PART 40 Procedure For Detailed Assessment Of Costs

PART 40

Time when detailed assessment may be carried out 40.1

40.1

The general rule is that the costs of any proceedings or any part of the proceedings are not to be assessed by the detailed procedure until the conclusion of the proceedings. However the Court may order them to be assessed immediately.

No stay of detailed assessment where there is an appeal 40.2

40.2

Detailed assessment is not stayed pending an appeal unless the Court so orders.

Authorised Court Officer 40.3

40.3

The Registrar or a judicial officer of the Court appointed for the purpose by the Chief Justice under Article 14 of the Court Law (referred to as “an authorised Court Officer ” in this Part) has all the powers of the Court when making a detailed assessment, except:

(1) power to make a wasted costs order;

(2) power to make an order under:

(a) Rule 38.60 (powers in relation to misconduct); and

(b) Rule 40.12 (sanction for delay in commencing detailed assessment proceedings).

Application of this section 40.4

40.4

This section of Part 40 applies where the Registrar is to make a detailed assessment of costs which are payable by one party to another.

Commencement of detailed assessment proceedings 40.5 - 40.9

40.5

Detailed assessment proceedings are commenced by the receiving party serving on the paying party :

(1) notice of commencement in Form P40/01; and

(2) a copy of the bill of costs.

40.6

The receiving party must also serve a copy of the notice of commencement and the bill on any other relevant person including:

(1) any person who has taken part in the proceedings which gave rise to the assessment and who is directly liable under an order for costs made against him;

(2) any person who has given to the receiving party notice in writing that he has a financial interest in the outcome of the assessment and wishes to be a party accordingly; and/or

(3) any other person whom the Court orders to be treated as such.

40.7

Where a party is unsure whether a person is or is not a relevant person, that party may apply to the appropriate office for directions.

40.8

The Court will generally not make an order that the person in respect of whom the application is made will be treated as a relevant person, unless within a specified time he applies to the Court to be joined as a party to the assessment proceedings in accordance with Part 20.

40.9

A person on whom a copy of the notice of commencement is served under Rule 40.6 is a party to the detailed assessment proceedings (in addition to the paying party and the receiving party).

Period for commencing detailed assessment proceedings 40.10

40.10

The following table shows the period for commencing detailed assessment proceedings.

Source of right to detailed assessment	Time by which detailed assessment proceedings must be commenced
Judgment, direction, order, award or other determination	3 months after the date of the judgment etc. Where detailed assessment is stayed pending an appeal, 3 months after the date of the order lifting the stay
Discontinuance under Part 34	3 months after the date of service of notice of discontinuance under Rule 34.6; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under Rule 34.10
Acceptance of an offer to settle	3 months after the date when the right to costs arose

Sanction for delay in commencing detailed assessment proceedings 40.11 - 40.13

40.11

Where the receiving party fails to commence detailed assessment proceedings within the period specified:

(1) in Rule 40.10; or

(2) by any direction of the Court ;

the paying party may apply for an order requiring the receiving party to commence detailed assessment proceedings within such time as the Court may specify.

40.12

On an application under Rule 40.11, the Court may direct that, unless the receiving party commences detailed assessment proceedings within the time specified by the Court , all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

40.13

If:

(1) the paying party has not made an application in accordance with Rule 40.11; and

(2) the receiving party commences the proceedings later than the period specified in Rule 40.10;

the Court may disallow all or part of the interest otherwise payable to the receiving party under Article 39 of the Court Law, No. 10 of 2004 but must not impose any other sanction except in accordance with Rule 38.60.

Points of dispute and consequence of not serving 40.14 - 40.18

40.14

The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute on:

(1) the receiving party; and

(2) every other party to the detailed assessment proceedings.

40.15

The period for serving points of dispute is 21 days after the date of service of the notice of commencement.

40.16

If a party serves points of dispute after the period set out in Rule 40.15, he may not be heard further in the detailed assessment proceedings unless the Court gives permission.

40.17

The receiving party may file a request for a default costs certificate if:

(1) the period set out in Rule 40.15 for serving points of dispute has expired; and

(2) he has not been served with any points of dispute.

40.18

If any party (including the paying party) serves points of dispute before the issue of a default costs certificate the Court may not issue the default costs certificate.

Procedure where costs are agreed 40.19

40.19

If the paying party and the receiving party agree the amount of costs, either party may apply for a costs certificate (either interim or final) in the amount agreed.

Default costs certificate 40.20 - 40.22

40.20

Where the receiving party is permitted by Rule 40.17 to obtain a default costs certificate, he does so by filing a request Form P40/02.

40.21

A default costs certificate will include an order to pay the costs to which it relates.

40.22

Where a receiving party obtains a default costs certificate, the costs payable to him for the commencement of detailed assessment proceedings shall be $US160.

Setting aside default costs certificate 40.23 - 40.26

40.23

The Court must set aside a default costs certificate if the receiving party was not entitled to it.

40.24

In any other case, the Court may set aside or vary a default costs certificate if it appears to the Court that there is some good reason why the detailed assessment proceedings should continue.

40.25

Where:

(1) the receiving party has purported to serve the notice of commencement on the paying party ;

(2) a default costs certificate has been issued; and

(3) the receiving party subsequently discovers that the notice of commencement did not reach the paying party at least 21 days before the default costs certificate was issued;

the receiving party must:

(a) file a request for the default costs certificate to be set aside ; or

(b) apply to the Court for directions.

40.26

Where Rule 40.25 applies, the receiving party may take no further step in:

(1) the detailed assessment proceedings; or

(2) the enforcement of the default costs certificate;

until the certificate has been set aside or the Court has given directions.

Optional reply 40.27 - 40.28

40.27

Where any party to the detailed assessment proceedings serves points of dispute, the receiving party may serve a reply on the other parties to the assessment proceedings.

40.28

He may do so within 21 days after service on him of the points of dispute to which his reply relates.

Detailed assessment hearing 40.29 - 40.35

40.29

Where points of dispute are served in accordance with this Part, the receiving party must file a request for a detailed assessment hearing.

40.30

He must file the request within 3 months of the expiry of the period for commencing detailed assessment proceedings as specified:

(1) in Rule 40.10; or

(2) by any direction of the Court .

40.31

Where the receiving party fails to file a request in accordance with Rule 40.30, the paying party may apply for an order requiring the receiving party to file the request within such time as the Court may specify.

40.32

On an application under Rule 40.31, the Court may direct that, unless the receiving party requests a detailed assessment hearing within the time specified by the Court , all or part of the Costs to which the receiving party would otherwise be entitled will be disallowed.

40.33

If:

(1) the paying party has not made an application in accordance with Rule 40.31; and

(2) the receiving party files a request for a detailed assessment hearing later than the period specified in Rule 40.30;

the Court may disallow all or part of the interest otherwise payable to the receiving party under Article 39 of the Court Law, No. 10 of 2004 but must not impose any other sanction except in accordance with Rule 38.60.

40.34

No party other than:

(1) the receiving party;

(2) the paying party ; and

(3) any party who has served points of dispute under 40.14;

may be heard at the detailed assessment hearing unless the Court gives permission.

40.35

Only items specified in the points of dispute may be raised at the hearing, unless the Court gives permission.

Power to issue an interim certificate 40.36 - 40.38

40.36

The Court may at any time after the receiving party has filed a request for a detailed assessment hearing:

(1) issue an interim costs certificate for such sum as it considers appropriate;

(2) amend or cancel an interim certificate.

40.37

An interim certificate will include an order to pay the costs to which it relates, unless the Court orders otherwise.

40.38

The Court may order the costs certified in an interim certificate to be paid into Court .

Final costs certificate 40.39 - 40.43

40.39

In Rules 40.40 and 40.41, a completed bill means a bill calculated to show the amount due following the detailed assessment of the costs.

40.40

The period for filing the completed bill is 14 days after the end of the detailed assessment hearing.

40.41

When a completed bill is filed, the Court will issue a final costs certificate and serve it on the parties to the detailed assessment proceedings.

40.42

Rule 40.41 is subject to any order made by the Court that a certificate is not to be issued until other costs have been paid.

40.43

A final costs certificate will include an order to pay the costs to which it relates, unless the Court orders otherwise.

Liability for costs of detailed assessment proceedings 40.44 - 40.46

40.44

The receiving party is entitled to his costs of the detailed assessment proceedings except where:

(1) the provisions of any enactment, any of these Rules or any relevant Practice Direction provide otherwise; or

(2) the Court makes some other order in relation to all or part of the costs of the detailed assessment proceedings.

40.45

In deciding whether to make some other order, the Court must have regard to all the circumstances, including:

(1) the conduct of all the parties;

(2) the amount, if any, by which the bill of costs has been reduced; and

(3) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

Offers to settle without prejudice save as to costs of the detailed assessment proceedings 40.46 - 40.47

40.46

Where:

(1) a party (whether the paying party or the receiving party) makes a written offer to settle the costs of the proceedings which gave rise to the assessment proceedings; and

(2) the offer is expressed to be without prejudice save as to the costs of the detailed assessment proceedings, the Court will take the offer into account in deciding who should pay the costs of those proceedings.

40.47

The fact of the offer must not be communicated to the Court until the question of costs of the detailed assessment proceedings falls to be decided.

Court to hear appeal 40.48

40.48

An appeal against a decision of an authorised Court Officer in detailed assessment proceedings is to a Judge of the Court of First Instance.

Appeal procedure 40.49

40.49

An appeal against a decision of an authorised Court Officer in detailed assessment proceedings should be made in accordance with the provisions of Part 44 of the Rules of Court.