

**Supreme Court (Chapter I Offers of Compromise
Amendments) Rules 2013**

S.R. No. 90/2013

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STATUTORY RULES 2013

S.R. No. 90/2013

Supreme Court Act 1986

**Supreme Court (Chapter I Offers of Compromise
Amendments) Rules 2013**

The Judges of the Supreme Court make the following Rules:

1 Object

The object of these Rules is to amend Chapter I of the Rules of the Supreme Court in relation to offers of compromise.

2 Authorising provisions

These Rules are made under section 25 of the **Supreme Court Act 1986** and all other enabling powers.

3 Commencement

These Rules come into operation on 1 September 2013.

4 Principal Rules

In these Rules, the Supreme Court (General Civil Procedure) Rules 2005¹ are called the Principal Rules.

5 Definitions

In Rule 26.01 of the Principal Rules, **insert** the following definitions—

"business day means a day on which the office of the Court is open as specified in Rule 3.08;

ordinarily applicable basis means—

- (a) in respect of costs incurred before 1 April 2013, party and party basis;
- (b) in respect of costs incurred on or after 1 April 2013, standard basis;"

6 Rule 26.02 substituted

For Rule 26.02 of the Principal Rules
substitute—

"26.02 Offers of compromise generally

- (1) A party may, in respect of any claim in a proceeding, serve on another party an offer of compromise on the terms specified in the offer.
 - (2) An offer of compromise in respect of a claim may be on terms that take into account any other claim made in the proceeding between the parties.
 - (3) An offer of compromise must—
 - (a) be in writing and prepared in accordance with Rules 27.02 to 27.04; and
 - (b) contain a statement to the effect that it is served in accordance with this Order.
 - (4) An offer of compromise must state either—
 - (a) that the offer is inclusive of costs; or
 - (b) that costs are to be paid or received, as the case may be, in addition to the offer."
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7 Time for making, accepting etc. offer

(1) Rule 26.03(3.1) of the Principal Rules is **revoked**.

(2) For Rule 26.03(7) of the Principal Rules **substitute—**

"(7) Upon the acceptance of an offer of compromise that states that costs are to be paid or received in addition to the offer, then, unless the offer otherwise provides or the Court otherwise orders—

(a) such costs are to be paid or received in respect of the claim up to and including the day the offer was served;

(b) liability for any costs in respect of the claim in relation to any subsequent period shall be in the discretion of the Court; and

(c) any party to the accepted offer may apply for the taxation of the costs."

(3) Rule 26.03(8) of the Principal Rules is **revoked**.

8 Time for payment

In Rule 26.03.1 of the Principal Rules—

(a) for "sum of money to a plaintiff" **substitute** "specified sum of money to a party";

(b) for "14 days" **substitute** "28 days".

9 Rule 26.07 substituted and new Rules 26.07.1 and 26.07.2

For Rule 26.07 of the Principal Rules **substitute—**

"26.07 Withdrawal of acceptance

(1) A party who has accepted an offer for the payment to that party of a sum of money may withdraw the acceptance if—

- (a) the sum of money is not paid—
 - (i) within the time provided by the offer; or
 - (ii) where no time is specified by the offer, within 28 days after acceptance of the offer; and
 - (b) the Court, on the application of the party who accepted the offer, gives leave.
- (2) A party seeking the leave of the Court under paragraph (1)(b) may also seek orders—
- (a) to restore the parties as nearly as practicable to each party's position in the proceeding at the time of acceptance; and
 - (b) as to the further conduct of the proceeding.

26.07.1 Failure to comply with accepted offer

If, after acceptance of an offer of compromise, a party to the accepted offer defaults in complying with that party's obligations under the offer, any non-defaulting party to the accepted offer may apply to the Court for an order—

- (a) giving effect to the accepted offer;
 - (b) staying or dismissing the proceeding if the plaintiff is in default;
 - (c) striking out the defendant's defence if the defendant is in default; or
 - (d) that a claim, not the subject of the offer, shall proceed.
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26.07.2 Multiple defendants

- (1) Rule 26.07.1 does not apply if—
 - (a) two or more defendants are alleged to be jointly, or jointly and severally, liable to the plaintiff for a debt or damages; and
 - (b) rights of contribution or indemnity appear to exist between the defendants.
- (2) Notwithstanding paragraph (1), Rule 26.07.1 applies if—
 - (a) in the case of an offer made by the plaintiff, the offer—
 - (i) is made to all defendants; and
 - (ii) is an offer to compromise the claim against all of them; or
 - (b) in the case of an offer made to the plaintiff—
 - (i) the offer is to compromise the claim against all defendants; and
 - (ii) if the offer is made by two or more defendants, those defendants offer to be jointly, or jointly and severally, liable to the plaintiff for the whole amount of the offer."

10 Costs consequences of failure to accept

- (1) For Rule 26.08(2)(b) of the Principal Rules **substitute—**
 - "(b) in the case of any other claim of the plaintiff, to an order against the defendant for the plaintiff's costs in respect of the claim before 11.00 a.m. on the second business day after the offer was served, taxed on the ordinarily

applicable basis and for the plaintiff's costs thereafter taxed on an indemnity basis."

(2) In Rule 26.08(3) of the Principal Rules—

(a) for paragraph (a) **substitute**—

"(a) the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim before 11.00 a.m. on the second business day after the offer was served, taxed on the ordinarily applicable basis; and";

(b) in paragraph (b) for "a party and party basis" **substitute** "the ordinarily applicable basis".

(3) For Rule 26.08(4) of the Principal Rules **substitute**—

"(4) Where an offer of compromise is made by a defendant and the plaintiff unreasonably fails to accept the offer and the claim to which the offer relates is dismissed or judgment on the claim is entered in favour of the defendant, then unless the Court otherwise orders—

(a) the defendant shall be entitled to an order against the plaintiff for the defendant's costs in respect of the claim until 11.00 a.m. on the second business day after the offer was made, taxed on the ordinarily applicable basis; and

(b) the defendant shall be entitled to an order against the plaintiff in respect of the defendant's costs after the time referred to in paragraph (a) taxed on an indemnity basis."

11 New Rule 26.08.1

After Rule 26.08 of the Principal Rules **insert—**

"26.08.1 Pre-litigation offers

(1) If—

- (a) a party, before a proceeding has commenced, has made an offer in writing to another party (whether or not expressed to be without prejudice) to compromise any claim made in the proceeding on the terms specified in the offer; and
- (b) the offer was open to be accepted for a reasonable time, but was not accepted; and
- (c) the offeror obtains an order or judgment in respect of the claim no less favourable to the offeror than the terms of the offer—

the Court shall take those matters into account in determining what order for costs to make in respect of the costs of the proceeding.

(2) In exercising its discretion as to costs in accordance with paragraph (1), the Court may order that the offeree pay all or part of the offeror's costs of the proceeding taxed on a basis other than the ordinarily applicable basis, from—

- (a) the day the offer was made;
- (b) the commencement of the proceeding; or
- (c) any other time that the Court thinks fit."

12 Rule 26.09 revoked

Rule 26.09 of the Principal Rules is **revoked**.

13 Rule 26.10 substituted

For Rule 26.10 of the Principal Rules
substitute—

"26.10 Contributor parties

- (1) If two or more parties (the *contributor parties*) may be held liable to contribute towards an amount of debt or damages that may be recovered from the contributor parties, any of those contributor parties may, without prejudice to that contributor party's defence, make an offer to another contributor party, to contribute, to a specified extent, to the amount of the debt or damages.
 - (2) If an offer is made by a contributor party (the *first contributor party*) and not accepted by another contributor party, and the first contributor party obtains a judgment against the other contributor party more favourable than the terms of the offer, then, unless the Court otherwise orders, the first contributor party is entitled to an order that the contributor party who did not accept the offer pay the costs incurred by the first contributor party—
 - (a) before 11.00 a.m. on the second business day after the offer was served—on the ordinarily applicable basis; and
 - (b) after the time referred to in paragraph (a)—on an indemnity basis."
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14 Transitional

At the end of Rule 26.11 of the Principal Rules
insert—

"(2) This Order as in force immediately before the commencement of the Supreme Court (Chapter I Offers of Compromise Amendments) Rules 2013 continues to apply to any offer of compromise served under Part 2 or Part 3 of this Order before that commencement."

15 Appeal to Court of Appeal

In Rule 26.12(4) of the Principal Rules for "a party and party basis" **substitute** "the ordinarily applicable basis".

Dated: 27 June 2013

M. L. WARREN, *C.J.*

CHRISTOPHER MAXWELL, P.

PETER BUCHANAN, J.A.

GEOFFREY NETTLE, J.A.

ROBERT REDLICH, J.A.

D. L. HARPER, J.A.

R. S. OSBORN, J.A.

PAUL COGHLAN, J.A.

K. WILLIAMS, J.

KEVIN H. BELL, J.

ROSS ROBSON, J.

JAMES JUDD, J.

EMILIOS KYROU, J.

DAVID F. R. BEACH, J.

JENNIFER DAVIES, J.

TERRY FORREST, J.
KARIN EMERTON, J.
CLYDE CROFT, J.
ANNE FERGUSON, J.
PETER ALMOND, J.
JOHN DIXON, J.
C. MACAULAY, J.
GREG GARDE, J.
G. J. DIGBY, J.
JAMES D. ELLIOT, J.
T. J. GINNANE, J.

ENDNOTES

- ¹ Rule 4: S.R. No. 148/2005. Reprint No. 4 as at 17 September 2012.
Reprinted to S.R. No. 97/2012 and subsequently amended by
S.R. Nos 39/2012, 121/2012, 140/2012, 141/2012, 142/2012, 27/2013
and 48/2013.