

Costs of Amendment Without Leave	6.76
Application to Disallow Amendment Without Leave	6.77
(D) Amendment of Writ/Pleading <i>With Leave</i>	6.79
General	6.79
Application to Amend After Expiry of Limitation Period	6.82
(E) Amendment of Judgments and Orders—the “Slip Rule”	6.88

1. Acknowledgement of Service of Writ (By Defendant) and Dispute of Court’s Jurisdiction

(A) General

The main Court rule relating to the Acknowledgement of Service (AOS) is the amended RHC and RDC O.12. 6.1

Filing (in court) an AOS in accordance with RHC and RDC O.12 constitutes an “entry of appearance” to a writ or other originating process.¹ 6.2

On the AOS form, there are a number of boxes and blanks for the defendant to fill in. In particular, the form asks whether the defendant intends to contest the plaintiff’s claim. If the defendant ticks the “yes” box to this question, once the completed AOS form has been filed in court, the defendant is said to have given “notice of intention to defend”. 6.3

(B) Who Can Acknowledge Service?

General rule: A defendant can acknowledge service of a writ by its solicitor or in person.² 6.4

Where a defendant is a body corporate, it is allowed to acknowledge service and give notice of intention to defend by a solicitor or by a person properly authorised to act on its behalf (this is usually a director):³ 6.5

(1) However, in the CFI, unless expressly authorised by a statute or with the Court’s leave, a body corporate *cannot* take any further steps in an action (beyond filing the AOS in court) unless by a solicitor;⁴

(2) There is no such restriction in the DC.

If the defendant is a partnership, a partner must complete the AOS in *his/her own* name, not in the name of firm.⁵ 6.6

If the defendant is under a disability (*i.e.* a minor or a mentally incapacitated person), the AOS must be by a solicitor appointed by the *guardian ad litem*.⁶ 6.7

(C) Form and Contents of AOS

An AOS must be in the prescribed form and signed:⁷ 6.8

¹ Rules of the High Court and Rules of the District Court O.12 r.10.

² Rules of the High Court and Rules of the District Court O.12 r.1(1).

³ Rules of the High Court and Rules of the District Court O.12 r.1(2).

⁴ Rules of the High Court O.12 1(2).

⁵ Rules of the High Court and Rules of the District Court O.81 r.4(1).

⁶ Rules of the High Court and Rules of the District Court O.80 r.2(1), 2(3).

⁷ Rules of the High Court and Rules of the District Court O.12 r.3(1).

- (1) The AOS form has been amended under the Civil Justice Reform (mainly to refer to admissions to money claims under the new RHC and RDC O.13A (see para.10.1 onwards)).

6.9 An AOS must contain the following information:⁸

- (1) If the defendant is acknowledging service *in person*, the defendant's residential address or other delivery address in Hong Kong;
 - (a) If the defendant is a body corporate, "residential" address means the registered or principal office;
- (2) If the defendant is acknowledging service *by a solicitor*, the solicitor's business address in Hong Kong.

The above is the defendant's address for service of other court documents in that action.

6.10 If the AOS does not specify an address for service or the address given is not genuine, the court may, on an application by the plaintiff, among other things:⁹

- (1) Set aside the AOS;
- (2) Order the defendant to give an address or a genuine address for service.

(D) Timing

6.11 For a writ served in Hong Kong, a defendant must file an AOS *in the Court Registry* within 14 days after service of the writ (*including the day of service of the writ*).¹⁰

- (1) For example, if the writ is served on the defendant on 4 January, the defendant has until 17 January to file the AOS in court (*i.e.* the 14-day period starts running on 4 January, the day on which the writ was served);
- (2) The date on which the Court Registry receives the AOS is the date of the defendant's acknowledgement of service.¹¹ To show this date, the Court Registry will apply a date stamp to the AOS form;¹²
- (3) The Court Registry will then send a copy of the AOS form (with the date stamp) to the plaintiff (so the plaintiff will know when the AOS form was filed in court).

6.12 The defendant is not prohibited from filing the AOS late, but all further time limits will be *as if* the AOS was filed on time¹³—*i.e.* the defendant will not get more time for complying with later steps in the action simply by filing the AOS late.

⁸ Rules of the High Court and Rules of the District Court O.12 r.3(2).

⁹ Rules of the High Court and Rules of the District Court O.12 r.3(4).

¹⁰ Rules of the High Court and Rules of the District Court O.12 r.5(a).

¹¹ Rules of the High Court and Rules of the District Court O.12 r.1(5).

¹² Rules of the High Court and Rules of the District Court O.12 r.4(a).

¹³ Rules of the High Court and Rules of the District Court O.12 r.6(2).

As will be explained further in Chapter 8, if the defendant does not give notice of intention to defend (*e.g.* the defendant fails to file the AOS in time), the plaintiff may be able to enter Court judgment against the defendant immediately (known as a "default judgment").

6.13

- (1) Although, as mentioned above, the defendant is not prohibited from filing the AOS late, the defendant will not be allowed to file the AOS *if* judgment has *already* been entered against it:¹⁴
 - (a) For example, if the defendant fails to file the AOS in time and default judgment has been entered against it, if the defendant does want to defend the action, it must first persuade the Court (by making an application) to set aside the default judgment before it can file the AOS.

(E) Dispute of Court's Jurisdiction

Remember—acknowledging service of the writ "shall not be treated as a waiver ... of any irregularity in the writ or service thereof or in any order giving leave to serve the writ or extending the validity of the writ for the purpose of service".¹⁵

6.14

If a defendant wishes to dispute the jurisdiction of the Court in the action in question (*i.e.* argue that the Court *does not have* jurisdiction), the defendant has to file the AOS in Court first and then, *within the time limited for service of the defence* (the defence is the formal statement of the defendant's case—see below), apply to the Court for one of the orders listed in the amended O.12 r.8(1):

6.15

- (1) Examples of orders set out in the amended O.12 r.8(1) include an order to set aside a previous Court order giving leave to serve a writ out of the jurisdiction, and an order to stay (*i.e.* suspend) the action.

Important—arguing, as mentioned above, that the Court *does not have* jurisdiction in a case is *different* from arguing that the Court *does have*, but *should decline*, jurisdiction in the case:

6.16

- (1) The defendant may argue that the Court *does not have* jurisdiction where, *e.g.* the writ has not been served on the defendant properly;
- (2) However, even where the Court *does have* jurisdiction, the defendant *can still apply for the Court to decline that jurisdiction* (*i.e.* not accept the case), *e.g.*:
 - (a) The defendant may argue that Hong Kong is an *inappropriate* forum for the trial of the action (another way of saying this is to say that the Hong Kong Court is not the *forum conveniens*, or is the *forum non conveniens*). (For a discussion of the *forum conveniens* doctrine, see para.5.29(2)).

¹⁴ Rules of the High Court and Rules of the District Court O.12 r.6(1).

¹⁵ Rules of the High Court and Rules of the District Court O.12 r.7.

- (i) An application on the *forum non conveniens* ground will normally be for the Court to stay the Hong Kong action in favour of the (more suitable) foreign Court;
- (ii) There are two situations in which the defendant may request the Court to decline jurisdiction on the basis of *forum non conveniens* and the *burdens of proof* are different:¹⁶
- Where the plaintiff started and served proceedings in Hong Kong *as of right* (i.e. no Court leave was required), e.g. the plaintiff issued and served the writ on the defendant *within* Hong Kong—the burden is on the *defendant* to show that Hong Kong is an inappropriate forum for the trial of the action (and there is another forum that is clearly more appropriate);
 - On the other hand, where the plaintiff did *not* start and serve proceedings in Hong Kong as of right (i.e. Court leave was required), e.g. the plaintiff issued and served the writ on the defendant *outside of* Hong Kong¹⁷—the burden would be on the *plaintiff* to show that Hong Kong is clearly the appropriate forum for the trial of the action;
- (b) Another common situation where this type of application is made is where the parties had agreed (e.g. in their contract) to deal with their disputes without using the Court but instead by, e.g. arbitration:
- (i) The application will also be to stay the Court action in favour of, say, arbitration:
- In general, provided the arbitration agreement is valid and enforceable and covers the dispute in question, the Court will stay the Court action in favour of arbitration;
 - For further details of the Court's considerations in this regard, see s.20 of the Arbitration Ordinance (Cap.609);

- (c) Whereas an application for the Court to decline jurisdiction over a case (e.g. on the basis of *forum non conveniens*), unless covered by a statute, used to be made under the Court's inherent jurisdiction, the Civil Justice Reform expressly puts this type of application on a statutory footing—under the new RHC and RDC O.12 r.8(2) and r.8(2A), a defendant who wishes to argue that the Court has, but should decline, jurisdiction should file the AOS and then, within the time limited for service of the defence, apply to the Court for one of the orders listed in the new O.12 r.8(2), which includes a stay of the action:

¹⁶ *Noble Power Investments Ltd v Nissei Stomach Tokyo Co Ltd* [2008] 5 HKLRD 631.

¹⁷ In this situation, in addition to a stay of the action (in favour of the foreign Court), the defendant will normally also apply to *set aside* the original Hong Kong Court order granting leave to the plaintiff to serve the writ outside of Hong Kong—logically, if Hong Kong is not the appropriate forum for the trial, the plaintiff should not have been granted such leave in the first place (see para.5.29(2)).

- (i) Having until the deadline for service of the defence to make the application gives the defendant the chance to see the statement of claim (which should set out the plaintiff's case in detail) before finally deciding whether to make the application;
- (ii) For the r.8(2) application, there are three specified grounds in the new r.8(2A), as set out below (although r.8(2) states that the application may be made on "any other ground"):
- "Considering the best interests and convenience of the parties to the proceedings and the witnesses of such proceedings, the proceedings should be conducted in another court";
 - "The defendant is entitled to rely on an agreement to which the plaintiff is a party excluding the jurisdiction of the Court"; and
 - "In respect of the same cause of action to which the proceedings relate, there are other proceedings pending between the defendant and the plaintiff in another court";
- (3) In practice, parties frequently make *both* of the above arguments in the alternative, i.e. argue that, firstly, the Court has no jurisdiction, but if that argument fails (and the Court rules that it does have jurisdiction), the Court should decline jurisdiction.

The application is made by summons (which must state the grounds of the application), with an affidavit/affirmation (confirming the facts on which the application is based and setting out the evidence in support of the application).¹⁸

6.17

- (1) For the use of a "summons", see the section entitled "Introduction to Interlocutory Applications" in Chapter 9.

The defendant's dispute of the Court's jurisdiction will fail if the defendant has already submitted to the jurisdiction of the Court:

6.18

- (1) For example, the defendant in such a case should *not* normally file and serve a defence, as this will generally (though not always) be regarded as a submission to the Court's jurisdiction:
- (a) However, it is possible to file and serve a defence *without* this being regarded as submitting to the Court's jurisdiction by making it very clear, when filing and serving the defence, that there is still going to be a challenge to the Court's jurisdiction;¹⁹

¹⁸ Rules of the High Court and Rules of the District Court O.12 amended r.8(3), 8(4).

¹⁹ *Miruvor Ltd v Panama-Globe Steamer Lines SA* [2007] 1 HKLRD 804.

I. Admissions in Claims for Payment of Money

(A) General

The main Court rule governing admissions in money claims is the new RHC and RDC O.13A. 10.1

This is a part of a series of new procedures introduced by the Civil Justice Reform, designed to encourage and help the parties to settle. 10.2

Under the new mechanism introduced by the new RHC and RDC O.13A, a defendant facing a claim for *money* can *admit* the whole or part of the claim, as well as make a *proposal* for the way in which payment is to be made (which may be reviewed by the Court): 10.3

- (1) RHC and RDC O.13A only applies where the *only remedy claimed* by the plaintiff is *money*.

Under the amended RHC and RDC O.6 r.2, a writ must contain a statement that the defendant may make an admission under RHC and RDC O.13A within the period fixed for serving the defence. 10.4

RHC and RDC O.13A also applies to a plaintiff's admission of counterclaims by a defendant,¹ as well as a third party's admission of a defendant's claims in third party proceedings.² 10.5

(B) Admissions Against Money Claims—General Scheme

As mentioned above, the new mechanism introduced by RHC and RDC O.13A applies where the *only remedy claimed* by the plaintiff is *money* (note O.13A r.1 where the plaintiff makes *more than one* claim). In this case, RHC and RDC O.13A provide for four different situations—where the defendant: 10.6

- (1) Admits the *whole* of a *liquidated* claim;
- (2) Admits a *part* of a *liquidated* claim in satisfaction of the whole claim;
- (3) Admits liability for the *whole* of an *unliquidated* claim (*without making any offer to pay any sum to satisfy the claim*); and
- (4) Admits liability for an *unliquidated* claim but *offers to pay* a sum to satisfy the claim.³

The admission is made by the defendant filing and serving the appropriate *admission form* (*Forms 16 or 16C* in the amended Appendix A to the RHC and RDC) (which is to be served on the defendant together with the originating process, *e.g.* writ).

¹ New Rules of the High Court and Rules of the District Court O.13A r.14(2).

² New Rules of the High Court and Rules of the District Court O.13A r.14(3).

³ New Rules of the High Court and Rules of the District Court O.13A r.2(1).

10.7

Timing for the defendant to make an admission:⁴

- (1) This depends on the kind of originating process that was served on the defendant:
 - (a) If a writ was served, an admission has to be made within the period for serving the defence;
 - (b) If an originating summons was served, within the period for filing affidavit evidence;
 - (c) In any other case, within 14 days after the service of the originating process;
- (2) If the defendant is late in making an admission in a *writ* action, it can still file an admission provided the plaintiff has not obtained any default judgment under O.13 or O.19.

10.8

On the defendant making one of the above kinds of admissions:

- (1) The plaintiff has a right to enter judgment in accordance with RHC and RDC O.13A, *except* where:⁵
 - (a) The defendant is a person under disability; or
 - (b) The admission is in the form set out in para.10.6(2) or (4) above and the plaintiff is a person under disability;
- (2) Outside the above exceptional situations, the plaintiff can request the Court to enter judgment by filing the appropriate *request for judgment form* (Forms 16A, 16B, 16D or 16E);
- (3) Depending on what the defendant states in the admission form and what the plaintiff states in the request for judgment form, the Court will take different steps, as explained further below.

10.9

The Court may allow a party to amend or withdraw an admission if it considers it is just to do so:⁶

- (1) As to the likely approach of the Court on an application to amend or withdraw from an admission, see paras.179 to 183 of the Final Report.

(C) Admission of Whole of Liquidated Claim⁷

10.10

The defendant must make its admission on Form 16, to be filed in the Court and served on the plaintiff:⁸

- (1) Form 16 allows the defendant to request time to pay.

⁴ New Rules of the High Court and Rules of the District Court O.13A r.3.

⁵ New Rules of the High Court and Rules of the District Court O.13A r.2(2).

⁶ New Rules of the High Court and Rules of the District Court O.13A r.2(3).

⁷ New Rules of the High Court and Rules of the District Court O.13A r.4.

⁸ New Rules of the High Court and Rules of the District Court O.13A r.4(2).

10.11

The plaintiff may then request judgment by filing Form 16A in the Court:

- (1) If the plaintiff does *not* file a Form 16A within 14 days of the service of the defendant's admission form, the action is stayed until the plaintiff does file the Form 16A;⁹
- (2) Where the defendant has *not* requested time to pay:
 - (a) The plaintiff may in its request for judgment form (*i.e.* the Form 16A) set a deadline for payment of the whole judgment debt, or dates or amounts for instalment payments;
 - (b) After receiving the plaintiff's request for judgment form, the Court will enter judgment for the amount of the claim (less any payments already made by the defendant) and costs, to be paid immediately (or in accordance with the date(s)/amounts set in the request for judgment form);¹⁰
- (3) Where the defendant *has* requested time to pay:
 - (a) If the plaintiff *accepts* the payment proposal, it may get judgment by filing in Court Form 16A (ticking the relevant box to confirm such acceptance). The Court will enter judgment for the amount of the claim (less any payments already made) and costs to be paid in accordance with the defendant's payment proposal;¹¹
 - (b) If the plaintiff does *not* accept the payment proposal, it should still file Form 16A in Court (but will tick the box on the form indicating its refusal). The Court will then enter judgment for the amount admitted by the defendant (less any payments already made), to be paid at such time or rate as the Court thinks fit:
 - (i) The Court may determine the time or rate of payment by the defendant with or without a hearing. However, in making this determination, the Court must consider all relevant matters including the information on the defendant's admission form and the plaintiff's reasons for refusing the defendant's payment proposal;¹²
 - (ii) If the Court makes the determination without a hearing, either party may, within 14 days of being informed by the Court of the result, apply to the Court for a re-determination;¹³
 - (iii) For an illustration of the considerations of the Court in making such a determination, in particular, the detailed way in which the Court considers the parties' circumstances including their financial positions before coming to an arrangement which the Court believes

⁹ New Rules of the High Court and Rules of the District Court O.13A r.4(4).

¹⁰ New Rules of the High Court and Rules of the District Court O.13A r.4(5)-(7).

¹¹ New Rules of the High Court and Rules of the District Court O.13A r.9.

¹² New Rules of the High Court and Rules of the District Court O.13A r.10.

¹³ New Rules of the High Court and Rules of the District Court O.13A r.11.

to be just, see *Lui Sheung Cho v Kin Wai Poly Bag Printing Ltd* (unrep., HCA 1579/2009, [2010] CHKEC 206);

- (c) Where the Court's judgment orders payment in accordance with the time or rate of payment requested by the defendant, unless the Court orders otherwise, execution of the judgment (*i.e.* using further Court procedures to get money from the judgment) is stayed pending the defendant's payment:¹⁴
- (i) If the defendant fails to make payment in accordance with the Court's judgment, the stay of execution is immediately "lifted" (*i.e.* stops), *i.e.* the plaintiff can immediately take further steps to enforce the unpaid amount of the judgment.¹⁵

10.12 Interest:¹⁶

- (1) If the following conditions are met, the Court's judgment will include interest claimed up to the date of the judgment:
- (a) The plaintiff has stated a claim for interest in the writ or statement of claim or originating summons and the grounds for such a claim; and
- (b) Where interest is claimed under s.48 of the HCO (or s.49 of the DCO), the rate of interest claimed is no higher than the judgment rate on the date the writ or originating summons was issued; and
- (c) The plaintiff's request for judgment form includes a calculation of the interest claimed for the period from (i) the date up to which interest is said to be calculated in the statement of claim or originating summons to (ii) the date of the request for judgment form;
- (2) If any of the above conditions are *not* satisfied, the Court will decide the amount of interest to be awarded in the judgment.

(D) Admission of Part of Liquidated Claim in Satisfaction of Whole Claim¹⁷

10.13 The defendant must make its admission on Form 16, to be filed in the Court and served on the plaintiff:¹⁸

- (1) Form 16 allows the defendant to request time to pay.

10.14 The plaintiff must file and serve a response in Form 16B within 14 days of the service of the defendant's admission form:

¹⁴ New Rules of the High Court and Rules of the District Court O.13A r.9(7).

¹⁵ New Rules of the High Court and Rules of the District Court O.13A r.9(8).

¹⁶ New Rules of the High Court and Rules of the District Court O.13A r.12.

¹⁷ New Rules of the High Court and Rules of the District Court O.13A r.5.

¹⁸ New Rules of the High Court and Rules of the District Court O.13A r.5(2).

- (1) The Form 16B must confirm whether the plaintiff accepts or rejects the amount admitted by the defendant in satisfaction of the plaintiff's claim and the defendant's proposals regarding time for payment (if any);¹⁹
- (2) If the plaintiff does *not* comply with r.5(3) above, the action is stayed until the Form 16B is filed;²⁰
- (3) If the plaintiff *accepts* the amount admitted by the defendant in satisfaction of its whole claim, then, depending on whether the defendant has asked for time to pay:
- (a) The procedure is set out in the new RHC and RDC O.13A r.5(6) to 5(8) (where the defendant has *not* requested time to pay) and the new RHC and RDC O.13A rr.9-11 (where the defendant *has* requested time to pay):
- (i) In essence, except that the plaintiff should file Form 16B and the amount of the judgment would be the amount admitted (less any payments already made) and costs, the procedure is the same as the procedure explained in "Admission of *Whole of Liquidated* claim" above—see para.10.11(2) and (3).
- (4) If the plaintiff does not accept the amount admitted by the defendant in satisfaction of its claim, the action continues.

Interest on judgment—this is also governed by the new RHC and RDC O.13A r.12—see para.10.12.

10.15

(E) Admission of Liability for Whole of Unliquidated Claim (Without Offering to Pay Any Sum to Satisfy the Claim)²¹

The defendant must make its admission on Form 16C, to be filed in the Court and served on the plaintiff.²²

10.16

Within 14 days of the service of the defendant's admission form, the plaintiff may request judgment by filing Form 16D in Court. Form 16D simply asks the Court to enter judgment for an amount to be decided by the Court and costs.²³

10.17

- (1) If the plaintiff does *not* file Form 16D in accordance with the above rules, the action is stayed until it is filed.²⁴

After receiving the plaintiff's request for judgment form, the Court:

10.18

- (1) Will enter judgment for an amount decided by the Court and costs;²⁵
- (2) May give any directions it considers appropriate.²⁶

¹⁹ New Rules of the High Court and Rules of the District Court O.13A r.5(3).

²⁰ New Rules of the High Court and Rules of the District Court O.13A r.5(4).

²¹ New Rules of the High Court and Rules of the District Court O.13A r.6.

²² New Rules of the High Court and Rules of the District Court O.13A r.6(2).

²³ New Rules of the High Court and Rules of the District Court O.13A r.6(3), 6(4), 6(6).

²⁴ New Rules of the High Court and Rules of the District Court O.13A r.6(4).

²⁵ New Rules of the High Court and Rules of the District Court O.13A r.6(5), 6(6).

²⁶ New Rules of the High Court and Rules of the District Court O.13A r.8.