by all or any of the parties to the proceeding in which the appointment is made; or
- (b) out of a fund in court (if any) in which the person is interested.

Note Chapter 7 (Interlocutory Applications) applies to an application for directions under this rule.

- 24.27** The court may give directions for the payment of costs mentioned in rule 24.26.

Costs—legal practitioner advocate

- 24.28** If a legal practitioner appears on a trial alone or instructed by a partner or employee the court or registrar must not allow the legal practitioner or partner a fee for preparing a brief.

- 24.29** The court or registrar may allow a single fee for preparing for the trial.

Counsel's fees for applications

- 24.30** The High Court may on the application of any party (which may be made orally in court at the hearing of an application or at trial or on application at a later date) certify:

- (a) the costs of the proceedings or an application are certified for counsel in which case:
 - (i) rule 24.28 does not apply and costs for preparation of a brief may be allowed; and

- (ii) costs of counsel shall be allowed on the scale for counsel in Schedule 3, unless the court makes another order under rules 24.7, or 24.13, or 24.43 or makes an order for indemnity costs; or
- (b) the costs in the proceedings or an application are certified for Queen's Counsel in which case:
 - (i) paragraph (a) applies with respect to the brief and junior counsel; and
 - (ii) the costs of Queen's Counsel shall be allowed at twice the scale for counsel in Schedule 3, unless the court makes another order under rules 24.7, or 24.13, or 24.43, or makes an order for indemnity costs.

24.31 Counsel's costs shall not be allowed unless the High Court gives a certificate under rule 24.30 or makes an order for indemnity costs.

Costs may be ordered against legal practitioner

24.32 Rules 24.33 to 24.35 apply to a legal practitioner acting for a party to a proceeding if:

- (a) the hearing of the proceeding, or an application in the proceeding, did not proceed, and a party to the proceeding incurred costs, because the practitioner:
 - (i) failed to attend the hearing either personally or by someone on his or her behalf; or
 - (ii) failed to file a document; or
 - (iii) failed to deliver a document or thing necessary for use in the hearing; or
 - (iv) failed to do anything else required to be done under these rules or an order of the court or in accordance with the practice of the court; or
- (b) a party to the proceeding incurred costs because of the delay, misconduct or negligence of the practitioner.

24.33 The court may order the legal practitioner:

- (a) to repay to a party all or part of any costs ordered to be paid by the party to another party because of the practitioner's conduct; or
- (b) to pay the costs incurred by any party because of the practitioner's conduct.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

24.34 The court may, on its own initiative, order the legal practitioner not to charge the practitioner's client costs in relation to all or any part of the proceeding if justice requires it.

24.35 The court may order that the costs of the whole or a part of a proceeding be paid by a party's legal practitioner personally if the party brings a proceeding that:

- (a) has no prospect of success, is vexatious or mischievous or is otherwise lacking in legal merit; and
- (b) a reasonably competent legal practitioner would have advised the party not to bring the proceeding.

In considering whether to make an order under this rule, the legal practitioner may produce evidence of written advice given to the client not to bring the proceeding and of the client giving written instructions to bring the proceedings notwithstanding that advice and for the purpose of this rule only, no privilege shall attach to the advice.

Matters court to take into account

24.36 In setting or assessing costs, the court or registrar must consider:

- (a) whether it was reasonable to carry out the work to which the costs relate; and
- (b) what was a fair and reasonable amount of costs for the work concerned.

24.37 In determining what a fair and reasonable amount of costs is, the court or registrar may have regard to:

- (a) the skill, labour and responsibility shown by the party's legal practitioner; and
- (b) the complexity, novelty or difficulty of the proceeding; and
- (c) the amount of money involved; and
- (d) the quality of the work done and whether the level of expertise was appropriate to the nature of the work; and
- (e) where the legal services were provided; and
- (f) the circumstances in which the legal services were provided; and
- (g) the time within which the work was to be done, including the degree of urgency; and
- (h) the outcome of the proceeding.

Court to take into account offers to settle

24.38 When considering the question of costs, the court or registrar may take into account any offer to settle that was not accepted.

Costs of counterclaim

24.39 A party who is successful on a counterclaim may be awarded the costs of the counterclaim although the party was unsuccessful in the proceeding overall.

Costs of determination

24.40 Costs of determining costs of a proceeding form part of the costs of the proceeding.

Court may determine maximum costs

- 24.41** The court may specify, or vary, the maximum amount that may be recovered on a standard basis:
- (a) by order at the first court hearing or at a conference; and
 - (b) of its own initiative or on the application of a party.
- 24.42** The amount specified should not include any amount that a party is ordered to pay under rule 24.43

Costs for time wasted

- 24.43** If:
- (a) a party does not appear at a conference or hearing when the party was given notice of the date and time; or
 - (b) a party has not filed and served on time a document that the party was required by the court to file and serve; or
 - (c) a party's actions, or failure to act, have otherwise led to the time of the court or other parties being wasted;
- and costs were incurred unnecessarily by another party, the court may order costs against the first party for the time wasted by the other party.
- 24.44** The order may be for costs of the whole or a part of the proceeding.
- 24.45** The order may be made at a conference or hearing.
- 24.46** Any other party may apply for the order.
- 24.47** The costs are to be paid within the period the court orders, being not less than 7 days.
- 24.48** If the costs are not paid within that period, or another period that the court fixes, the court may order that the proceeding, or a part of the proceeding, be struck out.

Security for Costs

- 24.49** The Magistrate's Court shall not consider an application for an order requiring that security be given for the costs of a proceeding unless:
- (a) the proceeding is to set aside a default judgment; or
 - (b) the applicant is ordinarily resident outside Solomon Islands.
- 24.50** On application by a defendant, the High Court or Magistrate's Court may order the claimant to give the security the court considers appropriate for the defendant's costs of the proceeding.
- 24.51** Notwithstanding rule 7.4, the application may be made orally, unless the complexity of the case requires a written application.
- 24.52** The court may order a claimant or applicant to give security for costs only if the court is satisfied that:
- (a) the claimant is a body corporate and there is reason to believe it will not be able to pay the defendant's costs if ordered to pay them; or

- (b) the claimant's address is not stated in the claim, or is not stated correctly, unless there is reason to believe this was done without intention to deceive; or
- (c) the claimant has changed address since the proceeding started and there is reason to believe this was done to avoid the consequences of the proceeding; or
- (d) the proceeding is by an applicant to set aside a default judgment; or
- (e) the claimant is ordinarily resident outside Solomon Islands; or
- (f) the claimant is about to depart Solomon Islands and there is reason to believe the claimant has insufficient fixed property in Solomon Islands available for enforcement to pay the defendant's costs if ordered to pay them; or
- (g) the justice of the case requires the making of the order.

24.53 In deciding whether to make an order for security for costs, the court may have regard to any of the following matters:

- (a) the prospects of success of the proceeding;
- (b) whether the proceeding is genuine;
- (c) for rule 24.52(a), the corporation's finances;
- (d) whether the claimant's lack of means is because of the defendant's conduct;
- (e) whether the order would be oppressive or would stifle the proceeding;
- (f) whether the proceeding involves a matter of public importance;
- (g) whether the claimant's delay in starting the proceeding has prejudiced the defendant;
- (h) the likely costs of the proceeding.

24.54 If the court orders the claimant or applicant to give security for costs, the court must also order:

- (a) the form of the security; and
- (b) when it is to be given; and
- (c) the time within which it is to be given; and
- (d) any conditions the court thinks appropriate for giving the security.

24.55 As soon as practicable after the security is given, the claimant or applicant must give the defendant written notice of when and how security was given.

24.56 If the court orders the claimant or applicant to give security, any time set for another party to do anything in the proceeding does not run until security is given.

24.57 If security is not given as ordered:

- (a) the proceeding is stayed as far as things to be done by the claimant are concerned; and

- (b) the defendant may apply to have the proceeding dismissed; and
- (c) if the defendant makes such an application, the court may order all or part of the proceeding be dismissed or make any other order that justice requires.

24.58 The court may set aside or vary an order for security for costs if the court is satisfied that:

- (a) the security is no longer necessary; or
- (b) there are other special circumstances.

24.59 The security must be discharged:

- (a) after the costs have been paid; or
- (b) if judgment is given and the party who gave the security is not required to pay all or part of the costs; or
- (c) if the court orders the security be discharged; or
- (d) if the applicant entitled to the benefit of the security consents.

Schedule 3 increase in costs

24.60 The Chief Justice may from time to time, by Practice Direction increase any amount in Schedule 3.

Chapter 25 Payment into court

Payment into court—amount

- 25.1** In a proceeding, a defendant may, when filing, or at any time after filing, a response or defence:
- (a) pay an amount into court in satisfaction of:
 - (i) the claim for relief; or
 - (ii) if there are 2 or more causes of action included in a single proceeding, 1 or more of the claims for relief; or
 - (b) in a proceeding for defamation: pay an amount into court by way of compensation, satisfaction and amends.
- 25.2** If there are 2 or more causes of action included in a single proceeding, and an amount is paid into court in satisfaction of 1 or more of the claims for relief, the notice must state:
- (a) the claim or each claim for which payment is made; and
 - (b) the part of the amount paid in satisfaction of each claim.
- 25.3** If the defendant makes a payment into court under this Chapter, the defendant must serve a notice of payment into court:
- (a) on the claimant; and
 - (b) if there are 2 or more defendants on each of the other defendants.
- 25.4** The notice must state whether liability is admitted or denied.
- 25.5** A defendant who has paid an amount into court may make further payments increasing the amount without the court's leave.

Payment into court—costs

- 25.6** If a party in a proceeding is liable to pay the costs of another party in the proceeding, the party may, at any time after the party becomes liable to pay the costs, pay an amount into court in satisfaction of the costs.
- 25.7** This Chapter applies, with necessary changes, in relation to costs as if:
- (a) the party entitled to the costs is a claimant; and
 - (b) the party liable to pay the costs is a defendant; and
 - (c) the party's entitlement to costs is a claim for relief.

Payment into court—bond

- 25.8** A party may lodge a bond or other security (such as a bank guarantee) for the amount with the registrar instead of actually paying the amount into court.
- 25.9** The bond or other security must be given by:
- (a) any of the following persons (an ***approved person***):
 - (i) an insurer, registered under section 4 of the *Motor Vehicles (Third Party Insurance) Act [Cap 83]*;

- (ii) an insurer, registered under section 14 of the *Insurance Act* [Cap 82]; or
- (iii) a financial institution licensed to carry on banking business under the Financial Institutions Act 1998 as amended; or
- (iv) a corporation approved by the registrar of the High Court; or
- (b) a person who is authorised, in writing, to give the bond or other security for an approved person (an ***authorised person***).

25.10 The bond or other security remains in effect unless the court otherwise orders.

25.11 If the bond or other security is given by an authorised person, a copy of the person's authority must be filed with the bond unless the authority has already been filed.

25.12 An authority given by or for an approved person that has been filed binds the approved person until notice of its revocation is filed.

25.13 If a bond or other security is lodged by a party in accordance with rules 25.8 to 25.12, this Chapter applies as if the party had paid the amount of the bond or security into court.

Payment into court—security

25.14 A party may lodge a security for payment of the amount with the registrar instead of actually paying the amount into court or lodging a bond or other security under rule 25.8 (Payment into court—bond).

25.15 The security may be accepted by the registrar.

Payment into court—interest up to date of payment

25.16 For this Chapter, the claimant's claim for relief or cause of action for a debt, liquidated demand or damages is taken to include a claim or cause of action for the interest that might be included in the judgment if judgment were given at the date of the payment into court.

Acceptance of payment into court by claimant

25.17 If an amount is paid into court under this Chapter by a defendant, the claimant may accept the amount:

- (a) in satisfaction of:
 - (i) the claim for relief; or
 - (ii) if there are 2 or more causes of action included in a single action: the claim or each claim for which the payment is made; or
- (b) if the proceeding is for defamation: as compensation, satisfaction and amends.

25.18 Rule 25.17 does not apply in relation to a proceeding in which there is a claim for an amount (including an amount of damages) by or on behalf of a person under a disability.

- 25.19** The claimant may accept the amount by serving a notice of acceptance on the defendant (or, if the payment was made by 1 of 2 or more defendants, each defendant):
- (a) not later than 14 days after the day notice of payment into court is served on the claimant; or
 - (b) if 2 or more payments into court have been made: not later than 14 days after the day notice of the last payment into court is served on the claimant.
- 25.20** If the defendant paid the amount into court by bond or other security, the defendant must pay into court the amount of the bond or security not later than 14 days after the day the notice of acceptance is served on the defendant.
- 25.21** If the defendant does not comply with rule 25.20 the defendant is not entitled to any advantage under the rules for the payment into court, and the claimant may:
- (a) withdraw the claimant's acceptance by notice; or
 - (b) ask the registrar to assign the bond or security to the claimant so the claimant can enforce it.
- 25.22** If the amount was paid into court in proceedings involving a claim by a beneficiary arising out of the death of a person, the amount may be paid out only:
- (a) if a beneficiary is not a person under a disability: with the agreement of the parties to the proceeding; or
 - (b) under an order of the court.
- Note* Chapter 7 (Interlocutory Applications) applies to an application for an order or leave under this rule.
- 25.23** If the amount was paid into court by 1 of 2 or more defendants, the amount may be paid out only:
- (a) with the agreement of the parties to the proceeding; or
 - (b) under an order of the court dealing with all of the costs of the proceeding or cause of action.
- 25.24** Unless the court otherwise orders, payment must be made to:
- (a) the claimant; or
 - (b) if the claimant has given written authority for payment to be made to the claimant's legal practitioner, the claimant's legal practitioner.
- 25.25** If a payment out of court is made the claim for relief or stated claim is permanently stayed.
- 25.26** If the proceeding is for defamation, and the claimant accepts the amount paid into court, the claimant may apply to the court for leave to make a statement in open court.

Payment into court—costs on acceptance by claimant

25.27 If:

- (a) for a proceeding in which there is only 1 cause of action: the claimant accepts an amount paid into court in satisfaction of the claim for relief; or
- (b) for a proceeding in which there are 2 or more causes of action included in a single proceeding: the claimant accepts an amount paid into court in satisfaction of all the claims for relief or stated claims and states in the notice of acceptance that the other claims are abandoned.

the applicant may file a bill of costs for assessment not earlier than 7 days after the day the amount is paid out of court.

25.28 The costs claimed in the bill of costs may include:

- (a) the costs incurred to the day of payment into court; and
- (b) the costs reasonably incurred in accepting the payment; and
- (c) the costs incurred in preparing the bill of costs.

Payment into court—effect on counterclaim of acceptance by claimant

25.29 If:

- (a) an amount is paid into court by a defendant who made a counterclaim; and
- (b) the defendant stated in the notice of payment into court that in making the payment the defendant had taken into account and intended to dispose of all the claims for relief, or stated claims, for which the defendant counterclaimed; and
- (c) the claimant accepts the amount,

the claims for relief, or stated claims, including the counter claim, are permanently stayed against the claimant.

Payment into court—payment out of remaining amount

25.30 If an amount paid into court is not taken out in accordance with rules 25.17 to 25.26 the amount may be paid out only:

- (a) with the agreement of all parties to the proceeding; or
- (b) under an order of the court.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

25.31 The order may be made at any time before, during or after the trial of the proceeding.

Payment into court—defendant to counterclaim

25.32 The claimant or other person made defendant to a counterclaim may pay an amount into court in accordance with this Chapter, and this Chapter applies with any necessary changes.

Payment into court—nondisclosure

25.33 Except in a proceeding:

- (a) to which a defence of tender before proceeding is pleaded; or
- (b) to which rules 25.37 to 25.40 (Payment into court - in discharge of lien) apply;

until all issues relating to liability have been decided in the proceeding, the pleadings must not include a statement that an amount has been paid into court under this Chapter.

25.34 Until judgment has been given, the judge or magistrate at the trial of the proceeding must not be told about any payment into court.

25.35 When exercising a discretion about costs of the proceeding (other than an application for which a separate costs order is to be made), the judge or magistrate must take into account:

- (a) the fact that an amount has been paid into court; and
- (b) the date the payment was made; and
- (c) the amount of the payment.

25.36 Rule 25.35 does not limit the matters that the judicial officer may take into account.

Payment into court—in discharge of lien

25.37 Rules 25.38 to 25.40 apply:

- (a) if a claimant (a *recovering party*) brings a proceeding to recover, or a defendant (also a *recovering party*) in a counterclaim seeks to recover, property other than land; and
- (b) the party (the *holding party*) from whom the recovery is sought does not dispute the recovering party's right to the property, but claims to be entitled to retain the property because of a lien or as other security for an amount.

25.38 The court may order that the recovering party pay the amount, and an amount (if any) for interest or costs, into court.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

25.39 The court may make the order at any time after the claim mentioned in rule 25.38(b) is made:

- (a) in the pleadings; or
- (b) if there are no pleadings, by sworn statement or otherwise to the court's satisfaction.

25.40 On the payment into court being made, the holding party must give the property to the recovering party.

Payment into court—payment of amount paid into court under order

25.41 An amount paid into court under an order of the court may be paid out of court only under an order of the court.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

Payment into court—amount recovered by person under a disability

25.42 An amount (including an amount of damages) recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a person under a disability must be paid into court.

25.43 The amount may be paid out of court only under an order of the court.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

Person under a disability—approval of settlement etc

25.44 In a proceeding (or proposed proceeding) in which there is a claim for an amount (including an amount of damages) by or on behalf of a person under a disability, a settlement or compromise may only be entered into, and an amount paid into court may only be accepted, with the court's approval.

25.45 The application for the court's approval must be made in the application, unless the application is made in a proceeding that has already been started.

Person under a disability—orders about recovered amounts etc

25.46 The court may make an order directing how an amount recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a person under a disability (the *claimant*) must be dealt with.

Note Chapter 7 (Interlocutory Applications) applies to an application for an order under this rule.

25.47 Without limiting rule 25.46, the court may, by order, direct:

- (a) the payment of all or part of the amount to:
 - (i) the claimant or the claimant's litigation guardian for:
 - (A) expenses incurred by or paid for the claimant; or
 - (B) the maintenance or benefit of the claimant; or
 - (ii) the claimant's legal practitioner for costs; or
- (b) the investment of all or part of the amount for the claimant in the way stated in the order; or
- (c) the investment of all or part of the interest received from an investment under this rule for the claimant in the way stated in the order; or
- (d) the changing of an investment made for the claimant under this rule; or
- (e) the sale of securities in which an amount is invested for the claimant under this rule at the time, and on the conditions, stated in the order; or
- (f) the payment of all or part of the amount, or the transfer of a security or investment under this rule (including an account with an authorised deposit-taking institution), for the claimant.

Notice of payment into court

- 25.48** Where a party makes a payment into court as part of an offer of settlement whether as to a matter in dispute or costs, the following provisions apply:
- (a) notice must be given to the other parties of the payment into court and the notice must indicate:
 - (i) if the offer relates to only part of the claim against the party making payment into court the extent to which it applies, and
 - (ii) whether liability is admitted or denied and to what extent; and
 - (b) the making of a payment into court under this provision may not be disclosed to the court except in relation to the issue of determining costs and interests to be paid by the party making the payment into court; and
 - (c) from the time notice is given, the nature and extent of liability of the party making the payment into court for costs and interest in relation to the claim to which the payment relates shall depend on the reasonableness of the offer in relation to judgment given or offer in settlement finally accepted in relation to the claim to which the payment relates.

Chapter 26 Time

Month

- 26.1** In any judgment or order and in any document in any proceeding, unless the context or subject matter otherwise indicates or requires, ‘*month*’ means calendar month.

Reckoning

- 26.2** Where a time of one day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event shall not be counted.
- 26.3** Where a period, being a period of 5 days or less, would include a day on which the Registry is closed for a day, that day shall be excluded.
- 26.4** Where the last day for doing a thing is a day on which the Registry is closed for that day, the thing may be done on the next day on which the Registry is open.
- 26.5** In calculating the time fixed by these rules or by any order fixing, extending or abridging time, the period from 24 December to 14 January next following is excluded, as is the period from Good Friday to Easter Tuesday, unless the court otherwise orders.

Extension and abridgment

- 26.6** The court or a judge may by order extend or abridge any time fixed by the rules or by any judgment or order.

Fixing times

- 26.7** Where no time is fixed by the rules or by any judgment or order of the court or a judge for the doing of any thing in or in connection with any proceeding, the court may, by subsequent order, fix the time within which the thing is to be done.

Suspension of time in all proceedings

- 26.8** The Chief Justice may order the suspension of time in all proceedings for a specified period.

Chapter 27 Repeal of old Rules and Transitional Provisions

Repeal of Old Rules

- 27.1** Except for the prescribed court fees, the High Court (Civil Procedure) Rules 1964 and the Magistrates' Courts (Civil Procedure) Rules 1969 (**'the old rules'**) are repealed.

Pending proceedings

- 27.2** Subject to 27.3 these rules apply to proceedings commenced before the commencement of these Rules in the same way as they apply to proceedings commenced on or after that commencement.
- 27.3** A court before which proceedings have been commenced before the commencement of these rules may make such orders dispensing with the requirements of these rules in relation to the proceedings, and such consequential orders (including orders that specific provisions of the old Rules may apply as if these Rules had not been enacted; and orders as to costs), as are appropriate in the circumstances.

Delegations

- 27.4** Any delegation that was in force immediately before the commencement of these rules under a provision of the old rules for which there is a corresponding provision in these rules is taken to be a delegation in force under the corresponding provision of these rules.

Construction of references

- 27.5** Subject to these rules, in any Act or instrument:
- (a) a reference to a provision of the old rules for which there is a corresponding provision in these rules extends to the corresponding provision of these rules, and
 - (b) a reference to any act, matter or thing referred to in a provision of the old rules for which there is a corresponding provision in these rules extends to the corresponding act, matter or thing referred to in the corresponding provision of these rules, as the case requires.

General saving

- 27.6** Subject to these rules:
- (a) anything begun before the commencement of these rules under a provision of the old rules for which there is no corresponding provision in these rules may be continued and completed under the old rules as if these rules had not been enacted, and
 - (b) subject to sub-paragraph (a), anything done under a provision of the old rules for which there is a corresponding provision in these rules (including anything arising under sub-paragraph (a)) is taken to have been done under the corresponding provision of these rules, as the case requires.

Schedule 1 Fees payable in the registry

Rule 20.6

The court fees prescribed in the High Court (Civil Procedure) Rules 1964 and the Magistrates' Courts (Civil Procedure) Rules 1969 apply to proceedings under these rules until those prescribed court fees are repealed and replaced.

Schedule 2

FORM 1 r2.2

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN: *Claimant's Name*
Claimant's lawyers name or claimant's address

AND: *Defendant's Name*
Defendant's lawyers name or defendant's address

CLAIM - (Category A)

IMPORTANT: **To:** *[Name of defendant]*

You must read this claim and the attached notice. You may wish to talk to a lawyer. You must return the RESPONSE form to the Court. You must take action quickly.

The claimant seeks:

1. *[Set out the relief claimed by the claimant in numbered paragraphs]*

On the grounds that:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the claimant OR claimant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:
[Name of person filing claim]

Address for Service:
[Address for service of person filing claim]

Notice for Defendant

You have been served with a claim in legal proceedings. You are the defendant. This claim is made against you personally or as the representative of the defendant.

YOU MUST TAKE ACTION QUICKLY

1. Complete the attached RESPONSE form.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 14 days from when you received the Claim.

2. If you ticked box 2 or 3 on the Response form, you must complete a DEFENCE form.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

If you complete a Defence form within 14 days you do not need to complete the Response form.

3. If you ticked box 4 on the Response form, you must file a Defence (see above) and a COUNTERCLAIM.
You must say in the Counterclaim what you are claiming against the claimant.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

4. If you file documents in these proceedings, the Registrar will notify all parties of a first court hearing. You will be required to attend court or have someone represent you in court

5. If you live more than 20 km by public road from the Honiara Post Office and more than 20km by public road from the main Post Office in any provincial capital the Court and Claimant must receive the copies of Response within 28 days and the Defence within 42 days from when you received the Claim.

WARNING – If you DO NOT take action as required the claimant could sign judgment against you. This means the claimant will win.

FORM 2 r2.2

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN: *Claimant's Name*
Claimant's lawyers name or claimant's address

Claimant

AND: *Defendant's Name*
Defendant's lawyers name or defendant's address

Defendant

CLAIM - (Category B)

IMPORTANT: **To:** *[Name of defendant]*

You must read this claim and the attached notice. You may wish to talk to a lawyer. You must return the RESPONSE form to the Court. You must take action quickly.

The claimant seeks:

1. [Set out the relief claimed by the claimant in numbered paragraphs]

On the grounds that:

1. [Set out, in numbered paragraphs, Statement of Case in accordance with rule 5.3)

Signed by the claimant OR claimant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:
[Name of person filing claim]

Address for Service:
[Address for service of person filing claim]

Notice for Defendant

You have been served with a claim in legal proceedings. You are the defendant. This claim is made against you personally or as the representative of the defendant.

YOU MUST TAKE ACTION QUICKLY

1. Complete the attached RESPONSE form.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 14 days from when you received the Claim.

2. If you ticked box 2 or 3 on the Response form, you must complete a DEFENCE form.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

If you complete a Defence form within 14 days you do not need to complete the Response form.

3. If you ticked box 4 on the Response form, you must file a Defence (see above) and a COUNTERCLAIM.
You must say in the Counterclaim what you are claiming against the claimant.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

4. If you file documents in these proceedings, the Registrar will notify all parties of a first court hearing. You will be required to attend court or have someone represent you in court

5. If you live more than 20 km by public road from the Honiara Post Office and more than 20km by public road from the main Post Office in any provincial capital the Court and Claimant must receive the copies of Response within 28 days and the Defence within 42 days from when you received the Claim.

WARNING – If you DO NOT take action as required the claimant could sign judgment against you. This means the claimant will win.

FORM 3 r2.2

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction**BETWEEN:*****Claimant's Name****Claimant's lawyers name or claimant's address***Claimant****AND:*****Defendant's Name****Defendant's lawyers name or defendant's address***Defendant**

CLAIM - (Category C)

Notice:To: *[Name of defendant]*This matter is listed for hearing in the court at *[place]* _____at *[time]* _____ on *[date]* _____ .You **MUST** attend court or have someone represent you in court at this time.

If you do not attend the court may make orders in your absence.

The claimant seeks:

1. *[Set out the relief claimed by the claimant in numbered paragraphs]*

On the grounds that:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the claimant OR claimant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:
[Name of person filing claim]

Address for Service:
[Address for service of person filing claim]

Notice for Defendant

You have been served with a claim in legal proceedings. You are the defendant. This claim is made against you personally or as the representative of the defendant.

YOU MUST TAKE ACTION QUICKLY

1. Complete the attached RESPONSE form.

Take or send one copy to the Court

Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 14 days from when you received the Claim.

If you live more than 20 km by public road from the Honiara Post Office and more than 20km by public road from the main Post Office in any provincial capital the Court and Claimant must receive these copies within 28 days from when you received the Claim.

2. If you ticked box 2 or 3 on the RESPONSE form, you must complete a DEFENCE form.

Take or send one copy to the Court

Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

If you live more than 20 km by public road from the Honiara Post Office and more than 20km by public road from the main Post Office in any provincial capital the Court and Claimant must receive these copies within 42 days from when you received the Claim.

3. If you ticked box 4 on the Response form, you must file a Defence (see above) and a COUNTERCLAIM.

You must say in the Counterclaim what you are claiming against the claimant.

Take or send one copy to the Court

Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

4. If you file documents in these proceedings, the Registrar will notify all parties of a first court hearing. You will be required to attend court or have someone represent you in court

WARNING – If you DO NOT take action as required the claimant could sign judgment against you. This means the claimant will win.

FORM 4 r3.14

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN: ***Claimant's Name***
 Claimant's lawyers name or claimant's address
Claimant

AND: ***Defendant's Name***
 Defendant's lawyers name or defendant's address
Defendant

AND: ***Third Party Name***
 Third party's lawyers name or third party's address
Third Party

THIRD PARTY NOTICE

IMPORTANT: **To:** ***[Third Party Name]***
 [Third Party's address]

You are a party to this proceeding from the day you are served this notice.

You must read this all of this Notice. You may wish to consult a lawyer. You must return the RESPONSE form to the Court. You must take action quickly.

The defendant seeks:

1. *[Set out, in numbered paragraphs, the defendant's claim for contribution, indemnity or other remedy]*

On the grounds that:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the defendant OR defendant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:
[Name of person filing claim]

Address for Service:
[Address for service of person filing claim]

FORM 5 r2.8

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction**BETWEEN:*****Claimant's Name****Claimant's lawyers name or claimant's address***Claimant****AND:*****Defendant's Name****Defendant's lawyers name or defendant's address***Defendant**

APPLICATION

Notice:To: *[Name of Party]*

This matter is listed for hearing in the court at *[place]* _____

at *[time]* _____ on *[date]* _____ .

You **MUST** attend court or have someone represent you in court at this time.

If you do not attend the court may make orders in your absence.

[Name of applicant] of *[Address of applicant]* applies for:

1. *[Set out grounds of application in numbered paragraphs]*

On the grounds that:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the applicant OR applicant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:
[Name of person filing claim]

Address for Service:
[Address for service of person filing claim]

FORM 6 r5.8

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN:

Claimant's Name

Claimant's lawyers name or claimant's address

Claimant

AND:

Defendant's Name

Defendant's lawyers name or defendant's address

Defendant

RESPONSE

I have received a copy of the Claim in this proceeding.

Please tick appropriate box or boxes

☐

1. I agree the claim is correct

☐

2. I dispute part of the claim

☐

3. I dispute all of the claim

☐

4. I want to make a counterclaim

(For a proceedings in the Magistrate Courts)

☐

I object to this proceeding being dealt with at _____ *[court]*.

Signed by the claimant OR claimant's legal practitioner)

At *[place signed]*)

On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

YOU MUST tell the court and the other parties immediately if you change this address.

YOU MUST complete a Defence form if you ticked box 2 or 3.

FORM 7 r5.11

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction**BETWEEN:*****Claimant's Name****Claimant's lawyers name or claimant's address***Claimant****AND:*****Defendant's Name****Defendant's lawyers name or defendant's address***Defendant**

DEFENCE

The defendant states:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the defendant OR defendant's legal practitioner)

At *[place signed]*)

On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 8 r 5.22

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN: *Claimant's Name*
Claimant's lawyers name or claimant's address

AND: *Defendant's Name*
Defendant's lawyers name or defendant's address

DEFENCE AND COUNTERCLAIM

The defendant states:

1. [Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]

The defendant seeks as a counterclaim:

1. [Set out the relief claimed by the defendant in numbered paragraphs]

On the grounds that:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the defendant OR defendant's legal practitioner)
 At *[place signed]*)
 On *[date signed]*)

Filed by:
[Name of person filing claim]

Address for Service:
[Address for service of person filing claim]

FORM 15 r9.68

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN:

Claimant's Name

Claimant's lawyers name or claimant's address

Claimant

AND:

Defendant's Name

Defendant's lawyers name or defendant's address

Defendant

NOTICE OF DISCONTINUANCE

TO: *[Name of defendant]*

The claimant has discontinued this proceeding against you.

Signed by the claimant OR claimant's legal practitioner)

At *[place signed]*)

On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 16 r9.73

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN:

Claimant's Name

Claimant's lawyers name or claimant's address

Claimant

AND:

Defendant's Name

Defendant's lawyers name or defendant's address

Defendant

**NOTICE TO SHOW GOOD CAUSE WHY PROCEEDING SHOULD
NOT BE STRUCK OUT**

Notice:

To the claimant:

This matter is listed for hearing in the court at *[place]*_____

at [time]_____ on [date]_____.

You **MUST** attend court or have someone represent you in court at this time and show good cause why the proceeding should not be struck out.

If you do not attend or show good cause the court may strike out the proceedings.

No steps have been taken in this proceeding for 6 months.

The proceeding is now listed for the claimant to show good cause why the proceeding should not be struck out on the date mentioned above.

Signed by the Registrar

SCHEDULE 1
Part 1

1. *[List all of the documents in the person's possession or power that are not claimed to be privileged]*

SCHEDULE 1
Part 2

2. *[List all of the documents in the person's possession or power that are claimed to be privileged and gives reasons why they are claimed to be privileged]*

SCHEDULE 2

3. *[List all of the documents not in the person's possession or power and give reasons why the person no longer has possession or power. If known, set out the current whereabouts of the documents]*

I acknowledge that I understand this sworn statement is to be used in court proceedings and that if I make a false statement I may commit perjury and be liable to a substantial penalty.

SWORN/AFFIRMED by)
)
)
_____)
[Name of person making statement])
At *[place signed]*)
On *[date signed]*)

BEFORE ME:)
[Signature of person taking sworn statement])
[Name of person taking sworn statement])
[Address of person taking sworn statement])
[Capacity of person taking sworn statement])

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 18 r13.16

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction**BETWEEN:*****Claimant's Name****Claimant's lawyers name or claimant's address***Claimant****AND:*****Defendant's Name****Defendant's lawyers name or defendant's address***Defendant**

CERTIFICATE OF TELEPHONE EVIDENCE

I *[Name of the magistrate, police officer or chief]* of *[Address]* certify that:

1. I was present when *[Name of witness]* gave evidence by telephone at *[place of evidence]* on *[date evidence given]* at *[time evidence given]*.
2. *[Name of witness]* is personally known to me.
3. *[Name of witness]* seemed to give the evidence freely.

Signed by the Magistrate, police officer or chief

NOTICE TO PERSON BEING SERVED WITH SUMMONS

1. This summons must be served on five days before you are required to attend court OR served on you no later than *[date]*_____.
2. If it has been served on you properly, you **MUST** attend court as requested in the summons. If you do not come to court, you may be arrested, brought to court and fined or put in prison.
3. If you are served personally with this summons, you should also be given enough money to travel to court to comply with this summons.
4. If you are not served personally with this summons you are entitled to be reimbursed your reasonable travel expenses by the person on whose behalf the summons was issued.
5. If this summons requires you to produce documents but not to give evidence, you may do so by giving the documents to the court office at the stated place in the summons at least two days before the stated date.

I acknowledge that I understand this sworn statement is to be used in court proceedings and that if I make a false statement I may commit perjury and be liable to a substantial penalty.

SWORN/AFFIRMED by)
)
 _____)
[Name of person making statement])
 At *[place signed]*)
 On *[date signed]*)

BEFORE ME:)
[Signature of person taking sworn statement])
[Name of person taking sworn statement])
[Address of person taking sworn statement])
[Capacity of person taking sworn statement])

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 21 r14.15**Certificate – blind or illiterate deponent (pursuant to Rule 14.15)**

I, _____, certify that:
[Name of person taking sworn statement]

- a) This sworn statement was read in his or her presence to the deponent; and
- b) The deponent seemed to understand the sworn statement.

[Signature]

[Date]

FORM 22 r14.16**Certificate – language not understood by deponent (pursuant to Rule 14.16)**

I, _____, certify that:
[Name of person taking sworn statement]

- a) this sworn statement was interpreted to the deponent in a language the deponent understands;
- b) the deponent seemed to understand the sworn statement; and
- c) the deponent signed the sworn statement in my presence.

[Signature]

[Date]

FORM 23 r14.17**Certificate – mark or thumbprint made by deponent (pursuant to Rule 14.17)**

I, _____, certify that:
[Name of person taking sworn statement]

the deponent's mark/thumbprint impression was made in my presence.

[Signature]

[Date]

FORM 24 r14.18**Certificate – physically impaired deponent (pursuant to Rule 14.18)**

I, _____, certify that:
[Name of person taking sworn statement]

- a) this sworn statement was read in his or her presence to the deponent;
- b) the deponent seemed to understand the sworn statement; and
- c) the deponent signified he or she swore the sworn statement.

[Signature]

[Date]

FORM 25 r14.28**Certificate – sworn statement prepared by legal practitioner (pursuant to Rule 14.88)**

This sworn statement was prepared by _____ who is the
[Name of legal practitioner]

legal representative of the _____ .
[Claimant or Defendant]

[Signature of legal practitioner]

[Signature]

[Date]

FORM 27 r15.1.11

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

Debtor's Name

Debtor's lawyers name or debtor's address

Debtor

DEBTOR'S PETITION

The debtor states:

1. I am unable to pay my debts
2. I understand that my filing of this document shall be deemed an act of bankruptcy and the court will make a receiving order appointing the Official Receiver the receiver of my property.
3. My contact details are:

[Contact details of debtor]

4. My financial circumstances ("statement of debtors affairs") are:

[Set out debtors financial circumstances here]

Signed by the debtor OR debtor's legal practitioner)

At *[place signed]*)

On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

Schedule 3 - Costs

FORM 28 r15.2.3

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ *of* _____

Civil Jurisdiction**BETWEEN:*****Claimant's Name****Claimant's lawyers name or claimant's address***Claimant****AND:*****Defendant's Name****Defendant's lawyers name or defendant's address***Defendant**

**CLAIM FOR DIVORCE UNDER THE MATRIMONIAL CASES ACT
1950 (UK)**

Notice:**To:** *[Name of defendant]*

This matter is listed for hearing in the court at *[place]* _____

at *[time]* _____ on *[date]* _____ .

You **MUST** attend court or have someone represent you in court at this time.

If you do not attend the court may make orders in your absence.

The claimant seeks an order:

1. That his/her marriage with the defendant be dissolved
2. That he/she may have custody of the child(ren) of the marriage.
3. That the claimant may have such further and other relief as may be just.

4. The claimant was married to the defendant on the *[date of marriage]*

5. After the marriage the claimant lived and cohabitated with the defendant at *[place of residence]* until *[date]*.
6. There have been no previous proceedings in this Court touching upon the marriage save and except for *[set out details of any previous proceedings]*
7. There are *[number of children]* children of the marriage.
8. *[set out grounds for divorce]*

Signed by the claimant OR claimant's legal practitioner)
 At *[place signed]*)
 On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 29 r15.2.3

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN:

Claimant's Name

Claimant's lawyers name or claimant's address

Claimant

AND:

Defendant's Name

Defendant's lawyers name or defendant's address

Defendant

**CLAIM FOR DECREE ABSOLUTE UNDER THE MATRIMONIAL
CASES ACT 1950 (UK)**

FORM 30 r15.3.22

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN:

Claimant's Name

Claimant's lawyers name or claimant's address

Claimant

AND:

Defendant's Name

Defendant's lawyers name or defendant's address

Defendant

CLAIM FOR WRIT OF HABEAS CORPUS

Notice:

To the defendant:

You must bring the person *[Name of person being restrained]* who it is

claimed is detained in prison under your custody to *[place]* _____

at *[time]* _____ on *[date]* _____ .

The claimant seeks:

1. A writ of habeas corpus for the release *[Name of person being restrained]* who it being claimed is being held under unlawful restraint.

On the grounds that:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the claimant OR claimant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 31 r15.4.3

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN: *Claimant's Name*
Claimant's lawyers name or claimant's address

Claimant

AND: **The Ship “*Ship’s Name*”**
 Defendant’s lawyers name or defendant’s address

Defendant

CLAIM AGAINST PROPERTY

IMPORTANT: **To:** *[Name of defendant]*

You must read this claim and the attached notice. You may wish to talk to a lawyer. You must return the RESPONSE form to the Court. You must take action quickly.

The claimant seeks:

1. *[Set out the relief claimed by the claimant in numbered paragraphs]*

On the grounds that:

1. [Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]

Signed by the claimant OR claimant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 32 r15.4.2

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN: *Claimant's Name*
Claimant's lawyers name or claimant's address

Claimant

AND: **The Ship “*Ship’s Name*”**
 Defendant’s lawyers name or defendant’s address

Defendant

COLLISION CLAIM

IMPORTANT: **To:** *[Name of defendant]*

You must read this claim and the attached notice. You may wish to talk to a lawyer. You must return the RESPONSE form to the Court. You must take action quickly.

The claimant makes this claim on the grounds:

1. *[Set out, in numbered paragraphs, the Statement of Case in accordance with rule 5.3]*

Signed by the claimant OR claimant's legal practitioner)
At *[place signed]*)
On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

Notice for Defendant

You have been served with a claim in legal proceedings. You are the defendant. This claim is made against you personally or as the representative of the defendant.

YOU MUST TAKE ACTION QUICKLY

1. Complete the attached RESPONSE form.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 14 days from when you received the Claim.

2. If you ticked box 2 or 3 on the Response form, you must complete a DEFENCE form.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

If you complete a Defence form within 14 days you do not need to complete the Response form.

3. If you ticked box 4 on the Response form, you must file a Defence (see above) and a COUNTERCLAIM.

You must say in the Counterclaim what you are claiming against the claimant.

Take or send one copy to the Court
Take or send one copy to the Claimant

The Court and Claimant must receive these copies within 28 days from when you received the Claim.

4. If you file documents in these proceedings, the Registrar will notify all parties of a first court hearing. You will be required to attend court or have someone represent you in court

5. If you live more than 20 km by public road from the Honiara Post Office and more than 20km by public road from the main Post Office in any provincial capital the Court and Claimant must receive the copies of Response within 28 days and the Defence within 42 days from when you received the Claim.

WARNING – If you DO NOT take action as required the claimant could sign judgment against you. This means the claimant will win.

FORM 33 r15.10.1

**IN THE _____ COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction**BETWEEN:*****Claimant's Name****Claimant's lawyers name or claimant's address***Claimant****AND:*****Defendant's Name****Defendant's lawyers name or defendant's address***Defendant**

**APPLICATION UNDER THE FOREIGN JUDGMENTS
(RECIPROCAL ENFORCEMENT) ACT [CAP 13]**

1. This application is for registration of a Judgment of *[description of court which made order]* obtained in *[description of case or matter]* and dated the *[date of order]*.

Signed by the applicant OR applicant's legal practitioner)

At *[place signed]*)

On *[date signed]*)

Filed by:

[Name of person filing claim]

Address for Service:

[Address for service of person filing claim]

FORM 34 r15.10.2

**IN THE HIGH COURT
OF SOLOMON ISLANDS**

Civil Case Number: Insert_Number of Insert_Year

Civil Jurisdiction

BETWEEN: **Insert_Name_of_Claimant**
 Insert_Claimaints_lawyers_name_or_Claimants_address
Claimant

AND:

Insert_Name_of_Defendant

Insert_Defendants_lawyers_name_or_Defendants_address

Defendant

SWORN STATEMENT OF
Insert name of person making statement, Insert date sworn

[Insert Certificate here if required]

I, Insert_name_of_person_making_statement,
Insert_occupation_of_person_making_statement, of
Insert_address_of_person_making_statement swear/affirm the following is true,

1. A copy of the Judgment is attached as Annex “A”
2. To the best of my information and belief the judgment creditor is entitled to enforce the judgment.
3. The full details of the judgment creditor are
Insert_the_name_of_the_judgment_creditor
Insert_the_title_of_the_judgment_creditor
Insert_the_trade_or_business_or_last_known_address_of_judgment_creditor
4. The full details for the judgment debtor are:
Insert_the_name_of_the_judgment_debtor
Insert_the_title_of_the_judgment_debtor
Insert_the_trade_or_business_or_last_known_address_of_judgment_debtor

I acknowledge that I understand this sworn statement is to be used in court proceedings and that if I make a false statement I may commit perjury and be liable to a substantial penalty.

SWORN/AFFIRMED by)
 Insert_name_of_person_making_statement)
 At Insert_Place_Signed)
 On Insert_Date_Signed)

BEFORE ME:)
[Signature of person taking sworn statement])
[Name of person taking sworn statement])
[Address of person taking sworn statement])
[Capacity of person taking sworn statement])

Filed by:

Insert_Person_who_filed_document

Address for Service:

Insert_Full_Address_for_Service

FORM 35 r16.6

**IN THE HIGH COURT
OF SOLOMON ISLANDS**

Civil Case Number: Insert Number of Insert Year

Civil Jurisdiction

BETWEEN: **Insert_Name_of_Appellant**
 Insert_Appellants_lawyers_name_or_Appellants_address
Appellant

AND:

	Insert_Name_of_Respondent
Insert_Respondents_lawyers_name_or_Respondents_address	Respondent

NOTICE OF APPEAL

Insert_Name_of_Appellant being the **Insert_claimant_OR_defendant** in **Insert_details_of_case** in the **Insert_details_of_court_or_tribunal** gives notice of appeal against the decision given on the **Insert_date_of_order** in which the Court decided that **Insert_details_of_decision**.

The appellant seeks:

1. Insert_the_decision_sought

The grounds of appeal are as follows:

1. Insert_grounds_of_appeal

Before taking another step in the proceeding, the respondent must file a notice of intention to respond, unless the respondent files a cross-appeal or notice of contention.

Signed by the appellant OR appellant's legal practitioner)
At Insert Place Signed)

On Insert_Date_Signed)

Filed by:

Insert_Person_who_filed_document

Address for Service:

Insert_Full_Address_for_Service

FORM 36 r16.74

**IN THE HIGH COURT
OF SOLOMON ISLANDS**

Civil Case Number: Insert_Number of Insert_Year

Civil Jurisdiction

BETWEEN: **Insert_Name_of_Claimant**
 Insert_Claimaints_lawyers_name_or_Claimants_address
Claimant

AND: **Insert_Name_of_Defendant**
 Insert_Defendants_lawyers_name_or_Defendants_address
Defendant

SPECIAL CASE

The claimant seeks the following questions to be decided:

1. State_the_questions_to_be_decided

The claimant states the facts as follows:

- ## 2. State the facts

Signed by the claimant OR claimant's legal practitioner)
At Insert_Place_Signed)
On Insert_Date_Signed)

Filed by:

Insert_Person_who_filed_document

Address for Service:

Insert Full Address for Service

FORM 37 r17.3

IN THE HIGH_or_MAGISTRATES COURT
OF SOLOMON ISLANDS *Civil Case No.*

Civil Case Number: Insert_Number of Insert_Year

Civil Jurisdiction

BETWEEN:

Insert_Name_of_Claimant

Insert_Claimaints_lawyers_name_or_Claimants_address

Claimant

AND:

Insert_Name_of_Defendant

Insert_Defendants_lawyers_name_or_Defendants_address

Defendant

ORDER

Date of Order: Insert Date of Order

Insert_Judge_or_Magistrate: Insert_name_of_Judicial_officer

1. Insert_details_of_order

Insert_name_of_judicial_officer

FORM 38 r21.27

**IN THE HIGH_or_MAGISTRATES COURT
OF SOLOMON ISLANDS**

Civil Case Number: Insert_Number of Insert_Year

Civil Jurisdiction

BETWEEN:

Insert_name_of_enforcement_creditor

Insert_enforcement_creditors_lawyers_name_or_enforcement_cre
ditor_address

Enforcement Creditor

AND:

Insert_name_of_enforcement_debtor

Insert_enforcement_debtors_lawyers_name_or_enforcement_debt
or_address

Enforcement Debtor

APPLICATION FOR ENFORCEMENT ORDER

I Insert_name_of_enforcement_creditor, enforcement creditor apply for an enforcement order against Insert_name_of_enforcement_debtor on the grounds that:

1. An order was made against Insert_name_of_enforcement_debtor on the Insert_date_of_order for Insert_details_of_order
2. This order has not been complied with

Signed by the applicant OR applicant's legal practitioner)
At Insert_Place_Signed)
On Insert_Date_Signed)

Filed by:

Insert_Person_who_filed_document

Address for Service:

Schedule 3 - Costs

FORM 39 r21.27**IN THE HIGH_or_MAGISTRATES COURT
OF SOLOMON ISLANDS***Civil Case Number: Insert_Number of Insert_Year****Civil Jurisdiction***

BETWEEN: **Insert_name_of_enforcement_creditor**
 Insert_enforcement_creditors_lawyers_name_or_enforcement_cre
 ditor_address

Enforcement Creditor

AND: **Insert_name_of_enforcement_debtor**
 Insert_enforcement_debtors_lawyers_name_or_enforcement_debt
 or_address

Enforcement Debtor

ENFORCEMENT ORDER

TO the Sheriff of the HIGH_or_MAGISTRATES Court

Debtor's name: Insert_name_of_enforcement_debtor

Debtor's Address: Insert_address_of_Debtor

Your are authorised to:

1. Set_out_details_of_order_in_numbered_paragraphs

Amount recoverable under this order:

The debt:	\$Insert_amount_of_debt
Interest:	\$Insert_amount_of_interest_claimed
Filing and Service Fees:	\$Insert_amount_of_filing_fees_and_fees_claimed
Costs:	\$Insert_amount_of_costs_claimed
TOTAL:	\$Insert_total_amount_of_debt

This order ends on: Insert_date_order_ends_on

Judge/Registrar

FORM 42 r23.15

**IN THE HIGH COURT
OF SOLOMON ISLANDS**

Civil Case Number: _____ of _____

Civil Jurisdiction

BETWEEN: *Claimant's Name*
 Claimant's lawyers name or claimant's address
Claimant

AND: *Defendant's Name*
 Defendant's lawyers name or defendant's address
Defendant

CONTEMPT WARRANT

TO the Sheriff of the High Court of Solomon Islands

Name of Person against whom warrant issued: *[Name of person]*

Address of Person against whom warrant issued: *[Address of person]*

You are authorised to arrest and detain the above named person and bring the person before the High Court.

[Name of Judicial Officer]

Schedule 3 Costs

(Rules 9.1, 9.4, 9.10, 9.28, 9.29, 9.43 and 9.44)

Schedule 3 part 1 Costs amount—undefended money claim

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrate's Court—less than \$10 000	165.00
2	Magistrate's Court—not less than \$10 000 but less than \$25 000	335.00
3	Magistrate's Court—not less than \$25 000 but less than \$40 000	400.00
4	Magistrate's Court—not less than \$40 000 but less than \$50 000	450.00
5	High Court—any amount	500.00

Schedule 3 part 2 Costs amount—money claim default judgment

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrate's Court—less than \$10 000	198.00
2	Magistrate's Court—not less than \$10 000 but less than \$25 000	402.00
3	Magistrate's Court—not less than \$25 000 but less than \$40 000	480.00
4	Magistrate's Court—not less than \$40 000 but less than \$50 000	540.00
5	High Court—any amount	600.00

Schedule 3 part 3 Costs (rule 24.5)

MAGISTRATE'S COURT PROCEEDINGS

The following scales appropriate for the amount the applicant recovers apply.

Work performed	Amount
1) Up to and including the first court hearing or conference:	
a) Category A proceedings	1500
b) Category B proceedings	
i) for a liquidated claim <\$2000	300
ii) for a liquidated claim >\$2000 and <\$10 000	500
iii) for a liquidated claim >\$10 000	700
c) Category C proceedings	1000
2) After the first court hearing or conference up to and including a trial listing conference (including assisted resolution):	
a) Category A proceedings	2000
b) Category B proceedings	
i) for a liquidated claim <\$2000	400
ii) for a liquidated claim >\$2000 and <\$10 000	600
iii) for a liquidated claim >\$10 000	850
c) Category C proceedings	1500
3) After a trial listing conference up to and including the day prior to the first day of trial:	
a) Category A proceedings	3000
b) Category B proceedings	
i) for a liquidated claim <\$2000	900
ii) for a liquidated claim >\$2000 and <\$10 000	1100
iii) for a liquidated claim >\$10 000	1500
c) Category C proceedings	2000
4) Trial ("hearing fee")	
a) Half day trial	750
b) One day trial	1000
c) For each extra half day of trial	500
5) For receiving and explaining judgment	350
6) Interlocutory applications:	
a) Preparation	350
b) Hearing	650

HIGH COURT PROCEEDINGS

The following scales appropriate for the amount the applicant recovers apply.

Work performed by legal practitioner	Amount
1) Up to and including the first court hearing or conference:	
a. Category A proceedings	3000
b. Category B proceedings	
i. for a liquidated claim <\$10 000	500
ii. for a liquidated claim >\$10 000 and <\$50 000	700
iii. for a liquidated claim >\$50 000 and <\$250 000	2000
iv. for a liquidated claim >\$250 000	3000
c. Category C proceedings	2000
2) After the first court hearing or conference up to and including a trial listing conference but excluding assisted resolution:	
a. Category A proceedings	6000
b. Category B proceedings	
i. for a liquidated claim <\$10 000	600
ii. for a liquidated claim >\$10 000 and <\$50 000	850
iii. for a liquidated claim >\$50 000 and <\$250 000	4000
iv. for a liquidated claim >\$250 000	6000
c. Category C proceedings	3000
3) After a trial listing conference up to and including the day prior to listing of trial:	
a. Category A proceedings	7000
b. Category B proceedings	
i. for a liquidated claim <\$10 000	1100
ii. for a liquidated claim >\$10 000 and <\$50 000	1500
iii. for a liquidated claim >\$50 000 and <\$250 000	5000
iv. for a liquidated claim >\$250 000	7000
c. Category C proceedings	5000
4) Trial (including an instructing solicitor where there is certification for counsel)	
a. Half day trial	3500
b. One day trial	6000
c. For each extra half day of trial	2500
5) For receiving and explaining judgment	700
6) Interlocutory applications (where order is made under rule 24.7)	
a. Preparation	800
b. Half day application	1200
c. One day application	2000
d. Each extra half day	900

7) Assisted resolution	
a. Mediation	
i. Preparation	700
ii. Each half day	900
b. Neutral Evaluation	
i. Written submission	1000
ii. Appearance before evaluator each half day	1000

COUNSEL'S FEES

Where counsel's fees are allowed for under rule 24.30.

Work performed	Amount
1) Interlocutory applications (where an order is made under rule 24.7):	
a. Preparation	1000
b. Hearings:	
i. First half day	2500
ii. Each subsequent half day	2500
2) Trial	
a. Preparation	
i. Trial set down for less than 5 days	5000
ii. Trial set down for 5 days or more	10000
b. Hearing	
i. First day	7500
ii. Each subsequent half day	2500
3) Legal practitioners costs of brief preparation where counsel's fees are allowed	
a. Trial set down for less than 5 days	3000
b. Trial set down for 5 days or more	6000

Schedule 4 – Dictionary

(Rule 1.12)

‘Admiralty claim’ means a claim within the Admiralty jurisdiction of the High Court.

‘appeal period’, for Chapter 13 – see rule 13.1.

‘application’ means an application for an interlocutory order.

‘applied law’, for Chapter 15.2 – see rule 15.2.1.

‘bankrupt’, for Chapter 15.1 – see rule 15.1.1.

‘bankruptcy notice’, for Chapter 15.1 – see rule 15.1.1.

‘bankruptcy petition’, for Chapter 15.1 – see rule 15.1.1.

‘bill’, for Chapter 20.2 – see rule 20.32.

‘category A proceeding’ means a complex claim that needs case management directions, including a claim for defamation, a customary land claim, a commercial dispute, a building or technical dispute, and a claim for damages for death or personal injury – see rule 2.14.

‘category B proceeding’ means a claim for payment of a specific sum of money the amount of which is worked out or capable of being worked out by calculation, and includes a claim for interest up to judgment – see rule 2.14.

‘category C proceedings’ means a claim that is not a category A or B proceedings – see rule 2.14.

‘caution against arrest’, for Chapter 15.4 – see rule 15.4.1.

‘caution against release’, for Chapter 15.4 – see rule 15.4.1.

‘child’ means a person under the age of 18 years.

‘civil proceedings’ mean any proceedings other than criminal proceedings.

‘claim against a person’, for Chapter 15.4 – see rule 15.4.1.

‘claim against property’, for Chapter 15.4 – see rule 15.4.1.

‘claims for relief’ includes:

- (a) a claim for delivery of goods; and
- (b) a claim for the recovery of damages or other money; and
- (c) a claim for possession of land; and
- (d) a claim for a declaration of right; and
- (e) a claim for the determination of any question or matter that may be determined by the court; and
- (f) any other claim (whether legal, equitable or otherwise) that is justiciable in court.

‘collision claim’, for Chapter 15.4 - see rule 15.4.1.

‘communication’, for Chapter 15.2 - see rule 15.2.1.

‘counterclaim’ means a claim against a claimant by a defendant included in the defence – see rule 5.22 – or a claim against a person other than the claimant by a defendant – see rule 5.28.

‘court’ means either the High Court or the Magistrate’s Court or both, depending on the context of the provision – see rule 1.10.

‘creditor’s petition’, for Chapter 15.1 –see rule 15.1.1.

‘debtor’s petition’, for Chapter 15.1 – see rule 15.1.1.

‘document’, for Chapter 13 – see rule 13.1.

‘enforcement applicant’, for Chapter 21 – see rule 21.1.

‘enforcement creditor’ means a person entitled to enforce a money order.

‘enforcement debtor’ means a person required to pay money under a money order.

‘enforcement hearing’ means a conference referred to under rule 21.38 or 21.39.

‘enforcement order’ means an order made under rule 21.38, 21.39, 21.46, 21.56, 21.77, 21.83, 21.90, 21.102, 21.109, 21.126, 21.132, 21.136 or an order for commitment of any judgment debtor under section 19(1)(g) of the Magistrates’ Courts Act.

‘exempt property’, for Chapter 21 – see rule 21.1.

‘fees’, for Chapter 20.2 – see rule 20.32.

‘freezing order’ means an order restraining a person from removing assets from Solomon Islands or dealing with assets in or outside Solomon Islands – see rule 7.15.

‘identity or whereabouts’, for Chapter 11.4 – see rule 11.69.

‘initiating party’, for Chapter 16.2.1 – see rule 16.73.

‘Judge’ means the Chief Justice or any other Judge or Commissioner of the High Court.

‘judgment debt’ means the amount payable under a money order and the costs of gaining the order.

‘limitation action’, for Chapter 15.4 – see rule 15.4.1.

‘Magistrate’ means a person appointed to hold a Magistrate's Court constituted under the Magistrates' Courts Act *Cap 20*.

‘Marshal’, for Chapter 15.4 – see rule 15.4.1.

‘mediation’, for Chapter 10 – see rule 10.1.

‘model’, for Chapter 13 – see 13.47.

‘money claim’ means a claim for payment of a specific sum of money the amount of which is worked out or capable of being worked out by calculation, and includes a claim for interest up to judgment – see rule 2.14.

‘money order’ means an order of the court for the payment of an amount of money.

‘month’ means calendar month.

‘neutral evaluation’, for Chapter 10 – see rule 10.1.

‘non-money order’ means an order of the court other than a money order.

‘oath’ includes affirmation – see rule 14.2.

‘officer of a corporation’ means a director, manager or secretary of a corporation.

‘order’ includes a judgment, direction or decision of the court.

‘person interested’, for Chapter 20.2 – see rule 20.32.

‘person under a disability’ means a person who is a child or who does not understand the nature and possible consequences of the proceedings or who is not capable of conducting the proceedings or giving instructions for the conduct of the proceedings – see rule 3.17.

‘pleading’ includes a claim, a defence, a reply, a counterclaim, a third-party notice and a notice claiming contribution or indemnity, but does not include an application.

‘question referred’, for Chapter 16.2.1 – see rule 16.73.

‘recovery of possession of land’ includes delivery of such possession, ejectment and like claims.

‘Register’, for Chapter 15.4 – see rule 15.4.1.

‘Registrar’ means the registrar of the High Court or the civil clerk of the Magistrate’s Court as appropriate, except where otherwise indicated.

‘salvage claim’, for Chapter 15.4 – see rule 15.4.1.

‘seizing order’ means an order authorising the applicant to seize documents and/or objects in another person’s possession – see rule 7.23.

‘Sheriff’, means the sheriff, any deputy sheriff or under sheriff, any sheriff’s officer, any other person assisting the sheriff in the performance of his or her duties, bailiff, any assistant bailiff, any other person assisting a bailiff in the performance of his or her duties or any officer in charge of any police station of the Solomon Islands Police Force (or his or her delegate) as may be authorised by the Sheriff.

‘ship’, for Chapter 15.4 – see rule 15.4.1.

‘summoned document or thing’, for Chapter 13 – see Rule 13.1.

‘sworn’ includes affirmed – see rule 14.2.

‘sworn statement’ means a statement in accordance with Chapter 14.

‘third party notice’ means a notice by which a defendant claims a contribution, indemnity or other remedy against a person who was until then not a party to the proceeding - see rule 3.14.

‘trial’ means any hearing that is not an interlocutory hearing.

‘tribunal’, for Chapter 16 – see rules 16.1 and 16.73.

‘usual undertaking as to damages’ means that the party giving the undertaking undertakes that, in the event that the party is ultimately successful in the proceeding or it is otherwise shown that the order to which the undertaking relates ought not to have been made, then the giver of the undertaking shall be liable (without further order) to pay such damages as any other party or person may have suffered as a result of the order being made, such damages to be assessed if not agreed.