PART 25 Interim Remedies And Security For Costs

PART 25

Orders for interim remedies 25.1 - 25.3

25.1

The Court may grant the following interim remedies:

(1) an interim injunction ;

(2) an interim declaration;

(3) an order:

(a) for the detention, custody or preservation of relevant property;

(b) for the inspection of relevant property;

(c) for the taking of a sample of relevant property;

(d) for the carrying out of an experiment on or with relevant property;

(e) for the sale of relevant property which is of a perishable nature or which for any other good reason is desirable to sell quickly; and

(f) for the payment of income from relevant property until a claim is decided.

(4) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (3);

(5) an order providing for the delivery up of any goods which are or may become the subject matter of subsequent proceedings in the Court or as to which any question may arise in proceedings, to the claimant or to a person appointed by the Court for the purpose on such terms and conditions as may be specified in the order;

(6) an order (referred to as a 'freezing order'):

(a) restraining a party from removing from the jurisdiction assets located there; or

(b) restraining a party from dealing with any assets whether located within the jurisdiction or not;

(7) an order directing a party to provide information about the location of relevant property or assets

or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;

(8) an order (referred to as a 'search order') requiring a party to admit another party to premises for the purpose of preserving evidence;

(9) an order for production of documents or inspection of property before a claim has been made;

(10) an order for production of documents or inspection of property against a non-party;

(11) an order (referred to as an order for interim payment) under Section II of this Part for payment by a defendant on account of any damages , debt or other sum (except costs) which the Court may hold the defendant liable to pay;

(12) an order for a specified fund to be paid into Court or otherwise secured, where there is a dispute over a party's right to the fund;

(13) an order permitting a party seeking to recover personal property to pay money into Court pending the outcome of the proceedings and directing that, if he does so, the property shall be given up to him;

(14) an order directing a party to prepare and file accounts relating to the dispute;

(15) an order directing any account to be taken or inquiry to be made by the Court ;

(16) an order appointing a receiver or receiver and manager, having such powers as the Court may see fit, of the property or any of the property of any body corporate;

(17) where the person against whom the order is to be made is a natural person:

(a) an order appointing a receiver or trustee, having such powers as the Court may see fit, of the property or any of the property of that person;

(b) an order requiring that person to deliver up to the Court his passport and such other documents as the Court sees fit; or

(c) an order prohibiting that person from leaving the DIFC , Dubai or the UAE without the consent of the Court ; and

(18) any other remedy provided by any other law, whether enacted before or after these Rules .

25.2

In Rules 25.1(3) and 25.1(7), relevant property means property (including land) which is the subject of a claim or as to which any question may arise on a claim.

25.3

The Court may grant an interim remedy whether or not there has been a claim for a final remedy of

that kind.

Jurisdiction 25.4 - 25.5

25.4

A Judge may make an order for any interim remedy.

25.5

The powers of the Registrar to make orders for interim remedies are set out in Rules 3.4 to 3.14.

Time when an order for an interim remedy may be made 25.6 - 25.7

25.6

An order for an interim remedy may be made at any time, including:

(1) before proceedings are started; and

(2) after judgment has been given.

25.7

However:

(1) Rule 25.6 is subject to any Rule, Practice Direction or other enactment which provides otherwise;

(2) the Court may grant an interim remedy before a claim has been made only if:

(a) the matter is urgent; or

(b) it is otherwise desirable to do so in the interests of justice; and

(c) unless the Court otherwise orders, a defendant may not apply for any of the orders listed in Rule 25.1 before he has filed either an acknowledgment of service or a defence.

(3) Where the Court grants an interim remedy before a claim has been commenced, it may give directions requiring a claim to be commenced.

(4) In particular, the Court need not direct that a claim be commenced where the application is made for production of documents or inspection of property before a claim is made.

How to apply for an interim remedy 25.8 - 25.10

25.8

The Court may grant an interim remedy on an application made without notice if it appears to the Court that there are good reasons for not giving notice.

25.9

An application for an interim remedy must be supported by evidence, unless the Court orders otherwise.

25.10

If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

Urgent applications and applications without notice 25.11 - 25.15

25.11

Urgent applications and applications without notice fall into two categories:

(1) applications where a claim form has already been issued; and

(2) applications where a claim form has not yet been issued;

and, in both cases, where notice of the application has not been given to the respondent.

25.12

Where a party makes an urgent application:

(1) The party should telephone the Court between 10:00am and 5:00pm Sunday to Thursday on + 917 4427 3333 and ask to be put in touch with the Registrar or Deputy Registrar. The party should state that the call relates to an urgent application and provide an estimate of when they will be ready to present the application;

(2) Where the application is so urgent that it must be made outside these hours, the party should telephone the Court’s emergency telephone number on + 971 4427 3331;

(3) The applications will normally be dealt with at a court hearing but cases of extreme urgency may be dealt with by telephone;

(4) At the hearing of the application, the Court may consist of a Judge and the Registrar sitting together;

(5) When acting under the procedure set out in this Part, the Court shall set a Return Date for the hearing of the application before a Judge sitting alone, which shall not be later than three days from the date upon which the interim order is issued.

25.13

Applications dealt with at a Court hearing after issue of a claim form:

(1) the application notice , evidence in support and a draft order should be filed with the Court two hours before the hearing wherever possible;

(2) if an application is made before the application notice has been issued, a draft order should be provided at the hearing, and the application notice and evidence in support must be filed with the Court on the same or next business day or as ordered by the Court ; and

(3) except in cases where secrecy is essential, the applicant should take steps to notify the respondent informally of the application.

25.14

Applications made before the issue of a claim form:

(1) in addition to the provisions set out in Rule 25.13, unless the Court orders otherwise, either the applicant must undertake to the Court to issue a claim form immediately or the Court will give directions for the commencement of the claim;

(2) where possible the claim form should be served with the order for the injunction ; and

(3) an order made before the issue of a claim form should state in the title after the names of the applicant and respondent ‘the Claimant and Defendant in an Intended Action’.

25.15

Applications made by telephone:

(1) [deleted]

(2) [deleted]

(3) the Judge will require a draft order to be emailed to him;

(4) the application notice and evidence in support must be filed with the Court on the same or next working day or as ordered, together with two copies of the order for sealing;

(5) injunctions will be heard by telephone only where the applicant is acting by legal representative .

Making an application - General 25.16 - 25.19

25.16

The application notice must state:

(1) the order sought; and

(2) the date, time and place of the hearing.

25.17

The application notice and evidence in support must be served as soon as practicable after issue and in any event not less than 3 days before the Court is due to hear the application.

25.18

A draft of the order sought should be filed with the application notice .

25.19

Unless the urgency means that this is not possible, the applicant should provide the Court at the earliest opportunity with a skeleton argument.

Evidence 25.20 - 25.23

25.20

Applications for search orders and freezing orders must be supported by affidavit evidence.

25.21

Applications for other interim injunctions must be supported by evidence set out in either:

(1) a witness statement; or

(2) a statement of case provided that it is verified by a statement of truth; or

(3) the application notice provided that it is verified by a statement of truth;

unless the Court , a Law, a Rule or a Practice Direction requires evidence by affidavit .

25.22

The evidence must set out the facts on which the applicant relies for the claim being made against the respondent, including all material facts of which the Court should be made aware.

25.23

Where an application is made without notice to the respondent, the evidence must also set out why notice was not given.

Application for an interim remedy where there is no related claim 25.24

25.24

Where a party wishes to apply for an interim remedy but:

(1) the remedy is sought in relation to proceedings which are taking place, or will take place, outside the DIFC ; or

(2) the application is made for an order for production of documents or inspection of property before a claim is made;

any application must be made in accordance with Part 8.

Orders for injunctions 25.25 - 25.32

25.25

Any order for an injunction , unless the Court orders otherwise, must contain:

(1) (save where the applicant is the DFSA or the Registrar of Companies) an undertaking by the applicant to the Court to pay any damages which the respondent sustains which the Court considers the applicant should pay. Where the applicant for an interim remedy is not able to show sufficient assets within the jurisdiction of the Court to provide substance to the undertakings given he may be required to reinforce his undertakings by providing security:

(a) Security will be ordered in such form as the Judge decides is appropriate but may, for example, take the form of a payment into Court , a bond issued by an insurance company or a first demand guarantee or standby credit issued by a first-class bank;

(b) In an appropriate case the Judge may order a payment to be made to the applicant’s legal representatives to be held by them as officers of the Court pending further order. The undertaking of a parent company may be acceptable;

(2) if made without notice to any other party, an undertaking by the applicant to the Court to serve on the respondent the application notice , evidence in support and any order made as soon as practicable;

(3) if made without notice to any other party, a return date for a further hearing at which the other party can be present;

(4) if made before filing the application notice , an undertaking to file and pay the appropriate fee on the same or next working day; and

(5) if made before issue of a claim form:

(a) an undertaking to issue a claim form and pay the appropriate fee on the same or next working day; or

(b) directions for the commencement of the claim.

25.26

When the Court makes an order for an injunction , it should consider whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order.

25.27

Any order for an injunction must set out clearly what the respondent must do or not do.

25.28

An order for an interim remedy should normally include a proviso which permits acts which would otherwise be a breach of the order to be done with the written consent of the claimant’s legal representatives . This enables the parties to agree in effect to variations (or the discharge) of the order without the necessity of coming back to the Court .

25.29

If the parties agree, the return date may be postponed to a later date on which all parties will be ready to deal with any substantive issues. In this event, an agreed form of order continuing the injunction to the postponed return date should be submitted for consideration by a Judge and if the order is made in the terms submitted there will be no need for the parties to attend on the day originally fixed as the return date. In such a case the defendant and any other interested party will continue to have liberty to apply to vary or set aside the order.

25.30

A provision for the defendant to give notice of any application to discharge or vary the order is

usually included as a matter of convenience but will not fetter the right of the defendant to apply without notice or on short notice if need be.

25.31

An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order.

25.32

A phrase indicating that an interim remedy is to remain in force until judgment or further order means that it remains in force until the delivery of a final judgment . If an interim remedy continuing after judgment is required, say until judgment has been satisfied, an application to that effect must be made.

Freezing orders 25.33 - 25.36

25.33

An example of a freezing order is set out in Schedule A to this Part.

25.34

The example may be modified as appropriate in any particular case. In particular, the Court may, if it considers it appropriate, require the applicant’s legal representatives , as well as the applicant, to give undertakings.

25.35

As regards freezing orders in respect of assets outside the jurisdiction , the standard wording in relation to effects on third parties should normally incorporate wording to enable overseas branches of banks or similar institutions which have offices within the jurisdiction to comply with what they reasonably believe to be their obligations under the laws of the country where the assets are located or under the proper law of the relevant banking or other contract relating to such assets.

25.36

Any bank or third party served with, notified of or affected by a freezing order may apply to the Court without notice to any party for directions, or notify the Court in writing without notice to any party, in the event that the order affects or may affect the position of the bank or third party under legislation, regulations or procedures aimed to prevent money laundering.

Search orders 25.37

25.37

The following provisions apply to search orders in addition to those listed above.

The Supervising Legal Representative 25.38 - 25.40

25.38

The Supervising Legal Representative must be experienced in the operation of search orders.

Evidence

25.39

The affidavit must state the name, firm and its address, and experience of the Supervising Legal Representative , also the address of the premises and whether it is a private or business address.

25.40

The affidavit must set out very fully the reason the order is sought, including the probability that relevant material would disappear if the order were not made.

Service 25.41 - 25.46

25.41

The order must be served personally by the Supervising Legal Representative , unless the Court otherwise orders, and must be accompanied by the evidence in support and any documents capable of being copied.

25.42

Confidential exhibits need not be served but they must be made available for inspection by the respondent in the presence of the applicant’s legal representatives while the order is carried out and afterwards be retained by the respondent’s legal representatives on their undertaking not to permit the respondent:

(1) to see them or copies of them except in their presence; and

(2) to make or take away any note or record of them.

25.43

The Supervising Legal Representative may be accompanied only by the persons mentioned in the order.

25.44

The Supervising Legal Representative must explain the terms and effect of the order to the respondent in everyday language (with the assistance of an interpreter if necessary) and advise him:

(1) of his right to take legal advice and to apply to vary or discharge the order; and

(2) that he may be entitled to avail himself of:

(a) legal professional privilege ; and

(b) the privilege against self-incrimination.

25.45

Where the Supervising Legal Representative is a man and the respondent is likely to be an unaccompanied woman, at least one other person named in the order must be a woman and must accompany the Supervising Legal Representative .

25.46

The order may only be served between 9.30 a.m. and 5.30 p.m. Sunday to Thursday unless the Court otherwise orders.

Search and custody of materials 25.47 - 25.59

25.47

No material shall be removed unless clearly covered by the terms of the order.

25.48

The premises must not be searched and no items shall be removed from them except in the presence of the respondent or a person who appears to be a responsible employee of the respondent.

25.49

Where copies of documents are sought, the documents should be retained for no more than 2 days before return to the owner.

25.50

Where material in dispute is removed pending trial, the applicant’s legal representatives should place it in the custody of the respondent’s legal representatives on their undertaking to retain it in safekeeping and to produce it to the Court when required.

25.51

In appropriate cases the applicant should insure the material retained in the respondent's legal representatives' custody.

25.52

The Supervising Legal Representative must make a list of all material removed from the premises and supply a copy of the list to the respondent.

25.53

No material shall be removed from the premises until the respondent has had reasonable time to check the list.

25.54

If any of the listed items exists only in computer readable form, the respondent must immediately give the applicant's legal representatives effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out.

25.55

The applicant must take all reasonable steps to ensure that no damage is done to any computer or data.

25.56

The applicant and his representatives may not themselves search the respondent's computers unless they have sufficient expertise to do so without damaging the respondent's system.

25.57

The Supervising Legal Representative shall provide a report on the carrying out of the order to the applicant's legal representatives .

25.58

As soon as the report is received the applicant's legal representatives shall:

(1) serve a copy of it on the respondent; and

(2) file a copy of it with the Court .

25.59

Where the Supervising Legal Representative is satisfied that full compliance with Rules 25.53 and 25.54 above is impracticable, he may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

General 25.60 - 25.63

25.60

The Supervising Legal Representative must not be an employee or member of the applicant's firm of legal representatives .

25.61

If the Court orders that the order need not be served by the Supervising Legal Representative , the reason for so ordering must be set out in the order.

25.62

The search order must not be carried out at the same time as a police search warrant.

25.63

An example of a Search Order is set out in Schedule B to this Part. The example may be modified as appropriate in any particular case.

Applications to discharge or vary freezing orders and search orders 26.64 - 25.65

25.64

Applications to discharge or vary freezing orders and search orders are treated as matters of urgency for listing purposes. Those representing applicants for discharge or variation should ascertain before a date is fixed for the hearing whether, having regard to the evidence which they wish to adduce, the claimant would wish to adduce further evidence in opposition. If so, all reasonable steps must be taken by all parties to agree upon the earliest practicable date at which they can be ready for the hearing, so as to avoid the last minute need to vacate a fixed date. In cases of difficulty the matter should be referred to a Judge who may be able to suggest temporary solutions pending the hearing.

25.65

If a freezing order or search order is discharged on an application to discharge or vary, or on the return date, the Judge will consider whether it is appropriate that he should assess damages at once

and direct immediate payment by the applicant.

Interim injunction to cease if claim is stayed 25.66

25.66

If:

(1) the Court has granted an interim injunction other than a freezing order; and

(2) the claim is stayed other than by agreement between the parties;

the interim injunction shall be set aside unless the Court orders that it should continue to have effect even though the claim is stayed .

Interim injunction to cease after 14 days if claim struck out 25.67 - 25.68

25.67

If:

(1) the Court has granted an interim injunction ; and

(2) the claim is struck out under Rule 4.31 (sanctions for non-payment of certain fees);

the interim injunction shall cease to have effect 14 days after the date that the claim is struck out unless Rule 25.68 applies.

25.68

If the claimant applies to reinstate the claim before the interim injunction ceases to have effect under Rule 25.67, the injunction shall continue until the hearing of the application unless the Court orders otherwise.

Injunctions against third parties 25.69 - 25.70

25.69

Rule 25.70 applies to orders which will affect a person other than the applicant or respondent, who:

(1) did not attend the hearing at which the order was made; and

(2) is served with the order.

25.70

Where such a person served with the order requests:

(1) a copy of any materials read by the Judge , including material prepared after the hearing at the direction of the Judge or in compliance with the order; or

(2) a note of the hearing;

the applicant, or his legal representative , must comply promptly with the request, unless the Court orders otherwise.

Inspection of property before commencement or against a non-party 25.71

25.71

Where a person makes an application under Rules 25.1(9) or 25.1(10):

(1) the evidence in support of such an application must show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property:

(a) is or may become the subject matter of such proceedings; or

(b) is relevant to the issues that will arise in relation to such proceedings; and

(2) he must serve a copy of the application notice and a copy of the evidence in support on:

(a) the person against whom the order is sought; and

(b) in relation to an application under Rule 25.1(10), every party to the proceedings other than the applicant.

Delivery-up orders 25.72

25.72

Where orders, other than search orders, have been made for delivery up or preservation of evidence or property where it is likely that such an order will be executed at the premises of the respondent or a third party, the Court shall consider whether to include in the order for the benefit or protection of the parties similar provisions to those specified above in relation to injunctions and search orders.

Interim payments - General procedure 25.73 - 25.78

25.73

The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgment of service applicable to the defendant against whom the application is made.

25.74

The claimant may make more than one application for an order for an interim payment.

25.75

An application for an interim payment must be supported by evidence.

25.76

The timetable for an application for an interim payment for is as follows:

(1) evidence in support must be filed and served with the application;

(2) evidence in answer must be filed and served within 14 days thereafter;

(3) evidence in reply (if any) must be filed and served within 7 days thereafter.

25.77

Rule 25.76 does not require written evidence:

(1) to be filed if it has already been filed; or

(2) to be served on a party on whom it has already been served.

25.78

The Court may order an interim payment in one sum or in instalments.

Evidence 25.79 - 25.80

25.79

An application for an interim payment of damages must be supported by evidence dealing with the following:

(1) the sum of money sought by way of an interim payment;

(2) the items or matters in respect of which the interim payment is sought;

(3) the sum of money for which final judgment is likely to be given;

(4) the reasons for believing that the conditions set out in Rule 25.81 are satisfied;

(5) any other relevant matters; and

(6) in claims for personal injuries, details of special damages and past and future loss.

25.80

Any documents in support of the application should be exhibited, including, in personal injuries claims, the medical report(s).

Interim payments — conditions to be satisfied and matters to be taken into account 25.81 - 25.83

25.81

The Court may only make an order for an interim payment where any of the following conditions are satisfied:

(1) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant ;

(2) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;

(3) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment whether or not that defendant is the only defendant or one of a number of defendants to the claim; or

(4) in a claim in which there are two or more defendants and the order is sought against any one or more of those defendants , the following conditions are satisfied:

(a) the Court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (but the Court cannot determine which); and

(b) all the defendants are either:

(i) a defendant that is insured in respect of the claim;

(ii) a defendant that is a Centre Body.

25.82

The Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment .

25.83

The Court must take into account:

(1) contributory negligence; and

(2) any relevant set-off or counterclaim.

Interim payment where account to be taken 25.84

25.84

Where a party seeks an interim payment under Rule 25.81(2) where the Court has ordered an account to be taken, if the evidence on the application for interim payment shows that the account is bound to result in a payment to the applicant, the Court will, before making an order for interim payment, order that the liable party pay to the applicant 'the amount shown by the account to be due'.

Instalments 25.85

25.85

Where an interim payment is to be paid in instalments the order should set out:

(1) the total amount of the payment;

(2) the amount of each instalment;

(3) the number of instalments and the date on which each is to be paid; and

(4) to whom the payment should be made.

Powers of Court where it has made an order for interim payment 25.86 - 25.90

25.86

Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the Court may make an order to adjust the interim payment.

25.87

The Court may in particular:

(1) order all or part of the interim payment to be repaid;

(2) vary or discharge the order for the interim payment;

(3) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.

25.88

The Court may make an order under Rule 25.87(3) only if:

(1) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution , indemnity or other remedy; and

(2) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the Court could make an order for interim payment under Rule 25.81.

25.89

The Court may make an order under Rule 25.86 without an application by any party if it makes the order when it disposes of the claim or any part of it.

25.90

Where:

(1) a defendant has made an interim payment; and

(2) the amount of the payment is more than his total liability under the final judgment or order;

the Court may award him interest on the overpaid amount from the date when he made the interim payment.

Adjustment of final judgment figure 25.91 - 25.95

25.91

In Rules 25.92 to 25.95 ‘judgment’ means:

(1) any order to pay a sum of money;

(2) a final award of damages;

(3) an assessment of damages.

25.92

In a final judgment where an interim payment has previously been made which is less than the total amount awarded by the Judge , the order should set out in a preamble:

(1) the total amount awarded by the Judge ; and

(2) the amounts and dates of the interim payment(s).

25.93

The total amount awarded by the Judge should then be reduced by the total amount of any interim payments, and an order made for entry of judgment and payment of the balance.

25.94

In a final judgment where an interim payment has previously been made which is more than the total amount awarded by the Judge , the order should set out in a preamble:

(1) the total amount awarded by the Judge ; and

(2) the amounts and dates of the interim payment(s).

25.95

An order should then be made for repayment, reimbursement, variation or discharge under Rule 25.87 and for interest on an overpayment under Rule 25.90.

Restriction on disclosure of an interim payment 25.96

25.96

The fact that a defendant has made an interim payment, whether voluntarily or by Court order, shall not be disclosed to the trial Judge until all questions of liability and the amount of money to be awarded have been decided unless the defendant agrees.

III SECURITY FOR COSTS 25.97 - 25.100

25.97

A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.

25.98

An order for security for costs may not be made against the DFSA or the Registrar of Companies in proceedings initiated by the DFSA or the Registrar of Companies under DIFC Law.

25.99

An application for security for costs must be supported by written evidence, setting out:

(1) the grounds on which security is sought;

(2) any factors relevant to the exercise of the Court's discretion, such as the location of the claimant's assets and any practical difficulties which may arise in enforcing any order for costs;

(3) a statement of costs already incurred, including the information required by RDC 38.35 and signed by the party or his legal representative; and

(4) An estimate of anticipated future costs calculated by reference to the elements set out at RDC 38.35 and signed by the party or his legal representative .

25.100

Where the Court makes an order for security for costs, it will:

(1) determine the amount of security; and

(2) direct:

(a) the manner in which; and

(b) the time within which;

the security must be given.

Conditions to be satisfied 25.101 - 25.102

25.101

The Court may make an order for security for costs under Rule 25.100 if it is satisfied, having regard to all the circumstances of the case that it is just to make such an order; and

(1) one or more of the conditions in Rule 25.102 applies; or

(2) an enactment permits the Court to require security for costs.

25.102

The conditions are:

(1) the claimant is resident out of the UAE ;

(2) the claimant is a company or other body (whether incorporated inside or outside the DIFC) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;

(3) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;

(4) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;

(5) the claimant is acting as a nominal claimant , other than as a representative claimant under Part 20, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;

(6) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

Security for costs other than from the claimant 25.103 - 25.104

25.103

The defendant may seek an order against someone other than the claimant , and the Court may make an order for security for costs against that person if:

(1) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(2) one or more of the conditions in Rule 25.104 applies.

25.104

The conditions are that the person:

(1) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him; or

(2) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and

is a person against whom a costs order may be made.

Security for costs of an appeal 25.105 - 25.106

25.105

The Court may order security for costs of an appeal against:

(1) an appellant ;

(2) a respondent who also appeals;

on the same grounds as it may order security for costs against a claimant under this Part.

25.106

The Court may also make an order under Rule 25.105 where the appellant , or the respondent who also appeals, is a limited company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.

First applications 25.107

25.107

First applications for security for costs should not be made later than at the Case Management Conference and in any event any application should not be left until close to the trial date. Delay to the prejudice of the other party or the administration of justice will probably cause the application to fail, as will any use of the application to harass the other party. Where it is intended to make an application for security at the Case Management Conference the procedure, and timetable for evidence, for an ordinary application must be followed.

Successive applications 25.108

25.108

Successive applications for security can be granted where the circumstances warrant. If a claimant wishes to seek to preclude any further application, it is incumbent on him to make that clear.

Evidence 25.109

25.109

An affidavit or witness statement in support of an application for security for costs should deal not only with the residence of the claimant (or other respondent to the application) and the location of his assets but also with the practical difficulties (if any) of enforcing an order for costs against him.

Investigation of the merits of the case 25.110

25.110

Investigation of the merits of the case on an application for security is strongly discouraged. Only in those cases where it can be shown without detailed investigation of evidence or law that the claim is certain or almost certain to succeed or fail will the merits be taken into consideration.

Undertaking by the applicant 25.111

25.111

In appropriate cases an order for security for costs may only be made on terms that the applicant gives an undertaking to comply with any order that the Court may make if the Court later finds that the order for security for costs has caused loss to the claimant and that the claimant should be compensated for such loss. Such undertakings are intended to compensate claimants in cases where no order for costs is ultimately made in favour of the applicant.

Stay of proceedings 25.112

25.112

It is not usually convenient or appropriate to order an automatic stay of the proceedings pending the provision of the security. It leads to delay and may disrupt the preparation of the case for trial, or other hearing. Experience has shown that it is usually better to give the claimant (or other relevant party) a reasonable time within which to provide the security and the other party permission to apply to the Court in the event of default. This enables the Court to allow the claimant to choose if he wishes to provide the security and, if he does not, to dismiss the case.

Amount of security 25.113

25.113

Where the dispute on an application for security for costs relates to the correct evaluation of the amount of costs likely to be allowed to a successful defendant on an assessment of costs, parties should consider whether it would be advantageous for the Judge hearing the application to sit with a the Registrar as an informal assessor . The Judge himself may take such an initiative.

Schedule A

Schedule B