

ANTIGUA AND BARBUDA



**EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE (AMENDMENT)
RULES 2011**

STATUTORY INSTRUMENTS

2011, No. 62

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The Chief Justice and two other judges of the Supreme Court, being the authority empowered by section 17 of the Supreme Court Order 1967, [Cap. 422A] to make Rules regulating the practice and procedure of the Court of Appeal and the High Court, have made the following amendments to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 –

1. **Citation:** These Rules may be cited as the **EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE (AMENDMENT) RULES 2011.**

2. **Amended Rules in the Schedule:** The amended Rules in the Schedule hereto are the amendments for the time being to the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 which govern civil procedure in the Eastern Caribbean Supreme Court.

3. **Reference to the Amended Rules:** It shall not be necessary to include the Schedule to the amended Rules in the annual volume of the laws of a Member State or Territory of the Eastern Caribbean Supreme Court, but a reference may be made thereto in such volume and shall be sufficient.

4. **Commencement:** These amended Rules shall come into effect on 1st October 2011.

SCHEDULE

(Rule 2)

Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules 2011.

Made this 29th day of September 2011.

Hugh A. Rawlins
Chief Justice

Ola Mae Edwards
Justice of Appeal

Janice M. Pereira
Justice of Appeal

EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE

(AMENDMENT) RULES 2011

STATUTORY INSTRUMENTS

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**EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE (AMENDMENT)
RULES 2011****STATUTORY INSTRUMENTS****2011, No. 62**

In exercise of the powers conferred pursuant to section 17 of the Supreme Court Order 1967, the Chief Justice and two other Judges of the Supreme Court make these Rules—

1. Short title

These Rules may be cited as the Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules 2011.

2. Commencement

These Rules shall come into effect on the 1st of October 2011.

3. Interpretation

In these Rules “the principal Rules” means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 published by the Caribbean Law Publishing Company Ltd.

4. Amendment of Rule 2.2

Rule 2.2 of the principal Rules is amended by repealing paragraph (3) and substituting the following Rule—

“(3) These Rules do not apply to proceedings of the following kinds—

- (a) family proceedings;
- (b) insolvency (including winding up of companies);
- (c) non-contentious probate proceedings;
- (a) proceedings when the High Court is acting as a prize court; or
- (e) any other proceedings in the Supreme Court instituted under any enactment, in so far as Rules made under that enactment regulate those proceedings,

except that Part 62 shall apply to paragraphs (a) and (b).”.

5. Repeal and substitution of Rule 2.7

Rule 2.7 of the principal Rules is repealed and substituted by the following Rule—

“Court’s discretion as to where, when and how it deals with cases

2.7 (1) Claims, motions and petitions shall be heard in open court and applications shall be heard in chambers except that—

(a) any hearing except the trial of an action may be conducted in chambers if the court so directs; and the court shall in each case decide whether the application is a proper one to be made in open court or by application in chambers, and may at or before the hearing, if it shall think fit, remove the same into open court or into chambers, as the case may be; and

(b) any proceedings may be heard in private, with the consent of the parties.

(2) An order made in chambers shall have the same force and effect as an order made in open court, and the court sitting in chambers shall have the same power to enforce, vary, or deal with any such order, as if sitting in open court.

(3) The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video-conference or any other form of electronic communication.

(4) The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

•“Action” has the meaning given to it by the Supreme Court Act.”.

6. Repeal and substitution of Rule 3.5

Rule 3.5 of the principal Rules is repealed and substituted by the following Rule—

“Time - vacations

3.5 (1) During the long vacation, the time prescribed by these Rules or by any practice direction for filing or serving any statement of case (other than a statement of claim) does not run unless the court orders or directs that time shall run.

(2) In this Rule “long vacation” has the meaning given by Rule 3.3.”.

7. Repeal and substitution of Rule 7.3

Rule 7.3 of the principal Rules is repealed and substituted by the following Rule—

“Service of claim form out of jurisdiction in specified proceedings

7.3 (1) The court may permit a claim form to be served out of the jurisdiction if the proceedings are listed in this Rule.

Features which may arise in any type of claim

(2) A claim form may be served out of the jurisdiction if a claim is made—

(a) against someone on whom the claim form has been or will be served, and—

(i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and

(ii) the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary or proper party to that claim;

(b) for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction; or

(c) for a remedy against a person domiciled or ordinarily resident within the jurisdiction.

Claims about contracts

(3) A claim form may be served out of the jurisdiction if—

(a) a claim is made in respect of a breach of contract committed within the jurisdiction;

(b) a claim is made in respect of a contract where the contract—

(i) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract; or

(ii) is by its terms or by implication governed by the law of any Member State or Territory;

(iii) was made by or through an agent trading or residing within the jurisdiction; or

(iv) was made within the jurisdiction; or

- (c) the claim is for a declaration that no contract exists, where, if the contract did exist, it would fulfill one or more of the conditions in sub-paragraph (b) of this Rule.

Claims in tort

(4) A claim form may be served out of the jurisdiction if a claim in tort is made and the act causing the damage was committed within the jurisdiction or the damage was sustained within the jurisdiction.

Enforcement

(5) A claim form may be served out of the jurisdiction if a claim is made to enforce any judgment or arbitral award which was made—

- (a) within the jurisdiction; or
- (b) by a foreign court or tribunal and registered in the High Court pursuant to Part 72.

Claims about property within the jurisdiction

(6) A claim form may be served out of the jurisdiction if the whole subject matter of the claim relates to property within the jurisdiction.

Claims about companies

(7) A claim form may be served out of the jurisdiction if the subject matter of the claim relates to—

- (a) the constitution, administration, management or conduct of the affairs; or
- (b) the ownership or control of a company incorporated within the jurisdiction.

Claims about trusts

(8) A claim form may be served out of the jurisdiction if—

- (a) a claim is made for a remedy against the defendant as constructive trustee and the defendant's alleged liability arises out of acts committed within the jurisdiction;
- (b) a claim is made for—
 - (i) any remedy which might be obtained in proceedings for the administration of the estate of; or
 - (ii) in probate proceedings as defined in Part 68 relating to;

a person who died domiciled within the jurisdiction; or

- (c) a claim is made for any remedy which might be obtained in proceedings to execute the trusts of a written instrument and the—
- (i) trusts ought to be executed according to the law of any Member State or Territory; and
 - (ii) person on whom the claim form is to be served is a trustee of the trusts.

Claims for restitution

(9) A claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction or out of acts which, wherever committed, were to the detriment of a person domiciled within the jurisdiction.

Claims under an enactment conferring jurisdiction on the Court

(10) A claim is made under an enactment which confers jurisdiction on the court and the proceedings are not covered by any of the other grounds referred to in this Rule.”.

8. Amendment of Rule 7.8

The principal Rules are amended in Rule 7.8 (1) by inserting between the words “rule,” and “if” the following words “and Rule 7.8A.”.

9. Insertion of rules 7.8A and 7.8B

Part 7 of the principal Rules is amended by inserting after Rule 7.8 the following rules—

“Mode of service - alternative procedure

7.8A (1) Where service under Rule 7.8 is impracticable, the claimant may apply for an order under this Rule that the claim form be served by a method specified by the court.

(2) An order made under this Rule shall specify the date on which service of the claim form shall be deemed to have been effected.

(3) Where an order is made under this Rule, service by the method specified in the court's order shall be deemed to be good service.

(4) An application for an order under this Rule may be made without notice but must be supported by evidence on affidavit—

- (a) specifying the method of service proposed;
- (b) providing full details as to why service under Rule 7.8 is impracticable;

(c) showing that such method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim; and

(a) certifying that the method of service proposed is not contrary to the law of the country in which the claim form is to be served.

(5) Where any method of service specified in an order made under this Rule is subsequently shown to be contrary to the law of the country in which the claim was purportedly served, such service shall be invalid.

Power of court to dispense with service of the claim form

7.8 B (1) The court may dispense with service of a claim form in exceptional circumstances.

(2) An application for an order to dispense with service may be made at any time and—

(a) must be supported by evidence on affidavit; and

(b) may be made without notice.”.

10. Amendment of Rule 8.7

Rule 8.7 of the principal Rules is amended by repealing paragraph (3) and substituting the following paragraph—

“(3) The claim form or the statement of claim must identify any document which the claimant considers to be necessary to his or her case.”.

11. Insertion of Rule 8.7A

Part 8 of the principal Rules is amended by inserting after Rule 8.7 the following Rule—

“Permission to rely on allegation or factual argument

8.7 A The claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the court gives permission or the parties agree.

•Rule 20.1 contains provisions about amendments to statements of case.”

12. Amendment of Rule 9.7

Rule 9.7 of the principal Rules is repealed and substituted by the following rules—

“Procedure for disputing court’s jurisdiction

9.7 (1) A defendant who disputes the court’s jurisdiction to try the claim may apply to the court for a declaration to that effect.

(2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service.

(3) An application under paragraph (1) of this Rule must be made within the period for filing a defence; the period for making an application under this Rule includes any period by which the time for filing a defence has been extended where the court has made an order, or the parties have agreed, to extend the time for filing a defence.

•Rule 10.3 sets out the period for filing a defence.

(4) An application under this Rule must be supported by evidence on affidavit.

(5) A defendant who—

(a) files an acknowledgment of service; and

(b) does not make an application under this Rule within the period for filing a defence, is treated as having accepted that the court has jurisdiction to try the claim.

(6) An order under this Rule may also—

(a) discharge an order made before the claim was commenced or the claim form served;

(b) set aside service of the claim form; and

(c) strike out a statement of claim.

(7) If on application under this Rule the court does not make a declaration, it—

(a) may—

(i) fix a date for a case management conference; or

(ii) treat the hearing of the application as a case management conference; and

(b) must make an order as to the period for filing a defence.

•Part 26 sets out powers which the court may exercise at a case management conference.

(8) Where a defendant makes an application under this Rule, the period for filing a defence is extended until the time specified by the court under paragraph (7)(b) and such period may be extended only by an order of the court.

•Rule 10.3(4) deals with an application to stay proceedings where there is a binding agreement to arbitrate.

Procedure for applying for a stay etc. where defendant served out of jurisdiction

9.7A (1) A defendant who contends that the court should not exercise its jurisdiction in respect of any proceedings may apply to the court for a stay and a declaration to that effect.

(2) A defendant who wishes to make an application under this paragraph 1 must first file an acknowledgment of service if he has not previously done so.

(3) An application under paragraph (1) of this Rule may be made at any time.

(4) An application under this Rule must be supported by evidence on affidavit.

(5) If on application under this Rule the court does not make a declaration, it—

(a) may—

(i) fix a date for a case management conference; or

(ii) treat the hearing of the application as a case management conference; and

(b) must make an order as to the period for filing a defence if none has yet been filed.

- Part 26 sets out powers which the court may exercise at a case management conference.

(6) Where a defendant makes an application under this Rule, the period for filing a defence (where none has yet been filed) is extended until the time specified by the court under paragraph (5)(b) and such period may be extended only by an order of the court.

- Rule 10.3(4) deals with an application to stay proceedings where there is a binding agreement to arbitrate.”.

13. Repeal and substitution of Rule 10.7

Rule 10.7 of the principal Rules is repealed and substituted by the following Rule—

“Consequences of not setting out defence

10.7 The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.

- Rule 20.1 contains provisions about amendments to statements of case.”.

14. Repeal and substitution of Rule 10.9

Rule 10.9 of the principal Rules is repealed and substituted by the following Rule—

“Reply to defence

10.9 (1) A claimant may file and serve a reply to a defence—

(a) 14 days after the date of service of the defence; or

(*t*) at any time with the permission of the court.

(2) Where the defence contains a counterclaim, Part 18 shall apply.

- Part 18 deals with a defence to an ancillary claim including counterclaims.”.

15. Repeal and substitution of Rule 13.3

The principal Rules are amended by repealing Rule 13.3 and substituting the following Rule—

“Cases where court may set aside or vary default judgment

13.3 (1) If Rule 13.2 does not apply, the court may set aside a judgment entered under Part 12 only if the defendant—

- (*a*) applies to the court as soon as reasonably practicable after finding out that judgment had been entered;
- (*b*) gives a good explanation for the failure to file an acknowledgment of service or a defence as the case may be; and
- (*c*) has a real prospect of successfully defending the claim.

(2) In any event the court may set aside a judgment entered under Part 12 if the defendant satisfies the court that there are exceptional circumstances.

(3) Where this Rule gives the court power to set aside a judgment, the court may instead vary it.

- Rule 26.1(3) enables the court to attach conditions to any order.”.

16. Amendment of Rule 14.2

Rule 14.2 of the principal Rules is amended by deleting paragraphs (3), (4), (5), and (6) and substituting the following paragraphs—

“Satisfaction

(3) If the claimant does not file and serve a notice of discontinuance in accordance with paragraph (1) within 7 days of payment, the defendant may file and serve a notice in the form specified in Form 28 to request that the claim be recorded as satisfied.

(4) If there is no dispute the court office must record that the claim has been satisfied.

(5) If the claimant disputes satisfaction, the court office must fix a hearing to consider the application and give not less than 7 days notice of the hearing to the claimant and defendant.”.

17. Amendment of Rule 14.7

Rule 14.7 of the principal Rules is repealed and substituted by the following Rule—

“Admission of part of claim for money only

14.7 (1) This Rule applies where -

- (a) the only remedy which the claimant is seeking is the payment of money;
- (b) the defendant admits a specified—
 - (i) sum of money; or
 - (ii) proportion of a claim for an unspecified sum of money;

in the acknowledgement of service or defence; and;

- (c) the defendant has filed a defence as to the amount not admitted.

•If the defendant does not file a defence the claimant will be entitled to default judgment in accordance with Rule 12.5.

(2) The claimant must serve a notice on the defendant stating that—

- (a) the amount or proportion admitted in satisfaction of the claim is accepted; or
- (b) the claimant intends to continue the claim

(3) The claimant must—

- (a) file the notice under paragraph (2); and
- (b) serve a copy on the defendant;

within 14 days after service of the defendant’s acknowledgment of service or defence, as the case may be.

(4) If the claimant does not file the notice within 14 days after service of the defendant’s acknowledgment of service or defence—

- (a) the claim is stayed until the notice is filed; and
- (b) any party may apply for the stay to be lifted.

(5) If the defendant has not requested time to pay under Rule 14.9, the claimant may file a request for judgment in Form 8 for the amount admitted, interest and fixed costs and may specify—

- (a) the date on which the judgment debt is to be paid; or

(*l*) the time and rate at which it is to be paid by installments.

(6) The court office must enter judgment in accordance with the request.

(7) If the claimant gives notice that he accepts the defendant's admission of a specified proportion of a claim for an unspecified sum of money, the court must enter judgment for that proportion of an amount to be decided by the court and costs.

(8) If the claimant files notice under paragraph (2)(*l*) the court office must fix a date, time and place for a case management conference.

•Part 27 sets out the procedure relating to a case management conference. Rule 65.4 deals with fixed costs.”

18. Amendment of Rule 17.3

Rule 17.3 of the principal Rules is amended by inserting after paragraph (1) the following paragraph—

“(1A) Where, in support of any application under this Rule, it is not practicable to produce evidence on affidavit then the application may be supported by evidence given by witness statement and, in such event, the court may at any time give such directions as it thinks fit in relation to the filing, in due course, of evidence by affidavit.”

19. Repeal and substitution of Rule 20.1

Rule 20.1 of the principal Rules is repealed and substituted by the following Rule—

“Changes to statement of case

(1) A statement of case may be amended once, without the court's permission, at any time prior to the date fixed by the court for the first case management conference.

(2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.

(3) A statement of case may not be amended without permission under this Rule if the change is one to which any of the following applies—

(*a*) Rule 19.4 (special provisions about adding or substituting parties after the end of a relevant limitation period); or

(*l*) Rule 20.2 (changes to statement of case after the end of relevant period).

(4) An amended statement of case must include a certificate of truth under Rule 3.12.

(5) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering an application under this Rule.

•Rule 27.3 (1) deals with the fixing of case management conference).”

20. Insertion of Rule 20.3

Part 20 of the principal Rules is amended by inserting after Rule 20.2 the following Rule—

“Filing an amended statement of case

20.3A party who amends his statement of case must file in the court office the original amended statement of case and one copy of the amended statement of case and, after filing, serve a copy of it on every other party.”

21. Amendment of Rule 26.7

Rule 26.7 of the principal Rules is amended by inserting after paragraph (3) the following paragraphs—

“Procedural default costs

(4) In circumstances where -

(a) a pre-trial memorandum or a bundle is not filed in accordance with Rule 39.1(5);

(b) a core bundle is not filed in accordance with Rule 62.12(4); or

(c) a legal practitioner fails to comply with a provision of these Rules, a court order, a practice direction or a practice guide,

and, as a result of that default, a party has incurred costs or a hearing has to be vacated, then the court may on its own initiative order the practitioner responsible to pay to any party and or to the court an amount of money which does not exceed the sum or sums specified by the relevant practice direction.

(5) Any sum paid under an order made under Rule 26.7(4) may be payable in addition to any sum which the court may order a practitioner to pay by way of wasted costs under Rule 64.8 or pay under Rule 64.10.”

22. Repeal and substitution of Rule 44.3

Rule 44.3 of the principal Rules is repealed and substituted by the following Rule—

“Procedure to obtain order for oral examination etc.

44.3 (1) Where permission is not required to enforce the judgment, a request for an order that a person attend an oral examination may be made by filing a request as specified in Form 29 or 30 of the Appendix, as the case requires, which contains the information required by the relevant practice direction.

(2) Where permission is required to enforce the judgment, an application for an order that a person attend an oral examination must be made and a copy of the permission must be attached to the application. An application under this paragraph may be made without notice.

(3) Where a request or an application for the order is against an officer of a body corporate, the request or the application must be supported by evidence on affidavit showing that the person to be orally examined is such an officer.”

23. Repeal and substitution of Table of Contents for Part 62

The Table of Contents for Part 62 of the principal Rules is deleted and substituted by the following table of contents --

“Part 62

Appeals to the Court of Appeal

Contents of this Part

Scope of this Part	Rule 62.1
How to obtain leave to appeal	Rule 62.2
How to appeal	Rule 62.3
Contents of notice of appeal	Rule 62.4
Time for filing notice of appeal	Rule 62.5
Summary appeal	Rule 62.6
Service of notice of appeal	Rule 62.7
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Action by court on receiving notice of appeal	Rule 62.9
Interlocutory appeal	Rule 62.10
Skeleton arguments	Rule 62.11
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The record - appeals from magistrates courts	Rule 62.13
Case management	Rule 62.14
Procedural applications to court	Rule 62.15
Powers of single judge of the court, master and Chief Registrar to make certain orders	Rule 62.16
Security for costs of appeal	Rule 62.17
Non-disclosure of payment into court, etc.	Rule 62.18
Stay of execution	Rule 62.19
General powers of the court	Rule 62.20
Failure of party to attend appeal	Rule 62.21
Application to set aside decision made in party’s absence	Rule 62.22
Adjournment of appeal	Rule 62.23
Certificate of result of appeal	Rule 62.24
Withdrawal or Discontinuance	Rule 62.25
Liability for costs on withdrawal or discontinuance	Rule 62.26
Quantification of costs on withdrawal or discontinuance	Rule 62.27
Judicial review appeals	Rule 62.28”.

24. Repeal and substitution of Rule 62.1

Rule 62.1 of the principal Rules is repealed and substituted by the following Rule—

“Scope of this Part

62.1 (1) This Part deals with appeals to the Court of Appeal from—

- (a) the High Court;
 - (b) a magistrate’s or district court; or
 - (c) a tribunal, not being -
 - (i) appeals or applications to the court for which other provision is made by these Rules or any other law; or
 - (ii) appeals by way of case stated on a question of law for determination by the court.
- Part 60 deals with appeals to the High Court and cases stated are dealt with in Part 61.
- (2) In this Part—

“appellant” means the party who first files a notice of appeal;

“core bundle” means a bundle containing only such documents listed in Rule 62.12 which the court will need to pre-read or to which it will be necessary to refer repeatedly at the appeal;

“court” means the Court of Appeal;

“court below” means the court or tribunal from which the appeal is brought;

“interlocutory appeal” means an appeal from an interlocutory judgment or an interlocutory order.

“respondent” means any party to the appeal other than the appellant whether or not the respondent files a counter-notice.

(3) In this Part—

- (a) a determination whether an order or judgment is final or interlocutory is made on the “application test”;
- (b) an order or judgment is final if it would be determinative of the issues that arise on a claim, whichever way the application could have been decided; and

- (c) an order on an application for disclosure against a person who is not a party is a final order.”.

25. Repeal and substitution of Rule 62.2

Rule 62.2 of the principal Rules is repealed and substituted by the following—

“How to obtain leave to appeal

62.2 (1) Where an appeal may be made only with the leave of the court below or the court, a party wishing to appeal must apply for leave within 14 days of the order against which leave to appeal is sought.

(1A) Where an application for leave has been refused by the court below, an application for leave may be made to the court within 7 days of such refusal.

(2) The application for leave to appeal must be made in writing and set out concisely the grounds of the proposed appeal.

(3) An application for leave to appeal made to the court may be considered by a single judge of the court.

(4) The judge considering an application under Rule 62.2(3) may give leave without hearing the applicant.

(5) However if the judge considering an application under Rule 62.2(3) is minded to refuse leave he or she must direct—

(a) that a hearing be fixed; and

(b) whether that hearing is to be by a single judge or the court.

- Rule 2.7 deals with how, when and where the court may deal with cases.”

26. Amendment of Rule 62.4

Rule 62.4 of the principal Rules is amended by repealing paragraph (7) and substituting the following paragraph—

“(7) The appellant may, except on an interlocutory appeal, amend the grounds of appeal once without permission at any time within 28 days from receiving notice under Rule 62.9(1) (a), (b) or (c) that a transcript of the evidence and the judgment have been prepared.”.

27. Repeal and substitution of Rule 62.5

Rule 62.5 of the principal Rules is repealed and substituted by the following Rule—

“Time for filing notice of appeal

62.5 (1) The notice of appeal must be filed at the appropriate court office—

- (a) in the case of an interlocutory appeal where leave is not required, within 21 days of the date the decision appealed against was made;
- (b) in an interlocutory appeal where leave is required, within 21 days of the date when such leave was granted; or
- (c) in the case of any other appeal, within 42 days of the date when judgment is delivered or the order is made, whichever is the earlier.

(2) The court below making the interlocutory decision in respect of which a party intends to appeal may extend any of the time limits in this Rule on application made orally at the time the decision is made.

(3) The court may extend any of the time limits in this Rule on an application made under Part 11 and any such application may be determined without a hearing.”.

28. Repeal and substitution of Rule 62.7

Rule 62.7 of the principal Rules is repealed and substituted by the following Rule—

“Service of notice of appeal

62.7 (1) The notice of appeal must be served on—

- (a) all parties to the proceedings; and
- (b) any other person if the court directs, or if required by law.

(2) The notice of appeal or amended notice of appeal must be served within 14 days, or within such period as prescribed by law, or order, after the notice has been filed.”.

29. Amendment of Rule 62.8

Rule 62.8 of the principal Rules is amended by deleting paragraph (4) and substituting the following paragraph—

“(4) The party filing a counter-notice must serve a copy on all other parties to the proceedings within 7 days of filing.”.

30. Repeal and substitution of Rule 62.9

Rule 62.9 of the principal Rules is deleted and substituted by the following Rule—

“Action to be taken on receipt of notice of appeal

62.9 (1) Upon the notice of appeal being filed (unless Rule 62.6 applies) the court below must forthwith, if the appeal is—

(a) from the High Court—

(i) arrange for the transcript of the proceedings; and

(ii) when these are prepared give notice to all parties that copies of the transcript are available on payment of the prescribed fee;

(b) from the magistrate’s or district court, comply with any provision for appeal in the Codes of Procedure, Criminal Code or any other enactment regulating appeals from the magistrate’s or district court; or

(c) from a tribunal- apply to the clerk or other officer of the court or tribunal for a—

(i) certified copy of the record of the proceedings;

(ii) certified copy of the notes of evidence given; and

(iii) statement of the judgment, the reasons for the decision and any finding on any question of law under appeal;

and forthwith upon receipt of these documents give notice to all parties that copies of the record and other documents are available on payment of the prescribed fee.

(2) Where in any case, the transcript of the notes of evidence and of the judgment, or of the proceedings or the notes of evidence is unavailable, the court below shall inform all parties of this in writing.

(3) The parties may by agreement in writing dispense with the need for the transcript to be included in the record in whole or in part.”.

31. Repeal and substitution of Rule 62.10

Rule 62.10 of the principal Rules is repealed and substituted by the following Rule—

“Interlocutory appeal

62.10 (1) On an interlocutory appeal the appellant shall be required to file and serve with the notice of appeal, written submissions in support of the appeal together with six bundles of

documents comprising a copy of each of the following documents in the order set out below bound, indexed and paginated—

- (a) the judgment (if any) or order appealed;
- (b) such affidavits, witness statements or exhibits relevant to the question at issue on the appeal which were put in evidence before the court below;
- (c) any written admissions or requests for information and replies;
- (a) the judge’s notes of any submission made (if any); and
- (e) any other relevant documents applicable to the appeal.

(2) The appellant’s notice of appeal must state in the heading that the appeal is an interlocutory appeal and is made under Rule 62.10 of the Civil Procedure Rules.

(3) A respondent who intends to oppose the notice of appeal must within 7 days of receipt of the appeal file and serve a notice of opposition.

(4) The respondent may within 14 days of receipt of the notice of appeal file and serve six copies of any written submissions in opposition to the appeal or in support of any cross appeal, together with any other documents, which have not been filed pursuant to paragraph (1) and the documents must be bound, indexed and paginated.

(5) The general Rule is that an interlocutory appeal is to be considered on paper by a single judge of the court.

(6) Consideration of the appeal must take place not less than 14 days after filing of the notice of appeal unless the court otherwise directs.

(7) The judge may, however, direct that the parties be entitled to make oral submissions and may direct that the appeal be heard by the court.

(8) The judge may exercise any power of the court whether or not any party has filed or served a counter-notice.”

32. Amendment of Rule 62.11

Rule 62.11 of the principal Rules is amended by—

- (a) repealing paragraph (1) and substituting the following paragraph-

“(1) Within 42 days of receipt of the notice under Rule 62.9(1) (a), (b) or (c) the appellant must file with the court office and serve on all other parties a skeleton argument.”

- (b) repealing paragraph (4) and substituting the following paragraph-

“(4) A skeleton argument must—

- (a) set out concisely the nature of the appellant's arguments on each ground of appeal;
- (b) in the case of a point of law, state the point and cite the principal authorities in support with references to the particular page where the principle concerned is set out; and
- (c) in the case of questions of fact, state briefly the basis on which it is contended that the court can interfere with the finding of fact concerned, with cross references to the passages in the transcript or notes of evidence which bear on the point.”.

(c) inserting after paragraph (5) the following paragraph—

“(6) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering the application of this Rule.”.

33. Amendment of Rule 62.12

Rule 62.12 of the principal Rules is amended by repealing paragraphs (1) and (2) and substituting the following paragraphs—

“(1) This Rule applies to all appeals from the High Court other than—

- (a) interlocutory appeals; or
- (b) summary appeals under Rule 62.6.

(2) Within 21 days of receipt of the notice under Rule 62.9(1) (a), (b) or (c) that the transcript is available, all parties must inform the appellant of the documents that they wish to have included in the record or the core bundle.”.

34. Amendment of Rule 62.13

Rule 62.13 of the principal Rules is amended by deleting paragraphs (2) and (3) and substituting the following paragraphs—

“(2) In the case of an appeal from a magistrate's or district court the record must consist of the documents referred to in Rule 62.9(1) (b) together with the notice of appeal and any counter-notices that have been served on the appellant.

(3) Within 28 days of receipt of the notice under Rule 62.9(1) (b) the appellant must file at the court office six copies of the record for the use of the court.”.

35. Amendment of Rule 62.14

Rule 62.14 of the principal Rules is amended by inserting after paragraph (6) the following paragraph—

“(7) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering the application of this Rule.”

36. Amendment of Rule 62.16

Rule 62.16 of the principal Rules is amended by—

(a) deleting the heading and substituting the following-

“Powers of single judge of the court, master and Chief Registrar to make certain orders”; and

(b) deleting paragraph (4).

37. Insertion of Rule 62.16A

The principal Rules are amended in Part 62 by inserting after Rule 62.16 the following Rule—

“62.16 (A) Any order, direction or decision made or given by a single judge may be varied discharged or revoked by two judges where the order, direction or decision relates to an appeal of a class which may be heard and determined by two judges and by the full court in any other case.

• See The Windward Islands and Leeward Islands (Court’s) Order in Council, 1959, section 10(3) and CPR 2.5 (4) and which provides for actions that may be heard and determined by two judges of the court and actions that may be heard and determined by the full court.”.

38. Amendment of Part 62

Part 62 of the principal Rules is amended by inserting after Rule 62.24 the following rules—

“Withdrawal or discontinuance

62.25(1) If the appellant files a notice that he desires to withdraw or discontinue his appeal, the appeal shall stand dismissed on the date on which such notice is filed.

(2) The appellant shall serve copies of the notice of withdrawal or discontinuance on all the parties with regard to whom the appellant wishes to withdraw his appeal within 2 days of filing, and shall file such notice and evidence of service within 2 days of service.

(3) Any party served in accordance with this Rule shall be precluded from laying claim to any costs incurred by him after such service unless the court shall otherwise order.

(4) Notwithstanding the appeal stands dismissed, the appellant shall be liable for the costs incurred by the respondent.

Liability for costs on withdrawal or discontinuance

62.26 (1) Unless the—

(a) parties agree; or

(*t*) court orders otherwise;

an appellant who discontinues is liable for the costs incurred by the respondent against whom the claim is discontinued, on or before the date on which notice of discontinuance was served.

(2) If an appeal is only partly discontinued—

(*a*) the appellant is only liable for the costs relating to that part of the appeal which is discontinued; and

(*t*) unless the court orders otherwise, the costs which the appellant is liable to pay are not to be quantified until the conclusion of the rest of the appeal.

Quantification of costs on withdrawal or discontinuance

62.27 (1) The general rule is that, unless an order has been made for budgeted costs under Rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(2) If the appellant discontinues part of the appeal only, the amount of costs must be assessed by the court when the remainder of the appeal is resolved.

(3) In determining the appropriate amount of costs to be paid where an order has been made under Rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

Judicial review appeals

62.28 (1) Where leave to apply for judicial review has been refused at a hearing in the court below, the person seeking that leave, may apply to the court for leave to appeal.

(2) An application in accordance with paragraph (1) must be made within 7 days of the decision of the court below to refuse to give leave to apply for judicial review.

(3) On an application under paragraph (1), the court may instead of giving leave to appeal, give leave to apply for judicial review.

(4) Where the court gives leave to apply for judicial review in accordance with paragraph (3) the claim will proceed in the court below, unless the court orders otherwise.”

39. Repeal and substitution of Rule 64.9

Rule 64.9 of the principal Rules is repealed and substituted by the following Rule -

“Court’s powers in relation to wasted costs orders

64.9 (1) The court may make an order under this Rule where—

- (a) a party or his legal representative, fails to comply with a Rule, practice direction or court order; or
 - (b) it appears to the court that the conduct of a party or his legal representative, before or during the proceedings, was unreasonable or improper.
- (2) Where paragraph (1) applies, the court may—
- (a) disallow all or part of the costs which are being assessed; or
 - (b) order the party at fault or his legal representative to pay costs to the court or which he has caused any other party to incur; or both.
- (3) Where—
- (a) the court makes an order under paragraph (2) against a legally represented party; and
 - (b) the party is not present when the order is made, the party’s legal practitioner must notify his client in writing of the order no later than 7 days after the legal practitioner receives notice of the order.”.

40. Amendment of Rule 65.5

Rule 65.5 of the principal Rules is amended by repealing paragraph (2) and substituting the following paragraph—

“(2) The “value” of the claim, whether or not the claim is one for a specified or unspecified sum, coupled with a claim for other remedies is to be decided in the case of the claimant or defendant—

- (a) by the amount agreed or ordered to be paid; or if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to, such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or
- (b) if the claim is not for a monetary sum it is to be treated as a claim for \$50,000 unless the court makes an order under Rule 65.6(1)(a).”.

41. Amendment of Rule 65.6

Rule 65.6 of the principal Rules is amended by—

- (a) repealing paragraph (1) and substituting the following paragraph—

“(1) A party may apply to the court at any time before trial—

- (a) to determine the value to be placed on a case which has no monetary value; or

(*b*) where the likely value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.”; and

(*b*) deleting paragraph (2).

42. Repeal and substitution of Rule 65.13

Rule 65.13 of the principal Rules is repealed and substituted by the following Rule—

“Costs of Proceedings in Court of Appeal

65.13 (1) The general rule is that the costs of any appeal must be determined in accordance with rules 65.5, 65.6 and 65.7 and Appendix B but the costs must be limited to two thirds of the amount that would otherwise be allowed.

(2) The Court of Appeal may, if the circumstances of the appeal or the justice of the case require, depart from the general rule and, in such a case, it may—

(*a*) make an order for budgeted costs whether on an application made in accordance with rules 65.8 and 65.9 or otherwise; or

(*b*) make such other order as it sees fit.”.

43. Amendment of Part 65

Part 65 of the principal Rules is amended—

(*a*) by inserting after Rule 65.13 the following rules-

“Costs capping orders – General

65.14 (1) A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.

(2) In this Rule, ‘future costs’ means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.

(3) A costs capping order may be in respect of—

(*a*) the whole litigation; or

(*b*) any issues which are ordered to be tried separately.

(4) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if—

- (a) it is in the interests of justice to do so;
- (b) there is a substantial risk that without such an order costs will be disproportionately incurred; and
- (c) it is not satisfied that the risk in sub-paragraph (b) can be adequately controlled by—
 - (i) case management directions or orders made under Part 26; and\
 - (ii) detailed assessment of costs.

(5) In considering whether to exercise its discretion under this Rule, the court will consider all the circumstances of the case, including—

- (a) whether there is a substantial imbalance between the financial position of the parties;
- (b) whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
- (c) the stage which the proceedings have reached; and
- (a) the costs which have been incurred to date and the future costs.

(6) A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless—

- (a) there has been a material and substantial change of circumstances since the date when the order was made; or
- (b) there is some other compelling reason why a variation should be made.

Application for a costs capping order

65.15(1) An application for a costs capping order must be made on notice in accordance with Part 11.

(2) The application must—

- (a) set out—
 - (i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
 - (ii) why a costs capping order should be made; and

- (*b*) be accompanied by an estimate of costs setting out –
- (i) the costs (and disbursements) incurred by the applicant to date; and
 - (ii) the costs (and disbursements) which the applicant is likely to incur in the future conduct of the proceedings.
- (3) The court may give directions for the determination of the application and such directions may—
- (*a*) direct any party to the proceedings –
 - (i) to file a schedule of costs;
 - (ii) to file written submissions on all or any part of the issues arising;
 - (*b*) fix the date and time estimate of the hearing of the application;
 - (*c*) include any further directions as the court sees fit.”.

Application to vary a costs capping order

65.16 An application to vary a costs capping order must be made by application notice pursuant to Part 11.”.

- (*b*) by deleting paragraph (3) in Table 2 of Appendix A and substituting the following—

Column 1	Column 2	Column 3
“(3)	Where an order is made under Rule 5.14 (specified method of service) for each defendant served	(\$500)”;

- (*c*) by deleting Appendix B and substituting the following—

**“APPENDIX B
Scale of prescribed costs**

Column 1

Column 2

Column 3

	Value of Claim	Percentage
(1)	Not exceeding \$100,000	15%
(2)	Exceeding 100,000 but not exceeding \$250,000	12.5%
(3)	Exceeding 250,000 but not exceeding 500,000	10%
(4)	Exceeding 500,000 but not exceeding \$1,000,000	7%
(5)	Exceeding 1,000,000 but not exceeding \$2,500,000	3%
(6)	Exceeding 2,500,000	0.5

Note: The costs for each stage of the scale are cumulative

(Example Claim for \$750,000

First \$100,000 \$ 15,000

Next \$150,000 \$ 18,750

Next \$250,000 \$ 25,000

Last \$250,000 \$ 17,500

Total \$76,250); and

(a) by deleting the example in Appendix C and substituting the following --

“APPENDIX C

(Example

Claim for \$ 750,000 — full costs as in Appendix 3 — \$76,250

Claim discontinued after case management conference —

defendant entitled to 70% of total costs — \$53,375);”

44. Amendment of Appendix to insert Forms

The Appendix to the principal Rules is amended by inserting after Form 27 the following forms—

“FORM 28

(Rule 14.2 (3) (4))

Request for Claim to be recorded as satisfied

(Heading as in Form 1)

Request for Claim to be recorded as satisfied

I/We _____ the defendant/defendant’s legal practitioner hereby request that
the claim in this matter be recorded as satisfied.

Dated:

Signed:

Legal practitioner for the Defendant

To: (Claimant/Legal practitioner for the Claimant)

The Claimant is required to notify the court within 14 days of whether he/she disputes that the claim has been satisfied. Failure to do so within the time stipulated, the court will record that the claim has been satisfied.

The court office is at [xxx xxx xxx] telephone number xxx xxxx, fax number xxx xxxx. The office is open between [.a m] and [.p m] . to . except public holidays

FORM 29

(Rule 44.2 (3))

Request for Order for Oral Examination of an individual

(Heading as in Form 1)

Request for Order for Oral Examination of an individual

The [claimant] [defendant] (the 'judgment creditor') applies for an order that the [defendant] [claimant] ('the judgment debtor') attend court to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order dated the day of _____, 20____.

1. Judgment Debtor

The judgment debtor is _____

whose address is _____

2. Judgment debt or order

[The judgment or order required the judgment debtor to pay \$_____ (including interest and costs). The amount now owing is \$_____ [which includes further interest payable on the judgment debt].

[The _____ judgment _____ or _____ order _____ required _____ the _____ judgment _____ debtor to _____]

Notes:

Normally the examiner will ask the questions set out in the Appendix A of Practice Direction 44 and the judgment debtor will be told to produce all relevant documents including:

- Pay slips

- Bank statements
- Share certificates
- Credit Union Pass books
- Mortgage statement
- Hire purchase and similar agreements
- Court orders
- Any other outstanding bills
- Electricity, gas, water, cable, telephone bills for the last year

Statement of Truth

*(I believe) (The judgment creditor believes) that the facts stated in this application are true.

*I am duly authorized by the judgment creditor to sign this statement.

Signed _____

Date _____

*(*Judgment creditor*) (*Judgment creditor's solicitor*)

**delete as appropriate*

Full name _____

Name of judgment creditor's solicitor's firm _____

The court office is at [xxx xxx xxx] telephone number xxx xxxx, fax number xxx xxxx. The office is open between [.a m] and [.p m] . to . except public holidays

FORM 30

(Rule 44.2 (3))

Request for Order for Oral Examination of an officer of a debtor company

(Heading as in Form 1)

Request for Order for Oral Examination of an officer of a debtor company

The [claimant] [defendant] (the 'judgment creditor') applies for an order that the [defendant] [claimant] company or corporation ('the judgment debtor') attend court to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order dated the _____ day of _____, 20____

1. Judgment Debtor

The judgment debtor is _____

whose address/registered office is situated at _____

2. The officer

The officer is the judgment debtor's _____

whose name and address is _____

3. Judgment debt or order

[The judgment or order required the judgment debtor to pay \$ _____ (including interest and costs). The amount now owing is \$ _____ [which includes further interest payable on the judgment debt].

[The judgment or order required the judgment debtor to _____]

Notes:

Normally the examiner will ask the questions set out in the Appendix B of Practice Direction 44 and the judgment debtor will be told to produce all relevant documents including:

- Bank statements
- Court orders on which money is still owed
- Bills owed to the company
- Hire purchase and similar agreements
- Any other outstanding bills
- 2 year's accounts

Statement of Truth

*(I believe) (The judgment creditor believes) that the facts stated in this application are true.

*I am duly authorized by the judgment creditor to sign this statement.

Signed

Date _____

*(*Judgment creditor*) (*Judgment Creditor's solicitor*)

**delete as appropriate*

Full name _____

Name of judgment creditor's solicitor's firm _____

The court office is at [xxx xxx xxx] telephone number xxx xxxx, fax number xxx xxxx. The office is open between [.a m] and [.p m] . to . except public holidays ”