THE ADMIRALTY & COMMERCIAL COURTS GUIDE

7th Edition: 2006

Approved for Publication by

The Rt Hon Lord Phillips of Worth Matravers, Lord Chief Justice:

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The Rt Hon Sir Anthony Clarke, Master of the Rolls

And Head of Civil Justice:

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16 November 2006

Introduction

It is now nearly 5 years since the last edition of the Admiralty & Commercial Court Guide. During that time there have been many amendments to the Civil Procedure Rules and the court has received numerous suggestions from practitioners for improvements to the Guide. This new edition reflects an enormous amount of work by my colleagues to revise the Guide to reflect those amendments and to take on board the suggestions. I am particularly grateful to Mr Justice Anthony Colman who has undertaken the role of editor in chief.

As before, the Guide is not intended to provide a blueprint for litigation to which practitioners and the court must unthinkingly conform. The interests of efficiency and justice are paramount and the Guide must be treated as a flexible instrument so as to enable the Court to continue to provide a service to the international business community of the highest quality.

Comments about the new edition are always welcome. A working group under the chairmanship of Mr Justice Richard Aikens is to be set up to consider ways of further improving the service which the Court provides. The next edition may thus not be so long in gestation.

The Hon Mr Justice David Steel
Judge in charge of the Commercial and Admiralty Courts
December 2006

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A. Preliminary

A1 The procedural framework

A1.1 Proceedings in the Commercial Court are governed by the Civil Procedure Rules ("CPR") and Practice Directions. CPR Part 58 and its associated practice direction deal specifically with the Commercial Court. Part 61 deals with the Admiralty Court and Part 62 deals with arbitration applications. Parts 58 and 61 and their associated practice directions are set out in Appendix 1; Rule 62 and its associated practice direction is set out in Appendix 2.

A1.2 The Admiralty & Commercial Courts Guide is published with the approval of the Lord Chief Justice and the Head of Civil Justice in consultation with the Judges of the Admiralty and Commercial Courts and with the advice and support of the Admiralty Court and Commercial Court Committees. It is intended to provide guidance about the conduct of proceedings in the Admiralty and Commercial Courts and, within the framework of the Civil Procedure Rules and Practice Directions, to establish the practice to be followed in those courts.

A1.3 In matters for which specific provision is not made by the Guide, the parties, their solicitors and counsel will be expected to act reasonably and in accordance with the spirit of the Guide.

A1.4 The requirements of the Guide are designed to ensure effective management of proceedings in the Admiralty and Commercial Courts. If parties fail to comply with these requirements the court may impose sanctions including orders for costs and (where appropriate) wasted costs orders.

A1.5 Pre-trial matters in the Admiralty and Commercial Courts are dealt with by the judges of those Courts: **58PD §1.2.**

A1.6 The Court expects a high level of co-operation and realism from the legal representatives of the parties. This applies to dealings (including correspondence) between legal representatives as well as to dealings with the Court.

A1.7 In order to avoid excessive repetition, the Guide has been written by reference to proceedings in the Commercial Court. Practitioners should treat the guidance as applicable to proceedings in the Admiralty Court unless the content of Part 61 or Section N of this Guide ("Admiralty") specifically requires otherwise.

A1.8 Parties may communicate with by e-mail with the Commercial and Admiralty Courts on certain matters:

a. to communicate the Case Management Unit, including the lodging of progress monitoring information sheets;

b. to communicate with the Registry in relation to the approval by the Judge of draft Order following a hearing before that Judge, queries on Orders made, requests to transfer a case into or out of the Commercial Court and general correspondence, including questions on practice;

Note: Orders submitted for sealing must be submitted on paper.

c. to communicate with the Listing Office in matters relating to listing (including the lodging of pre-trial checklists) and to lodge skeleton arguments with the listing office;

d. to communicate with the Admiralty Marshal (except for out of hours business).

Note: The Court cannot accept any other documents by e-mail at present. In particular e-mail cannot be used to lodge pleadings, affidavits, witness statements, case memoranda and lists of issues. A Guidance Note for communications with the Court by e-mail is set out in Appendix 17.

A2 The Admiralty & Commercial Registry; the Commercial Court Listing Office

A2.1 The administrative office for the Admiralty Court and the Commercial Court is the Admiralty & Commercial Registry ("the Registry") which is located at Room EB13 in the Royal Courts of Justice, Strand, London WC2A 2LL. The Commercial Court Listing Office ("the Listing Office") is located at Room EB09 in the Royal Courts of Justice, Strand, London WC2A 2LL.

A2.2 It is important that there is close liaison between legal representatives of the parties and both the Registry and the Listing Office.

A3 The Commercial Court Committee

A3.1 The success of the Court's ability to meet the special problems and continually changing needs of the commercial community depends in part upon a steady flow of information and constructive suggestions between the Court, litigants and professional advisers.

A3.2 The Commercial Court Committee has assisted in this process for many years. It is expected to play an important part in helping to ensure that the procedures of the Court enable the achievement of the "overriding objective". All concerned with the Court are encouraged to make the fullest use of this important channel of communication. Correspondence raising matters for the consideration of the Committee should be addressed to the

Clerk to the Commercial Court, Royal Courts of Justice, Strand, London WC2A 2LL.

A4 Specialist associations

A4.1 There are a number of associations of legal representatives which liaise closely with the Commercial Court. These will also play an important part in helping to ensure that the Court remains responsive to the "overriding objective".

A4.2 The associations include the Commercial Bar Association ("COMBAR"), the London Common Law and Commercial Bar Association ("LCLCBA"), the City of London Law Society, the London Solicitors Litigation Association and the Admiralty Solicitors Group.

B. Commencement, Transfer and Removal

B1 Commercial cases

B1.1 Rule 58.1(2) describes a "commercial claim" as follows:

"any claim arising out of the transaction of trade and commerce and includes any claim relating to -

(a) a business document or contract;
(b) the export or import of goods;
(c) the carriage of goods by land, sea, air or pipeline;
(d) the exploitation of oil and gas reserves or other natural resources;
(e) insurance and re-insurance;
(f) banking and financial services;
(g) the operation of markets and exchanges;
(h) the purchase and sale of commodities;
(i) the construction of ships;
(j) business agency; and
(k) arbitration."

B2 Starting a case in the Commercial Court

B2.1 Except for arbitration applications which are governed by the provisions of CPR Part 62 and section O of the Guide, the case will be begun by a claim form under Part 7 or Part 8.

B2.2 Save where otherwise specified, references in this Guide to a claim form are to a Part 7 claim form.

B2.3 The Commercial Court may give a fixed date for trial (see section D16), but it does not give a fixed date for a hearing when it issues a claim. Rules 7.9 and 7.10 and their associated practice directions do not apply to the Commercial Court.

B3 Part 7 claims

The form

B3.1 A claimant starting proceedings in the Commercial Court must use practice form N1(CC) for Part 7 claims: **PD58 §2.4**. A copy of this practice form is included at the end of the Guide.

Marking

B3.2 In accordance with PD58 §2.3 the claim form should be marked in the top right hand corner with the words "Queen's Bench Division, Commercial Court", and on the issue of the claim form out of the Registry the case will be entered in the Commercial List. Marking the claim form in this way complies sufficiently with PD7 §3.6(3).

Statement of value

B3.3 Rule 16.3, which provides for a statement of value to be included in the claim form, does not apply in the Commercial Court: **rule 58.5(2).**

Particulars of claim and the claim form

B3.4 Although particulars of claim may be served with the claim form, this is not a requirement in the Commercial Court. However, if the particulars of claim are not contained in or served with the claim form, the claim form must contain a statement that if an acknowledgment of service is filed indicating an intention to defend the claim, particulars of claim will follow: **rule 58.5(1)(a).**

B3.5 If particulars of claim do not accompany the claim form they must be served within 28 days after the defendant has filed an acknowledgment of service indicating an intention to defend the claim: **rule 58.5(1)(c).**

B3.6 The three forms specified in rule 7.8(1) must be served with the claim form. One of these is a form for acknowledging service: **rule 58.5(1)(b).**

Statement of truth

B3.7 (a) A claim form must be verified by a statement of truth: **rule 22.1.** Unless the court otherwise orders, any amendment to a claim form must also be verified: **rule 22.1(2).**

(b) The required form of statement of truth is set out at **PD7 §7.2.**

(c) A claim form will remain effective even where not verified by a statement of truth, unless it is struck out: **PD22 §4.1.**

(d) In certain cases the statement of truth may be signed by a person other than the party on whose behalf it is served or its legal representative: **section C1.8-1.9**.

Trial without service of particulars of claim or a defence

B3.8 The attention of the parties and their legal representatives is drawn to rule 58.11 which allows the court to order (before or after the issue of a claim form) that the case shall proceed without the filing or service of particulars of claim or defence or of any other statement of case. This facility is to be used with caution. It is unlikely to be appropriate unless all the issues have already been clearly defined in previous exchanges between the parties either in the course of a pre-claim form application or in previous correspondence and then only when the issues are of law or construction.

Interest

B3.9 The claim form (and not only the particulars of claim) must comply with the requirements of rules 16.4(1)(b) and 16.4(2) concerning interest: **rule 58.5(3).**

B3.10 References to particulars of claim in rule 12.6(1)(a) (referring to claims for interest where there is a default judgment) and rule 14.14(1)(a) (referring to

claims for interest where there is a judgment on admissions) may be treated as references to the claim form: **rules 58.8(2) and 58.9(3)**.

Issue of a claim form when the Registry is closed

B3.11 A request for the issue of a Part 7 claim form may be made by fax at certain times when the Registry is closed to the public: **PD58 §2.2.** The procedure is set out in Appendix 3. Any further details may be obtained from the Registry. The fax number is 020 7947 6667.

B4 Part 8 claims

Form

B4.1 A claimant who wishes to commence a claim under CPR Part 8 must use practice form N208(CC): **PD58 §2.4**. A copy of this practice form is included at the end of this Guide.

B4.2 Attention is drawn to the requirement in rule 8.2(a) that where a claimant uses the Part 8 procedure his claim form must state that Part 8 applies. Similarly, PD7 §3.3 requires that the claim form state (if it be the case) that the claimant wishes his claim to proceed under Part 8 or that the claim is required to proceed under Part 8.

Marking and statement of truth

B4.3 Sections B3.2 (marking) and B3.7 (statement of truth) also apply to a claim form issued under Part 8.

Issue of a claim form when the Registry is closed

B4.4 A request for the issue of a Part 8 claim form may be made by fax at certain times when the Registry is closed to the public: **PD58 §2.2.** The procedure is set out in Appendix 3.

Time for filing evidence in opposition to a Part 8 claim

B4.5 A defendant to a Part 8 claim who wishes to rely on written evidence must file and serve it within 28 days after filing an acknowledgment of service: **rule 58.12**.

B5 Part 20 claims

Form

B5.1 Adapted versions of the Part 20 claim form and acknowledgment of service (Practice Forms no. N211 and N213) and of the related Notes to Part 20 claimant and Part 20 defendant have been approved for use in the Commercial Court. Copies of the practice forms are included at the end of the Guide.

B6 Service of the claim form

Service by the parties

B6.1 Claim forms issued in the Commercial List are to be served by the parties, not by the Registry: **PD58 §9.**

Methods of service

B6.2 Methods of service are set out in CPR Part 6, which is supplemented by a Practice Direction.

B6.3 PD6 §§2.1 and 3.1 concern service by document exchange and by fax. Service of the claim form on the legal representative of the defendant by document exchange or fax will not be effective unless that legal representative has authority to accept service. It is desirable to obtain confirmation from the legal representative in writing that he has instructions to accept service of a claim form on behalf of the defendant.

Applications for extension of time

B6.4 Applications for an extension of time in which to serve a claim form are governed by rule 7.6. Rule 7.6(3)(a), which refers to service of the claim form by the court, does not apply in the Commercial Court.

B6.5 The evidence required on an application for an extension of time is set out in PD7 §8.2.

Certificate of service

B6.6 When the claimant has served the claim form he must file a certificate of service: **rule 6.14(2).** Satisfaction of this requirement is relevant, in particular, to the claimant's ability to obtain judgment in default (see Part 12).

B7 Service of the claim form out of the jurisdiction

B7.1 Applications for permission to serve a claim form out of the jurisdiction are governed by rules 6.19 to 6.31. A guide to the appropriate practice is set out in Appendix 15.

B7.2 Service of process in some foreign countries may take a long time to complete; it is therefore important that solicitors take prompt steps to effect service.

B8 Acknowledgment of service

Part 7 claims

B8.1 (a) A defendant must file an acknowledgment of service in every case: **rule 58.6(1)**. An adapted version of practice form N9 (which includes the acknowledgment of service) has been approved for use in the Commercial Court. A copy of this practice form (Form N9(CC)) is included at the end of the Guide, together with adapted versions of the notes for claimants and defendants on completing and replying to a Part 7 claim form.

(b) The period for filing an acknowledgment of service is calculated from the service of the claim form, whether or not particulars of claim are contained in or accompany the claim form or are to follow service of

the claim form. Rule 9.1(2), which provides that in certain circumstances the defendant need not respond to the claim until particulars of claim have been served on him, does not apply: **rule 58.6(1).**

Part 8 claims

B8.2 (a) A defendant must file an acknowledgment of service in every case: **rule 58.6(1)**. An adapted version of practice form N210 (acknowledgment of service of a Part 8 claim form) has been approved for use in the Commercial Court. A copy of this practice form (Form N210(CC)) is included at the end of the Guide, together with adapted versions of the notes for claimants and defendants on completing and replying to a Part 8 claim form.

(b) The time for filing an acknowledgment of service is calculated from the service of the claim form.

Acknowledgment of service in a claim against a firm

B8.3 (a) PD10 §4.4 allows an acknowledgment of service to be signed on behalf of a partnership by any of the partners or a person having the control or management of the partnership business, whether he be a partner or not.

(b) However, attention is drawn to Schedule 1 to the CPR which includes, with modifications, provisions previously contained in CPR Order 81 concerning acknowledgment of service by a person served as a partner who denies his liability as such (see also the note at the end of CPR Part 10).

Time for filing acknowledgment of service

B8.4 (a) Except in the circumstances described in section B8.4(b) and B8.4(c), or is otherwise ordered by the court, the period for filing an acknowledgment of service is 14 days after service of the claim form.

(b) If the claim form has been served out of the jurisdiction without the permission of the court under rule 6.19, the time for filing an acknowledgment of service is governed by rule 6.22, save that in all cases time runs from the service of the claim form: **rule 58.6(3).**

(c) If the claim form has been served out of the jurisdiction with the permission of the court under rule 6.20 the time for filing an acknowledgment of service is governed by rule 6.21(4)(a), the second practice direction supplementing rule 6 and the table to which it refers, save that in all cases time runs from the service of the claim form: **rule 58.6(3).**

B9 Disputing the court's jurisdiction

Part 7 claims

B9.1 (a) If the defendant intends to dispute the court's jurisdiction or contend that the court should not exercise its jurisdiction he must
(i) file an acknowledgment of service **- rule 11(2)**; and
(ii) issue an application notice seeking the appropriate relief.

(b) An application to dispute the court's jurisdiction must be made within 28 days of filing an acknowledgment of service: **rule 58.7(2)**.

(c) If the defendant wishes to rely on written evidence in support of that application, he must file and serve that evidence when he issues the application.

(d) The parties to that application should consider at the time of the application and as soon as possible thereafter whether the application is a 'heavy application' within Section F6.1 likely to last more than half a day but for which the automatic timetable provisions in PD 58 para 13.2 and F6.3 – F6.5 will not for any reason be appropriate. If any party considers that special timetabling is required otherwise than in accordance with those automatic provisions it should at once so inform all other parties and the Listing Office. Unless a timetable covering those matters covered by Section F6.3 to F6.5 can be agreed forthwith, the applicant must without delay inform the Listing Office that a directions hearing will be required. For the purposes of such a hearing all parties must by 1pm on the day before that hearing lodge with the Listing Office a brief summary of the issues of fact and law likely to arise on the application, a list of witnesses of fact whose witness statements or affidavits are likely to be adduced by that party, a list of expert witnesses on whose report that party intends to reply, an estimate of how long the hearing will take and a proposed pre-hearing timetable.

(e) If the defendant makes an application under rule 11(1), the claimant is not bound to serve particulars of claim until that application has been disposed of: **rule 58.7(3)**.

Part 8 claims

B9.2 (a) The provisions of section B9.1(a)-(c) also apply in the case of Part 8 claims.

(b) If the defendant makes an application under rule 11(1), he is not bound to serve any written evidence on which he wishes to rely in opposition to the substantive claim until that application has been disposed of: **rule 11.9**.

Effect of an application challenging the jurisdiction

B9.3 An acknowledgment of service of a Part 7 or Part 8 claim form which is followed by an application challenging the jurisdiction under Part 11 does not constitute a submission by the defendant to the jurisdiction: **rules 11(3)** and **11(7)**.

B9.4 If an application under Part 11 is unsuccessful, and the court then considers giving directions for filing and serving statements of case (in the case of a Part 7 claim) or evidence (in the case of a Part 8 claim), a defendant does not submit to the jurisdiction merely by asking for time to serve and file his statement of case or evidence, as the case may be.

B10 Default judgment

B10 Default judgment is governed by Part 12 and PD12. However, because in the Commercial Court the period for filing the acknowledgment of service is calculated from service of the claim form, the reference to "particulars of claim" in PD12 §4.1(1) should be read as referring to the claim form: **PD58 §6(1).**

B11 Admissions

B11 (a) Admissions are governed by CPR Part 14, and PD14, except that the references to "particulars of claim" in PD14 §§2.1, 3.1 and 3.2 should be read as referring to the claim form: **PD58 §6(2)**.

(b) Adapted versions of the practice forms of admission (practice forms no. N9A and no. N9C) have been approved for use in the Commercial Court. Copies of these practice forms (Forms N9A(CC) and N9C(CC)) are included at the end of the Guide.

B12 Transfer of cases into and out of the Commercial List

B12.1 The procedure for transfer and removal is set out in **PD58 §4**. All such applications must be made to the Commercial Court: **rule 30.5(3)**.

B12.2 Although an order to transfer a case to the Commercial List may be made at any stage, any application for such an order should normally be made at an early stage in the proceedings.

B12.3 Transfer to the Commercial List may be ordered for limited purposes only, but a transferred case will normally remain in the Commercial List until its conclusion.

B12.4 An order transferring a case out of the Commercial List may be made at any stage, but will not usually be made after a pre-trial timetable has been fixed at the case management conference (see section D8).

B12.5 Some commercial cases may more suitably, or as suitably, be dealt with in one of the Mercantile Courts or the London Mercantile Court. Parties should consider whether it would be more appropriate to begin proceedings in one of those courts and the Commercial Judge may on his own initiative order the case to be transferred there. Guidance on practical steps for transferring cases to the London Mercantile Court and to the Mercantile Courts is contained in a Guidance Note at Appendix 18.

C. Particulars of Claim, Defence and Reply

C1 Form, content, serving and filing

C1.1 (a) Particulars of claim, the defence and any reply must be set out in separate consecutively numbered paragraphs and be as brief and concise as possible.

(b) If it is necessary for the proper understanding of the statement of case to include substantial parts of a lengthy document the passages in question should be set out in a schedule rather than in the body of the case.

(c) The document must be signed by the individual person or persons who drafted it, not, in the case of a solicitor, in the name of the firm alone.

C1.2 (a) Particulars of claim, the defence and also any reply must comply with the provisions of rules 16.4 and 16.5, save that rules 16.5(6) and 16.5(8) do not apply.

(b) The requirements of PD16 §7.4-7.6 and 8.1 (which relate to claims based upon oral agreements, agreements by conduct and Consumer Credit Agreements and to reliance upon evidence of certain matters under the Civil Evidence Act 1968) should be treated as applying to the defence and reply as well as to the particulars of claim.

(c) (i) full and specific details must be given of any allegation of fraud, dishonesty, malice or illegality; and
(ii) where an inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged must be fully set out.

(d) Any legislative provision upon which an allegation is based must be clearly identified and the basis of its application explained.

(e) Any provision of The Human Rights Act 1998 (including the Convention) on which a party relies in support of its case must be clearly identified and the basis of its application explained.

(f) Any principle of foreign law or foreign legislative provision upon which a party's case is based must be clearly identified and the basis of its application explained.

(g) It is important that if a defendant or Part 20 defendant wishes to advance by way of defence or defence to counterclaim a positive case on causation or quantification of damages, full details of that case should be included in the defence or Part 20 defence at the outset or, if not then available, as early as possible thereafter.

C1.3 **(a)** PD16 §7.3 relating to a claim based upon a written agreement should be treated as also applying to the defence, unless the claim and the defence are based on the same agreement.

(b) In most cases attaching documents to or serving documents with a statement of case does not promote the efficient conduct of the proceedings and should be avoided.

(c) If documents are to be served at the same time as a statement of case they should normally be served separately from rather than attached to the statement of case.

(d) Only those documents which are obviously of critical importance and necessary for a proper understanding of the statement of case should be attached to or served with it. The statement of case must itself refer to the fact that documents are attached to or served with it.

(e) An expert's report should not be attached to the statement of case and should not be filed with the statement of case at the Registry. A party must obtain permission from the court in order to adduce expert evidence at trial and therefore any party which serves an expert's report without obtaining such permission does so at his own risk as to costs.

(f) Notwithstanding PD16 §7.3(1), a true copy of the complete written agreement may be made available at any hearing unless the court orders otherwise.

Adapted versions of the practice forms of defence and counterclaim have been approved for use in the Commercial Court. Copies of these practice forms are included at the end of this Guide.

Summaries

C1.4 If a statement of case exceeds 25 pages (excluding schedules), a summary, not exceeding 4 pages, must also be filed and served. The summary should cross-refer to the paragraph numbering of the full statement of case. The summary is to be included in the case management bundle: **section D7.2(ii).**

Length

C1.5 Parties serving statements of case should bear in mind that the court will take into account the length of the document served when considering any application by another party for further time within which to respond.

Statement of truth

C1.6 Particulars of claim, a defence and any reply must be verified by a statement of truth: **rule 22.1**. So too must any amendment, unless the court otherwise orders: **rule 22.1(2)**; see also **section C5.2**.

C1.7 The required form of statement of truth is as follows:

(i) for particulars of claim, as set out in **PD7 §7.2** or **PD16 §3.4**;
(ii) for a defence, as set out in **PD15 §2.2** or **PD16 §11.2**;
(iii) for a reply the statement of truth should follow the form for the particulars of claim, but substituting the word "reply" for the words "particulars of claim" (see **PD22 §2.1**).

C1.8 A party may apply to the court for permission that a statement of truth be signed by a person other than one of those required by rule 22.1(6).

C1.9 If insurers are conducting proceedings on behalf of many claimants or defendants a statement of truth may be signed by a senior person responsible for the case at a lead insurer, but
(i) the person signing must specify the capacity in which he signs;
(ii) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and
(iii) the court may order that a statement of truth also be signed by one or more of the parties.
See **PD22 §3.6B**

C1.10 A statement of case remains effective (although it may not be relied on as evidence) even where it is not verified by a statement of truth, unless it is struck out: **PD22 §§4.1-4.3**.

Service

C1.11 All statements of case are served by the parties, not by the court: **PD58 §9**.

Filing

C1.12 The statements of case filed with the court form part of the permanent record of the court.

C2 Serving and filing particulars of claim

C2.1 Subject to any contrary order of the court and unless particulars of claim are contained in or accompany the claim form
(i) the period for serving particulars of claim is 28 days after filing an acknowledgment of service: **rule 58.5(1)(c)**;
(ii) the parties may agree extensions of the period for serving the particulars of claim. However, any such agreement must be evidenced in writing and notified to the court, addressed to the Case Management Unit: **PD58 §7.1**;
(iii) any notification of an agreed extension exceeding 6 weeks, or which when taken together with preceding extensions exceeds 6 weeks in total, must be accompanied by a brief statement of the reasons for the extension.

C2.2 The court may make an order overriding any agreement by the parties varying a time limit: **PD58 §7.2**.

C2.3 The claimant must serve the particulars of claim on all other parties. A copy of the claim form will be filed at the Registry on issue. If the claimant

serves particulars of claim separately from the claim form he must file a copy within 7 days of service together with a certificate of service: **rule 7.4(3).**

C3 Serving and filing a defence

C3.1 The defendant must serve the defence on all other parties and must at the same time file a copy with the court.

C3.2 (a) If the defendant files an acknowledgment of service which indicates an intention to defend the period for serving and filing a defence is 28 days after service of the particulars of claim, subject to the provisions of rule 15.4(2). (See also Appendix 15 for cases where the claim form has been served out of the jurisdiction).

(b) The defendant and the claimant may agree that the period for serving and filing a defence shall be extended by up to 28 days: **rule 15.5(1).**

(c) An application to the court is required for any further extension. If the parties are able to agree that a further extension should be granted, a draft consent order should be provided together with a brief explanation of the reasons for the extension.

C3.3 The general power to agree variations to time limits contained in rule 2.11 and PD58 §7.1 enables parties to agree extensions of the period for serving and filing a defence that exceed 28 days. The length of extension must in all cases be specified. Any such agreement must be evidenced in writing and comply with the requirements of section C2.1.

C3.4 (a) Where an extension is agreed the defendant must, in accordance with rule 15.5(2), notify the court in writing; the notification should be addressed to the Case Management Unit.

(b) Any notification of an agreed extension exceeding 6 weeks, or which when taken together with preceding extensions exceeds 6 weeks in total, must be accompanied by a brief statement (agreed by the claimant and the defendant) of the reasons for the extension. The reasons will be brought to the attention of the Judge in Charge of the Commercial List.

C3.5 The claimant must notify the Case Management Unit by letter when all defendants who intend to serve a defence have done so. This information is material to the fixing of the case management conference (see section D3.1).

C4 Serving and filing a reply

C4.1 Subject to section C4.3, the period for serving and filing a reply is 21 days after service of the defence: **rule 58.10(1)**.

C4.2 (a) A reply must be filed at the same time as it is served: **rule15.8(b)**; rule 15.8(a) does not apply in proceedings in the Commercial List.

(b) The reply should be served before case management information sheets are provided to the court (see section D8.5). In the normal case, this will allow the parties to consider any reply before completing the case management information sheet, and allow time for the preparation of the case memorandum and the list of issues each of which is required for the case management conference (see sections D4-D7).

C4.3 In some cases, more than 21 days may be needed for the preparation, service and filing of a reply. In such cases an application should be made on paper for an extension of time and for a postponement of the case management conference. The procedure to be followed when making an application on paper is set out in section F4.

C4.4 Any reply must be served by the claimant on all other parties: **rule 58.10(1)**.

C5 Amendment

C5.1 (a) Amendments to a statement of case must show the original text, unless the court orders otherwise: **PD58 §8**.

(b) Amendments may be shown by using footnotes or marginal notes, provided they identify precisely where and when an amendment has been made.

(c) Unless the court so orders, there is no need to show amendments by colour-coding.

(d) If there have been extensive amendments it may be desirable to prepare a fresh copy of the statement of case. However, a copy of the statement of case showing where and when amendments have been made must also be made available.

C5.2 All amendments to any statement of case must be verified by a statement of truth unless the court orders otherwise: **rule 22.1(2)**.

C5.3 Questions of amendment, and consequential amendment, should wherever possible be dealt with by consent. A party should consent to a proposed amendment unless he has substantial grounds for objecting to it.

C5.4 Late amendments should be avoided and may be disallowed.

D. Case Management in the Commercial Court

D1 Generally

D1.1 All proceedings in the Commercial List will be subject to management by the court.

D1.2 All proceedings in the Commercial List are automatically allocated to the multi-track and consequently Part 26 and the rules relating to allocation do not apply: **rule 58.13(1)**.

D1.3 Except for rule 29.3(2) (legal representatives to attend case management conferences and pre-trial reviews) and rule 29.5 (variation of case management timetable), Part 29 does not apply to proceedings in the Commercial List: **rule 58.13(2)**.

D2 Key features of case management in the Commercial Court

D2 Case management is governed by rule 58.13 and PD58 §10. In a normal commercial case commenced by a Part 7 claim form, case management will include the following 10 key features:

(1) statements of case will be exchanged within fixed or monitored time periods;

(2) a case memorandum, a list of issues and a case management bundle will be produced at an early point in the case;

(3) the case memorandum, list of issues and case management bundle will be amended and updated or revised on a running basis throughout the life of the case and will be used by the court at every stage of the case;

(4) a mandatory case management conference will be held shortly after statements of case have been served, if not before (and preceded by the parties lodging case management information sheets identifying their views on the requirements of the case);

(5) at the case management conference the court will (as necessary) discuss the issues in the case and the requirements of the case with the advocates retained in the case. The court will set a pre-trial timetable and give any other directions as may be appropriate;

(6) before the progress monitoring date the parties will report to the court, using a progress monitoring information sheet, the extent of their compliance with the pre-trial timetable;

(7) on or shortly after the progress monitoring date a judge will (without a hearing) consider progress and give such further directions as he thinks appropriate;

(8) if at the progress monitoring date all parties have indicated that they will be ready for trial, all parties will complete a pre-trial checklist;

(9) in many cases there will be a pre-trial review; in such cases the parties will be required to prepare a trial timetable for consideration by the court;

(10) throughout the case there will be regular reviews of the estimated length of trial.

D3 Fixing a case management conference

D3.1 A mandatory case management conference will normally take place on the first available date 6 weeks after all defendants who intend to serve a

defence have done so. This will normally allow time for the preparation and service of any reply (see section C4).

D3.2 (a) If proceedings have been started by service of a Part 7 claim form, the claimant must take steps to fix the date for the case management conference with the Listing Office in co-operation with the other parties within 14 days of the date when all defendants who intend to file and serve a defence have done so: **PD58 §10.2(a)**. The parties should bear in mind the need to allow time for the preparation and service of any reply.

(b) If proceedings have been begun by service of a Part 8 claim form, the claimant must take steps to fix a date for the case management conference with the Listing Office in co-operation with the other parties within 14 days of the date when all defendants who wish to serve evidence have done so: **PD58 §10.2(b)**.

D3.3 (a) In accordance with section C3 the Registry will expect a defence to be served and filed by the latest of

(i) 28 days after service of particulars of claim (as certified by the certificate of service); or

(ii) any extended date for serving and filing a defence as notified to the court in writing following agreement between the parties; or

(iii) any extended date for serving and filing a defence as ordered by the court on an application.

(b) If within 28 days after the latest of these dates has passed for each defendant, the parties have not taken steps to fix the date for the case management conference, the Case Management Unit will inform the Judge in Charge of the List, and at his direction will take steps to fix a date for the case management conference without further reference to the parties.

D3.4 If the proceedings have been transferred to the Commercial List, the claimant must apply for a case management conference within 14 days of the date of the order transferring them, unless the judge held, or gave directions for, a case management conference when he made the order transferring the proceedings: **PD58 §10.3**.

D3.5 If the claimant fails to make an application as required by the rules, any other party may apply for a case management conference: **PD58 §10.5**.

D3.6 (a) In some cases it may be appropriate for a case management conference to take place at an earlier date.

(b) Any party may apply to the court in writing at an earlier time for a case management conference: **PD58 §10.4**. A request by any party for an early case management conference should be made in writing to the Judge in Charge of the List, on notice to all other parties, at the earliest possible opportunity.

D3.7 If before the date on which the case management conference would be held in accordance with section D3 there is a hearing in the case at which the parties are represented, the business of the case management conference will normally be transacted at that hearing and there will be no separate case management conference.

D3.8 The court may fix a case management conference at any time on its own initiative. If it does so, the court will normally give at least 7 days notice to the parties: **PD58 §10.6**.

D3.9 A case management conference may not be postponed or adjourned without an order of the court.

D4 Two-Judge team system

D4.1 (a) Cases which are exceptional in size or complexity or in having a propensity to give rise to numerous pre-trial applications may be allocated to a management team of two designated judges.

(b) An application for the appointment of a two-judge management team should be made in writing to the Judge in Charge of the List at the time of fixing the case management conference.

(c) If an order is made for allocation to a two-judge team, one of the designated judges will preside at all subsequent pre-trial case management conferences and other hearings.

D4.2 Except for an application for an interim payment, all applications in the case, and the trial itself, will be heard by one or other of the designated judges.

D5 Case memorandum

D5.1 In order that the judge conducting the case management conference may be informed of the general nature of the case and the issues which are expected to arise, after service of the defence and any reply the solicitors and counsel for each party shall draft an agreed case memorandum.

D5.2 The case memorandum should contain:

(i) a short and uncontroversial description of what the case is about; and

(ii) a very short and uncontroversial summary of the material procedural history of the case.

D5.3 Unless otherwise ordered, the solicitors for the claimant are to be responsible for producing and filing the case memorandum.

D5.4 The case memorandum should not refer to any application for an interim payment, to any order for an interim payment, to any voluntary interim payment, or to any payment or offer under CPR Part 36 or Part 37.

D5.5 (a) It should be clearly understood that the only purpose of the case memorandum is to help the judge understand broadly what the case is about. The case memorandum does not play any part in the trial. It is unnecessary, therefore, for parties to be unduly concerned about the precise terms in which it is drafted, provided it contains a reasonably fair and balanced description of the case. Above all the parties must do their best to spend as little time as practicable in drafting and negotiating the wording of the memorandum and keep clearly in mind the need to limit costs.

(b) Accordingly, in all but the most exceptional cases it should be possible for the parties to draft an agreed case memorandum. However, if it proves impossible to do so, the claimant must draft the case memorandum and send a copy to the defendant. The defendant may provide its comments to the court (with a copy to the claimant) separately.

(c) The failure of the parties to agree a case memorandum is a matter which the court may wish to take into account when dealing with the costs of the case management conference.

D6 List of issues

D6.1 After service of the defence (and any reply), the solicitors and counsel for each party shall produce an agreed list of the important issues in the case. The list should include both issues of fact and issue of law. A separate section of the document should list what is common ground between the parties (or any of them, specifying which).

D6.2 Unless otherwise ordered, the solicitors and counsel for the claimant are to have responsibility for the production and revision of the list of issues.

D7 Case management bundle

Preparation

D7.1 Before the case management conference (see sections D3 and D8), a case management bundle should be prepared by the solicitors for the claimant: **PD58 §10.8**.

Contents

D7.2 The case management bundle should only contain the documents listed below (where the documents have been created by the relevant time):

(i) the claim form;
(ii) all statements of case (excluding schedules), except that, if a summary has been prepared, the bundle should contain the summary, not the full statement of case;
(iii) the case memorandum (see section D5);
(iv) the list of issues (see section D6);
(v) the case management information sheets and the pre-trial timetable if one has already been established (see sections D8.5 and D8.9);
(vi) the principal orders in the case; and

(vii) any agreement in writing made by the parties to disclose documents without making a list or any agreement in writing that disclosure (or inspection or both) shall take place in stages.

See generally **PD58 §10.8**.

D7.3 The case management bundle must not include a copy of any order for an interim payment.

Lodging the case management bundle

D7.4 The case management bundle should be lodged with the Listing Office at least 7 days before the (first) case management conference (or earlier hearing at which the parties are represented and at which the business of the case management conference may be transacted: see section D3.7).

Preparation and upkeep

D7.5 The claimant (or other party responsible for the preparation and upkeep of the case management bundle), in consultation with the other parties, must revise and update the case management bundle as the case proceeds: **PD58 §10.9**. The claimant should attend at the Case Management Unit for this purpose at the following stages:

(i) within 10 days of the case management conference, in order to add the pre-trial timetable (or any other order made at the case management conference) and an updated case memorandum;

(ii) within 10 days of an order being made on an application, if in the light of the order or the application it is necessary to add a copy of the order made (as a principal order in the case) or an updated case memorandum;

(iii) within 14 days of the service of any amended statement of case (or summary), in order to substitute a copy of the amended statement of case (or summary) for that which it replaces and to incorporate an updated case memorandum and (if appropriate) a revised list of issues;

(iv) within 10 days of any other revision to the case memorandum or list of issues, in order to incorporate the revised document.

D8 Case Management Conference

Application to postpone the case management conference

D8.1 (a) An application to postpone the case management conference must be made within 21 days after all defendants who intend to serve a defence have done so.

(b) The application will be dealt with on paper unless the court considers it appropriate to direct an oral hearing.

Attendance at the case management conference

D8.2 Clients need not attend a case management conference unless the court otherwise orders. A representative who has conduct of the case must attend from each firm of solicitors instructed in the case. At least one of the advocates retained in the case on behalf of each party should also attend.

D8.3 (a) The case management conference is a very significant stage in the case. It is not simply a substitute for the summons for directions under the former Rules of the Supreme Court and although parties are encouraged to agree proposals for directions for the consideration of the court, directions will not normally be made by consent without the need for attendance.

(b) The general rule in the Commercial Court, as the Commercial and Admiralty Courts Guide makes clear, is that there must be an oral Case Management Conference (CMC) at court.

(c) However, there are cases which are out of the ordinary where it may be possible to dispense with an oral hearing if the issues are straightforward and the costs of an oral hearing cannot be justified.

(d) In such a case, if the parties wish to ask the Court to consider holding the CMC on paper, they must lodge all the appropriate documents by no later than 12 noon on the Tuesday of the week in which the CMC is fixed for the Friday. That timing will be strictly enforced. If all the papers are not provided by that time, the CMC must be expected to go forward to an oral hearing. If the failure to lodge the papers is due to the fault of one party and it is for that reason an oral CMC takes place, that party will be at risk as to costs.

(e) With the papers (which will include the Case Management bundle with the information sheets fully completed by each party), the parties must lodge a draft Order (agreed by the parties) for consideration by the Judge and a statement signed by each advocate:

(i) confirming that the parties have considered and discussed all the relevant issues and brought to the Court's attention anything that was unusual; and

(ii) setting out information about any steps that had been taken to resolve the dispute by ADR, any future plans for ADR or an explanation as to why ADR would not be appropriate.

(f) In the ordinary course of things it would be unlikely that any case involving expert evidence or preliminary issues would be suitable for a CMC on paper. In cases involving expert evidence, the Court is anxious to give particular scrutiny to that evidence, given the cost such evidence usually involves and the need to focus that evidence. In cases where preliminary issues are sought, the Court will need to examine the formulation of those issues and discuss whether they are really appropriate.

Applications

D8.4 (a) If by the time of the case management conference a party wishes to apply for an order in respect of a matter not covered by Questions (1)-(16) in the case management information sheet, he should make that application at the case management conference.

(b) In some cases notice of such an application may be given in the case management information sheet itself: see section D8.5(c).

(c) In all other cases the applicant should ensure that an application notice and any supporting evidence is filed and served in time to enable the application to be heard at the case management conference.

Materials: case management information sheet and case management bundle

D8.5 (a) All parties attending a case management conference must complete a case management information sheet: **PD58 §10.7**. A standard form of case management information sheet is set out in Appendix 6. The information sheet is intended to include reference to all applications which the parties would wish to make at a case management conference.

(b) A completed case management information sheet must be provided by each party to the court (and copied to all other parties) at least 7 days before the case management conference.

(c) Applications not covered by the standard questions raised in the case management information sheet should be entered under Question (17). No other application notice is necessary if written evidence will not be involved and the 7 day notice given by entering the application on the information sheet will in all the circumstances be sufficient to enable all other parties to deal with the application.

D8.6 The case management bundle must be provided to the court at least 7 days before the case management conference: **PD58 §10.8**. Only where it is essential for the court on the case management conference to see the full version of a statement of case that has been summarised in accordance with section C1.4 above should a copy of that statement of case be lodged for the case management conference.

The hearing

D8.7 The court's power to give directions at the case management conference is to be found in rules 3.1 and 58.13(4). At the case management conference the judge will:

(i) discuss the issues in the case, and the requirements of the case, with the advocates retained in the case;

(ii) fix the entire pre-trial timetable, or, if that is not practicable, fix as much of the pre-trial timetable as possible; and

(iii) in appropriate cases make an ADR order.

D8.8 At the Case Management Conference, and again at the Pre-Trial Review, consideration will be given to the possibility of the trial of a preliminary issue or issues the resolution of which is likely to shorten the proceedings. An example is a relatively short question of law which can be tried without significant delay (though the implications of a possible appeal for the

remainder of the case cannot be lost sight of). The court may suggest the trial of a preliminary issues, but it will rarely make an order without the concurrence of at least one of the parties.

D8.9 (a) Rules 3.1(2) and 58.13(4) enable the court at the case management conference to stay the proceedings while the parties try to settle the case by alternative means. The case management information sheet requires the parties to indicate whether a stay for such purposes is sought.

(b) In an appropriate case an ADR order may be made without a stay of proceedings. The parties should consider carefully whether it may be possible to provide for ADR in the pre-trial timetable without affecting the date of trial.

(c) Where a stay has been granted for a fixed period for the purposes of ADR the court has power to extend it. If an extension of the stay is desired by all parties, a judge will normally be prepared to deal with an application for such an extension if it is made before the expiry of the stay by letter from the legal representatives of one of the parties. The letter should confirm that all parties consent to the application.

(d) An extension will not normally be granted for more than four weeks unless clear reasons are given to justify a longer period, but more than one extension may be granted.

The pre-trial timetable

D8.10 The pre-trial timetable will normally include:

(i) a progress monitoring date (see section D12 below); and

(ii) a direction that the parties attend upon the Clerk to the Commercial Court to obtain a fixed date for trial.

Variations to the pre-trial timetable

D8.11 The parties may agree minor variations to the time periods set out in the pre-trial timetable without the case needing to be brought back to the court provided that the variation

(i) will not jeopardise the date fixed for trial;

(ii) does not relate to the progress monitoring date; and

(iii) does not provide for the completion after the progress monitoring date of any step which was previously scheduled to have been completed by that date.

D8.12 If in any case it becomes apparent that variations to the pre-trial timetable are required which do not fall within section D8.10 above, the parties should apply to have the case management conference reconvened immediately. The parties should not wait until the progress monitoring date.

D9 Case management conference: Part 8 claims

D9 In a case commenced by the issue of a Part 8 claim form, a case management conference will normally take place on the first available date

6 weeks after service and filing of the defendant's evidence. At that case management conference the Court will make such pre-trial directions as are necessary, adapting (where useful in the context of the particular claim) those of the case management procedures used for a claim commenced by the issue of a Part 7 claim form.

D10 Case management conference: Part 20 claims

D10.1 Wherever possible, any party who intends to make a Part 20 claim should do so before the hearing of the case management conference dealing with the main claim.

D10.2 Where permission to make a Part 20 claim is required it should be sought at the case management conference in the main claim.

D10.3 If the Part 20 claim is confined to a counterclaim by a defendant against a claimant alone, the court will give directions in the Part 20 claim at the case management conference in the main claim.

D10.4 If the Part 20 claim is not confined to a counterclaim by a defendant against a claimant alone, the case management conference in the main claim will be reconvened on the first available date 6 weeks after service by the defendant of the new party or parties to the proceedings.

D10.5 All parties to the proceedings (i.e. the parties to the main claim and the parties to the Part 20 claim) must attend the reconvened case management conference. There will not be a separate case management conference for the Part 20 claim alone.

D10.6 In any case involving a Part 20 claim the court will give case management directions at the same case management conferences as it gives directions for the main claim: **PD58 §12**. The court will therefore normally only give case management directions at hearings attended by all parties to the proceedings.

D10.7 The provisions of D10.4, D10.5 and D10.6 apply equally to Part 20 claims brought by parties who are not also parties to the main claim.

D11 Management throughout the case

D11 The court will continue to take an active role in the management of the case throughout its progress to trial. Parties should be ready at all times to provide the court with such information and assistance as it may require for that purpose.

D12 Progress monitoring

Fixing the progress monitoring date

D12.1 The progress monitoring date will be fixed at the case management conference and will normally be after the date in the pre-trial timetable for exchange of witness statements and expert reports.

Progress monitoring information sheet

D12.2 At least 3 days (i.e. three clear days) before the progress monitoring date the parties must each send to the Case Management Unit (with a copy to all other parties) a progress monitoring information sheet to inform the court:

(i) whether they have complied with the pre-trial timetable, and if they have not, the respects in which they have not; and

(ii) whether they will be ready for a trial commencing on the fixed date specified in the pre-trial timetable, and if they will not be ready, why they will not be ready.

D12.3 A standard form of progress monitoring information sheet is set out in Appendix 12.

D13 Reconvening the case management conference

D13.1 If in the view of the court the information given in the progress monitoring sheets justifies this course, the court may direct that the case management conference be reconvened.

D13.2 At a reconvened hearing of the case management conference the court may make such orders and give such directions as it considers appropriate. If the court is of the view that due to the failure of the parties or any of them to comply with the case management timetable the trial cannot be fairly and efficiently conducted on the date fixed, it may vacate the trial date and make such order for costs as is appropriate.

D14 Pre-trial checklist

D14 Not later than three weeks before the date fixed for trial each party must send to the Listing Office (with a copy to all other parties) a completed checklist confirming final details for trial (a "pre-trial checklist") in the form set out in Appendix 13.

D15 Further information

D15.1(a) If a party declines to provide further information requested under Part 18, the solicitors or counsel who are to appear at the application for the parties concerned must communicate directly with each other in an attempt to reach agreement before any application is made to the court.

(b) No application for an order that a party provide further information will normally be listed for hearing without prior written confirmation from the applicant that the requirements of this section D15.1(a) have been complied with.

D15.2 Because it falls within the definition of a statement of case (see rule 2.3(1)) a response providing further information under CPR Part 18 must be verified by a statement of truth.

D16 Fixed trial dates

D16.1 Most cases will be given fixed trial dates immediately after the pre-trial timetable has been set at the case management conference.

D16.2 A fixed date for trial is given on the understanding that if previous fixtures have been substantially underestimated or other urgent matters need to be heard, the trial may be delayed. Where such delay might cause particular inconvenience to witnesses or others involved in the trial, the Clerk to the Commercial Court should be informed well in advance of the fixed date.

D17 Estimates of length of trial

D17.1 At the case management conference an estimate will be made of the minimum and maximum lengths of the trial. The estimate will appear in the pre-trial timetable and will be the basis on which a date for trial will be fixed.

D17.2 If a party subsequently instructs new advocate(s) to appear on its behalf at the trial, the Listing Office should be notified of that fact within 14 days. Advocates newly instructed should review the estimate of the minimum and maximum lengths of the trial, and submit to the Listing Office a signed note revising or confirming the estimate as appropriate.

D17.3 A confirmed estimate of the minimum and maximum lengths of the trial, signed by the advocates who are to appear at the trial, should be attached to the pre-trial checklist.

D17.4 It is the duty of all advocates who are to appear at the trial to seek agreement, if possible, on the estimated minimum and maximum lengths of trial.

D17.5 The provisional estimate and (after it is given) the confirmed estimate must be kept under review by the advocates who are to appear at the trial. If at any stage an estimate needs to be revised, a signed revised estimate (whether agreed or not) must be submitted by the advocates to the Clerk to the Commercial Court.

D17.6 Accurate estimation of trial length is of great importance to the efficient functioning of the court. The court will be guided by, but will not necessarily accept, the estimates given by the parties

D18 Pre-Trial Review and trial timetable

D18.1 The court will order a pre-trial review in any case in which it considers it appropriate to do so.

D18.2 A pre-trial review will normally take place between 8 and 4 weeks before the date fixed for trial.

D18.3 Whenever possible the pre-trial review will be conducted by the trial judge. It should be attended by the advocates who are to appear at the trial: **PD58 §11.2**.

D18.4 Before the pre-trial review or, if there is not to be one, not later than 7 days before the trial is due to commence, the parties must attempt to agree a

timetable for the trial providing for oral submissions, witnesses of fact and expert evidence: **PD58 § 11.3**. The claimant must file a copy of the draft timetable at least two days before the date fixed for the pre-trial review; any differences of view should be clearly identified: **PD58 §11.4**. At the pre-trial review the judge may set a timetable for the trial and give such other directions for the conduct of the trial as he considers appropriate.

D19 Orders

D19.1(a) Except for orders made by the court on its own initiative under rule 3.3, and unless the court otherwise orders, every judgment or order will be drawn up by the parties and rule 40.3 is modified accordingly: **rule 58.15(1)**.

(b) Consent orders are to be drawn up in accordance with the procedure described in section F9.

(c) All other orders are to be drawn up in draft by the parties and dated in the draft with the date of the judge's decision. The claimant is to have responsibility for drafting the order, unless it was made on the application of another party in which case that other party is to have the responsibility.

(d) Two copies of the draft, signed by the parties themselves, or by their solicitors or counsel, must be lodged with the Registry **within five days** of the decision of the court reflected in the draft.

D19.2 If the court orders that an act be done by a certain date without specifying a time for compliance, the latest time for compliance is 4.30 p.m. on the day in question.

D19.3 Orders that are required to be served must be served by the parties, unless the court otherwise directs.

E. Disclosure

E1 Generally

E1.1 The court will seek to ensure that disclosure is no wider than appropriate. Anything wider than standard disclosure (see section E3) will need to be justified.

E2 Procedure

E2.1 At the case management conference the court will normally wish to consider one or more of the following:

(i) ordering standard disclosure: **rule 31.5(1)**;
(ii) dispensing with or limiting standard disclosure: **rule 31.5(2)**;
(iii) ordering sample disclosure;
(iv) ordering disclosure in stages;
(v) ordering disclosure otherwise than by service of a list of documents, for example, by service of copy documents; and
(vi) ordering specific disclosure**: rule 31.12**.

E2.2 The obligations imposed by an order for disclosure continue until the proceedings come to an end. If, after a list of documents has been prepared and served, the existence (present or past) of further documents to which the order applies comes to the attention of the disclosing party, that party must prepare and serve a supplemental list.

E3 Standard disclosure

E3.1 Standard disclosure is defined by rule 31.6. Where standard disclosure is ordered a party is required to disclose only:

(i) the documents on which he relies; and
(ii) documents which –
- adversely affect his own case;
- adversely affect another party's case; or
- support another party's case; and

(iii) documents which he is required to disclose by any relevant practice direction.

E3.2 A party who contends that to search for a category or class of document under rule 31.6(b) would be unreasonable must indicate this in his case management information sheet (see Appendix 6).

E3.3 In order to comply with rule 31.10(3) (which requires the list to identify the documents in a convenient order and manner and as concisely as possible) it will normally be necessary to list the documents in date order, to number them consecutively and to give each a concise description. However, where there is a large number of documents all falling within a particular category the disclosing party may (unless otherwise ordered) list those documents as a category rather than individually.

E3.4 Each party to the proceedings must serve a separate list of documents. This applies even if two or more parties are represented by the same firm of solicitors.

E3.5 If the physical structure of a file may be of evidential value (e.g. a placing or chartering file) solicitors should make one complete copy of the file in the form in which they received it before any documents are removed for the purpose of giving disclosure or inspection.

E3.6 Unless the Court directs otherwise, the disclosure statement must comply with the requirements of rules 31.7(3) and 31.10(6). In particular, it should

(i) expressly state that the disclosing party believes the extent of the search to have been reasonable in all the circumstances; and

(ii) draw attention to any particular limitations on the extent of the search adopted for reasons of proportionality and give the reasons why they were adopted.

E3.7 The disclosure statement for standard disclosure should begin with the following words:

"[I/we], [name(s)] state that [I/we] have carried out a reasonable and proportionate search to locate all the documents which [I am/*here name the party* is] required to disclose under [the order made by the Court or the agreement in writing made between the parties] on the [ ] day of [ ] 20[ ]."

E3.8 The disclosure statement for standard disclosure should end with the following certificate:

"[I/we] certify that [I/we] understand the duty of disclosure and to the best of [my/our] knowledge [I have/*here name the party* has] carried out that duty. [I/we] certify that the list above is a complete list of all documents which are or have been in [my/*here name the party's*] control and which [I am/*here name the party* is] obliged under [the said order or the said agreement in writing] to disclose."

E3.9 An adapted version of practice form N265 (list of documents: standard disclosure) has been approved for use in the Commercial Court. A copy of this practice form (Form N265(CC)) is included at the end of the Guide. The court may at any stage order that a disclosure statement be verified by affidavit.

E3.10(a) For the purposes of PD31 §4.3 the court will normally regard as an appropriate person any person who is in a position responsibly and authoritatively to search for the documents required to be disclosed by that party and to make the statements contained in the disclosure statement concerning the documents which must be disclosed by that party

(b) A legal representative may in certain cases be an appropriate person.

(c) An explanation why the person is considered an appropriate person must still be given in the disclosure statement.

(d) A person holding an office or position in the disclosing party but who is not in a position responsibly and authoritatively to make the

statements contained in the disclosure statement will not be regarded as an appropriate person to make the disclosure statement of the party.

(e) The court may of its own initiative or on application require that a disclosure statement also be signed by another appropriate person.

E3.11 All parties should have regard to issues which may specifically arise concerning electronic data and documents:

(a) Rule 31.4 contains a broad definition of a document. This extends to electronic documents, including e-mail and other electronic communications, word processed documents and databases. In addition to documents that are readily accessible from computer systems and other electronic devices and media, the definition covers those documents that are stored on servers and back-up systems and electronic documents that have been "deleted". It also extends to additional information stored and associated with electronic documents known as metadata. In most cases metadata is unlikely to be relevant.

(b) The parties should, prior to the first Case Management Conference, discuss any issues that may arise regarding searches for and the preservation of electronic documents. This may involve the parties providing information about the categories of electronic documents within their control, the computer systems, electronic devices and media on which any relevant documents may be held, the storage systems maintained by the parties and their document retention policies. In the case of difficulty or disagreement, the matter should be referred to a judge for directions at the earliest practical date, if possible at the first Case Management Conference. For this purpose the parties should before any such hearing co-operate to provide the court with an explicit account of the issues as to retrieval and disclosure of electronic documents which have arisen and where proportionality is in issue each party should provide the court with an informed estimate of the volume of documents involved and the cost of their retrieval and disclosure.

(c) The parties should co-operate at an early stage as to the format in which electronic copy documents are to be provided on inspection. In the case of difficulty or disagreement, the matter should be referred to a Judge for directions at the earliest practical date, if possible at the first Case Management Conference.

(d) The existence of electronic documents impacts upon the extent of the reasonable search required by Rule 31.7 for the purposes of standard disclosure. The factors that may be relevant in deciding the reasonableness of a search for electronic documents include (but are not limited to) the following:-

(i) The number of documents involved.

(ii) The nature and complexity of the proceedings.

(iii) The ease and expense of retrieval of any particular document. This includes:

(1) The accessibility of electronic documents or data including e-mail communications on computer systems, servers, back-up systems and other electronic devices or media that may contain such documents taking into account alterations or developments in hardware or software systems used by the disclosing party and/or available to enable access to such documents.

(2) The location of relevant electronic documents, data, computer systems, servers, back-up systems and other electronic devices or media that may contain such documents.

(3) The likelihood of locating relevant data.

(4) The cost of recovering any electronic documents.

(5) The cost of disclosing and providing inspection of any relevant electronic documents.

(6) The likelihood that electronic documents will be materially altered in the course of recovery, disclosure or inspection.

(iv) The significance of any document which is likely to be located during the search.

(e) It may be reasonable to search some or all of the parties' electronic storage systems. In some circumstances, it may be reasonable to search for electronic documents by means of keyword searches (agreed as far as possible between the parties) even where a full review of each and every document would be unreasonable. There may be other forms of electronic search that may be appropriate in particular circumstances.

E4 Specific disclosure

E4.1 Specific disclosure is defined by rule 31.12(2).

E4.2 An order for specific disclosure under rule 31.12 may in an appropriate case direct a party to carry out a thorough search for any documents which it is reasonable to suppose may adversely affect his own case or support the case of the party applying for disclosure or which may lead to a train of enquiry which has either of these consequences and to disclose any documents located as a result of that search: **PD31 §5.5**.

E4.3 Where an application is made for specific disclosure the party from whom disclosure is sought should provide to the applicant and to the Court information as to the factors listed in E3.11(d) above and its documents retention policy, to the extent such information is relevant to the application. At the hearing of the application, the Court may take into account the factors listed in E3.11(d) as well as the width of the request and the conduct of the parties.

E4.4 The court may at any stage order that specific disclosure be verified by affidavit or witness statement.

E4.5 Applications for ship's papers are provided for in rule 58.14.

E.5 Authenticity

E5.1 (a) Where the authenticity of any document disclosed to a party is not admitted, that party must serve notice that the document must be proved at trial in accordance with CPR 32.19. Such notice must be served by the latest date for serving witness statements or within 7 days of disclosure of the document, whichever is later.

(b) Where, apart from the authenticity of the document itself, the date upon which a document or an entry in it is stated to have been made or the person by whom the document states that it or any entry in it was made or any other feature of the document is to be challenged at the trial on grounds which may require a witness to be called at the trial to support the contents of the document, such challenge

(i) must be raised in good time in advance of the trial to enable such witness or witnesses to be called;

(ii) the grounds of challenge must be explicitly identified in the skeleton argument or outline submissions in advance of the trial.

(c) Where, due to the late disclosure of a document it or its contents or character cannot practicably be challenged within the time limits prescribed in (a) or (b), the challenge may only be raised with the permission of the court and having regard to the Overriding Objective (CPR 1.1).

F. Applications

F1 Generally

F1.1 (a) Applications are governed by CPR Part 23 and PD23 as modified by rule 58 and PD58. As a result

(i) PD23 §§1 and 2.3-2.6 do not apply;

(ii) PD23 §§2.8 and 2.10 apply only if the proposed (additional) application will not increase the time estimate already given for the hearing for which a date has been fixed; and

(iii) PD23 §3 is subject in all cases to the judge's agreeing that the application may proceed without an application notice being served.

(b) An adapted version of practice form N244 (application notice) has been approved for use in the Commercial Court. A copy of this practice form (Form N244(CC)) is included at the end of the Guide.

F1.2 An application for a consent order must include a draft of the proposed order signed on behalf of all parties to whom it relates: **PD58 §14.1**.

F1.3 The requirement in PD23 §12.1 that a draft order be supplied on disk does not apply in the Commercial Court since orders are generally drawn up by the parties: **PD58 §14.2**.

Service

F1.4 Application notices are served by the parties, not by the court: **PD58 §9**.

Evidence

F1.5 (a) Particular attention is drawn to PD23 §9.1 which points out that even where no specific requirement for evidence is set out in the Rules or Practice Directions the court will in practice often need to be satisfied by evidence of the facts that are relied on in support of, or in opposition to, the application.

(b) Where convenient the written evidence relied on in support of an application may be included in the application notice, which may be lengthened for this purpose.

Time for service of evidence

F1.6 The time allowed for the service of evidence in relation to applications is governed by PD58 §13.

Hearings

F1.7 (a) Applications (other than arbitration applications) will be heard in public in accordance with rule 39.2, save where otherwise ordered.

(b) With certain exceptions, arbitration applications will normally be heard in private: **rule 62.10(3)**. See section O.

(c) An application without notice for a freezing injunction or a search order will normally be heard in private.

F1.8 Parties should pay particular attention to PD23 §2.9 which warns of the need to anticipate the court's wish to review the conduct of the case and give further management directions. The parties should be ready to give the court their assistance and should be able to answer any questions that the court may ask for this purpose.

F1.9 PD23 §§6.1-6.5 and §7 deal with the hearing of applications by telephone (other than an urgent application out of court hours) and the hearing of applications using video-conferencing facilities. These methods may be considered when an application needs to be made before a particular Commercial Judge who is currently on circuit. In most other cases applications are more conveniently dealt with in person.

F2 Applications without notice

F2.1 All applications should be made on notice, even if that notice has to be short, unless

(i) any rule or Practice Direction provides that the application may be made without notice; or

(ii) there are good reasons for making the application without notice, for example, because notice would or might defeat the object of the application.

F2.2 Where an application without notice does not involve the giving of undertakings to the court, it will normally be made and dealt with on paper, as, for example, applications for permission to serve a claim form out of the jurisdiction, and applications for an extension of time in which to serve a claim form.

F2.3 Any application for an interim injunction or similar remedy will require an oral hearing.

F2.4 **(a)** A party wishing to make an application without notice which requires an oral hearing before a judge should contact the Clerk to the Commercial Court at the earliest opportunity.

(b) If a party wishes to make an application without notice at a time when no commercial judge is available he should apply to the Queen's Bench Judge in Chambers (see section P1.1).

F2.5 On all applications without notice it is the duty of the applicant and those representing him to make full and frank disclosure of all matters relevant to the application.

F2.6 The papers lodged for the application should include two copies of a draft of the order sought. Save in exceptional circumstances where time does not permit, all the evidence relied upon in support of the application and any other relevant documents must be lodged in advance with the Clerk to the

Commercial Court. If the application is urgent, the Clerk to the Commercial Court should be informed of the fact and of the reasons for the urgency. Counsel's estimate of reading time likely to be required by the court should also be provided.

F3 Expedited applications

F3.1 The Court will expedite the hearing of an application on notice in cases of sufficient urgency and importance.

F3.2 Where a party wishes to make an expedited application a request should be made to the Clerk to the Commercial Court on notice to all other parties.

F4 Paper applications

F4.1 **(a)** Although contested applications are usually best determined at an oral hearing, some applications may be suitable for determination on paper.

(b) Attention is drawn to the provisions of rule 23.8 and PD23 §11. If the applicant considers that the application is suitable for determination on paper, he should ensure before lodging the papers with the court

(i) that the application notice together with any supporting evidence has been served on the respondent;

(ii) that the respondent has been allowed the appropriate period of time in which to serve evidence in opposition;

(iii) that any evidence in reply has been served on the respondent; and

(iv) that there is included in the papers

(A) the written consent of the respondent to the disposal of the application without a hearing; or

(B) a statement by the applicant of the grounds on which he seeks to have the application disposed of without a hearing, together with confirmation that a copy has been served on the respondent.

(c) Only in exceptional cases will the court dispose of an application without a hearing in the absence of the respondent's consent.

F4.2 **(a)** Certain applications relating to the management of proceedings may conveniently be made in correspondence without issuing an application notice.

(b) It must be clearly understood that such applications are not applications without notice and the applicant must therefore ensure that a copy of the letter making the application is sent to all other parties to the proceedings.

(c) Accordingly, the following procedure should be followed when making an application of this kind:

(i) the applicant should first ascertain whether the application is opposed by the other parties;

(ii) if it is, the applicant should apply to the court by letter stating the nature of the order which it seeks and the grounds on which the application is made;
(iii) a copy the letter should be sent (by fax, where possible) to all other parties at the same time as it is sent to the court;
(iv) any other party wishing to make representations should do so by letter within two days (i.e. two clear days) of the date of the applicant's letter of application. The representations should be sent (by fax, where possible) to the applicant and all other parties at the same time as they are sent to the court;
(v) the court will advise its decision by letter to the applicant. The applicant must forthwith copy the court's letter to all other parties, by fax where possible.

F5 Ordinary applications

F5.1 Applications likely to require an oral hearing lasting half a day or less are regarded as "ordinary" applications.

F5.2 Ordinary applications will generally be heard on Fridays, but may be heard on other days. Where possible, the Listing Office will have regard to the availability of advocates when fixing hearing dates.

F5.3 Many ordinary applications, especially those in the non-Counsel list on Fridays, are very short indeed (e.g. applications to extend time). As in the past, it is likely that many, if not most, of such applications can be heard without evidence and on short (i.e. a few days) notice. The parties should however have in mind what is said in section F1.5(a) above.

F5.4 (a) The timetable for ordinary applications is set out in PD58 §13.1 and is as follows:
(i) evidence in support must be filed and served with the application;
(ii) evidence in answer must be filed and served within 14 days thereafter;
(iii) evidence in reply (if any) must be filed and served within 7 days thereafter.

(b) This timetable may be abridged or extended by agreement between the parties provided that any date fixed for the hearing of the application is not affected: **PD58 §13.4**. In appropriate cases, this timetable may be abridged by the Court.

F5.5 An application bundle (see section F11) must be lodged with the Listing Office by 1 p.m. one clear day before the date fixed for the hearing. The case management bundle will also be required on the hearing; this file will be passed by the Listing Office to the judge. Only where it is essential for the court on the hearing of the ordinary application to see the full version of a statement of case that has been summarised in accordance with section C1.4 above should a copy of that statement of case be lodged for the ordinary application.

F5.6 Save in very short and simple cases, skeleton arguments must be provided by all parties. These must be lodged with the Listing Office and served on the advocates for all other parties to the application by 1 p.m. on the day before the date fixed for the hearing (i.e. the immediately preceding day) together with an estimate of the reading time likely to be required by the court. Guidelines on the preparation of skeleton arguments are set out in Part 1 of Appendix 9.

F5.7 Thus, for an application estimated for a half day or less and due to be heard on a Friday:

(i) the application bundle must be lodged by 1 p.m. on Wednesday; and

(ii) skeleton arguments must be lodged by 1 p.m. on Thursday.

If, for reasons outside the reasonable control of the advocate a skeleton argument cannot be delivered to the Listing Office by 1pm, it should be delivered direct to the clerk of the judge listed to hear the application and in any event not later than 4pm the day before the hearing.

F5.8 The applicant should, as a matter of course, provide all other parties to the application with a copy of the application bundle at the cost of the receiving party. Further copies should be supplied on request, again at the cost of the receiving party.

F5.9 Problems with the lodging of bundles or skeleton arguments should be notified to the Clerk to the Commercial Court as far in advance as possible. **If the application bundle or skeleton argument is not lodged by the time specified, the application may be stood out of the list without further warning**.

F6 Heavy applications

F6.1 Applications likely to require an oral hearing lasting more than half a day are regarded as "heavy" applications.

F6.2 Heavy applications normally involve a greater volume of evidence and other documents and more extensive issues. They accordingly require a longer lead-time for preparation and exchange of evidence. Where possible the Listing Office will have regard to the availability of advocates when fixing hearing dates.

F6.3 The timetable for heavy applications is set out in PD58 §13.2 and is as follows:

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

(ii) evidence in answer must be filed and served within 28 days thereafter;

(iii) evidence in reply (if any) must be filed and served as soon as possible, and in any event within 14 days of service of the evidence in answer.

F6.4 (a) An application bundle (see section F11) must be lodged with the Listing Office by 4 p.m. two days (i.e. two clear days) before the date fixed for the hearing together with a reading list and an estimate for the reading time likely to be required by the court as agreed between the counsel or other advocates to appear on the application. The case management bundle will also be required on the hearing; this file will be passed by the Listing Office to the judge.

(b) Only where it is essential for the court on the hearing of the application to see the full version of a statement of case that has been summarised in accordance with section C1.4 above should a copy of that statement of case be lodged for the application.

F6.5 Skeleton arguments must be lodged with the Listing Office and served on the advocates for all other parties to the application as follows:

(i) applicant's skeleton argument (with chronology unless one is unnecessary, and with a dramatis personae if one is warranted), by 4 p.m. two days (i.e. two clear days) before the hearing;

(ii) respondent's skeleton argument, by 4 p.m. one day (i.e. one clear day) before the hearing.

Guidelines on the preparation of skeleton arguments are set out in Part 1 of Appendix 9.

F6.6 Thus, for an application estimated for more than half a day and due to be heard on a Thursday:

(i) the application bundle and the applicant's skeleton argument must be lodged by 4 p.m. on Monday;

(ii) the respondent's skeleton argument must be lodged by 4 p.m. on Tuesday.

F6.7 The applicant must, as a matter of course, provide all other parties to the application with a copy of the application bundle at the cost of the receiving party. Further copies must be supplied on request, again at the cost of the receiving party.

F6.8 Problems with the lodging of bundles or skeleton arguments should be notified to the Clerk to the Commercial Court as far in advance as possible. **If the application bundle or skeleton argument is not lodged by the time specified, the application may be stood out of the list without further warning**.

F7 Evidence

F7.1 Although evidence may be given by affidavit, it should generally be given by witness statement, except where PD32 requires evidence to be given on affidavit (as, for example, in the case of an application for a freezing injunction or a search order: **PD32 §1.4**). In other cases the Court may order that evidence be given by affidavit: **PD32 §1.4(1) and 1.6**.

F7.2 Witness statements and affidavits must comply with the requirements of PD32, save that photocopy documents should be used unless the court orders otherwise.

F7.3 (a) Witness statements must be verified by a statement of truth signed by the maker of the statement: **rule 22.1**.

(b) At hearings other than trial an applicant may rely on the application notice itself, and a party may rely on his statement of case, if the application notice or statement of case (as the case may be) is verified by a statement of truth: **rule 32.6(2)**.

(c) A statement of truth in an application notice may also be signed as indicated in sections C1.8 and C1.9 above.

F7.4 Proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a witness statement (or any other document verified by a statement of truth) without an honest belief in its truth: **rule 32.14(1)**.

F8 Reading time

F8 **(a)** It is essential for the efficient conduct of the court's business that the parties inform the court of the reading required in order to enable the judge to dispose of the application within the time allowed for the hearing and of the time likely to be required for that purpose. Accordingly

(i) in the case of all heavy applications and in the case of other applications, if any advocate considers that the time required for reading is likely to exceed two hours, each party must lodge with the Listing Office not later than 1pm two clear days before the hearing of the application a reading list with an estimate of the time likely to be required by the court for reading;

(ii) in the case of all other applications each party must lodge with the Listing Office by 1pm on the day before the date fixed for the hearing of an application (ie the immediately preceding day) a reading list with an estimate of the time required to complete the reading;

(iii) each party's reading list should identify the material on both sides which the court needs to read.

(b) Failure to comply with these requirements may result in the adjournment of the hearing.

F9 Applications disposed of by consent

F9.1 (a) Consent orders may be submitted to the court in draft for approval and initialling without the need for attendance.

(b) Two copies of the draft, one of which (or a counterpart) must be signed on behalf of all parties to whom it relates, should be lodged at the Registry. The copies should be undated. The order will be dated with the date on which the judge initials it, but that does not prevent the parties acting on their agreement immediately if they wish.

(c) The parties should act promptly in lodging the copies at the Registry. If it is important that the orders are made by a particular date, that fact (and the reasons for it) should be notified in writing to the Registry.

F9.2 For the avoidance of doubt, this procedure is not normally available in relation to a case management conference or a pre-trial review. Whether or not the parties are agreed as between themselves on the directions that the court should be asked to consider giving at a case management conference or a pre-trial review, attendance will normally be required. See section D8.3.

F9.3 Where an order provides a time by which something is to be done the order should wherever possible state the particular date by which the thing is to be done rather than specify a period of time from a particular date or event: **rule 2.9**.

F10 Hearing dates, time estimates and time limits

F10.1 Dates for the hearing of applications to be attended by advocates are normally fixed after discussion with the counsel's clerks or with the solicitor concerned.

F10.2 The efficient working of the court depends on accurate estimates of the time needed for the oral hearing of an application. Over-estimating can be as wasteful as under-estimating.

F10.3 Subject to section F10.4, the Clerk to the Commercial Court will not accept or act on time estimates for the oral hearing of applications where those estimates exceed the following maxima:

Application to set aside service:	4 hours
Application for summary judgment:	4 hours
Application to set aside or vary interim remedy:	4 hours
Application to set aside or vary default judgment:	2 hours
Application to amend statement of case:	1 hour
Application for specific disclosure:	1 hour
Application for security for costs:	1 hour

F10.4 A longer listing time will only be granted upon application in writing specifying the additional time required and giving reasons why it is required. A copy of the written application should be sent to the advocates for all other parties in the case at the same time as it is sent to the Listing Office.

F10.5(a) Not later than five days before the date fixed for the hearing the applicant must provide the Listing Office with his current estimate of the time required to dispose of the application.

(b) If at any time either party considers that there is a material risk that the hearing of the application will exceed the time currently allowed it must inform the Listing Office immediately.

F10.6(a) All time estimates should be given on the assumption that the judge will have read in advance the skeleton arguments and the documents identified in the reading list. In this connection attention is drawn to section F8.

(b) A time estimate for an ordinary application should allow time for judgment and consequential matters; a time estimate for a heavy application should not.

F10.7 Save in the situation referred to at section F10.8, a separate estimate must be given for each application, including any application issued after, but to be heard at the same time as, another application.

F10.8 A separate estimate need not be given for any application issued after, but to be heard at the same time as, another application where the advocate in the case certifies in writing that

(i) the determination of the application first issued will necessarily determine the application issued subsequently; or

(ii) the matters raised in the application issued subsequently are not contested.

F10.9 If it is found at the hearing that the time required for the hearing has been significantly underestimated, the judge hearing the application may adjourn the matter and may make any special costs orders (including orders for the immediate payment of costs and wasted costs orders) as may be appropriate.

F10.10 Failure to comply with the requirements for lodging bundles for the application will normally result in the application not being heard on the date fixed at the expense of the party in default (see further sections F5.9 and F6.8 above). An order for immediate payment of costs may be made.

F11 Application bundles

F11.1(a) Bundles for use on applications may be compiled in any convenient manner but must contain the following documents (preferably in separate sections in the following order):

(i) a copy of the application notice;

(ii) a draft of the order which the applicant seeks;

(iii) a copy of the statements of case;

(iv) copies of any previous orders which are relevant to the application;

(v) copies of the witness statements and affidavits filed in support of, or in opposition to, the application, together with any exhibits.

(b) Copies of the statements of case and of previous orders in the action should be provided in a separate section of the bundle. They should not be exhibited to witness statements.

(c) Witness statements and affidavits previously filed in the same proceedings should be included in the bundle at a convenient location. They should not be exhibited to witness statements.

(d) Where for the purpose of the application it is likely to be necessary for the court to read in chronological order correspondence or other documents located as exhibits to different affidavits or witness statements, copies of such documents should be filed and paged in chronological order in a separate composite bundle or bundles which should be agreed between the parties. If time does not permit agreement on the contents of the composite bundle, it is the responsibility of the applicant to prepare the composite bundle and to lodge it with the Listing Office by 4pm two clear days before the hearing in the case of heavy applications and one clear day before the hearing in the case of all other applications.

F12 Chronologies, indices and dramatis personae

F12.1 For most applications it is of assistance for the applicant to provide a chronology which should be cross-referenced to the documents. Dramatis personae are often useful as well.

F12.2 Guidelines on the preparation of chronologies and indices are set out in Part 2 of Appendix 9.

F13 Authorities

F13.1 On some applications there will be key authorities that it would be useful for the judge to read before the oral hearing of the application. Copies of these authorities should be provided with the skeleton arguments.

F13.2 It is also desirable for bundles of the authorities on which the parties wish to rely to be provided to the judge hearing the application as soon as possible after skeleton arguments have been exchanged.

F13.3 Authorities should only be cited when they contain some principle of law relevant to an issue arising on the application and where their substance is not to be found in the decision of a court of higher authority.

F14 Costs

F14.1 Costs are dealt with generally at section J13.

F14.2 Reference should be also be made to the rules governing the summary assessment of costs for shorter hearings contained in Parts 43 and 44.

F14.3 In carrying out a summary assessment of costs, the court may have regard amongst other matters to:

(i) advice from a Commercial Costs Judge or from the Chief Costs Judge on costs of specialist solicitors and counsel;

(ii) any survey published by the London Solicitors Litigation Association showing the average hourly expense rate for solicitors in London;

(iii) any information provided to the court at its request by one or more of the specialist associations (referred to at section A4.2) on average charges by specialist solicitors and counsel.

F15 Interim injunctions

Generally

F15.1(a) Applications for interim injunctions are governed by CPR Part 25.

(b) Applications must be made on notice in accordance with the procedure set out in CPR Part 23 unless there are good reasons for proceeding without notice.

F15.2 A party who wishes to make an application for an interim injunction must give the Clerk to the Commercial Court as much notice as possible.

F15.3(a) Except when the application is so urgent that there has not been any opportunity to do so, the applicant must issue his claim form and obtain the evidence on which he wishes to rely in support of the application before making the application.

(b) On applications of any weight, and unless the urgency means that this is not possible, the applicant should provide the court at the earliest opportunity with a skeleton argument.

(c) An affidavit, and not a witness statement, is required on an application for a freezing injunction or a search order: **PD25 §3.1**.

Fortification of undertakings

F15.4(a) 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, particularly the undertaking in damages, he may be required to reinforce his undertakings by providing security.

(b) 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.

(c) In an appropriate case the judge may order a payment to be made to the applicant's solicitors to be held by them as officers of the court pending further order. Sometimes the undertaking of a parent company may be acceptable.

Form of order

F15.5 Standard forms of wording for freezing injunctions and search orders are set out in Appendix 5. The forms have been adapted for use in the Commercial Court and should be followed unless the judge hearing a particular application considers there is good reason for adopting a different form.

F15.6 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 (see further section K1).

F15.7 It is good practice to draft an order for an interim remedy so that it includes 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 solicitors. 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.

Freezing injunctions

F15.8 (a) Freezing injunctions made on an application without notice will provide for a return date, unless the judge otherwise orders: **PD25 §5.1(3)**. In the usual course, the return date given will be a Friday (unless a date for a case management conference has already been fixed, in which event the return date given will in the usual course be that date).

(b) If, after service or notification of the injunction, one or more of the parties considers that more than 15 minutes will be required to deal with the matter on the return date the Listing Office should be informed forthwith and in any event no later than 4 p.m. on the Wednesday before the Friday fixed as the return date.

(c) 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.

(d) 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.

F15.9 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 it is not proper to attempt to fetter the right of the defendant to apply without notice or on short notice if need be.

F15.10 As regards freezing injunctions 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.

F15.11 Any bank or third party served with, notified of or affected by a freezing injunction 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

F15.12 Attention is drawn to the detailed requirements in respect of search orders set out in PD25 §§7.1-8.2. The applicant for the search order will normally be required to undertake not to inform any third party of the search order or of the case until after a specified date.

Applications to discharge or vary freezing injunctions and search orders

F15.13 Applications to discharge or vary freezing injunctions 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.

F15.14 If a freezing injunction 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. Where the judge considers that the hearing for the assessment of damages should be postponed to a future date he will give such case management directions as may be appropriate for the assessment hearing, including, if necessary, disclosure of documents and exchange of witness statements and experts' reports.

Applications under section 25 of the Civil Jurisdiction and Judgments Act 1982

F15.15 A Part 8 claim form (rather than an application notice: cf. rule 25.4(2)) must be used for an application under section 25 of the Civil Jurisdiction and Judgments Act 1982 ("Interim relief in England and Wales and Northern Ireland in the absence of substantive proceedings"). The modified Part 8 procedure used in the Commercial Court is referred to at section B4 above.

F16 Security for costs

F16.1 Applications for security for costs are governed by rules 25.12-14.

F16.2 The applicable practice is set out in Appendix 16.

G. Alternative Dispute Resolution ("ADR")

G1 Generally

G1.1 While emphasising its primary role as a forum for deciding commercial cases, the Commercial Court encourages parties to consider the use of ADR (such as, but not confined to, mediation and conciliation) as an alternative means of resolving disputes or particular issues.

G1.2 Whilst the Commercial Court remains an entirely appropriate forum for resolving most of the disputes which are entered in the Commercial List, the view of the Commercial Court is that the settlement of disputes by means of ADR:

(i) significantly helps parties to save costs;

(ii) saves parties the delay of litigation in reaching finality in their disputes;

(iii) enables parties to achieve settlement of their disputes while preserving their existing commercial relationships and market reputation;

(iv) provides parties with a wider range of solutions than those offered by litigation; and

(v) is likely to make a substantial contribution to the more efficient use of judicial resources.

G1.3 The Commercial Judges will in appropriate cases invite the parties to consider whether their dispute, or particular issues in it, could be resolved through ADR.

G1.4 Legal representatives in all cases should consider with their clients and the other parties concerned the possibility of attempting to resolve the dispute or particular issues by ADR and should ensure that their clients are fully informed as to the most cost effective means of resolving their dispute.

G1.5 Parties who consider that ADR might be an appropriate means of resolving the dispute or particular issues in the dispute may apply for directions at any stage, including before service of the defence and before the case management conference.

G1.6 At the case management conference if it should appear to the judge that the case before him or any of the issues arising in it are particularly appropriate for an attempt at settlement by means of ADR but that the parties have not previously attempted settlement by such means, he may invite the parties to use ADR.

G1.7 The judge may, if he considers it appropriate, adjourn the case for a specified period of time to encourage and enable the parties to use ADR. He may for this purpose extend the time for compliance by the parties or any of them with any requirement under the rules, the Guide or any order of the Court. The judge in making an order providing for ADR will normally take into account, when considering at what point in the pre-trial timetable there should be compliance with such an order, such matters as the costs

likely to be incurred at each stage in the pre-trial timetable if the claim is not settled, the costs of a mediation or other means of dispute resolution, how far the prospects of a successful mediation or other means of dispute resolution are likely to be enhanced by completion of pleadings, disclosure of documents, provision of further information under CPR 18, exchange of factual witness statements or exchange of experts' reports.

G1.8 The Judge may further consider in an appropriate case making an ADR Order in the terms set out in Appendix 7.

G1.9 (a) The Clerk to the Commercial Court keeps some published information on individuals and bodies that offer ADR and arbitration services. If the parties are unable to agree upon a neutral individual or panel of individuals to act as a mediator or give an early neutral evaluation, the normal form of ADR order set out in Appendix 7 contains at paragraph 3 a mandatory requirement that the case management conference should be restored to enable the court to facilitate agreement on a neutral or panel of neutrals. In order to avoid the cost of a restored case management hearing, the parties may agree to send to the court their respective list of available neutrals, so as to enable the judge to suggest a name from those lists. In any other case the parties may by consent refer to the judge for assistance in reaching such agreement.

(b) The court will not recommend any individual or body to act as a mediator or arbitrator.

G1.10 At the case management conference or at any other hearing in the course of which the judge makes an order providing for ADR he may make such order as to the costs that the parties may incur by reason of their using or attempting to use ADR as may in all the circumstances seem appropriate. The orders for costs are normally costs in the case, meaning that if the claim is not settled, the costs of the ADR procedures, will follow the ultimate event, or that each side shall bear its own costs of those procedures if the case is not settled.

G1.11 In some cases it may be appropriate that an ADR order should be made following judgment if application is made for permission to appeal. In such cases the court may adjourn the application for permission to appeal while making an ADR order providing for ADR procedures to be completed within a specified time and, failing settlement with that period, for the application for permission to appeal to be restored.

G1.12 At the case management conference the court may consider that an order directed to encouraging bilateral negotiations between the parties' respective legal representatives is likely to be a more cost-effective and productive route to settlement then can be offered by a formal ADR or ENE Order. In such a case the court will set a date by which there is to be a meeting between respective solicitors and their respective clients' officials responsible for decision-taking in relation to the case in question.

G2 Early neutral evaluation

G2.1 In appropriate cases and with the agreement of all parties the court will provide a without-prejudice, non-binding, early neutral evaluation ("ENE") of a dispute or of particular issues.

G2.2 The approval of the Judge in Charge of the List must be obtained before any ENE is undertaken.

G2.3 If, after discussion with the advocates representing the parties, it appears to a judge that an ENE is likely to assist in the resolution of the dispute or of particular issues, he will, with the agreement of the parties, refer the matter to the Judge in Charge of the List.

G2.4 (a) The Judge in Charge of the List will nominate a judge to conduct the ENE.

(b) The judge who is to conduct the ENE will give such directions for its preparation and conduct as he considers appropriate.

G2.5 The judge who conducts the ENE will take no further part in the case, either for the purpose of the hearing of applications or as the judge at trial, unless the parties agree otherwise.

H. Evidence for Trial

H1 Witnesses of fact

Preparation and form of witness statements

H1.1 Witness statements must comply with the requirements of PD32. The following points are also emphasised:

(i) the function of a witness statement is to set out in writing the evidence in chief of the witness; as far as possible, therefore, the statement should be in the witness's own words;

(ii) it should be as concise as the circumstances of the case allow without omitting any significant matters;

(iii) it should not contain lengthy quotations from documents;

(iv) it should not engage in argument;

(v) it must indicate which of the statements made in it are made from the witness's own knowledge and which are made on information or belief, giving the source for any statement made on information or belief;

(vi) it must contain a statement by the witness that he believes the matters stated in it are true; proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a witness statement without an honest belief in its truth: **rule 32.14(1)**.

H1.2 It is improper to put pressure of any kind on a witness to give anything other than his own account of the matters with which his statement deals. It is also improper to serve a witness statement which is known to be false or which it is known the maker does not in all respects actually believe to be true.

Fluency of witnesses

H1.3 If a witness is not sufficiently fluent in English to give his evidence in English, the witness statement should be in the witness's own language and a translation provided.

H1.4 If a witness is not fluent in English but can make himself understood in broken English and can understand written English, the statement need not be in his own words provided that these matters are indicated in the statement itself. It must however be written so as to express as accurately as possible the substance of his evidence.

Witness statement as evidence in chief

H1.5 (a) Where a witness is called to give oral evidence, his witness statement is to stand as his evidence in chief unless the Court orders otherwise: **rule 32.5(2)**.

(b) In an appropriate case the trial judge may direct that the whole or any part of a witness's evidence in chief is to be given orally. Any application for such an order should be made at the beginning of the trial.

Additional evidence from a witness

H1.6 (a) A witness giving oral evidence at trial may with the permission of the court amplify his witness statement and give evidence in relation to new matters which have arisen since the witness statement was served: **rule 32.5(3)**. Permission will be given only if the Court considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement: **rule 32.5(4)**.

(b) A supplemental witness statement should normally be served where the witness proposes materially to add to, alter, correct or retract from what is in his original statement. Permission will be required for the service of a supplemental statement. Such application should be made at the pre-trial review or, if there is no pre-trial review, as early as possible before the start of the trial. If application is made at any later stage, the applicant must provide compelling evidence explaining its delay in adducing such evidence.

(c) It is the duty of all parties to ensure that the statements of all factual witnesses intended to be called or whose statements are to be tendered as hearsay statements should be exchanged simultaneously unless the court has otherwise ordered. Witnesses additional to those whose statements have been initially exchanged may only be called with the permission of the court which will not normally be given unless prompt application is made supported by compelling evidence explaining the late introduction of that witness's evidence.

Notice of decision not to call a witness

H1.7 (a) A party who has decided not to call to give oral evidence at trial a witness whose statement has been served must give prompt notice of this decision to all other parties. He must at the same time state whether he proposes to put the statement in as hearsay evidence.

(b) If the party who has served the statement does not put it in as hearsay evidence, any other party may do so: **rule 32.5(5)**.

Witness summonses

H1.8(a) Rules 34.2-34.8 deal with witness summonses, including a summons for a witness to attend court or to produce documents in advance of the date fixed for trial.

(b) Witness summonses are served by the parties, not the court.

H2 Expert witnesses

Application for permission to call an expert witness

H2.1 Any application for permission to call an expert witness or serve an expert's report should normally be made at the case management conference.

H2.2 Parties should bear in mind that expert evidence can lead to unnecessary expense and they should be prepared to consider the use of single joint experts in appropriate cases. In many cases the use of single joint experts is not appropriate and each party will generally be given permission to call one expert in each field requiring expert evidence. These are referred to in the Guide as "separate experts".

H2.3 When the use of a single joint expert is contemplated, the court will expect the parties to co-operate in developing, and agreeing to the greatest possible extent, terms of reference for that expert. In most cases the terms of reference will (in particular) identify in detail what the expert is asked to do, identify any documentary materials he is asked to consider and specify any assumptions he is asked to make.

Provisions of general application in relation to expert evidence

H2.4 The provisions set out in Appendix 11 to the Guide apply to all aspects of expert evidence (including expert reports, meetings of experts and expert evidence given orally) unless the court orders otherwise. Parties should ensure that they are drawn to the attention of any experts they instruct at the earliest opportunity.

Form and content of expert's reports

H2.5 Expert's reports must comply with the requirements of PD35 §§1 and 2.

H2.6(a) In stating the substance of all material instructions on the basis of which his report is written as required by rule 35.10(3) and PD35 §2.2(3) an expert witness should state the facts or assumptions upon which his opinion is based.

(b) The expert must make it clear which, if any, of the facts stated are within his own direct knowledge.

(c) If a stated assumption is, in the opinion of the expert witness, unreasonable or unlikely he should state that clearly.

H2.7 It is useful if a report contains a glossary of significant technical terms.

H2.8 Where the evidence of an expert, such as a surveyor, assessor, adjuster, or other investigator is to be relied upon for the purpose of establishing primary facts, such as the condition of a ship or other property as found by him at a particular time, as well as for the purpose of deploying his expertise to express an opinion on any matter related to or in connection with the primary facts, that part of his evidence which is to be relied upon to establish the primary facts, is to be treated as factual evidence to be incorporated into a factual witness statement to be exchanged in accordance with the order for the exchange of factual witness statements. The purpose of this practice is to avoid postponing disclosure of a party's factual evidence until service of expert reports.

Statement of truth

H2.9(a) The report must be signed by the expert and must contain a statement of truth in accordance with Part 35.

(b) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, without an honest belief in its truth, a false statement in an expert's report verified in the manner set out in this section.

Request by an expert to the court for directions

H2.10 An expert may file with the court a written request for directions to assist him in carrying out his function as expert, but

(i) at least 7 days before he does so (or such shorter period as the court may direct) he should provide a copy of his proposed request to the party instructing him; and

(ii) at least 4 days before he does so (or such shorter period as the court may direct) he should provide a copy of his proposed request to all other parties.

Exchange of reports

H2.11 In appropriate cases the court will direct that the reports of expert witnesses be exchanged sequentially rather than simultaneously. The sequential exchange of expert reports may in many cases save time and costs by helping to focus the contents of responsive reports upon true rather than assumed issues of expert evidence and by avoiding repetition of detailed factual material as to which there is no real issue. Sequential exchange is likely to be particularly effective where experts are giving evidence of foreign law or are forensic accountants.This is an issue that the court will normally wish to consider at the case management conference.

Meetings of expert witnesses

H2.12 The court will normally direct a meeting or meetings of expert witnesses before trial. Sometimes it may be useful for there to be further meetings during the trial itself.

H2.13 The purposes of a meeting of experts are to give the experts the opportunity

(i) to discuss the expert issues;

(ii) to decide, with the benefit of that discussion, on which expert issues they share or can come to share the same expert opinion and on which expert issues there remains a difference of expert opinion between them (and what that difference is).

H2.14 Subject to section H2.16 below, the content of the discussion between the experts at or in connection with a meeting is without prejudice and shall not be referred to at the trial unless the parties so agree: **rule 35.12(4)**.

H2.15 Subject to any directions of the court, the procedure to be adopted at a meeting of experts is a matter for the experts themselves, not the parties or their legal representatives.

H2.16 Neither the parties nor their legal representatives should seek to restrict the freedom of experts to identify and acknowledge the expert issues on which they agree at, or following further consideration after, meetings of experts.

H2.17 Unless the court orders otherwise, at or following any meeting the experts should prepare a joint memorandum for the court recording:

(i) the fact that they have met and discussed the expert issues;
(ii) the issues on which they agree;
(iii) the issues on which they disagree; and
(iv) a brief summary of the reasons for their disagreement.

H2.18 If experts reach agreement on an issue that agreement shall not bind the parties unless they expressly agree to be bound by it.

Written questions to experts

H2.19 (a) Under rule 35.6 a party may, without the permission of the court, put written questions to an expert instructed by another party (or to a single joint expert) about his report. Unless the court gives permission or the other party agrees, such questions must be for the purpose only of clarifying the report.

(b) The court will pay close attention to the use of this procedure (especially where separate experts are instructed) to ensure that it remains an instrument for the helpful exchange of information. The court will not allow it to interfere with the procedure for an exchange of professional opinion at a meeting of experts, or to inhibit that exchange of professional opinion. In cases where (for example) questions that are oppressive in number or content are put, or questions are put for any purpose other than clarification of the report, the court will not hesitate to disallow the questions and to make an appropriate order for costs against the party putting them.

Documents referred to in experts' reports

H2.20 Unless they have already been provided on inspection of documents at the stage of disclosure, copies of any photographs, plans, analyses, measurements, survey reports or other similar documents relied on by an expert witness as well as copies of any unpublished sources must be provided to all parties at the same time as his report.

H2.21(a) In a commercial case an expert's report will frequently, and helpfully, list all or many of the relevant previous papers (published or unpublished) or books written by the expert or to which the expert has contributed. Whereas it is open to a party to apply under rule 31.14(2) for an order for inspection of such material, requiring inspection of this material may often be unrealistic, and the collating and copying burden could be huge.

(b) Accordingly, a party wishing to inspect a document in an expert report should (failing agreement) make an application to the court. The court will not permit inspection unless it is satisfied that it is

necessary for the just disposal of the case and that the document is not reasonably available to the party making the application from an alternative source.

Trial

H2.22 At trial the evidence of expert witnesses is usually taken as a block, after the evidence of witnesses of fact has been given. The introduction of additional expert evidence after the commencement of the trial can have a severely disruptive effect. Not only is it likely to make necessary additional expert evidence in response, but it may also lead to applications for further disclosure of documents and also to applications to call further factual evidence from witnesses whose statements have not previously been exchanged. Accordingly, experts' supplementary reports must be completed and exchanged not later than the progress monitoring date and the introduction of additional expert evidence after that date will only be permitted upon application to the trial judge and if there are very strong grounds for admitting it.

H3 Evidence by video link

H3.1 In an appropriate case permission may be given for the evidence of a witness to be given by video link. If permission is given the court will give directions for the conduct of this part of the trial.

H3.2 The party seeking permission to call evidence by video link should prepare and serve on all parties and lodge with the Court a memorandum dealing with the matters outlined in the Video Conferencing Guidance contained in Annex 3 to PD32 (see Appendix 14) and setting out precisely what arrangements are proposed. Where the proposal involves transmission from a location with no existing video-link facility, experience shows that questions of feasibility, timing and cost will require particularly close investigation.

H3.3 An application for permission to call evidence by video link should be made, if possible, at the case management conference or, at the latest, at any pre-trial review. However, an application may be made at an even later stage if necessary. Particular attention should be given to the taking of evidence by video link whenever a proposed witness will have to travel from a substantial distance abroad and his evidence is likely to last no more than half a day.

H3.4 In considering whether to give permission for evidence to be given in this way the court will be concerned in particular to balance any potential savings of costs against the inability to observe the witness at first hand when giving evidence.

H4 Taking evidence abroad

H4.1 In an appropriate case permission may be given for the evidence of a witness to be taken abroad. CPR Part 34 contains provisions for the taking of evidence by deposition, and the issue of letters of request.

H4.2 In a very exceptional case, and subject in particular to all necessary approvals being obtained and diplomatic requirements being satisfied, the court may be willing to conduct part of the proceedings abroad. However, if there is any reasonable opportunity for the witness to give evidence by video link, the court is unlikely to take that course.

J. *Trial*

J1 Expedited trial

J1.1 The Commercial Court is able to provide an expedited trial in cases of sufficient urgency and importance.

J1.2 A party seeking an expedited trial should apply to the Judge in Charge of the Commercial List on notice to all parties at the earliest possible opportunity. The application should normally be made after issue and service of the claim form but before service of particulars of claim.

J2 Split trials

J2.1 It will sometimes be advantageous to try liability first. Assessment of damages can be referred to a judge of the Technology and Construction Court or to a Master, or the parties may choose to ask an arbitrator to decide them. The same approach can be applied to other factual questions.

J3 Documents for trial

J3.1 Bundles of documents for the trial must be prepared in accordance with Appendix 10.

J3.2 The number, content and organisation of the trial bundles must be approved by the advocates with the conduct of the trial.

J3.3 Consideration must always be given to what documents are and are not relevant and necessary. Where the court is of the opinion that costs have been wasted by the copying of unnecessary documents it will have no hesitation in making a special order for costs against the person responsible.

J3.4 The number content and organisation of the trial bundles should be agreed in accordance with the following procedure:

(i) the claimant must submit proposals to all other parties at least 6 weeks before the date fixed for trial; and

(ii) the other parties must submit details of additions they require and any suggestions for revision of the claimant's proposals to the claimant at least 4 weeks before the date fixed for trial.

This information must be supplied in a form that will be most convenient for the recipient to understand and respond to. The form to be used should be discussed between the parties before the details are supplied.

J3.5 (a) It is the claimant's responsibility to prepare and lodge the agreed trial bundles.

(b) If another party wishes to put before the court a bundle that the claimant regards as unnecessary he must prepare and lodge it himself.

J3.6 (a) Preparation of the trial bundles must be completed not later than 2 weeks before the date fixed for trial unless the court orders otherwise.

(b) Any party preparing a trial bundle should, as a matter of course, provide all other parties who are to take part in the trial with a copy, at the cost of the receiving party. Further copies should be supplied on request, again at the cost of the receiving party.

J3.7 Unless the court orders otherwise, a full set of the trial bundles must be lodged with the Listing Office at least 7 days before the date fixed for trial.

J3.8 Failure to comply with the requirements for lodging bundles for the trial may result in the trial not commencing on the date fixed, at the expense of the party in default. An order for immediate payment of costs may be made.

J3.9 If oral evidence is to be given at trial, the claimant must provide a clean unmarked set of all relevant trial bundles for use in the witness box. The claimant is responsible for ensuring that these bundles are kept up to date throughout the trial.

J4 Information technology at trial

J4.1 The use of information technology at trial is encouraged where it is likely substantially to save time and cost or to increase accuracy.

J4.2 If any party considers that it might be advantageous to make use of information technology in preparation for, or at, trial, the matter should be raised at the case management conference. This is particularly important if it is considered that document handling systems would assist disclosure and inspection of documents or the use of documents at trial.

J4.3 Where information technology is to be used for the purposes of presenting the case at trial the same system must be used by all parties and must be made available to the court. In deciding whether and to what extent information technology should be used at the trial the court will have regard to the financial resources of the parties and will consider whether it is appropriate that, having regard to the parties' unequal financial resources, it is appropriate that the party applying for the use of such information technology should initially bear the cost subject to the court's ultimate order as to the overall costs following judgment.

J5 Reading lists, authorities and trial timetable

J5.1 Unless the court orders otherwise, a single reading list approved by all advocates must be lodged with the Listing Office not later than 1 p.m. two days (i.e. two clear days) before the date fixed for trial together with an estimate of the time required for reading.

J5.2 **(a)** If any party objects to the judge reading any document in advance of the trial, the objection and its grounds should be clearly stated in a letter accompanying the trial bundles and in the skeleton argument of that party.

(b) Parties should consider in particular whether they have any objection to the judge's reading the witness statements before the trial.

(c) In the absence of objection, the judge will be free to read the witness statements and documents in advance.

J5.3 **(a)** A composite bundle of the authorities referred to in the skeleton arguments should be lodged with the Listing Office as soon as possible after skeleton arguments have been exchanged.

(b) Unless otherwise agreed, the preparation of the bundle of authorities is the responsibility of the claimant, who should provide copies to all other parties. Advocates should liaise in relation to the production of bundles of authorities to ensure that the same authority does not appear in more than one bundle.

J5.4 Cases which are unreported and which are also not included in the index of Judgments of the Commercial Court and Admiralty Court of England and Wales should normally only be cited where the advocate is ready to give an assurance that the transcript contains a statement of some relevant principle of law of which the substance, as distinct from some mere choice of phraseology, is not to be found in any judgment that has appeared in one of the general or specialised series of law reports. The index of Judgments of the Commercial Court and Admiralty Court of England and Wales can be found www.hmcourt-service.gov.uk/infoabout/admiralcomm/index.htm via the link to "Searchable index of court cases" (at bottom of the box on right hand side of Commercial Court and Admiralty Court), and is also available at the BAILII website where it can be found at www.bailii.org/cgi-bin/summaries.cgi?index=comm

J5.5 **(a)** When lodging the reading list the claimant should also lodge a trial timetable.

(b) A trial timetable may have been fixed by the judge at the pre-trial review (section D18.4 above). If it has not, a trial timetable should be prepared by the advocate(s) for the claimant after consultation with the advocate(s) for all other parties.

(c) If there are differences of view between the advocate(s) for the claimant and the advocate(s) for other parties, these should be shown.

(d) The trial timetable will provide for oral submissions, witness evidence and expert evidence over the course of the trial. On the first day of the trial the judge may fix the trial timetable, subject to any further order.

J6 Skeleton arguments etc. at trial

J6.1 Written skeleton arguments should be prepared by each party. Guidelines on the preparation of skeleton arguments are set out in Part 1 of Appendix 9.

J6.2 Unless otherwise ordered, the skeleton arguments should be served on all other parties and lodged with the court as follows:

(i) by the claimant, not later than 1 p.m. two days (i.e. two clear days) before the start of the trial;

(ii) by each of the defendants, not later than 1 p.m. one day (i.e. one clear day) before the start of the trial.

J6.3 In heavier cases it will often be appropriate for skeleton arguments to be served and lodged at earlier times than indicated at section J6.2. The timetable should be discussed between the advocates and may be the subject of a direction in the pre-trial timetable or at any pre-trial review.

J6.4 The claimant should provide a chronology with his skeleton argument. Indices (i.e. documents that collate key references on particular points, or a substantive list of the contents of a particular bundle or bundles) and dramatis personae should also be provided where these are likely to be useful. Guidelines on the preparation of chronologies and indices are set out in Part 2 of Appendix 9.

J7 Trial sitting days and hearing trials in public

J7.1 Trial sitting days will not normally include Fridays.

J7.2 Where it is necessary in order to accommodate hearing evidence from certain witnesses or types of witness, the court may agree to sit outside normal hours.

J7.3 The general rule is that a hearing is to be in public: **rule 39.2(1)**.

J8 Oral opening statements at trial

J8.1 Oral opening statements should as far as possible be uncontroversial and in any event no longer than the circumstances require. Even in a very heavy case, oral opening statements may be very short. There remains some confusion amongst advocates as to what is necessary to adduce a document other than a witness statement or expert report in evidence. Whereas there can be no doubt that any disclosed document can be relied on as evidence of the facts contained in it or as evidence of its existence or the use to which it was put, see Civil Evidence Act 1995 S.2(4) and CPR 32.19 the mere inclusion of a document in the agreed trial bundles does not in itself mean that it is being adduced in evidence by either party see Appendix 10. For this to happen either the parties must agree that the document in question is to be treated as put in evidence by one or other of them and the judge so informed or they must actively adduce the document in evidence by some other means. This might be done by counsel inviting the judge to read the document relied upon before the calling of oral evidence. It may however be more efficient for the document or part of it to be read to the court in the course of opening. That will be a matter for the judgment of the advocates in each case. However, whichever course is adopted, it will not normally be appropriate for reliance to be placed in final speeches on any document, not already specifically adduced in evidence by one of the means described.

J8.2 At the conclusion of the opening statement for the claimant the advocates for each of the other parties will usually each be invited to make a short opening statement.

J9 Applications in the course of trial

J9.1 It will not normally be necessary for an application notice to be issued for an application which is to be made during the course of the trial, but all other parties should be given adequate notice of the intention to apply.

J9.2 Unless the judge directs otherwise the parties should prepare skeleton arguments for the hearing of the application

J10 Oral closing submissions at trial

J10.1 All parties will be expected to make oral closing submissions, whether or not closing submissions have been made in writing. It is a matter for the advocate to consider how in all the circumstances these oral submissions should be presented.

J10.2 Unless the trial judge directs otherwise, the claimant will make his oral closing submissions first, followed by the defendant(s) in the order in which they appear on the claim form with the claimant having a right of reply.

J11 Written closing submissions at trial

J11.1 (a) In a more substantial trial, the court will normally also require closing submissions in writing before oral closing submissions.

(b) In such a case the court will normally allow an appropriate period of time after the conclusion of the evidence to allow the preparation of these submissions.

(c) Even in a less substantial trial the court will normally require a skeleton argument on matters of law.

J12 Judgment

J12.1 (a) When judgment is reserved the judge may deliver judgment orally or by handing down a written judgment.

(b) If the judge intends to hand down a written judgment a copy of the draft text marked

"Draft Judgment"
and bearing the rubric:

" *This is a judgment to which the new Practice Direction - Reserved Judgments (which supplements CPR Part 40 with effect from 1st October 2005) applies. It will be handed down on at in Court No . This Judgment is confidential to Counsel and Solicitors, but a copy may be shown, in confidence, to the parties provided that neither the Judgment nor its substance is disclosed to any other person or used in the public domain, and no action is taken (other than*

internally) in response to the Judgment, before the Judgment is handed down. Any breach of this obligation of confidentiality may be treated as a contempt of court. The official version of the judgment will be available from the Mechanical Recording Department of the Royal Courts of Justice once it has been approved by the judge.

*The court is likely to wish to hand down its judgment in an approved final form. Counsel should therefore submit any list of typing corrections and other obvious errors in writing (Nil returns are required) to the clerk to , by fax to 020 7947 or via email at , by on , so that changes can be incorporated, if the judge accepts them, in the handed down judgment.***"**

will normally be supplied to the advocates one clear day before the judgment is to be delivered.

(c) Advocates should inform the judge's clerk not later than noon on the day before judgment is to be handed down of any typographical or other errors of a similar nature which the judge might wish to correct. This facility is confined to the correction of textual mistakes and is not to be used as the occasion for attempting to persuade the judge to change the decision on matters of substance.

(d) The requirement to treat the text as confidential must be strictly observed. Failure to do so amounts to a contempt of court.

J12.2 (a) Judgment is not delivered until it is formally pronounced in open court.

(b) Copies of the approved judgment will be made available to the parties, to law reporters and to any other person wanting a copy.

(c) The judge may direct that the written judgment stand as the definitive record and that no transcript need be made. Any editorial corrections made at the time of handing down will be incorporated in an approved official text as soon as possible, and the approved official text, so marked, will be available from the Mechanical Recording Department.

J12.3 If at the time of pronouncement of the judgment any party wishes to apply for permission to appeal to the Court of Appeal, that application should be supported by written draft grounds of appeal.

J13 Costs

J13.1 The rules governing the award and assessment of costs are contained in CPR Parts 43 to 48.

J13.2 The summary assessment procedure provided for in Parts 43 and 44 also applies to trials lasting one day or less.

K. *After Trial*

K1 Continuation, variation and discharge of interim remedies and undertakings

K1.1 (a) Applications to continue, vary or discharge interim remedies or undertakings should be made to a Commercial Judge, even after trial.

(b) If a party wishes to continue a freezing injunction after trial or judgment, care should be taken to ensure that the application is made before the existing freezing injunction has expired.

K2 Accounts and enquiries

K2.1 The court may order that accounts and inquiries be referred to a judge of the Technology and Construction Court or to a Master. Alternatively, the parties may choose to refer the matter to arbitration.

K3 Enforcement

K3.1 Unless the court orders otherwise, all proceedings for the enforcement of any judgment or order for the payment of money given or made in the Commercial Court will be referred automatically to a master of the Queen's Bench Division or a district judge: **PD58 §1.2(2)**.

K3.2 Applications in connection with the enforcement of a judgment or order for the payment of money should accordingly be directed to the Registry which will allocate them to the Admiralty Registrar or to one of the Queen's Bench masters as appropriate.

K4 Assessment of damages or interest after a default judgment

K4.1 Unless the court orders otherwise, the assessment of damages or interest following the entry of a default judgment for damages or interest to be assessed will be carried out by the Admiralty Registrar or one of the Queen's Bench masters to whom the case is allocated by the Registry.

L. *Multi-party Disputes*

L1 Early consideration

L1.1 Cases which involve, or are expected to involve, a large number of claimants or defendants require close case management from the earliest point. The same is true where there are, or are likely to be, a large number of separate cases involving the same or similar issues. Both classes of case are referred to as "multi-party" disputes.

L1.2 (a) The Judge in Charge of the List should be informed as soon as it becomes apparent that a multi-party dispute exists or is likely to exist and an early application for directions should be made.

(b) In an appropriate case an application for directions may be made before issue of a claim form. In some cases it may be appropriate for an application to be made without notice in the first instance.

L2 Available procedures

L2.1 In some cases it may be appropriate for the court to make a Group Litigation Order under Part 19 of the Rules. In other cases it may be more convenient for the court to exercise its general powers of management. These include powers

(i) to dispense with statements of case;
(ii) to direct parties to serve outline statements of case;
(iii) to direct that cases be consolidated or managed and tried together;
(iv) to direct that certain cases or issues be determined before others and to stay other proceedings in the meantime;
(v) to advance or put back the usual time for pre-trial steps to be taken (for example the disclosure of documents by one or more parties or a payment into court).

L2.2 Attention is drawn to the provisions of Section III of Part 19, rules 19.10-19.15 and the practice direction supplementing Section III of Part 19. Practitioners should note that the provisions of Section III of Part 19 give the court additional powers to manage disputes involving multiple claimants or defendants. They should also note that a Group Litigation Order may not be made without the consent of the Lord Chief Justice: **PD19B §3.3(1)**.

L2.3 An application for a Group Litigation Order should be made in the first instance to the Judge in Charge of the List: **PD19B §3.5**.

M. *Litigants in Person*

M1 The litigant in person

M1.1 Litigants in person appear less often in the Commercial Court than in some other courts. Their position requires special consideration.

M2 Represented parties

M2.1 Where a litigant in person is involved in a case the court will expect solicitors and counsel for other parties to do what they reasonably can to ensure that he has a fair opportunity to prepare and put his case.

M2.2 The duty of an advocate to ensure that the court is informed of all relevant decisions and legislative provisions of which he is aware (whether favourable to his case or not) and to bring any procedural irregularity to the attention of the court during the hearing is of particular importance in a case where a litigant in person is involved.

M2.3 Further, the court will expect solicitors and counsel appearing for other parties to ensure that the case memorandum, the list of issues and all necessary bundles are prepared and provided to the court in accordance with the Guide, even where the litigant in person is unwilling or unable to participate.

M2.4 If the claimant is a litigant in person the judge at the case management conference will normally direct which of the parties is to have responsibility for the preparation and upkeep of the case management bundle.

M2.5 At the case management conference the court may give directions relating to the costs of providing application bundles and trial bundles to the litigant in person.

M3 Companies without representation

M3.1 Although rule 39.6 allows a company or other corporation with the permission of the court to be represented at trial by an employee, the complexity of most cases in the Commercial Court makes that unsuitable. Accordingly, permission is likely to be given only in unusual circumstances.

N. *Admiralty*

N1 General

N1.1 Proceedings in the Admiralty Court are dealt with in Part 61 and its associated practice direction.

N1.2 The Admiralty & Commercial Courts Guide has been prepared in consultation with the Admiralty Judge. It has been adopted to provide guidance about the conduct of proceedings in the Admiralty Court. The Guide must be followed in the Admiralty Court unless the content of Part 61, its associated practice direction or the terms of this section N require otherwise.

N1.3 One significant area of difference between practice in the Commercial Court and practice in the Admiralty Court is that many interlocutory applications are heard by the Admiralty Registrar who has all the powers of the Admiralty judge save as provided otherwise: **rule 61.1 (4)**.

N2 The Admiralty Court Committee

N2.1 The Admiralty Court Committee provides a specific forum for contact and consultation between the Admiralty Court and its users. Its meetings are usually held in conjunction with the Commercial Court Users Committee. Any correspondence should be addressed to the Deputy Admiralty Marshal, Royal Courts of Justice, Strand, WC2A 2LL.

N3 Commencement of proceedings, service of Statements of Case and associated matters

N3.1 Sections B and C of this guide apply to all Admiralty claims except:

(i) a claim in rem;
(ii) a collision claim; and
(iii) a limitation claim.

N4 Commencement and early stages of a claim in rem

N4.1 The early stages of an in rem claim differ from those of other claims. The procedure is governed generally by rule 61.3 and PD61 §§3.1-3.11.

N4.2 In addition, the following sections of the Guide apply to claims in rem: B3.3, B3.7 - B3.11, B6.4 - B6.6, C1.1 - C1.9, C1.11 and C2.1 (ii) - C5.4.

N4.3 Subject to PD61 §3.7, section C1.11 of the Guide also applies to claims in rem.

N4.4 After an acknowledgement of service has been filed a claim in rem follows the procedure applicable to a claim proceeding in the Commercial List, save that the Claimant is allowed 75 days in which to serve his particulars of claim: **PD61 §3.10**.

N5 The early stages of a Collision Claim

N5.1 Where a collision claim is commenced in rem, the general procedure applicable to claims in rem applies subject to rule 61.4 and PD61 §§4.1-4.5.

N5.2 Where a collision claim is not commenced in rem the general procedure applicable to claims proceeding in the Commercial List applies subject to rule 61.4 and PD61 §§4.1-4.5.

N5.3 Service of a claim form out of the jurisdiction in a collision claim (other than a claim in rem) is permitted in the circumstances identified in rule 61.4(7) only and the procedure set out in Appendix 15 of the Guide should be adapted accordingly.

N5.4 One particular feature of a collision action is that the parties must prepare and file a Collision Statement of Case. Prior to the coming into force of Part 61, a Collision Statement of Case was known as a Preliminary Act and the law relating to Preliminary Acts continues to apply to Collision Statements of Case: **PD61 §4.5**.

N5.5 The provisions of Appendix 4 apply to part 2 of a Collision Statement of Case (but not to part 1).

N5.6 Every party is required, so far as it is able, to provide full and complete answers to the questions contained in part 1 of the Collision Statement of Case. The answers should descend to a reasonable level of particularity.

N5.7 The answers to the questions contained in part 1 are treated as admissions made by the party answering the questions and leave to amend such answers will be granted only in exceptional circumstances. As to the principles applicable to the amendment of particulars of claim in a collision claim reference should be made to the judgment of Gross J. in The Topaz [2003] 2 Lloyd's Rep 19.

N6 The early stages of a Limitation Claim

N6.1 The procedure governing the early stages of a limitation claim differs significantly from the procedure relating to other claims and is contained in rule 61.11 and PD61 §10.1.

N6.2 Service of a limitation claim form out of the jurisdiction is permitted in the circumstances identified in rule 61.11 (5) only and the procedure set out in Appendix 15 of the Guide should be adapted accordingly.

N7 Issue of documents when the Registry is closed.

N7.1 When the Registry is closed (and only when it is closed) an Admiralty claim form may be issued on the following designated fax machine: 020 7947 6245 and only on that machine.

N7.2 The procedure to be followed is set out in Appendix 3 of the Guide.

N7.3 The issue of an Admiralty claim form in accordance with the procedure set out in Appendix 3 shall have the same effect for all purposes as a claim form issued in accordance with the relevant provisions of rule 61 and PD61.

N7.4 When the Registry is closed (and only when it is closed) a notice requesting a caution against release may be filed on the following designated fax machine: 020 7947 6245 and only on that machine. This machine is manned 24 hours a day by court security staff (telephone 020 7947 6260).

N7.5 The notice requesting the caution should be transmitted with a note in the following form for ease of identification by security staff:

> "CAUTION AGAINST RELEASE
> Please find notice requesting caution against release of the ... (*name ship/identify cargo*) ... for filing in the Admiralty & Commercial Registry."

N7.6 The notice must be in Admiralty Form No. ADM11 and signed by a solicitor acting on behalf of the applicant.

N7.7 Subject to the provisions of sections N7.9 and N7.10 below, the filing of the notice takes place when the fax is recorded as having been received.

N7.8 When the Registry is next open to the public, the filing solicitor or his agent shall attend and deliver to the Registry the document which was transmitted by fax together with the transmission report. Upon satisfying himself that the document delivered fully accords with the document received by the Registry, the court officer shall stamp the document delivered with the time and date on which the notice was received, enter the same in the caution register and retain the same with the faxed copy.

N7.9 Unless otherwise ordered by the court, the stamped notice shall be conclusive proof that the notice was filed at the time and on the date stated.

N7.10 If the filing solicitor does not comply with the foregoing procedure, or if the notice is not stamped, the notice shall be deemed never to have been filed.

N8 Case Management

N8.1 The case management provisions of the Guide apply to Admiralty claims save that:

(i) In Admiralty claims the case management provisions of the Guide are supplemented by PD61 §§2.1-2.3 which make provision for the early classification and streaming of cases;

(ii) In a collision case the claimant should apply for a case management conference within 7 days after the last Collision Statement of Case is filed;

(iii) In a limitation claim where the right to limit is not admitted and the claimant seeks a general limitation decree, the claimant must, within 7 days after the date of the filing of the defence of the defendant last served or the expiry of the time for doing so, apply to the Admiralty Registrar for a case management conference: **PD61 §10.7**;

(iv) In a collision claim or a limitation claim a mandatory case management conference will normally take place on the first available date 5 weeks after the date when the claimant is required to take steps to fix a date for the case management conference;

(v) In a limitation claim, case management directions are initially given by the Registrar: **PD61 §10.8**;

(vi) In the Admiralty Court, the Case Management Information Sheet should be in the form in Appendix 6 of this Guide but should also include the following questions: -

1. Do any of the issues contained in the List of Issues involve questions of navigation or other particular matters of an essentially Admiralty nature which require the trial to be before the Admiralty Judge?
2. Is the case suitable to be tried before a Deputy Judge nominated by the Admiralty Judge?
3. Do you consider that the court should sit with nautical or other assessors? If you intend to ask that the court sit with one or more assessors who is not a Trinity Master, please state the reasons for such an application.

N8.2 The two judge team system referred to in section D.4 of the Guide does not apply to Admiralty claims.

N9 Evidence

N9.1 In collision claims, section H1.5 and Appendix 8 are subject to the proviso that experience has shown that it is usually desirable for the main elements of a witness' evidence in chief to be adduced orally.

Authenticity

N9.2

(a) Where the authenticity of any document disclosed to a party is not admitted, that party must serve notice that the document must be proved at trial in accordance with CPR 32.19. Such notice must be served by the latest date for serving witness statements or within 7 days of disclosure of the document, whichever is later.

(b) Where, apart from the authenticity of the document itself, the date upon which a document or an entry in it is stated to have been made or the person by whom the document states that it or any entry in it was made or any other feature of the document is to be challenged at the trial on grounds which may require a witness to be called at the trial to support the contents of the document, such challenge

(i) must be raised in good time in advance of the trial to enable such witness or witnesses to be called;

(ii) the grounds of challenge must be explicitly identified in the skeleton argument or outline submissions in advance of the trial.

(c) Where, due to the late disclosure of a document it or its contents or character cannot practicably be challenged within the time limits prescribed in (a) or (b), the challenge may only be raised with the permission of the court and having regard to the Overriding Objective (CPR 1.1).

Skeleton arguments in Collision Claims

N9.3 In collision claims the skeleton argument of each party must be accompanied by a plot or plots of that party's case or alternative cases as to the navigation of vessels during and leading to the collision. All plots must contain a sufficient indication of the assumptions used in the preparation of the plot.

N10 Split trials, accounts, enquiries and enforcement

N10.1 In collision claims it is usual for liability to be tried first and for the assessment of damages and interest to be referred to the Admiralty Registrar.

N10.2 Where the Admiralty Court refers an account, enquiry or enforcement, it will usually refer the matter to the Admiralty Registrar.

N11 Release of vessels out of hours

N11.1 This section makes provision for release from arrest when the Registry is closed.

N11.2 An application for release under rule 61.8(4)(c) or (d) may, when the Registry is closed, be made in, and only in, the following manner:

(i) The solicitor for the arrestor or the other party applying must telephone the security staff at the Royal Courts of Justice (020 7947 6260) and ask to be contacted by the Admiralty Marshal, who will then respond as soon as practicably possible;

(ii) Upon being contacted by the Admiralty Marshal the solicitor must give oral instructions for the release and an oral undertaking to pay the fees and expenses of the Admiralty Marshal as required in Form No. ADM 12;

(iii) The arrestor or other party applying must then send a written request and undertaking on Form No. ADM 12 by fax to a number given by the Admiralty Marshal;

(iv) The solicitor must provide written consent to the release from all persons who have entered cautions against release (and from the arrestor if the arrestor is not the party applying) by sending such consents by fax to the number supplied by the Admiralty Marshal;

(v) Upon the Admiralty Marshal being satisfied that no cautions against release are in force, or that all persons who have entered cautions against release, and if necessary the arrestor, have given their written consent to the release, the Admiralty Marshal shall effect the release as soon as practicable.

N11.3 Practitioners should note that the Admiralty Marshal is not formally on call and therefore at times may not be available to assist. Similarly the practicalities of releasing a ship in some localities may involve the services of others who may not be available outside court hours.

N11.4 This service is offered to practitioners for use during reasonable hours and on the basis that if the Admiralty Marshal is available and can be contacted

he will use his best endeavours to effect instructions to release but without guarantee as to their success.

N12 Use of postal facilities in the Registry

N12.1 Applications together with the requisite documents may be posted to:

The Admiralty and Commercial Registry,
Room EB15,
Royal Courts of Justice,
Strand,
London WC2A 2LL.

N12.2 In addition to the classes of business for which the use of postal facilities is permitted by the CPR or the Commercial Court Guide, the filing of the following classes of documents is also permitted in Admiralty matters:

(i) Requests for cautions;
(ii) Collision Statements of Case.

N12.3(a) Documents sent by post for filing must be accompanied by two copies of a list of the documents sent and an envelope properly addressed to the sender.

(b) On receipt of the documents in the Registry, the court officer will, if the circumstances are such that had the documents been presented personally they would have been filed, cause them to be filed and will, by post, notify the sender that this has been done. If the documents would not have been accepted if presented personally the court officer will not file them but will retain them in the Registry for collection by the sender and will, by post, so inform the sender.

(c) When documents received through the post are filed by the court officer they will be sealed and entered as filed on the date on which they were received in the Registry.

N13 Insurance of arrested property

N13.1 The Marshal will not insure any arrested property for the benefit of parties at any time during the period of arrest (whether before or after the lodging of an application for sale, if any).

N13.2 The Marshal will use his best endeavours (but without any legal liability for failure to do so) to advise all parties known to him as being on the record in actions in rem against the arrested property, including those who have filed cautions against release of that property, before any such property moves or is moved beyond the area covered by the usual port risks policy.

N13.3 In these circumstances, practitioners' attention is drawn to the necessity of considering the questions of insuring against port risks for the amount of their clients' interest in any property arrested in an Admiralty action and the inclusion in any policy of a "Held Covered" clause in case the ship moves or is moved outside the area covered by the usual port risks policy. The

usual port risks policy provides, among other things, for a ship to be moved or towed from one berth to another up to a distance of five miles within the port where she is lying.

N14 Assessors

14.1 In collision claims and other cases involving issues of navigation and seamanship, the Admiralty Court usually sits with assessors. The parties are not permitted to call expert evidence on such matters without the leave of the court: **rule 61.13**.

14.2 Parties are reminded of the practice with regard to the disclosure of any answers to the court's questions and the opportunity for comment on them as set out in the Judgment of Gross J. in The Global Mariner [2005] 1 Lloyd's Rep 699 at p702.

14.3 Provision is made in rule 35.15 for assessors' remuneration. The usual practice is for the court to seek an undertaking from the claimant to pay the remuneration on demand after the case has concluded.

O. Arbitration

O1 Arbitration claims

O1.1 **(a)** Applications to the court under the Arbitration Acts 1950 – 1996 and other applications relating to arbitrations are known as "arbitration claims".

(b) The procedure applicable to arbitration claims is to be found in Part 62 and its associated practice direction. Separate provision is made

(i) by Section I for claims relating to arbitrations to which the Arbitration Act 1996 applies;

(ii) by Section II for claims relating to arbitrations to which the Arbitration Acts 1950 – 1979 ("the old law") apply; and

(iii) by Section III for enforcement proceedings.

(c) For a full definition of the expression "arbitration claim" see rule 62.2(1) (claims under the 1996 Act) and rule 62.11(2) (claims under the old law).

(d) Part 58 applies to arbitration claims in the Commercial Court insofar as no specific provision is made by Part 62: **rule 62.1(3)**.

Claims under the Arbitration Act 1996

O2 Starting an arbitration claim

O2.1 Subject to section O2.3 an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure: **rule 62.3(1)**.

O2.2 The claim form must be substantially in the form set out in Appendix A to practice direction 62: **PD62 §2.2**.

O2.3 An application to stay proceedings under section 9 of the Arbitration Act 1996 must be made by application notice in the proceedings: **rule 62.3(2)**.

O2.4 Where a question arises as to whether an arbitration agreement is null and void, inoperative or incapable of being performed the court may deal with it in the same way as provided by rule 62.8(3) which applies where a question arises as to whether an arbitration agreement has been concluded or the dispute which is the subject matter of the proceedings falls within the terms of such an agreement.

O3 The arbitration claim form

O3.1 The arbitration claim form must contain, among other things, a concise statement of the remedy claimed and, if an award is challenged, the grounds for that challenge: **rule 62.4(1)**.

O3.2 Reference in the arbitration claim form to a witness statement or affidavit filed in support of the claim is not sufficient to comply with the requirements of rule 62.4(1).

O4 Service of the arbitration claim form

O4.1 An arbitration claim form issued in the Admiralty & Commercial Registry must be served by the claimant.

O4.2 **(a)** The rules governing service of the claim form are set out in Part 6 of the Civil Procedure Rules.

(b) Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue: **rule 62.4(2)**.

O4.3 **(a)** An arbitration claim form may be served out of the jurisdiction with the permission of the court: **rule 62.5(1)**.

(b) Rules 6.24 – 6.29 apply to the service of an arbitration claim form out of the jurisdiction: rule **62.5(3)**.

O4.4 The court may exercise its powers under rule 6.8 to permit service of an arbitration claim form on a party at the address of the solicitor or other representative acting for him in the arbitration: **PD62 §3.1**.

O4.5 The claimant must file a certificate of service within 7 days of serving the arbitration claim form: **PD62 §3.2**.

O5 Acknowledgment of service

O5.1 **(a)** A defendant must file an acknowledgment of service of the arbitration claim form in every case: **rule 58.6(1)**.

(b) An adapted version of practice form N210 (acknowledgment of service of a Part 8 claim form) has been approved for use in the Commercial Court. A copy of this practice form (Form N210(CC)) is included at the end of the Guide, together with adapted versions of the notes for claimants and defendants on completing and replying to an arbitration claim form.

O5.2 The time for filing an acknowledgment of service is calculated from the service of the arbitration claim form.

O6 Standard directions

O6.1 The directions set out in **PD62 §6.2-6.7** apply unless the court orders otherwise.

O6.2 The claimant should apply for a hearing date as soon as possible after issuing an arbitration claim form or (in the case of an appeal) obtaining permission to appeal.

O6.3 A defendant who wishes to rely on evidence in opposition to the claim must file and serve his evidence within 21 days after the date by which he was required to acknowledge service: **PD62 §6.2**.

O6.4 A claimant who wishes to rely on evidence in response to evidence served by the defendant must file and serve his evidence within 7 days after the service of the defendant's evidence: **PD62 §6.3**.

O6.5 An application for directions in a pending arbitration claim should be made by application notice under Part 23. Where an arbitration application involves recognition and/or enforcement of an agreement to arbitrate and that application is challenged on the grounds that the parties to the application were not bound by an agreement to arbitrate, it will usually be necessary for the court to resolve that issue in order to determine the application. For this purpose it may be necessary for there to be disclosure of documents and/or factual and/or expert evidence. In that event, it is the responsibility of those advising the applicant to liaise with the other party and to arrange with the Listing Office for a case management conference to be listed as early as possible to enable the court to give directions as to the steps to be taken before the hearing of the application.

O7 Interim remedies

O7.1 An application for an interim remedy under section 44 of the Arbitration Act 1996 must be made in an arbitration claim form: **PD62 §8.1**.

O8 Challenging the award

Challenge by way of appeal

O8.1 A party wishing to appeal against the award of an arbitrator or umpire must set out in the arbitration claim form

(i) the question of law on which the appeal is based; and

(ii) a succinct statement of the grounds of appeal,

identifying the relevant part(s) of the award and reasons.

O8.2 If the appeal is brought with the agreement of the other parties to the proceedings, a copy of their agreement in writing must be filed with the arbitration claim form.

O8.3 A party seeking permission to appeal must

(i) state in his arbitration claim form the grounds on which he contends that permission to appeal should be given **PD62 §12.1**; and

(ii) file and serve with the arbitration claim form any written evidence on which he wishes to rely for the purposes of satisfying the court of the matters referred to in section 69(3) of the 1996 Act: **PD62 §12.2**.

O8.4 (a) If the defendant wishes to oppose the claimant's application for permission to appeal he must file a witness statement setting out

(i) the grounds on which he opposes the grant of permission; and

(ii) any evidence on which he relies in relation to the matters mentioned in section 69(3) of the 1996 Act: **PD62 §§12.3(1) & (2)**.

(b) If the defendant wishes to contend that that the award should be upheld for reasons other than those expressed in the award, he must set out those reasons in his witness statement: **PD62 §12.3(3)**.

O8.5 The court will normally determine applications for permission to appeal without an oral hearing. If the court considers that an oral hearing is required, it will give further directions as appropriate.

Challenging an award for serious irregularity

O8.6 (a) An arbitration claim challenging an award on the ground of serious irregularity under section 68 of the 1996 Act is appropriate only in cases where there are grounds for thinking

(i) that an irregularity has occurred which

(ii) has caused or will cause **substantial** injustice to the party making the challenge.

(b) An application challenging an award on the ground of serious irregularity should therefore not be regarded as an alternative to, or a means of supporting, an application for permission to appeal.

O8.7 The challenge to the award must be supported by evidence of the circumstances on which the claimant relies as giving rise to the irregularity complained of and the nature of the injustice which has been or will be caused to him.

O8.8 If the nature of the challenge itself or the evidence filed in support of it leads the court to consider that the claim has no real prospect of success, the court may exercise its powers under rule 3.3(4) to dismiss the application summarily. In such cases the applicant will have the right to apply to the court to set aside the order and to seek directions for the hearing of the application.

Multiple claims

O8.9 If the arbitration claim form includes both a challenge to an award by way of appeal and a challenge on the ground of serious irregularity, the applications should be set out in separate sections of the arbitration claim form and the grounds on which they are made separately identified.

O8.10 In such cases the papers will be placed before a judge to consider how the applications may most appropriately be disposed of. It is usually more appropriate to dispose of the application to set aside or remit the award before considering the application for permission to appeal.

O9 Time limits

O9.1 An application to challenge an award under sections 67 or 68 of the 1996 Act or to appeal under section 69 of the Act must be brought within 28 days of the date of the award: **see section 70(3)**.

O9.2 The court has power to vary the period of 28 days fixed by section 70(3) of the 1996 Act: **rule 62.9(1)**. However, it is important that any challenge to an award be pursued without delay and the court will require cogent reasons for extending time.

O9.3 An application to extend time made **before** the expiry of the period of 28 days must be made in a Part 23 application notice, but the application notice need not be served on any other party: **rule 62.9(2)** and **PD62 §11.1(1)**.

O9.4 An application to extend time made **after** the expiry of the period of 28 days must be made in the arbitration claim form in which the applicant is seeking substantive relief: **rule 62.9(3)(a)**.

O9.5 An application to vary the period of 28 days will normally be determined without a hearing and prior to the consideration of the substantive application: **PD62 §10.2**.

Claims under the Arbitration Acts 1950 - 1979

O10 Starting an arbitration claim

O10.1 Subject to section O10.2 an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure: **rule 62.13(1)**.

O10.2 The claim form must be substantially in the form set out in Appendix A to PD62 §2.2.

O10.3 An application to stay proceedings on the grounds of an arbitration agreement must be made by application notice in the proceedings: **rule 62.13(2)**.

O11 The arbitration claim form

O11.1 An arbitration claim form must state the grounds of the claim or appeal: **rule 62.15(5)(a)**.

O11.2 Reference in the arbitration claim form to the witness statement or affidavit filed in support of the claim is not sufficient to comply with the requirements of rule 62.15(5)(a).

O12 Service of the arbitration claim form

O12.1 An arbitration claim form issued in the Admiralty & Commercial Registry must be served by the claimant.

O12.2 The rules governing service of the claim form are set out in Part 6 of the Civil Procedure Rules.

O12.3 (a) An arbitration claim form may be served out of the jurisdiction with the permission of the court: **rule 62.16(1)**.

(b) Rules 6.24 – 6.29 apply to the service of an arbitration claim form out of the jurisdiction: rule **62.16(4)**.

O12.4 Although not expressly covered by PD62, the court may in an appropriate case exercise its powers under rule 6.8 to permit service of an arbitration claim form on a party at the address of the solicitor or other representative acting for him in the arbitration.

O12.5 The claimant must file a certificate of service within 7 days of serving the claim form.

Acknowledgment of service

O13.1(a) A defendant must file an acknowledgment of service in every case: **rule 58.6(1)**.

(b) An adapted version of practice form N210 (acknowledgment of service of a Part 8 claim form) has been approved for use in the Commercial Court. A copy of this practice form (Form N210(CC)) is included at the end of the Guide, together with adapted versions of the notes for claimants and defendants on completing and replying to an arbitration claim form.

O13.2 The time for filing an acknowledgment of service is calculated from the service of the arbitration claim form.

O14 Standard directions

O14.1 Where the claim or appeal is based on written evidence, a copy of that evidence must be served with the arbitration claim form: **rule 62.15(5)(b)**.

O14.2 Where the claim or appeal is made with the consent of the arbitrator or umpire or other parties, a copy of every written consent must be served with the arbitration claim form: **rule 62.15(5)(c)**.

O14.3 An application for directions in a pending arbitration claim should be made by application notice under Part 23.

O15 Interim remedies

O15.1 An application for an interim remedy under section 12(6) of the 1950 Act must be made in accordance with Part 25.

O15.2 The application must be made by arbitration claim form.

O15.3 A claim under section 12(4) of the 1950 Act for an order for the issue of a witness summons to compel the attendance of a witness before an arbitrator or umpire where the attendance of the witness is required within the district of a District Registry may be started in that Registry: **rule 62.14**.

O16 Challenging the award

Challenge by way of appeal

O16.1 A party wishing to appeal against the award of an arbitrator or umpire must file and serve with the arbitration claim form a statement of the grounds for the appeal, specifying the relevant part(s) of the award and reasons: **rule 62.15(6)**.

O16.2 A party seeking permission to appeal must also file and serve with the arbitration claim form any written evidence in support of the contention that the question of law concerns a term of the contract or an event which is not "one off": **rule 62.15(6)**.

O16.3 Any written evidence in reply must be filed and served not less than 2 days before the hearing of the application for permission to appeal: **rule 62.15(7)**.

O16.4 A party who wishes to contend that the award should be upheld for reasons other than those set out in the award and reasons must file and serve on the claimant a notice specifying the grounds of his contention not less than 2 days before the hearing of the application for permission to appeal: **rule 62.15(8)**.

O16.5 Applications for permission to appeal will be heard orally, but will not normally be listed for longer than half an hour. Skeleton arguments should be lodged.

Claims to set aside or remit the award

O16.6 A claim to set aside or remit an award on the grounds of misconduct should not be regarded as an alternative to, or a means of supporting, an application for permission to appeal.

O16.7 The directions set out in PD62 §§6.2-6.7 should be followed unless the court orders otherwise.

Multiple claims

O16.8 If the arbitration claim form includes both an appeal and an application to set aside or remit the award, the applications should be set out in separate sections of the arbitration claim form and the grounds on which they are made separately identified.

O16.9 The court may direct that one application be heard before the other or may direct that they be heard together, as may be appropriate. It is usually more appropriate to dispose of the application to set aside or remit the award before considering the application for permission to appeal.

O17 Time limits

O17.1 (a) Time limits governing claims under the 1950 and 1979 Acts are set out in rule 62.15.

(b) Different time limits apply to different claims. **It is important to consult rule 62.15 to ensure that applications are made within the time prescribed.**

(c) The court has power under rule 3.1(2) to vary the time limits prescribed by rule 62.15, but will require cogent reasons for doing so.

Provisions applicable to all arbitrations

Enforcement of awards

O18.1 All applications for permission to enforce awards are governed by Section III of Part 62: **rule 62.17**.

O18.2 An application for permission to enforce an award in the same manner as a judgment may be made without notice, but the court may direct that the arbitration claim form be served, in which case the application will continue as an arbitration claim in accordance with the procedure set out in Section I: **rule 62.18(1) – (3)**.

O18.3 An application for permission to enforce an award in the same manner as a judgment must be supported written evidence in accordance with **rule 62.18(6)**.

O18.4 (a) Two copies of the draft order must accompany the application.

(b) If the claimant wishes to enter judgment, the form of the judgment must correspond to the terms of the award.

(c) The defendant has the right to apply to the court to set aside an order made without notice giving permission to enforce the award and the order itself must state in terms

(i) that the defendant may apply to set it aside within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the court may set; and

(ii) that it may not be enforced until after the end of that period or any application by the defendant to set it aside has been finally disposed of: **rule 62.18(9) & (10)**.

Matters of general application

O19 Transfer of arbitration claims

O19.1 An arbitration claim which raises no significant point of arbitration law or practice will normally be transferred

(i) if a rent-review arbitration, to the Chancery Division;

(ii) if a construction or engineering arbitration, to the Technology and Construction Court;

(iii) if an employment arbitration, to the Central London County Court Mercantile List.

O19.2 Salvage arbitrations will normally be transferred to the Admiralty Court.

O20 Appointment of a Commercial Judge as sole arbitrator or umpire

O20.1 Section 93 of the Arbitration Act 1996 provides for the appointment of a Commercial Judge as sole arbitrator or umpire. The Act limits the circumstances in which a Judge may accept such an appointment.

O20.2 Enquiries should be directed to the Judge in charge of the Commercial List or the Clerk to the Commercial Court.

P. Miscellaneous

P1 Out of hours emergency arrangements

P1.1 (a) When the Listing Office is closed, solicitors or counsel's clerks should in an emergency contact the Clerk to the Queen's Bench Judge in Chambers by telephone through the security desk at the Royal Courts of Justice.

(b) The telephone number of the security desk is included in the list of addresses and contact details at the end of the Guide.

P1.2 When the Listing Office is closed an urgent hearing will initially be dealt with by the Queen's Bench Judge in Chambers who may dispose of the application himself or make orders allowing the matter to come before a Commercial Judge at the first available opportunity.

P2 Index of decisions of the Commercial and Admiralty Courts

P2.1 An Index has been prepared on a subject-matter basis of unreported Commercial Court and Admiralty Court judgments from 1995 onwards. The Index is updated regularly.

P2.2 The Index is provided as a service to litigants and to the legal profession, and to assist the Commercial Court and the Admiralty Court to maintain reasonable consistency of approach in those areas of law and procedure most frequently before them.

P2.3 The index of Judgments of Commercial Court and Admiralty Court of England and Wales is available to all Internet users and can be found at: www.hmcourts-service.gov.uk/infoabout/admiralcomm/index.htm via the link to "Searchable index of court cases" (at bottom of the box on right hand side of Commercial Court and Admiralty Court). The Index is also available at the BAILII website and can be found at www.bailii.org/cgi-bin/summaries.cgi?index=comm

P2.4 The judgments referred to in the Index are kept in the Registry. They may be consulted there.

P2.5 Copies of the judgments referred to in the Index may be obtained from the Registry (or where there is difficulty, from the clerk to the judge) unless the judgment is in the form of a transcript, in which case copies should be obtained from the shorthand writers or other transcript agency.

Appendix 1

Civil Procedure Rules

PART 58

COMMERCIAL COURT

Contents of this Part

Scope of this Part and interpretation

58.1 (1) This Part applies to claims in the Commercial Court of the Queen's Bench Division.

(2) In this Part and its practice direction, "commercial claim" means any claim arising out of the transaction of trade and commerce and includes any claim relating to –

(a) a business document or contract;
(b) the export or import of goods;
(c) the carriage of goods by land, sea, air or pipeline;
(d) the exploitation of oil and gas reserves or other natural resources;
(e) insurance and re-insurance;
(f) banking and financial services;
(g) the operation of markets and exchanges;
(h) the purchase and sale of commodities;
(i) the construction of ships;
(j) business agency; and
(k) arbitration.

Specialist list

58.2 (1) The commercial list is a specialist list for claims proceeding in the Commercial Court.

(2) One of the judges of the Commercial Court shall be in charge of the commercial list.

Application of the Civil Procedure Rules

58.3 These Rules and their practice directions apply to claims in the commercial list unless this Part or a practice direction provides otherwise.

Proceedings in the commercial list

58.4 (1) A commercial claim may be started in the commercial list.

(2) Rule 30.5 applies to claims in the commercial list, except that a Commercial Court judge may order a claim to be transferred to any other specialist list.

(Rule 30.5(3) provides that an application for the transfer of proceedings to or from a specialist list must be made to a judge dealing with claims in that list.)

Claim form and particulars of claim

58.5 (1) If, in a Part 7 claim, particulars of claim are not contained in or served with the claim form -

(a) the claim form must state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, particulars of claim will follow;

(b) when the claim form is served, it must be accompanied by the documents specified in rule 7.8(1);

(c) the claimant must serve particulars of claim within 28 days of the filing of an acknowledgement of service which indicates an intention to defend; and

(d) rule 7.4(2) does not apply.

(2) A statement of value is not required to be included in the claim form.

(3) If the claimant is claiming interest, he must –

(a) include a statement to that effect; and

(b) give the details set out in rule 16.4(2),

in both the claim form and the particulars of claim.

Acknowledgment of service

58.6 (1) A defendant must file an acknowledgment of service in every case.

(2) Unless paragraph (3) applies, the period for filing an acknowledgment of service is 14 days after service of the claim form.

(3) Where the claim form is served out of the jurisdiction, or on the agent of a defendant who is overseas, the time periods provided by rules 6.16(4), 6.21(4) and 6.22 apply after service of the claim form.

Disputing the court's jurisdiction

58.7 (1) Part 11 applies to claims in the commercial list with the modifications set out in this rule.

(2) An application under rule 11(1) must be made within 28 days after filing an acknowledgment of service.

(3) If the defendant files an acknowledgment of service indicating an intention to dispute the court's jurisdiction, the claimant need not serve particulars of claim before the hearing of the application.

Default judgment

58.8 (1) If, in a Part 7 claim in the commercial list, a defendant fails to file an acknowledgment of service, the claimant need not serve particulars of claim before he may obtain or apply for default judgment in accordance with Part 12.

(2) Rule 12.6(1) applies with the modification that paragraph (a) shall be read as if it referred to the claim form instead of the particulars of claim.

Admissions

58.9 (1) Rule 14.5 does not apply to claims in the commercial list.

(2) If the defendant admits part of a claim for a specified amount of money, the claimant may apply under rule 14.3 for judgment on the admission.

(3) Rule 14.14(1) applies with the modification that paragraph (a) shall be read as if it referred to the claim form instead of the particulars of claim.

Defence and Reply

58.10 (1) Part 15 (defence and reply) applies to claims in the commercial list with the modification to rule 15.8 that the claimant must-

(a) file any reply to a defence; and

(b) serve it on all other parties,

within 21 days after service of the defence.

(2) Rule 6.23 (period for filing a defence where the claim form is served out of the jurisdiction) applies to claims in the commercial list, except that if the particulars of claim are served after the defendant has filed an acknowledgment of service the period for filing a defence is 28 days from service of the particulars of claim.

Statements of case

58.11 The court may at any time before or after the issue of the claim form order a claim in the commercial list to proceed without the filing or service of statements of case.

Part 8 claims

58.12 Part 8 applies to claims in the commercial list, with the modification that a defendant to a Part 8 claim who wishes to rely on written evidence must file and serve it within 28 days after filing an acknowledgment of service.

Case management

58.13 (1) All proceedings in the commercial list are treated as being allocated to the multi-track and Part 26 does not apply.

(2) The following parts only of Part 29 apply –

(a) rule 29.3(2) (legal representative to attend case management conferences and pre-trial reviews);

(b) rule 29.5 (variation of case management timetable) with the exception of rule 29.5(1)(c).

(3) As soon as practicable the court will hold a case management conference which must be fixed in accordance with the practice direction.

(4) At the case management conference or at any hearing at which the parties are represented the court may give such directions for the management of the case as it considers appropriate.

Disclosure – ships papers

58.14 (1) If, in proceedings relating to a marine insurance policy, the underwriters apply for specific disclosure under rule 31.12, the court may –

(a) order a party to produce all the ship's papers; and

(b) require that party to use their best endeavours to obtain and disclose documents which are not or have not been in his control.

(2) An order under this rule may be made at any stage of the proceedings and on such terms, if any, as to staying the proceedings or otherwise, as the court thinks fit.

Judgments and orders

58.15 (1) Except for orders made by the court on its own initiative and unless the court orders otherwise, every judgment or order will be drawn up by the parties, and rule 40.3 is modified accordingly.

(2) An application for a consent order must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) Rule 40.6 (consent judgments and orders) does not apply.

PRACTICE DIRECTION - COMMERCIAL COURT

This practice direction supplements part 58.

General

1.1 This practice direction applies to commercial claims proceeding in the commercial list of the Queen's Bench Division. It supersedes all previous practice directions and practice statements in the Commercial Court.

1.2 All proceedings in the commercial list, including any appeal from a judgment, order or decision of a master or district judge before the proceedings were transferred to the Commercial Court, will be heard or determined by a Commercial Court judge, except that -

(1) another judge of the Queen's Bench Division or Chancery Division may hear urgent applications if no Commercial Court judge is available; and

(2) unless the court otherwise orders, any application relating to the enforcement of a Commercial Court judgment or order for the payment of money will be dealt with by a master of the Queen's Bench Division or a district judge.

1.3 Provisions in other practice directions which refer to a master or district judge are to be read, in relation to claims in the commercial list, as if they referred to a Commercial Court judge.

1.4 The Admiralty and Commercial Registry in the Royal Courts of Justice is the administrative office of the court for all proceedings in the commercial list.

Starting proceedings in the Commercial Court

2.1 Claims in the Commercial Court must be issued in the Admiralty and Commercial Registry.

2.2 When the Registry is closed, a request to issue a claim form may be made by fax using the procedure set out in Appendix A to this practice direction. If a request is made which complies with that procedure, the claim form is issued when the fax is received by the Registry.

2.3 The claim form must be marked in the top right hand corner "Queen's Bench Division, Commercial Court".

2.4 A claimant starting proceedings in the commercial list, other than an arbitration claim, must use practice form N1(CC) for Part 7 claims or practice form N208(CC) for Part 8 claims.

Applications before proceedings are issued

3.1 A party who intends to bring a claim in the commercial list must make any application before the claim form is issued to a Commercial Court judge.

3.2 The written evidence in support of such an application must state that the claimant intends to bring proceedings in the commercial list.

3.3 If the Commercial Court judge hearing the application considers that the proceedings should not be brought in the commercial list, he may adjourn the application to be heard by a master or by a judge who is not a Commercial Court judge.

Transferring proceedings to or from the Commercial Court

4.1 If an application is made to a court other than the Commercial Court to transfer proceedings to the commercial list, the other court may –

(1) adjourn the application to be heard by a Commercial Court judge; or

(2) dismiss the application.

4.2 If the Commercial Court orders proceedings to be transferred to the commercial list –

(1) it will order them to be transferred to the Royal Courts of Justice; and

(2) it may give case management directions.

4.3 An application by a defendant, including a Part 20 defendant, for an order transferring proceedings from the commercial list should be made promptly and normally not later than the first case management conference.

Acknowledgement of service

5.1 For part 7 claims, a defendant must file an acknowledgment of service using practice form N9 (CC).

5.2 For part 8 claims, a defendant must file an acknowledgment of service using practice form N210 (CC).

Default judgment and admissions

6. The practice directions supplementing Parts 12 and 14 apply with the following modifications-

(1) paragraph 4.1(1) of the practice direction supplementing Part 12 is to be read as referring to the service of the claim form; and

(2) the references to "particulars of claim" in paragraphs 2.1, 3.1 and 3.2 of the practice direction supplementing Part 14 are to be read as referring to the claim form.

Variation of time limits

7.1 If the parties, in accordance with rule 2.11, agree in writing to vary a time limit, the claimant must notify the court in writing, giving brief written reasons for the agreed variation.

7.2 The court may make an order overriding an agreement by the parties varying a time limit.

Amendments

8. Paragraph 2.2 of the practice direction supplementing Part 17 is modified so that amendments to a statement of case must show the original text, unless the court orders otherwise.

Service of documents

9. Unless the court orders otherwise, the commercial court will not serve documents or orders and service must be effected by the parties.

Case management

10.1 The following parts only of the practice direction supplementing Part 29 apply-

(1) paragraph 5 (case management conferences), excluding paragraph 5.9 and modified so far as is made necessary by other specific provisions of this practice direction; and

(2) paragraph 7 (failure to comply with case management directions).

10.2 If the proceedings are started in the commercial list, the claimant must apply for a case management conference –

(a) for a part 7 claim, within 14 days of the date when all defendants who intend to file and serve a defence have done so; and

(b) for a part 8 claim, within 14 days of the date when all defendants who intend to serve evidence have done so.

10.3 If the proceedings are transferred to the commercial list, the claimant must apply for a case management conference within 14 days of the date of the order transferring them, unless the judge held, or gave directions for, a case management conference when he made the order transferring the proceedings.

10.4 Any party may, at a time earlier than that provided in paragraphs 10.2 or 10.3, apply in writing to the court to fix a case management conference.

10.5 If the claimant does not make an application in accordance with paragraphs 10.2 or 10.3, any other party may apply for a case management conference.

10.6 The court may fix a case management conference at any time on its own initiative. If it does so, the court will give at least 7 days notice to the parties, unless there are compelling reasons for a shorter period of notice.

10.7 Not less than 7 days before a case management conference, each party must file and serve-

(1) a completed case management information sheet; and

(2) an application notice for any order which that party intends to seek at the case management conference, other than directions referred to in the case management information sheet.

10.8 Unless the court orders otherwise, the claimant, in consultation with the other parties, must prepare -

(1) a case memorandum, containing a short and uncontroversial summary of what the case is about and of its material case history;

(2) a list of issues, with a section listing important matters which are not in dispute; and

(3) a case management bundle containing

(a) the claim form

(b) all statements of case (excluding schedules), except that if a summary of a statement of case has been filed, the bundle should contain the summary and not the full statement of case;

(c) the case memorandum;

(d) the list of issues;

(e) the case management information sheets and, if a pre-trial timetable has been agreed or ordered, that timetable;

(f) the principal orders of the court; and

(g) any agreement in writing made by the parties as to disclosure,

and provide copies of the case management bundle for the court and the other parties at least 7 days before the first case management conference or any earlier hearing at which the court may give case management directions.

10.9 The claimant, in consultation with the other parties, must revise and update the documents referred to in paragraph 10.8 appropriately as the case proceeds. This must include making all necessary revisions and additions at least 7 days before any subsequent hearing at which the court may give case management directions.

Pre-trial review

11.1 At any pre-trial review or case management hearing, the court will ensure that case management directions have been complied with and give any further directions for the trial that are necessary.

11.2 Advocates who are to represent the parties at the trial should represent them at the pre-trial review and any case management hearing at which arrangements for the trial are to be discussed.

11.3 Before the pre-trial review, the parties must discuss and, if possible, agree a draft written timetable for the trial.

11.4 The claimant must file a copy of the draft timetable for the trial at least two days before the hearing of the pre-trial review. Any parts of the timetable which are not agreed must be identified and short explanations of the disagreement must be given.

11.5 At the pre-trial review, the court will set a timetable for the trial, unless a timetable has already been fixed or the court considers that it would be inappropriate to do so or appropriate to do so at a later time.

Case management where there is a part 20 claim

12. Paragraph 5 of the practice direction supplementing Part 20 applies, except that, unless the court otherwise orders, the court will give case management directions for Part 20 claims at the same case management conferences as it gives directions for the main claim.

Evidence for applications

13.1 The general requirement is that, unless the court orders otherwise -

(1) evidence in support of an application must be filed and served with the application (see rule 23.7(3));

(2) evidence in answer must be filed and served within 14 days after the application is served; and

(3) evidence in reply must be filed and served within 7 days of the service of evidence in answer.

13.2 In any case in which the application is likely to require an oral hearing of more than half a day the periods set out in paragraphs 13.1(2) and (3) will be 28 days and 14 days respectively.

13.3 If the date fixed for the hearing of an application means that the times in paragraphs 13.1(2) and (3) cannot both be achieved, the evidence must be filed and served –

(1) as soon as possible; and

(2) in sufficient time to ensure that the application may fairly proceed on the date fixed.

13.4 The parties may, in accordance with rule 2.11, agree different periods from those in paragraphs 13.1(2) and (3) provided that the agreement does not affect the date fixed for the hearing of the application.

Judgments and orders

14.1 An application for a consent order must include a draft of the proposed order signed on behalf of all parties to whom it relates (see paragraph 10.4 of the practice direction supplementing Part 23).

14.2 Judgments and orders are generally drawn up by the parties (see rule 58.15). The parties are not therefore required to supply draft orders on disk (see paragraph 12.1 of the practice direction supplementing Part 23).

PART 61

ADMIRALTY CLAIMS

Contents of this Part

Scope and interpretation

61.1 (1) This Part applies to admiralty claims

(2) In this Part-

(a) "admiralty claim" means a claim within the Admiralty jurisdiction of the High Court as set out in section 20 of the Supreme Court Act 1981;

(b) "the Admiralty Court" means the Admiralty Court of the Queen's Bench Division of the High Court of Justice;

(c) "claim in rem" means a claim in an admiralty action in rem;

(d) "collision claim" means a claim within section 20(3)(b) of the Supreme Court Act 1981;

(e) "limitation claim" means a claim under the Merchant Shipping Act 1995 for the limitation of liability in connection with a ship or other property;

(f) "salvage claim" means a claim-

(i) for or in the nature of salvage;
(ii) for special compensation under Article 14 of Schedule 11 to the Merchant Shipping Act 1995;

(iii) for the apportionment of salvage; and
(iv) arising out of or connected with any contract for salvage services;

(g) "caution against arrest" means a caution entered in the Register under rule 61.7;

(h) "caution against release" means a caution entered in the Register under rule 61.8;

(i) "the Register" means the Register of cautions against arrest and release which is open to inspection as provided by the practice direction;

(j) "the Marshal" means the Admiralty Marshal;

(k) "ship" includes any vessel used in navigation; and

(l) "the Registrar" means the Queen's Bench Master with responsibility for Admiralty claims.

(3) Part 58 (Commercial Court) applies to claims in the Admiralty Court except where this Part provides otherwise.

(4) The Registrar has all the powers of the Admiralty judge except where a rule or practice direction provides otherwise.

Admiralty claims

61.2 (1) The following claims must be started in the Admiralty Court-

(a) a claim-

(i) in rem;

(ii) for damage done by a ship;

(iii) concerning the ownership of a ship;

(iv) under the Merchant Shipping Act 1995;

(v) for loss of life or personal injury specified in section 20(2)(f) of the Supreme Court Act 1981;

(vi) by a master or member of a crew for wages;

(vii) in the nature of towage; or

(viii) in the nature of pilotage;

(b) a collision claim;

(c) limitation claim; or

(d) a salvage claim.

(2) Any other admiralty claim may be started in the Admiralty Court.

(3) Rule 30.5 applies to claims in the Admiralty Court except that the Admiralty Court may order the transfer of a claim to-

(a) the Commercial list;

(b) a Mercantile Court;

(c) the Mercantile list at the Central London County Court; or

(d) any other appropriate court.

Claims in rem

61.3 (1) This rule applies to claims in rem.

(2) A claim in rem is started by the issue of an in rem claim form as set out in the practice direction.

(3) Subject to rule 61.4, the particulars of claim must –

(a) be contained in or served with the claim form; or

(b) be served on the defendant by the claimant within 75 days after service of the claim form.

(4) An acknowledgment of service must be filed within 14 days after service of the claim form.

(5) The claim form must be served-

(a) in accordance with the practice direction; and

(b) within 12 months after the date of issue and rules 7.5 and 7.6 are modified accordingly.

(6) If a claim form has been issued (whether served or not), any person who wishes to defend the claim may file an acknowledgment of service.

Special provisions relating to collision claims

61.4 (1) This rule applies to collision claims.

(2) A claim form need not contain or be followed by particulars of claim and rule 7.4 does not apply.

(3) An acknowledgment of service must be filed.

(4) A party who wishes to dispute the court's jurisdiction must make an application under Part 11 within 2 months after filing his acknowledgment of service.

(5) Every party must-

(a) within 2 months after the defendant files the acknowledgment of service; or

(b) where the defendant applies under Part 11, within 2 months after the defendant files the further acknowledgment of service,

file at the court a completed collision statement of case in the form specified in the practice direction.

(6) A collision statement of case must be-

(a) in the form set out in the practice direction; and

(b) verified by a statement of truth.

(7) A claim form in a collision claim may not be served out of the jurisdiction unless-

(a) the case falls within section 22(a), (b) or (c) of the Supreme Court Act 1981; or

(b) the defendant has submitted to or agreed to submit to the jurisdiction; and

the court gives permission in accordance with Section III of Part 6.

(8) Where permission to serve a claim form out of the jurisdiction is given, the court will specify the period within which the defendant may file an acknowledgment of service and, where appropriate, a collision statement of case.

(9) Where, in a collision claim in rem ("the original claim")-

(a) (i) a Part 20 claim; or
(ii) a cross claim in rem
arising out of the same collision or occurrence is made; and

(b) (i) the party bringing the original claim has caused the arrest of a ship or has obtained security in order to prevent such arrest; and
(ii) the party bringing the Part 20 claim or cross claim is unable to arrest a ship or otherwise obtain security,

the party bringing the Part 20 claim or cross claim may apply to the court to stay the original claim until sufficient security is given to satisfy any judgment that may be given in favour of that party.

(10) The consequences set out in paragraph (11) apply where a party to a claim to establish liability for a collision claim (other than a claim for loss of life or personal injury)-

(a) makes an offer to settle in the form set out in paragraph (12) not less than 21 days before the start of the trial;

(b) that offer is not accepted; and

(c) the maker of the offer obtains at trial an apportionment equal to or more favourable than his offer.

(11) Where paragraph (10) applies the parties will, unless the court considers it unjust, be entitled to the following costs-

(a) the maker of the offer will be entitled to-

(i) all his costs from 21 days after the offer was made; and

(ii) his costs before then in the percentage to which he would have been entitled had the offer been accepted; and

(b) all other parties to whom the offer was made-

(i) will be entitled to their costs up to 21 days after the offer was made in the percentage to which they would have been entitled had the offer been accepted; but

(ii) will not be entitled to their costs thereafter.

(12) An offer under paragraph (10) must be in writing and must contain-

(a) an offer to settle liability at stated percentages;

(b) an offer to pay costs in accordance with the same percentages;

(c) a term that the offer remain open for 21 days after the date it is made; and

(d) a term that, unless the court orders otherwise, on expiry of that period the offer remains open on the same terms except that the offeree should pay all the costs from that date until acceptance.

Arrest

61.5 (1) In a claim in rem -

(a) a claimant; and

(b) a judgment creditor

may apply to have the property proceeded against arrested.

(2) The practice direction sets out the procedure for applying for arrest.

(3) A party making an application for arrest must-

(a) request a search to be made in the Register before the warrant is issued to determine whether there is a caution against arrest in force with respect to that property; and

(b) file a declaration in the form set out in the practice direction**.**

(4) A warrant of arrest may not be issued as of right in the case of property in respect of which the beneficial ownership, as a result of a sale or disposal by any court in any jurisdiction exercising admiralty jurisdiction in rem, has changed since the claim form was issued.

(5) A warrant of arrest may not be issued against a ship owned by a State where by any convention or treaty, the United Kingdom has undertaken to minimise the possibility of arrest of ships of that State until-

(a) notice in the form set out in the practice direction has been served on a consular officer at the consular office of that State in London or the port at which it is intended to arrest the ship; and

(b) a copy of that notice is attached to any declaration under paragraph (3)(b).

(6) Except-

(a) with the permission of the court; or

(b) where notice has been given under paragraph (5),

a warrant of arrest may not be issued in a claim in rem against a foreign ship belonging to a port of a State in respect of which an order in council has been made under section 4 of the Consular Relations Act 1968, until the expiration of 2 weeks from appropriate notice to the consul.

(7) A warrant of arrest is valid for 12 months but may only be executed if the claim form-

(a) has been served; or

(b) remains valid for service at the date of execution.

(8) Property may only be arrested by the Marshal or his substitute.

(9) Property under arrest-

(a) may not be moved unless the court orders otherwise; and

(b) may be immobilised or prevented from sailing in such manner as the Marshal may consider appropriate.

(10) Where an in rem claim form has been issued and security sought, any person who has filed an acknowledgment of service may apply for an order specifying the amount and form of security to be provided.

Security in claim in rem

61.6 (1) This rule applies if, in a claim in rem, security has been given to-

(a) obtain the release of property under arrest; or

(b) prevent the arrest of property.

(2) The court may order that the-

(a) amount of security be reduced and may stay the claim until the order is complied with; or

(b) claimant may arrest or re-arrest the property proceeded against to obtain further security.

(3) The court may not make an order under paragraph (2)(b) if the total security to be provided would exceed the value of the property at the time-

(a) of the original arrest; or

(b) security was first given (if the property was not arrested).

Cautions against arrest

61.7 (1) Any person may file a request for a caution against arrest.

(2) When a request under paragraph (1) is filed the court will enter the caution in the Register if the request is in the form set out in the practice direction and-

(a) the person filing the request undertakes-
(i) to file an acknowledgment of service; and
(ii) to give sufficient security to satisfy the claim with interest and costs; or

(b) where the person filing the request has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976 he-

(i) states that such a fund has been constituted; and

(ii) undertakes that the claimant will acknowledge service of the claim form by which any claim may be begun against the property described in the request.

(3) A caution against arrest-

(a) is valid for 12 months after the date it is entered in the Register; but

(b) may be renewed for a further 12 months by filing a further request.

(4) Paragraphs (1) and (2) apply to a further request under paragraph (3)(b).

(5) Property may be arrested if a caution against arrest has been entered in the Register but the court may order that-

(a) the arrest be discharged; and

(b) the party procuring the arrest pays compensation to the owner of or other persons interested in the arrested property.

Release and cautions against release

61.8 (1) Where property is under arrest-

(a) an in rem claim form may be served upon it; and

(b) it may be arrested by any other person claiming to have an in rem claim against it.

(2) Any person who-

(a) claims to have an in rem right against any property under arrest; and

(b) wishes to be given notice of any application in respect of that property or its proceeds of sale,

may file a request for a caution against release in the form set out in the practice direction.

(3) When a request under paragraph (2) is filed, a caution against release will be entered in the Register.

(4) Property will be released from arrest if-

(a) it is sold by the court;

(b) the court orders release on an application made by any party;

(c) (i) the arresting party; and

(ii) all persons who have entered cautions against release

file a request for release in the form set out in the practice direction; or

(d) any party files-

(i) a request for release in the form set out in the practice direction (containing an undertaking); and

(ii) consents to the release of the arresting party and all persons who have entered cautions against release.

(5) Where the release of any property is delayed by the entry of a caution against release under this rule any person who has an interest in the property may apply for an order that the person who

entered the caution pay damages for losses suffered by the applicant because of the delay.

(6) The court may not make an order under paragraph (5) if satisfied that there was good reason to-

(a) request the entry of; and
(b) maintain

the caution.

(7) Any person-

(a) interested in property under arrest or in the proceeds of sale of such property; or

(b) whose interests are affected by any order sought or made,

may be made a party to any claim in rem against the property or proceeds of sale.

(8) Where-

(a) (i) a ship is not under arrest but cargo on board her is; or

(ii) a ship is under arrest but cargo on board her is not; and

(b) persons interested in the ship or cargo wish to discharge the cargo,

they may, without being made parties, request the Marshal to authorise steps to discharge the cargo.

(9) If-

(a) the Marshal considers a request under paragraph (8) reasonable; and

(b) the applicant gives an undertaking in writing acceptable to the Marshal to pay-

(i) his fees; and
(ii) all expenses to be incurred by him or on his behalf

on demand,

the Marshal will apply to the court for an order to permit the discharge of the cargo.

(10) Where persons interested in the ship or cargo are unable or unwilling to give an undertaking as referred to in paragraph (9)(b), they may-

(a) be made parties to the claim; and

(b) apply to the court for an order for-

(i) discharge of the cargo; and

(ii) directions as to the fees and expenses of the Marshal with regard to the discharge and storage of the cargo.

Judgment in default

61.9 (1) In a claim in rem (other than a collision claim) the claimant may obtain judgment in default of-

(a) an acknowledgment of service only if-

(i) the defendant has not filed an acknowledgment of service; and

(ii) the time for doing so set out in rule 61.3(4) has expired; and

(b) defence only if-

(i) a defence has not been filed; and

(ii) the relevant time limit for doing so has expired.

(2) In a collision claim, a party who has filed a collision statement of case within the time specified by rule 61.4(5) may obtain judgment in default of a collision statement of case only if-

(a) the party against whom judgment is sought has not filed a collision statement of case; and

(b) the time for doing so set out in rule 61.4(5) has expired.

(3) An application for judgment in default-

(a) under paragraph (1) or paragraph (2) in an in rem claim must be made by filing-

(i) an application notice as set out in the practice direction;

(ii) a certificate proving service of the claim form; and

(iii) evidence proving the claim to the satisfaction of the court; and

(b) under paragraph (2) in any other claim must be made in accordance with Part 12 with any necessary modifications.

(4) An application notice seeking judgment in default and, unless the court orders otherwise, all evidence in support, must be served on all persons who have entered cautions against release on the Register.

(5) The court may set aside or vary any judgment in default entered under this rule.

(6) The claimant may apply to the court for judgment against a party at whose instance a notice against arrest was entered where-

(a) the claim form has been served on that party;

(b) the sum claimed in the claim form does not exceed the amount specified in the undertaking given by that party in accordance with rule 61.7(2)(a)(ii); and

(c) that party has not fulfilled that undertaking within 14 days after service on him of the claim form.

Sale by the court, priorities and payment out

61.10 (1) An application for an order for the survey, appraisement or sale of a ship may be made in a claim in rem at any stage by any party.

(2) If the court makes an order for sale, it may -

(a) set a time within which notice of claims against the proceeds of sale must be filed; and

(b) the time and manner in which such notice must be advertised.

(3) Any party with a judgment against the property or proceeds of sale may at any time after the time referred to in paragraph (2) apply to the court for the determination of priorities.

(4) An application notice under paragraph (3) must be served on all persons who have filed a claim against the property.

(5) Payment out of the proceeds of sale will be made only to judgment creditors and-

(a) in accordance with the determination of priorities; or

(b) as the court orders**.**

Limitation claims

61.11 (1) This rule applies to limitation claims.

(2) A claim is started by the issue of a limitation claim form as set out in the practice direction.

(3) The-

(a) claimant; and

(b) at least one defendant

must be named in the claim form, but all other defendants may be described.

(4) The claim form-

(a) must be served on all named defendants and any other defendant who requests service upon him; and

(b) may be served on any other defendant.

(5) The claim form may not be served out of the jurisdiction unless-

(a) the claim falls within section 22(2)(a), (b) or (c) of the Supreme Court Act 1981;

(b) the defendant has submitted to or agreed to submit to the jurisdiction of the court; or

(c) the Admiralty Court has jurisdiction over the claim under any applicable Convention; and

the court grants permission in accordance with Section III of Part 6.

(6) An acknowledgment of service is not required.

(7) Every defendant upon whom a claim form is served must-

(c) within 28 days of service file-

(i) a defence; or

(ii) a notice that he admits the right of the claimant to limit liability,

as set out in the practice direction; or

(d) if he wishes to-

(i) dispute the jurisdiction of the court; or

(ii) argue that the court should not exercise its jurisdiction,

file within 14 days of service (or where the claim form is served out of the jurisdiction, within the time specified in rule 6.22) an acknowledgment of service as set out in the practice direction.

(8) If a defendant files an acknowledgment of service under paragraph (7)(b) he will be treated as having accepted that the court has jurisdiction to hear the claim unless he applies under Part 11 within 14 days after filing the acknowledgment of service.

(9) Where one or more named defendants admits the right to limit-

(a) the claimant may apply for a restricted limitation decree in the form set out in the practice direction; and

(b) the court will issue a decree in the form set out in the practice direction limiting liability only against those named defendants who have admitted the claimant's right to limit liability.

(10) A restricted limitation decree-

(a) may be obtained against any named defendant who fails to file a defence within the time specified for doing so; and

(b) need not be advertised, but a copy must be served on the defendants to whom it applies.

(11) Where all the defendants upon whom the claim form has been served admit the claimant's right to limit liability-

(a) the claimant may apply to the Admiralty Registrar for a genera limitation decree in the form set out in the practice direction; and

(b) the court will issue a limitation decree.

(12) Where one or more of the defendants upon whom the claim form has been served do not admit the claimant's right to limit, the claimant may apply for a general limitation decree in the form set out in the practice direction.

(13) When a limitation decree is granted the court-

(a) may-

(i) order that any proceedings relating to any claim a rising out of the occurrence be stayed;

(ii) order the claimant to establish a limitation fund if one has not been established or make such other arrangements for payment of claims against which liability is limited; or

(iii) if the decree is a restricted limitation decree, distribute the limitation fund; and

(b) will, if the decree is a general limitation decree, give directions as to advertisement of the decree and set a time within which notice of claims against the fund must be filed or an application made to set aside the decree.

(14) When the court grants a general limitation decree the claimant must-

(a) advertise it in such manner and within such time as the court directs; and

(b) file-

(i) a declaration that the decree has been advertised in accordance with paragraph (a); and

(ii) copies of the advertisements.

(15) No later than the time set in the decree for filing claims, each of the defendants who wishes to assert a claim must file and serve his statement of case on-

(a) the limiting party; and

(b) all other defendants except where the court orders otherwise.

(16) Any person other than a defendant upon whom the claim form has been served may apply to the court within the time fixed in the decree to have a general limitation decree set aside.

(17) An application under paragraph (16) must be supported by a declaration -

(a) stating that the applicant has a claim against the claimant arising out of the occurrence; and

(b) setting out grounds for contending that the claimant is not entitled to the decree, either in the amount of limitation or at all.

(18) The claimant may constitute a limitation fund by making a payment into court.

(19) A limitation fund may be established before or after a limitation claim has been started.

(20) If a limitation claim is not commenced within 75 days after the date the fund was established-

(a) the fund will lapse; and

(b) all money in court (including interest) will be repaid to the person who made the payment into court.

(21) Money paid into court under paragraph (18) will not be paid out except under an order of the court.

(22) A limitation claim for-

(a) a restricted decree may be brought by counterclaim ; and

(b) a general decree may only be brought by counterclaim with the permission of the court.

Stay of proceedings

61.12 Where the court orders a stay of any claim in rem-

(a) any property under arrest in the claim remains under arrest; and

(b) any security representing the property remains in force,

unless the court orders otherwise.

Assessors

61.13 The court may sit with assessors when hearing-

(a) collision claims; or

(b) other claims involving issues of navigation or seamanship,

and the parties will not be permitted to call expert witnesses unless the court orders otherwise.

Practice direction – Admiralty claims

This practice direction supplements CPR Part 61

61.1 - Scope

1.1 The Practice Direction supplementing Part 58 (Commercial Claims) also applies to Admiralty claims except where it is inconsistent with Part 61 or this practice direction.

Case management

2.1 After a claim form is issued the Registrar will issue a direction in writing stating-

(1) whether the claim will remain in the Admiralty Court or be transferred to another court; and

(2) if the claim remains in the Admiralty Court-

(a) whether it will be dealt with by-

(i) the Admiralty judge; or

(ii) the Registrar; and

(b) whether the trial will be in London or elsewhere.

2.2 In making these directions the Registrar will have regard to-

(1) the nature of the issues and the sums in dispute; and

(2) the criteria set in rule 26.8 so far as they are applicable.

2.3 Where the Registrar directs that the claim will be dealt with by the Admiralty judge, case management directions will be given and any case management conference or pre-trial review will be heard by the Admiralty judge.

61.3 – Claims in rem

3.1 A claim form in rem must be in Form ADM 1.

3.2 The claimant in a claim in rem may be named or may be described, but if not named in the claim form must identify himself by name if requested to do so by any other party.

3.3 The defendant must be described in the claim form.

3.2 The acknowledgment of service must be in Form ADM 2. The person who acknowledges service must identify himself by name.

3.5 The period for acknowledging service under rule 61.3(4) applies irrespective of whether the claim form contains particulars of claim.

3.6 A claim form in rem may be served in the following ways:

(1) on the property against which the claim is brought by fixing a copy of the claim form–

(a) on the outside of the property in a position which may reasonably be expected to be seen; or

(b) where the property is freight, either-

(i) on the cargo in respect of which the freight was earned; or

(ii) on the ship on which the cargo was carried;

(2) if the property to be served is in the custody of a person who will not permit access to it, by leaving a copy of the claim form with that person;

(3) where the property has been sold by the Marshal, by filing the claim form at the court;

(4) where there is a notice against arrest, on the person named in the notice as being authorised to accept service;

(5) on any solicitor authorised to accept service;

(6) in accordance with any agreement providing for service of proceedings; or

(7) in any other manner as the court may direct under rule 6.8 provided that the property against which the claim is brought or part of it is within the jurisdiction of the court.

3.7 In claims where the property-

(1) is to be arrested; or

(2) is already under arrest in current proceedings,

the Marshal will serve the in rem claim form if the claimant requests the court to do so.

3.8 In all other cases in rem claim forms must be served by the claimant.

3.9 Where the defendants are described and not named on the claim form (for example as “the Owners of the Ship X”), any acknowledgment of service in addition to stating that description must also state the full names of the persons acknowledging service and the nature of their ownership.

3.10 After the acknowledgment of service has been filed, the claim will follow the procedure applicable to a claim proceeding in the Commercial list except that the claimant is allowed 75 days to serve the particulars of claim.

3.11 A defendant who files an acknowledgment of service to an in rem claim does not lose any right he may have to dispute the jurisdiction of the court (see rule 10.1(3)(b) and Part 11).

3.12 Any person who pays the prescribed fee may, during office hours, search for, inspect and take a copy of any claim form in rem whether or not it has been served.

61.4 - Collision claims

4.1 A collision statement of case must be in form ADM 3.

4.2 A collision statement of case must contain-

(a) in Part 1 of the form, answers to the questions set out in that Part; and

(b) in Part 2 of the form, a statement-

(i) of any other facts and matters on which the party filing the collision statement of case relies;

(ii) of all allegations of negligence or other fault which the party filing the collision statement of case makes; and

(iii) of the remedy which the party filing the collision statement of case claims.

4.3 When he files his collision statement of case each party must give notice to every other party that he has done so.

4.4 Within 14 days after the last collision statement of case is filed each party must serve a copy of his collision statement of case on every other party.

4.5 Before the coming into force of Part 61, a collision statement of case was known as a Preliminary Act and the law relating to Preliminary Acts will continue to apply to collision statements of case.

61.5 – Arrest

5.1 An application for arrest must be-

(1) in form ADM 4 (which must also contain an undertaking); and

(2) accompanied by a declaration in form ADM 5.

5.2 When it receives an application for arrest that complies with the rules and the practice direction the court will issue an arrest warrant.

5.3 The declaration required by rule 61.5(3)(b) must be verified by a statement of truth and must state-

(1) in every claim-

(a) the nature of the claim or counterclaim and that it has not been satisfied and if it arises in connection with a ship, the name of that ship;

(b) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and

(c) the amount of the security sought, if any.

(2) in a claim against a ship by virtue of section 21(4) of the Supreme Court Act 1981-

(a) the name of the person who would be liable on the claim if it were not commenced in rem;

(b) that the person referred to in sub-paragraph (a) was, when the right to bring the claim arose-

(i) the owner or charterer of; or

(ii) in possession or in control of,

the ship in connection with which the claim arose; and

(c) that at the time the claim form was issued the person referred to in sub-paragraph (a) was either-

(i) the beneficial owner of all the shares in the ship in respect of which the warrant is required; or
(ii) the charterer of it under a charter by demise;

(3) in the cases set out in rules 61.5 (5) and (6) that the relevant notice has been sent or served, as appropriate; and

(4) in the case of a claim in respect of liability incurred under section 153 of the Merchant Shipping Act 1995, the facts relied on as establishing that the court is not prevented from considering the claim by reason of section 166(2) of that Act.

5.4 The notice required by rule 61.5(5)(a) must be in form ADM 6.

5.5 Property is arrested-

(1) by service on it of an arrest warrant in form ADM 9 in the manner set out at paragraph 3.6(1); or

(2) where it is not reasonably practicable to serve the warrant, by service of a notice of the issue of the warrant-

(a) in the manner set out in paragraph 3.6(1) on the property; or

(b) by giving notice to those in charge of the property.

5.6 When property is arrested the Registrar will issue standard directions in form ADM 10.

5.7 The Marshal does not insure property under arrest.

61.7 - Cautions against arrest

6.1 The entry of a caution against arrest is not treated as a submission to the jurisdiction of the court.

6.2 The request for a caution against arrest must be in form ADM 7.

6.3 On the filing of such a request, a caution against arrest will be entered in the Register.

6.4 The Register is open for inspection when the Admiralty and Commercial Registry is open.

61.8 – Release and cautions against release

7.1 The request for a caution against release must be in form ADM11.

7.2 On the filing of such a request, a caution against release will be entered in the Register.

7.3 The Register is open for inspection when the Admiralty and Commercial Registry is open.

7.4 A request for release under rule 61.8(4)(c) and (d) must be in form ADM 12.

7.5 A withdrawal of a caution against release must be in form ADM12A.

61.9 - Judgment in default

8.1 An application notice for judgment in default must be in form ADM 13.

61.10 – Sale by the court and priorities

9.1 Any application to the court concerning-

(1) the sale of the property under arrest; or

(2) the proceeds of sale of property sold by the court

will be heard in public and the application notice served on-

(a) all parties to the claim;

(b) all persons who have requested cautions against release with regard to the property or the proceeds of sale; and

(c) the Marshal.

9.2 Unless the court orders otherwise an order for sale will be in form ADM 14.

9.3 An order for sale before judgment may only be made by the Admiralty judge.

9.4 Unless the Admiralty judge orders otherwise, a determination of priorities may only be made by the Admiralty judge.

9.5 When-

(1) proceeds of sale are paid into court by the Marshal; and

(2) such proceeds are in a foreign currency,

the funds will be placed on one day call interest bearing account unless the court orders otherwise.

9.6 Unless made at the same time as an application for sale, or other prior application, an application to place foreign currency on longer term deposit may be made to the Registrar.

9.7 Notice of the placement of foreign currency in an interest bearing account must be given to all parties interested in the fund by the party who made the application under paragraph 9.6.

9.8 Any interested party who wishes to object to the mode of investment of foreign currency paid into court may apply to the Registrar for directions.

61.11 - Limitation claims

10.1 The claim form in a limitation claim must be-

(1) in form ADM 15; and

(2) accompanied by a declaration-

(a) setting out the facts upon which the claimant relies; and

(b) stating the names and addresses (if known) of all persons who, to the knowledge of the claimant, have claims against him in respect of the occurrence to which the claim relates (other than named defendants),

verified by a statement of truth.

10.2 A defence to a limitation claim must be in form ADM16A.

10.3 A notice admitting the right of the claimant to limit liability in a limitation claim must be in form ADM16.

10.4 An acknowledgment of service in a limitation claim must be in form ADM 16B.

10.5 An application for a restricted limitation decree must be in form ADM17 and the decree issued by the court on such an application must be in form ADM18.

10.6 An application for a general limitation decree must be in form ADM17A.

10.7 Where-

(1) the right to limit is not admitted; and

(2) the claimant seeks a general limitation decree in form ADM17A,

the claimant must, within 7 days after the date of the filing of the defence of the defendant last served or the expiry of the time for doing so, apply for an appointment before the Registrar for a case management conference.

10.8 On an application under rule 61.11(12) the Registrar may-

(1) grant a general limitation decree; or
(2) if he does not grant a decree-
  (a) order service of a defence;
  (b) order disclosure by the claimant; or
  (c) make such other case management directions as may be appropriate.

10.9 The fact that a limitation fund has lapsed under rule 61.11(20)(a) does not prevent the establishment of a new fund.

10.10 Where a limitation fund is established, it must be-

(1) the sterling equivalent of the number of special drawing rights to which [the claimant] claims to be entitled to limit his liability under the Merchant Shipping Act 1995; together with
(2) interest from the date of the occurrence giving rise to his liability to the date of payment into court.

10.11 Where the claimant does not know the sterling equivalent referred to in paragraph 10.10(1) on the date of payment into court he may-

(1) calculate it on the basis of the latest available published sterling equivalent of a special drawing right as fixed by the International Monetary Fund; and

(2) in the event of the sterling equivalent of a special drawing right on the date of payment into court being different from that used for calculating the amount of that payment into court the claimant may-

(a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court, will be treated, except for the purpose of the rules relating to the accrual of interest on money paid into court, as if made on the date of that payment into court; or

(b) apply to the court for payment out of any excess amount (together with any interest accrued) paid into court.

10.12 An application under paragraph 10.11(2)(b)-

(1) may be made without notice to any party; and

(2) must be supported by evidence proving, to the satisfaction of the court, the sterling equivalent of the appropriate number of special drawing rights on the date of payment into court.

10.13 The claimant must give notice in writing to every named defendant of-

(1) any payment into court specifying-
(a) the date of the payment in;
(b) the amount paid in;
(c) the amount and rate of interest included; and
(d) the period to which it relates; and

(2) any excess amount (and interest) paid out to him under paragraph 10.11(2)(b).

10.14 A claim against the fund must be in form ADM 20

10.15 A defendant's statement of case filed and served in accordance with rule 61.11(15) must contain particulars of the defendant's claim.

10.16 Any defendant who is unable to file and serve a statement of case in accordance with rule 61.11(15) and paragraph 10.15 must file a declaration, verified by a statement of truth, in form ADM 21 stating the reason for his inability.

10.17 No later than 7 days after the time for filing claims [or declarations], the Registrar will fix a date for a case management conference at which directions will be given for the further conduct of the proceedings.

10.18 Nothing in rule 61.11 prevents limitation being relied on by way of defence.

Proceeding against or concerning the International Oil Pollution Compensation Fund

11.1 For the purposes of section 177 of the Merchant Shipping Act 1995 ("the Act") and the corresponding provision of Schedule 4 to the Act, the Fund may be given notice of proceedings by any party to a claim against an owner or guarantor in respect of liability under-

(1) section 153 or section 154 of the Act; or

(2) the corresponding provisions of Schedule 4 to the Act

by that person serving a notice in writing on the Fund together with copies of the claim form and any statements of case served in the claim.

11.2 The Fund may intervene in any claim to which paragraph 11.1 applies, (whether or not served with the notice) by serving notice of intervention on the-

(1) owner;

(2) guarantor; and

(3) court.

11.3 Where a judgment is given against the Fund in any claim under-

(1) section 175 of the Act; or

(2) the corresponding provisions of Schedule 4 to the Act,

the Registrar will arrange for a stamped copy of the judgment to be sent to the Fund by post.

11.4 Notice to the Registrar of the matters set out in-

(1) section 176(3)(b) of the Act; or

(2) the corresponding provisions of Schedule 4 to the Act,

must be given by the Fund in writing and sent to the court.

Other claims

12.1 This section applies to admiralty claims which, before the coming into force of Part 61, would have been called claims *in personam.* Subject to the provisions of Part 61 and this practice direction relating to limitation claims and to collision claims, the following provisions apply to such claims.

12.2 All such claims will proceed in accordance with Part 58 (Commercial Court).

12.3 The claim form must be in Form ADM 1A and must be served by the claimant.

12.4 The claimant may be named or may be described, but if not named in the claim form must identify himself by name if requested to do so by any other party.

12.5 The defendant must be named in the claim form.

12.6 Any person who files a defence must identify himself by name in the defence.

References to the Registrar

13.1 The court may at any stage in the claim refer any question or issue for determination by the Registrar (a "reference").

13.2 Unless the court orders otherwise, where a reference has been ordered-

(1) if particulars of claim have not already been served, the claimant must file and serve particulars of claim on all other parties within 14 days after the date of the order; and

(2) any party opposing the claim must file a defence to the claim within 14 days after service of the particulars of claim on him.

13.3 Within 7 days after the defence is filed, the claimant must apply for an appointment before the Registrar for a case management conference.

Undertakings

14.1 Where, in Part 61 or this practice direction, any undertaking to the Marshal is required it must be given-

(1) in writing and to his satisfaction; or

(2) in accordance with such other arrangements as he may require.

14.2 Where any party is dissatisfied with a direction given by the Marshal in this respect he may apply to the Registrar for a ruling.

Appendix 2

PART 62
ARBITRATION CLAIMS[1]

Contents of this Part

[1] This Word edition is made available without the footnotes which cross refer to the legislation: see the PDF version

Scope of this Part and Interpretation

62.1 (1) This Part contains rules about arbitration claims.

(2) In this Part-

(a) "the 1950 Act" means the Arbitration Act 1950;

(b) "the 1975 Act" means the Arbitration Act 1975;

(c) "the 1979 Act" means the Arbitration Act 1979;

(d) "the 1996 Act" means the Arbitration Act 1996;

(e) references to-

(i) the 1996 Act; or

(ii) any particular section of that Act

include references to that Act or to the particular section of that Act as applied with modifications by the ACAS Arbitration Scheme (England and Wales) Order 2001; and

(f) "arbitration claim form" means a claim form in the form set out in the practice direction.

(3) Part 58 (Commercial Court) applies to arbitration claims in the Commercial Court, Part 59 (Mercantile Court) applies to arbitration claims in the Mercantile Court and Part 60 (Technology and Construction Court claims) applies to arbitration claims in the Technology and Construction Court, except where this Part provides otherwise.

I CLAIMS UNDER THE 1996 ACT

Interpretation

62.2 (1) In this Section of this Part "arbitration claim" means-

(a) any application to the court under the 1996 Act;

(b) a claim to determine-

(i) whether there is a valid arbitration agreement;

(ii) whether an arbitration tribunal is properly constituted; or what matters have been submitted to

arbitration in accordance with an arbitration agreement;

(c) a claim to declare that an award by an arbitral tribunal is not binding on a party; and

(d) any other application affecting-

(i) arbitration proceedings (whether started or not); or

(ii) an arbitration agreement.

(2) This Section of this Part does not apply to an arbitration claim to which Sections II or III of this Part apply.

Starting the claim

62.3 (1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.

(2) An application under section 9 of the 1996 Act to stay legal proceedings must be made by application notice to the court dealing with those proceedings.

(3) The courts in which an arbitration claim may be started are set out in the practice direction.

(4) Rule 30.5 applies with the modification that a judge of the Technology and Construction Court may transfer the claim to any other court or specialist list.

Arbitration claim form

62.4 (1) An arbitration claim form must-

(a) include a concise statement of-

(i) the remedy claimed; and

(ii) any questions on which the claimant seeks the decision of the court;

(b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;

(c) show that any statutory requirements have been met;

(d) specify under which section of the 1996 Act the claim is made;

(e) identify against which (if any) defendants a costs order is sought; and

(f) specify either-

(i) the persons on whom the arbitration claim form is to be served, stating their role in the arbitration and whether they are defendants; or

(ii) that the claim is made without notice under section 44(3) of the 1996 Act and the grounds relied on.

(2) Unless the court orders otherwise an arbitration claim form must be served on the defendant within 1 month from the date of issue and rules 7.5 and 7.6 are modified accordingly.

(3) Where the claimant applies for an order under section 12 of the 1996 Act (extension of time for beginning arbitral proceedings or other dispute resolution procedures), he may include in his arbitration claim form an alternative application for a declaration that such an order is not needed.

Service out of the jurisdiction

62.5 (1) The court may give permission to serve an arbitration claim form out of the jurisdiction if-

(a) the claimant seeks to-

(i) challenge; or

(ii) appeal on a question of law arising out of,

an arbitration award made within the jurisdiction;

(The place where an award is treated as made is determined by section 53 of the 1996 Act)

(b) the claim is for an order under section 44 of the 1996 Act; or

(c) the claimant-

(i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and

(ii) the seat of the arbitration is or will be within the jurisdiction or the conditions in section 2(4) of the 1996 Act are satisfied.

(2) An application for permission under paragraph (1) must be supported by written evidence-

(a) stating the grounds on which the application is made; and

(b) showing in what place or country the person to be served is, or probably may be found.

(3) Rules 6.24 to 6.29 apply to the service of an arbitration claim form under paragraph (1).

(4) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

Notice

62.6 (1) Where an arbitration claim is made under section 24, 28 or 56 of the 1996 Act, each arbitrator must be a defendant.

(2) Where notice must be given to an arbitrator or any other person it may be given by sending him a copy of-

(a) the arbitration claim form; and

(b) any written evidence in support.

(3) Where the 1996 Act requires an application to the court to be made on notice to any other party to the arbitration, that notice must be given by making that party a defendant.

Case management

62.7 (1) Part 26 and any other rule that requires a party to file an allocation questionnaire does not apply.

(2) Arbitration claims are allocated to the multi-track.

(3) Part 29 does not apply.

(4) The automatic directions set out in the practice direction apply unless the court orders otherwise.

Stay of legal proceedings

62.8 (1) An application notice seeking a stay of legal proceedings under section 9 of the 1996 Act must be served on all parties to those proceedings who have given an address for service.

(2) A copy of an application notice under paragraph (1) must be served on any other party to the legal proceedings (whether or not he is within the jurisdiction) who has not given an address for service, at-

(a) his last known address; or

(b) a place where it is likely to come to his attention.

(3) Where a question arises as to whether-

(a) an arbitration agreement has been concluded; or

(b) the dispute which is the subject-matter of the proceedings falls within the terms of such an agreement,

the court may decide that question or give directions to enable it to be decided and may order the proceedings to be stayed pending its decision.

Variation of time

62.9 (1) The court may vary the period of 28 days fixed by section 70(3) of the 1996 Act for-

(a) challenging the award under section 67 or 68 of the Act; and

(b) appealing against an award under section 69 of the Act.

(2) An application for an order under paragraph (1) may be made without notice being served on any other party before the period of 28 days expires.

(3) After the period of 28 days has expired-

(a) an application for an order extending time under paragraph (1) must-

(i) be made in the arbitration claim form; and

(ii) state the grounds on which the application is made;

(b) any defendant may file written evidence opposing the extension of time within 7 days after service of the arbitration claim form; and

(c) if the court extends the period of 28 days, each defendant's time for acknowledging service and serving evidence shall start to run as if the arbitration claim form had been served on the date when the court's order is served on that defendant.

Hearings

62.10 (1) The court may order that an arbitration claim be heard either in public or in private.

(2) Rule 39.2 does not apply.

(3) Subject to any order made under paragraph (1)-

(a) the determination of-

(i) a preliminary point of law under section 45 of the 1996 Act; or

(ii) an appeal under section 69 of the 1996 Act on a question of law arising out of an award,

will be heard in public; and

(b) all other arbitration claims will be heard in private.

(4) Paragraph (3)(a) does not apply to-

(a) the preliminary question of whether the court is satisfied of the matters set out in section 45(2)(b); or

(b) an application for permission to appeal under section 69(2)(b).

II OTHER ARBITRATION CLAIMS

Scope of this Section

62.11 (1) This Section of this Part contains rules about arbitration claims to which the old law applies.

(2) In this Section-

(a) "the old law" means the enactments specified in Schedules 3 and 4 of the 1996 Act as they were in force before their amendment or repeal by that Act; and

(b) "arbitration claim" means any application to the court under the old law and includes an appeal (or application for permission to appeal) to the High Court under section 1(2) of the 1979 Act

(3) This Section does not apply to-

(a) a claim to which Section III of this Part applies; or

(b) a claim on the award.

Applications to Judge

62.12 A claim-

(a) seeking permission to appeal under section 1(2) of the 1979 Act;

(b) under section 1(5) of that Act (including any claim seeking permission); or

(c) under section 5 of that Act,

must be made in the High Court and will be heard by a judge of the Commercial Court unless any such judge directs otherwise.

Starting the claim

62.13 (1) Except where paragraph (2) applies an arbitration claim must be started by the issue of an arbitration claim form in accordance with the Part 8 procedure.

(2) Where an arbitration claim is to be made in existing proceedings-

(a) it must be made by way of application notice; and

(b) any reference in this Section of this Part to an arbitration claim form includes a reference to an application notice.

(3) The arbitration claim form in an arbitration claim under section 1(5) of the 1979 Act (including any claim seeking permission) must be served on-

(a) the arbitrator or umpire; and

(b) any other party to the reference.

Claims in District Registries

62.14 If-

(a) a claim is to be made under section 12(4) of the 1950 Act for an order for the issue of a witness summons to compel the attendance of the witness before an arbitrator or umpire; and

(b) the attendance of the witness is required within the district of a District Registry,

the claim may be started in that Registry.

Time limits and other special provisions about arbitration claims

62.15 (1) An arbitration claim to-

(a) remit an award under section 22 of the 1950 Act;

(b) set aside an award under section 23(2) of that Act or otherwise; or

(c) direct an arbitrator or umpire to state the reasons for an award under section 1(5) of the 1979 Act,

must be made, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.

(2) An arbitration claim to determine any question of law arising in the course of a reference under section 2(1) of the Arbitration Act 1979 must be made, and the arbitration claim form served, within 14 days after-

(a) the arbitrator or umpire gave his consent in writing to the claim being made; or

(b) the other parties so consented.

(3) An appeal under section 1(2) of the 1979 Act must be filed, and the arbitration claim form served, within 21 days after the award has been made and published to the parties.

(4) Where reasons material to an appeal under section 1(2) of the 1979 Act are given on a date subsequent to the publication of the award, the period of 21 days referred to in paragraph (3) will run from the date on which reasons are given.

(5) In every arbitration claim to which this rule applies-

(a) the arbitration claim form must state the grounds of the claim or appeal;

(b) where the claim or appeal is based on written evidence, a copy of that evidence must be served with the arbitration claim form; and

(c) where the claim or appeal is made with the consent of the arbitrator, the umpire or the other parties, a copy of every written consent must be served with the arbitration claim form.

(6) In an appeal under section 1(2) of the 1979 Act-

(a) a statement of the grounds for the appeal specifying the relevant parts of the award and reasons; and

(b) where permission is required, any written evidence in support of the contention that the question of law concerns-

(i) a term of a contract; or

(ii) an event,

which is not a “one-off” term or event,

must be filed and served with the arbitration claim form.

(7) Any written evidence in reply to written evidence under paragraph (6)(b) must be filed and served on the claimant not less than 2 days before the hearing.

(8) A party to a claim seeking permission to appeal under section 1(2) of the 1979 Act who wishes to contend that the award should be upheld for reasons not expressed or fully expressed in the award and reasons must file and serve on the claimant, a notice specifying the grounds of his contention not less than 2 days before the hearing.

Service out of the jurisdiction

62.16 (1) Subject to paragraph (2),

(a) any arbitration claim form in an arbitration claim under the 1950 Act or the 1979 Act; or

(b) any order made in such a claim,

may be served out of the jurisdiction with the permission of the court if the arbitration to which the claim relates-

(i) is governed by the law of England and Wales; or

(ii) has been, is being, or will be, held within the jurisdiction.

(2) An arbitration claim form seeking permission to enforce an award may be served out of the jurisdiction with the permission of the court whether or not the arbitration is governed by the law of England and Wales.

(3) An application for permission to serve an arbitration claim form out of the jurisdiction must be supported by written evidence-

(a) stating the grounds on which the application is made; and

(b) showing in what place or country the person to be served is, or probably may be found.

(4) Rules 6.24 to 6.29 apply to the service of an arbitration claim form under paragraph (1).

(5) An order giving permission to serve an arbitration claim form out of the jurisdiction must specify the period within which the defendant may file an acknowledgment of service.

III ENFORCEMENT

Scope of this Section

62.17 This Section of this Part applies to all arbitration enforcement proceedings other than by a claim on the award.

Enforcement of awards

62.18 (1) An application for permission under-

(a) section 66 of the 1996 Act;

(b) section 101 of the 1996 Act;

(c) section 26 of the 1950 Act; or

(d) section 3(1)(a) of the 1975 Act,

to enforce an award in the same manner as a judgment or order may be made without notice in an arbitration claim form.

(2) The court may specify parties to the arbitration on whom the arbitration claim form must be served.

(3) The parties on whom the arbitration claim form is served must acknowledge service and the enforcement proceedings will continue as if they were an arbitration claim under Section I of this Part.

(4) With the permission of the court the arbitration claim form may be served out of the jurisdiction irrespective of where the award is, or is treated as, made.

(5) Where the applicant applies to enforce an agreed award within the meaning of section 51(2) of the 1996 Act-

(a) the arbitration claim form must state that the award is an agreed award; and

(b) any order made by the court must also contain such a statement.

(6) An application for permission must be supported by written evidence-

(a) exhibiting-

(i) where the application is made under section 66 of the 1996 Act or under section 26 of the 1950 Act, the arbitration agreement and the original award (or copies);

(ii) where the application is under section 101 of the 1996 Act, the documents required to be produced by section 102 of that Act; or

(iii) where the application is under section 3(1)(a) of the 1975 Act, the documents required to be produced by section 4 of that Act;

(b) stating the name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award; and

(c) stating either-

(i) that the award has not been complied with; or

(ii) the extent to which it has not been complied with at the date of the application.

(7) An order giving permission must-
(a) be drawn up by the claimant; and
(b) be served on the defendant by-
(i) delivering a copy to him personally; or
(ii) sending a copy to him at his usual or last known place of residence or business.

(8) An order giving permission may be served out of the jurisdiction-
(a) without permission; and
(b) in accordance with rules 6.24 to 6.29 as if the order were an arbitration claim form.

(9) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the court may set-
(a) the defendant may apply to set aside the order; and
(b) the award must not be enforced until after-
(i) the end of that period; or
(ii) any application made by the defendant within that period has been finally disposed of.

(10) The order must contain a statement of-
(a) the right to make an application to set the order aside; and
(b) the restrictions on enforcement under rule 62.18(9)(b).

(11) Where a body corporate is a party any reference in this rule to place of residence or business shall have effect as if the reference were to the registered or principal address of the body corporate.

Interest on awards

62.19 (1) Where an applicant seeks to enforce an award of interest the whole or any part of which relates to a period after the date of the award, he must file a statement giving the following particulars-
(a) whether simple or compound interest was awarded;
(b) the date from which interest was awarded;
(c) where rests were provided for, specifying them;
(d) the rate of interest awarded; and
(e) a calculation showing-
(i) the total amount claimed up to the date of the statement; and
(ii) any sum which will become due on a daily basis.

(2) A statement under paragraph (1) must be filed whenever the amount of interest has to be quantified for the purpose of-
(a) obtaining a judgment or order under section 66 of the 1996 Act (enforcement of the award); or
(b) enforcing such a judgment or order.

Registration in High Court of foreign awards

62.20 (1) Where-

(a) an award is made in proceedings on an arbitration in any part of a United Kingdom Overseas Territory (within the meaning of rule 6.18(f)) or other territory to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 ("the 1933 Act") extends;

(b) Part II of the Administration of Justice Act 1920 extended to that part immediately before Part I of the 1933 Act was extended to that part; and

(c) an award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place,

rules 74.1 to 74.7 and 74.9 apply in relation to the award as they apply in relation to a judgment given by the court subject to the modifications in paragraph (2).

(2) The modifications referred to in paragraph (1) are as follows-

(a) for references to the State of origin are substituted references to the place where the award was made; and

(b) the written evidence required by rule 74.4 must state (in addition to the matters required by that rule) that to the best of the information or belief of the maker of the statement the award has, under the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

Registration of awards under the Arbitration (International Investment Disputes) Act 1966

62.21 (1) In this rule-

(a) "the 1966 Act" means the Arbitration (International Investment Disputes) Act 1966;

(b) "award" means an award under the Convention;

(c) "the Convention" means the Convention on the settlement of investment disputes between States and nationals of other States which was opened for signature in Washington on 18th March 1965;

(d) "judgment creditor" means the person seeking recognition or enforcement of an award; and

(e) "judgment debtor" means the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of Part 74 apply with such modifications as may be necessary in relation to an award as they apply in relation to a judgment to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies-

(a) rule 74.1;

(b) rule 74.3;

(c) rule 74.4(1), 2(a) to (d), and (4); and

(d) rule 74.6 (except paragraph 3(c) to (e)); and

(e) rule 74.9(2).

(3) An application to have an award registered in the High Court under section 1 of the 1966 Act must be made in accordance with the Part 8 procedure.

(4) The written evidence required by rule 74.4 in support of an application for registration must-

(a) exhibit the award certified under the Convention instead of the judgment (or a copy of it); and

(b) in addition to stating the matters referred to in rule 74.4(2)(a) to (d), state whether-

(i) at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) under the Convention; and

(ii) any, and if so what, application has been made under the Convention, which, if granted, might result in a stay of the enforcement of the award.

(5) Where, on granting permission to register an award or an application made by the judgment debtor after an award has been registered, the court considers-

(a) that the enforcement of the award has been stayed (whether provisionally or otherwise) under the Convention; or

(b) that an application has been made under the Convention which, if granted, might result in a stay of the enforcement of the award,

the court may stay the enforcement of the award for such time as it considers appropriate.

PRACTICE DIRECTION – ARBITRATION

This Practice Direction supplements CPR Part 62

SECTION I

1.1 This Section of this Practice Direction applies to arbitration claims to which Section I of Part 62 applies.

1.2 In this Section "the 1996 Act" means the Arbitration Act 1996.

1.3 Where a rule provides for a document to be sent, it may be sent-
(1) by first class post;
(2) through a document exchange; or
(3) by fax, electronic mail or other means of electronic communication.

62.3 – Starting the claim

2.1 An arbitration claim under the 1996 Act (other than under section 9) must be started in accordance with the High Court and County Courts (Allocation of Arbitration Proceedings) Order 1996 by the issue of an arbitration claim form.

2.2 An arbitration claim form must be substantially in the form set out in Appendix A to this practice direction.

2.3 Subject to paragraph 2.1, an arbitration claim form –
(1) may be issued at the courts set out in column 1 of the table below and will be entered in the list set out against that court in column 2;
(2) relating to a landlord and tenant or partnership dispute must be issued in the Chancery Division of the High Court.

2.3A An arbitration claim form must, in the case of an appeal, or application for permission to appeal, from a judge-adjudicator, be issued in the Civil Division of the Court of Appeal. The judge hearing the application may adjourn the matter for oral argument before two judges of that court.

Court	***List***
Admiralty and Commercial Registry at the Royal Courts of Justice, London	**Commercial list**
Technology and Construction Court Registry, St. Dunstan's House, London	**TCC list**
District Registry of the High Court (where mercantile court established)	**Mercantile list**

District Registry of the High Court (where arbitration claim form marked "Technology and Construction Court" in top right hand corner)	**TCC list**
Central London County Court	**Mercantile list**

62.4 – Arbitration claim form Service

Service

3.1 The court may exercise its powers under rule 6.8 to permit service of an arbitration claim form at the address of a party's solicitor or representative acting for him in the arbitration.

3.2 Where the arbitration claim form is served by the claimant he must file a certificate of service within 7 days of service of the arbitration claim form.

(Rule 6.10 specifies what a certificate of service must show).

Acknowledgment of service or making representations by arbitrator or ACAS

4.1 Where-

(1) an arbitrator; or

(2) ACAS (in a claim under the 1996 Act as applied with modifications by the ACAS Arbitration Scheme (England and Wales) Order 2001)

is sent a copy of an arbitration claim form (including an arbitration claim form sent under rule 62.6(2)), that arbitrator or ACAS (as the case may be) may-

(a) apply to be made a defendant; or

(b) make representations to the court under paragraph 4.3.

4.2 An application under paragraph 4.1(2)(a) to be made a defendant-

(1) must be served on the claimant; but

(2) need not be served on any other party.

4.3 An arbitrator or ACAS may make representations by filing written evidence or in writing to the court.

Supply of documents from court records

5.1 An arbitration claim form may only be inspected with the permission of the court.

62.7 – Case management

6.1 The following directions apply unless the court orders otherwise.

6.2 A defendant who wishes to rely on evidence before the court must file and serve his written evidence-

(1) within 21 days after the date by which he was required to acknowledge service; or,

(2) where a defendant is not required to file an acknowledgement of service, within 21 days after service of the arbitration claim form.

6.3 A claimant who wishes to rely on evidence in reply to written evidence filed under paragraph 6.2 must file and serve his written evidence within 7 days after service of the defendant's evidence.

6.4 Agreed indexed and paginated bundles of all the evidence and other documents to be used at the hearing must be prepared by the claimant.

6.5 Not later than 5 days before the hearing date estimates for the length of the hearing must be filed together with a complete set of the documents to be used.

6.6 Not later than 2 days before the hearing date the claimant must file and serve-

(1) a chronology of the relevant events cross-referenced to the bundle of documents;

(2) (where necessary) a list of the persons involved; and

(3) a skeleton argument which lists succinctly-
- (a) the issues which arise for decision;
- (b) the grounds of relief (or opposing relief) to be relied upon;
- (c) the submissions of fact to be made with the references to the evidence; and
- (d) the submissions of law with references to the relevant authorities.

6.7 Not later than the day before the hearing date the defendant must file and serve a skeleton argument which lists succinctly-
(1) the issues which arise for decision;
(2) the grounds of relief (or opposing relief) to be relied upon;
(3) the submissions of fact to be made with the references to the evidence; and
(4) the submissions of law with references to the relevant authorities.

Securing the attendance of witnesses

7.1 A party to arbitral proceedings being conducted in England or Wales who wishes to rely on section 43 of the 1996 Act to secure the attendance of a witness must apply for a witness summons in accordance with Part 34.

7.2 If the attendance of the witness is required within the district of a district registry, the application may be made at that registry.

7.3 A witness summons will not be issued until the applicant files written evidence showing that the application is made with-

(1) the permission of the tribunal; or
(2) the agreement of the other parties.

Interim remedies

8.1 An application for an interim remedy under section 44 of the 1996 Act must be made in an arbitration claim form.

Applications under sections 32 and 45 of the 1996 Act

9.1 This paragraph applies to arbitration claims for the determination of-

(1) a question as to the substantive jurisdiction of the arbitral tribunal under section 32 of the 1996 Act; and

(2) a preliminary point of law under section 45 of the 1996 Act.

9.2 Where an arbitration claim is made without the agreement in writing of all the other parties to the arbitral proceedings but with the permission of the arbitral tribunal, the written evidence or witness statements filed by the parties must set out any evidence relied on by the parties in support of their contention that the court should, or should not, consider the claim.

9.3 As soon as practicable after the written evidence is filed, the court will decide whether or not it should consider the claim and, unless the court otherwise directs, will so decide without a hearing.

Decisions without a hearing

10.1 Having regard to the overriding objective the court may decide particular issues without a hearing. For example, as set out in paragraph 9.3, the question whether the court is satisfied as to the matters set out in section 32(2)(b) or section 45(2)(b) of the 1996 Act.

10.2 The court will generally decide whether to extend the time limit under section 70(3) of the 1996 Act without a hearing. Where the court makes an order extending the time limit, the defendant must file his written evidence within 21 days from service of the order.

62.9 – Variation of time

11.1 An application for an order under rule 62.9(1)-

(1) before the period of 28 days has expired, must be made in a Part 23 application notice; and

(2) after the period of 28 days has expired, must be set out in a separately identified part in the arbitration claim form.

Applications for permission to appeal

12.1 Where a party seeks permission to appeal to the court on a question of law arising out of an arbitration award, the arbitration claim form must-

(1) identify the question of law; and

(2) state the grounds

on which the party alleges that permission should be given.

12.2 The written evidence in support of the application must set out any evidence relied on by the party for the purpose of satisfying the court-

(1) of the matters referred to in section 69(3) of the 1996 Act; and

(2) that permission should be given.

12.3 The written evidence filed by the respondent to the application must-

(1) state the grounds on which the respondent opposes the grant of permission;

(2) set out any evidence relied on by him relating to the matters mentioned in section 69(3) of the 1996 Act; and

(3) specify whether the respondent wishes to contend that the award should be upheld for reasons not expressed (or not fully expressed) in the award and, if so, state those reasons.

12.4 The court will normally determine applications for permission to appeal without an oral hearing.

12.5 Where the court refuses an application for permission to appeal without an oral hearing, it must provide brief reasons.

12.6 Where the court considers that an oral hearing is required, it may give such further directions as are necessary.

SECTION II

13.1 This Section of this Practice Direction applies to arbitration claims to which Section II of Part 62 applies.

62.13 - Starting the claim

14.1 An arbitration claim must be started in the Commercial Court and, where required to be heard by a judge, be heard by a judge of that court unless he otherwise directs.

SECTION III

15.1 This Section of this Practice Direction applies to enforcement proceedings to which Section III of Part 62 applies.

62.21 – Registration of awards under the Arbitration (International Investment Disputes) Act 1966

16.1 Awards ordered to be registered under the 1966 Act and particulars will be entered in the Register kept for that purpose at the Admiralty and Commercial Registry.

Appendix 3

Procedure for issue of claim form when Registry closed

(See generally sections B3.11 and B4.4 of the Guide.)

Procedure

The procedure is as follows:

1. The claim form must be signed by a solicitor acting on behalf of the claimant, and must not require the permission of the Court for its issue (unless such permission has already been given).

2. The solicitor causing the claim form to be issued ("the issuing solicitor") must
   (i) endorse on the claim form the endorsement shown below and sign that endorsement;
   (ii) send a copy of the claim form so endorsed to the Registry by fax for issue under this section; and
   (iii) when he has received a transmission report stating that the transmission of the claim form to the Registry was completed in full and the time and the date of the transmission, complete and sign the certificate shown below.

3. When the Registry is next open to the public after the issue of a claim form in accordance with this procedure the issuing solicitor or his agent shall attend and deliver to the Registry the document which was transmitted by fax (including the endorsement and the certificate), or if that document has been served, a true and certified copy of it, together with as many copies as the Registry shall require and the transmission report.

4. When the proper officer at the Registry has checked and is satisfied that the document delivered under paragraph 3 fully accords with the document received under paragraph 2, and that all proper fees for issue have been paid, he shall allocate a number to the case, and seal, mark as "original" and date the claim form with the date on which it was issued (being, as indicated below, the date when the fax is recorded at the Registry as having been received).

5. As soon as practicable thereafter the issuing solicitor shall inform any person served with the unsealed claim form of the case number, and (on request) shall serve any such person with a copy of the claim form sealed and dated under paragraph 4 above (at such address in England and Wales as the person may request) and the person may, without paying a fee, inspect and take copies of the documents lodged at the Registry under paragraphs 2 and 3 above.

Effect of issue following request by fax.

The issue of a claim form in accordance with this procedure takes place when the fax is recorded at the Registry as having been received, and the claim form bearing the endorsement shall have the same effect for all purposes as a claim form issued under CPR Part 7 [or 8, as the case may be]. Unless otherwise ordered the sealed version of the claim form retained by the Registry shall be

conclusive proof that the claim form was issued at the time and on the date stated. If the procedure set out in this Appendix is not complied with, the court may declare (on its own initiative or on application) that the claim form shall be treated as not having been issued.

Endorsement
A claim form issued pursuant to a request by fax must be endorsed as follows:

> "1. This claim form is issued under section B3.11/B4.4 of the Commercial Court Guide and may be served notwithstanding that it does not bear the seal of the Court.
> 2. A true copy of this claim form and endorsement has been transmitted to the Admiralty and Commercial Registry, Royal Courts of Justice, Strand, London WC2A 2LL, at the time and date certified below by the undersigned solicitor.
> 3. It is the duty of the undersigned solicitor or his agent to attend at the Registry when it is next open to the public for the claim form to be sealed.
> 4. Any person upon whom this unsealed claim form is served will be notified by the undersigned solicitor of the number of the case and may require the undersigned solicitor to serve a copy of the sealed claim form at an address in England and Wales and may inspect without charge the documents which have been lodged at the Registry by the undersigned solicitor.
> 5. I, the undersigned solicitor, undertake to the Court, to the defendants named in this claim form, and to any other person upon whom this claim form may be served:
>
> (i) that the statement in paragraph 2 above is correct;
> (ii) that the time and date given in the certificate at the foot of this endorsement are correct;
> (iii) that this claim form is a claim form which may be issued under section B3.11 (or B4.4, as the case may be) of the Commercial Court Guide;
> (iv) that I will comply in all respects with the requirements of section B3.11/B4.4 of the Commercial Court Guide;
> (v) that I will indemnify any person served with the claim form before it is sealed against any loss suffered as a result of the claim form being or becoming invalid in accordance with section B3.11/B4.4 of the Commercial Court Guide.
>
> *(Signed)*
> Solicitor for the claimant"

> [**Note**: the endorsement may be signed in the name of the firm of solicitors rather than an individual solicitor, or by solicitors' agents in their capacity as agents acting on behalf of their professional clients.]

Certificate
A solicitor who causes a claim form to be issued pursuant to a request sent by fax must sign a certificate in the following form:

"I, the undersigned solicitor, certify that I have received a transmission report confirming that the transmission of a copy of this claim form to the Registry by fax was fully completed and that the time and date of transmission to the Registry were *[enter the time and date shown on the transmission report]*.

Dated

(Signed)

Solicitor for the claimant."

[**Note**: the certificate may be signed in the name of the firm of solicitors rather than an individual solicitor, or by solicitors' agents in their capacity as agents acting on behalf of their professional clients]

Appendix 4

Statements of Case

The following principles apply to all statements of case and should, as far as possible, also be observed when drafting a Part 8 claim form, which will not contain, or be followed by, particulars of claim:

1. The document must be as brief and concise as possible.

2. The document must be set out in separate consecutively numbered paragraphs and sub-paragraphs.

3. So far as possible each paragraph or sub-paragraph should contain no more than one allegation.

4. The document must deal with the case on a point by point basis to allow a point by point response.

5. Where particulars are given of any allegation or reasons given for a denial, the allegation or denial should be stated first and the particulars or reasons for it listed one by one in separate numbered sub-paragraphs.

6. A party wishing to advance a positive case should set that case out in the document; a simple denial is not sufficient.

7. Any matter which, if not stated, might take another party by surprise should be stated.

8. Where they will assist:
   (i) headings should be used; and
   (ii) abbreviations and definitions should be established and used, and a glossary annexed.

9. Contentious headings, abbreviations and definitions should not be used. Every effort should be made to ensure that headings, abbreviations and definitions are in a form that will enable them to be adopted without issue by the other parties.

10. Particulars of primary allegations should be stated as particulars and not as primary allegations.

11. If it is necessary to rely upon a substantial amount of detailed factual information or lengthy particulars in support of an allegation, these should be set out in schedules or appendices.

12. Particular care should be taken to set out only those factual allegations which are necessary to support the case. Evidence should not be included.

13. A response to particulars set out in a schedule should be set out in a corresponding schedule.

14. If it is necessary for the proper understanding of the statement of case to include substantial parts of a lengthy document the passages in question should be set out in a schedule rather than in the body of the case.

15. Contentious paraphrasing should be avoided.

16. The document must be signed by the individual person or persons who drafted it, not, in the case of a solicitor, in the name of the firm alone.

Appendix 5

Forms of Freezing Injunction and Search Order
adapted for use in the Commercial Court

*** FREEZING INJUNCTION ***

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Before The Honourable Mr Justice [ ]

Claim No.

BETWEEN

Claimant(s)

- and –

Defendant(s)

Applicant(s)

Respondent(s)

PENAL NOTICE

If you [ ][2] disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized.

Any other person who knows of this order and does anything which helps or permits the Respondent to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

---

[2] Insert name of Respondent(s).

THIS ORDER

1. This is a Freezing Injunction made against [ ] ("the Respondent") on [ ] by Mr Justice [ ] on the application of [ ] ("the Applicant"). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.

2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 13 below.

3. There will be a further hearing in respect of this order on [ ] ("the return date").

4. If there is more than one Respondent-
   (a) unless otherwise stated, references in this order to "the Respondent" mean both or all of them; and
   (b) this order is effective against any Respondent on whom it is served or who is given notice of it.

FREEZING INJUNCTION

[For injunction limited to assets in England and Wales]

5. Until the return date or further order of the court, the Respondent must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of his assets which are in England and Wales up to the value of £ .

[For worldwide injunction]

5. Until the return date or further order of the court, the Respondent must not-

   (1) remove from England and Wales any of his assets which are in England and Wales up to the value of £ ; or

   (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.

[For either form of injunction]

6. Paragraph 5 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to

be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

7. This prohibition includes the following assets in particular-

(a) the property known as *[title/address]* or the net sale money after payment of any mortgages if it has been sold;

(b) the property and assets of the Respondent's business [known as *[name]*] [carried on at *[address]*] or the sale money if any of them have been sold; and

(c) any money in the account numbered *[account number]* at *[title/address]*.

[For injunction limited to assets in England and Wales]

8. If the total value free of charges or other securities ("unencumbered value") of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of his assets still in England and Wales remains above £ .

[For worldwide injunction]

8. (1) If the total value free of charges or other securities ("unencumbered value") of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £ .

(2) If the total unencumbered value of the Respondent's assets in England and Wales does not exceed £ , the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above £ .

PROVISION OF INFORMATION

9. (1) Unless paragraph (2) applies, the Respondent must [immediately] [within hours of service of this order] and to the best of his ability inform the Applicant's solicitors of all his

assets [in England and Wales] [worldwide] [exceeding £ in value] whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.

(2) If the provision of any of this information is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.

10. Within [ ] working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information.

EXCEPTIONS TO THIS ORDER

11.(1) This order does not prohibit the Respondent from spending £ a week towards his ordinary living expenses and also £ [*or* a reasonable sum] on legal advice and representation. [But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.]

[(2) This order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.]

(3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.

(4) The order will cease to have effect if the Respondent-

(a) provides security by paying the sum of £ into court, to be held to the order of the court; or

(b) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

COSTS

12. The costs of this application are reserved to the judge hearing the application on the return date.

VARIATION OR DISCHARGE OF THIS ORDER

13. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

INTERPRETATION OF THIS ORDER

14. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

15. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

16. **Effect of this order**

It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

17. **Set off by banks**

This injunction does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the respondent before it was notified of this order.

18. **Withdrawals by the Respondent**

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

[For worldwide injunction]

19. **Persons outside England and Wales**

(1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.

(2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court -

(a) the Respondent or his officer or agent appointed by power of attorney;

(b) any person who-
  (i) is subject to the jurisdiction of this court;
  (ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and
  (iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

[For worldwide injunction]

20. **Assets located outside England and Wales**

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with-

(1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and

(2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors.

COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to Room EB09, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6826.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

AFFIDAVITS

The Applicant relied on the following affidavits-

[name] [number of affidavit] [date sworn] [filed on behalf of]

(1)
(2)

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

(1) If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make.

[(2) The Applicant will-
(a) on or before *[date]* cause a written guarantee in the sum of £ to be issued from a bank with a place of business within England or Wales, in respect of any order the court may make pursuant to paragraph (1) above; and
(b) immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent.]

(3) As soon as practicable the Applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].

(4) The Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's counsel/solicitors].

(5) The Applicant will serve upon the Respondent [together with this order] [as soon as practicable]-
(i) copies of the affidavits and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application;
(ii) the claim form; and
(iii) an application notice for continuation of the order.

[(6) Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.]

(7) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should

be compensated for that loss, the Applicant will comply with any order the court may make.

(8) If this order ceases to have effect (for example, if the Respondent provides security or the Applicant does not provide a bank guarantee as provided for above) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

[(9) The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.]

[(10) The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales [or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets].]

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's legal representatives are-

[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]

****SEARCH ORDER****

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Before The Honourable Mr Justice [ ]

Claim No.

BETWEEN

Claimant(s)

- and –

Defendant(s)

Applicant(s)

Respondent(s)

PENAL NOTICE

If you [ ][3] disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized.

Any other person who knows of this Order and does anything which helps or permits the Respondent to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS ORDER

1. This is a Search Order made against [ ] ("the Respondent") on [ ] by Mr Justice [

---

[3] Insert name of Respondent.

] on the application of [ ] ("the Applicant"). The Judge read the Affidavits listed in Schedule F and accepted the undertakings set out in Schedules C, D and E at the end of this order.

2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 27 below.

3 There will be a further hearing in respect of this order on [ ] ("the return date").

4. If there is more than one Respondent-
   (a) unless otherwise stated, references in this order to "the Respondent" mean both or all of them; and
   (b) this order is effective against any Respondent on whom it is served or who is given notice of it.

5. This order must be complied with by-
   (a) the Respondent;
   (b) any director, officer, partner or responsible employee of the Respondent; and
   (c) if the Respondent is an individual, any other person having responsible control of the premises to be searched.

THE SEARCH

6. The Respondent must permit the following persons[4]-
   (a) [ ] ("the Supervising Solicitor);
   (b) [ ], a solicitor in the firm of [ ], the Applicant's solicitors; and
   (c) up to [ ] other persons[5] being [*their identity or capacity*] accompanying them,

(together "the search party"), to enter the premises mentioned in Schedule A to this order and any other premises of the Respondent disclosed under paragraph 18 below and any vehicles under the Respondent's control on or around the premises ("the premises") so that they can search for, inspect, photograph or photocopy, and deliver into the safekeeping of the Applicant's solicitors all the documents and articles which are listed in Schedule B to this order ("the listed items").

7. Having permitted the search party to enter the premises, the Respondent must allow the search party to remain on the premises

[4] Where the premises are likely to be occupied by an unaccompanied woman and the Supervising Solicitor is a man, at least one of the persons accompanying him should be a woman.

[5] None of these persons should be people who could gain personally or commercially from anything they might read or see on the premises, unless their presence is essential.

until the search is complete. In the event that it becomes necessary for any of those persons to leave the premises before the search is complete, the Respondent must allow them to re-enter the premises immediately upon their seeking re-entry on the same or the following day in order to complete the search.

RESTRICTIONS ON SEARCH

8. This order may not be carried out at the same time as a police search warrant.

9. Before the Respondent allows anybody onto the premises to carry out this order, he is entitled to have the Supervising Solicitor explain to him what it means in everyday language.

10. The Respondent is entitled to seek legal advice and to ask the court to vary or discharge this order. Whilst doing so, he may ask the Supervising Solicitor to delay starting the search for up to 2 hours or such other longer period as the Supervising Solicitor may permit. However, the Respondent must-
    (a) comply with the terms of paragraph 27 below;
    (b) not disturb or remove any listed items; and
    (c) permit the Supervising Solicitor to enter, but not start to search.

11. Before permitting entry to the premises by any person other than the Supervising Solicitor, the Respondent may, for a short time (not to exceed two hours, unless the Supervising Solicitor agrees to a longer period), gather together any documents he believes may be [incriminating or][6] privileged and hand them to the Supervising Solicitor for him to assess whether they are [incriminating or] privileged as claimed. If the Supervising Solicitor decides that any of the documents may be [incriminating or] privileged or is in any doubt as to their status, he will exclude them from the search and retain them in his possession pending further order of the court.

12. If the Respondent wishes to take legal advice and gather documents as permitted, he must first inform the Supervising Solicitor and keep him informed of the steps being taken.

13. No item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the Respondent, and he has been given a reasonable opportunity to check the list.

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[6] References to incriminating documents should be omitted from orders made in intellectual property proceedings, where the privilege against self-incrimination does not apply – see paragraph 8.4 of the practice direction.

14. The premises must not be searched, and items must not be removed from them, except in the presence of the Respondent.

15. If the Supervising Solicitor is satisfied that full compliance with paragraphs 13 or 14 is not practicable, he may permit the search to proceed and items to be removed without fully complying with them.

DELIVERY UP OF ARTICLES/DOCUMENTS

16. The Respondent must immediately hand over to the Applicant's solicitors any of the listed items, which are in his possession or under his control, save for any computer or hard disk integral to any computer. Any items the subject of a dispute as to whether they are listed items must immediately be handed over to the Supervising Solicitor for safe keeping pending resolution of the dispute or further order of the court.

17. The Respondent must immediately give the search party effective access to the computers on the premises, with all necessary passwords, to enable the computers to be searched. If they contain any listed items the Respondent must cause the listed items to be displayed so that they can be read and copied.[7] The Respondent must provide the Applicant's Solicitors with copies of all listed items contained in the computers. All reasonable steps shall be taken by the Applicant and the Applicant's solicitors to ensure that no damage is done to any computer or data. 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.

PROVISION OF INFORMATION

18. The Respondent must immediately inform the Applicant's Solicitors (in the presence of the Supervising Solicitor) so far as he is aware-
    (a) where all the listed items are;
    (b) the name and address of everyone who has supplied him, or offered to supply him, with listed items;
    (c) the name and address of everyone to whom he has supplied, or offered to supply, listed items; and
    (d) full details of the dates and quantities of every such supply and offer.

[7] If it is envisaged that the Respondent's computers are to be imaged (i.e. the hard drives are to be copied wholesale, thereby reproducing listed items and other items indiscriminately), special provision needs to be made and independent computer specialists need to be appointed, who should be required to give undertakings to the court.

19. Within [ ] working days after being served with this order the Respondent must swear and serve an affidavit setting out the above information.[8]

PROHIBITED ACTS

20. Except for the purpose of obtaining legal advice, the Respondent must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against him by the Applicant until 4.30 p.m. on the return date or further order of the court.

21. Until 4.30 p.m. on the return date the Respondent must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed items otherwise than in accordance with the terms of this order.

22. [Insert any negative injunctions.]

23. [Insert any further order]

COSTS

24. The costs of this application are reserved to the judge hearing the application on the return date.

RESTRICTIONS ON SERVICE

25. This order may only be served between [ ] a.m./p.m. and [ ] a.m./p.m. [and on a weekday].[9]

26. This order must be served by the Supervising Solicitor, and paragraph 6 of the order must be carried out in his presence and under his supervision.

VARIATION AND DISCHARGE OF THIS ORDER

27. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

---

[8] The period should ordinarily be longer than the period in paragraph (2) of Schedule D, if any of the information is likely to be included in listed items taken away of which the Respondent does not have copies.

[9] Normally, the order should be served in the morning (not before 9.30 a.m.) and on a weekday to enable the Respondent more readily to obtain legal advice.

INTERPRETATION OF THIS ORDER

28. Any requirement that something shall be done to or in the presence of the Respondent means-
    (a) if there is more than one Respondent, to or in the presence of any one of them; and
    (b) if a Respondent is not an individual, to or in the presence of a director, officer, partner or responsible employee.

29. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

30. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to Room EB09, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 020 7947 6826.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

THE PREMISES

SCHEDULE B

THE LISTED ITEMS

SCHEDULE C

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

(1) If the court later finds that this order or carrying it out has caused loss to the Respondent, and decides that the Respondent should be compensated

for that loss, the Applicant will comply with any order the court may make. Further if the carrying out of this order has been in breach of the terms of this order or otherwise in a manner inconsistent with the Applicant's solicitors' duties as officers of the court, the Applicant will comply with any order for damages the court may make**.**

[(2) As soon as practicable the Applicant will issue a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].]

(3) The Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's counsel/solicitors].

(4) The Applicant will not, without the permission of the court use any information or documents obtained as a result of carrying out this order nor inform anyone else of these proceedings except for the purposes of these proceedings (including adding further Respondents) or commencing civil proceedings in relation to the same or related subject matter to these proceedings until after the return date.

[(5) The Applicant will maintain pending further order the sum of £ [ ] in an account controlled by the Applicant's solicitors.]

[(6) The Applicant will insure the items removed from the premises.]

SCHEDULE D

UNDERTAKINGS GIVEN BY THE APPLICANT'S SOLICITORS

(1) The Applicant's solicitors will provide to the Supervising Solicitor for service on the Respondent-

- (i) a service copy of this order;
- (ii) the claim form (with defendant's response pack) or, if not issued, the draft produced to the court;
- (iii) an application for hearing on the return date;
- (iv) copies of the affidavits *[or draft affidavits]* and exhibits capable of being copied containing the evidence relied upon by the applicant;
- (v) a note of any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge; and
- (vi) a copy of the skeleton argument produced to the court by the Applicant's [counsel/solicitors].

(2) The Applicants' solicitors will answer at once to the best of their ability any question whether a particular item is a listed item.

(3) Subject as provided below the Applicant's solicitors will retain in their own safe keeping all items obtained as a result of this order until the court directs otherwise.

(4) The Applicant's solicitors will return the originals of all documents obtained as a result of this order (except original documents which belong to the Applicant) as soon as possible and in any event within [two] working days of their removal.

SCHEDULE E

UNDERTAKINGS GIVEN BY THE SUPERVISING SOLICITOR

(1) The Supervising Solicitor will use his best endeavours to serve this order upon the Respondent and at the same time to serve upon the Respondent the other documents required to be served and referred to in paragraph (1) of Schedule D.

(2) The Supervising Solicitor will offer to explain to the person served with the order its meaning and effect fairly and in everyday language, and to inform him of his right to take legal advice (such advice to include an explanation that the Respondent may be entitled to avail himself of [the privilege against self-incrimination or] [legal professional privilege]) and to apply to vary or discharge this order as mentioned in paragraph 27 above.

(3) The Supervising Solicitor will retain in the safe keeping of his firm all items retained by him as a result of this order until the court directs otherwise.

(4) Within [48] hours of completion of the search the Supervising Solicitor will make and provide to the Applicant's solicitors, the Respondent or his solicitors and to the judge who made this order (for the purposes of the court file) a written report on the carrying out of the order.

SCHEDULE F

AFFIDAVITS

The Applicant relied on the following affidavits-

[name] [number of affidavit] [date sworn] [filed on behalf of]

(1)
(2)

NAME AND ADDRESS OF APPLICANT'S SOLICITORS

The Applicant's solicitors are-
[Name, address, reference, fax and telephone numbers both in and out of office hours.]

Appendix 6

Case Management Information Sheet

The information supplied should be printed in bold characters

Case Management Information Sheet

Party lodging information sheet:

Name of solicitors:

Name(s) of advocates for trial:

> [Note: This Sheet should normally be completed with the involvement of the advocate(s) instructed for trial. If the claimant is a litigant in person this fact should be noted at the foot of the sheet and proposals made as to which party is to have responsibility for the preparation and upkeep of the case management bundle.]

(1) By what date can you give standard disclosure?

(2) In relation to standard disclosure, do you contend in relation to any category or class of document under rule 31.6(b) that to search for that category or class would be unreasonable? If so, what is the category or class and on what grounds do you so contend?

(3) Is specific disclosure required on any issue? If so, please specify.

(4) By what dates can you (a) give specific disclosure or (b) comply with a special disclosure order?

(5) May the time periods for inspection at rule 31.15 require adjustment, and if so by how much?

(6) Are amendments to or is information about any statement of case required?
If yes, please give brief details of what is required.

(7) Can you make any additional admissions? If yes, please give brief details of the additional admissions.

(8) Are any of the issues in the case suitable for trial as preliminary issues?

(9) (a) On the evidence of how many witnesses of fact do you intend to rely at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done.
(b) By what date can you serve signed witness statements?

(c) How many of these witnesses of fact do you intend to call to give oral evidence at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done.
(d) Will interpreters be required for any witness?
(e) Do you wish any witness to give oral evidence by video link? Please give his or her name, or explain why this is not being done. Please state the country and city from which the witness will be asked to give evidence by video link.

(10) (a) On what issues may expert evidence be required?
(b) Is this a case in which the use of a single joint expert might be suitable (see rule 35.7)?
(c) On the evidence of how many expert witnesses do you intend to rely at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done. Please identify each expert's field of expertise.
(d) By what date can you serve signed expert reports?
(e) When will the experts be available for a meeting or meetings of experts?
(f) How many of these expert witnesses do you intend to call to give oral evidence at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done.
(g) Will interpreters be required for any expert witness?
(h) Do you wish any expert witness to give oral evidence by video link? Please give his or her name, or explain why this is not being done. Please state the country and city from which the witness will be asked to give evidence by video link.

(11) What are the advocates' present provisional estimates of the minimum and maximum lengths of the trial?

(12) What is the earliest date by which you believe you can be ready for trial?

(13) Is this a case in which a pre-trial review is likely to be useful?

(14) Is there any way in which the Court can assist the parties to resolve their dispute or particular issues in it without the need for a trial or a full trial?

(15) (a) Might some form of Alternative Dispute Resolution procedure assist to resolve or narrow the dispute or particular issues in it?
(b) Has the question at (a) been considered between the client and legal representatives (including the advocate(s) retained)?
(c) Has the question at (a) been explored with the other parties in the case?
(d) Do you request that the case is adjourned while the parties try to settle the case by Alternative Dispute Resolution or other means?
(e) Would an ADR order in the form of Appendix 7 to the Commercial Court Guide be appropriate?
(f) Are any other special directions needed to allow for Alternative Dispute Resolution?

(16) What other applications will you wish to make at the Case Management Conference?

(17) Does provision need to be made in the pre-trial timetable for any application or procedural step not otherwise dealt with above? If yes, please specify the application or procedural step.

(18) Are there, or are there likely in due course to be, any related proceedings (e.g. a Part 20 claim)? Please give brief details.
[Signature of solicitors]

> Note: This information sheet must be lodged with the Clerk to the Commercial Court at least 7 days before the Case Management Conference (with a copy to all other parties): see section D8.5 of the Commercial Court Guide.

Appendix 7

Draft ADR Order

1. On or before [*] the parties shall exchange lists of 3 neutral individuals who are available to conduct ADR procedures in this case prior to [*]. Each party may [in addition] [in the alternative] provide a list identifying the constitution of one or more panels of neutral individuals who are available to conduct ADR procedures in this case prior to [*].

2. On or before [*] the parties shall in good faith endeavour to agree a neutral individual or panel from the lists so exchanged and provided.

3. Failing such agreement by [*] the Case Management Conference will be restored to enable the Court to facilitate agreement on a neutral individual or panel.

4. The parties shall take such serious steps as they may be advised to resolve their disputes by ADR procedures before the neutral individual or panel so chosen by no later than [*].

5. If the case is not finally settled, the parties shall inform the Court by letter prior to [disclosure of documents/exchange of witness statements/exchange of experts' reports] what steps towards ADR have been taken and (without prejudice to matters of privilege) why such steps have failed. If the parties have failed to initiate ADR procedures the Case Management Conference is to be restored for further consideration of the case.

6. [Costs].

> Note: The term "ADR procedures" is deliberately used in the draft ADR order. This is in order to emphasise that (save where otherwise provided) the parties are free to use the ADR procedure that they regard as most suitable, be it mediation, early neutral evaluation, non-binding arbitration etc.

Appendix 8

Standard Pre-Trial Timetable

1. [Standard disclosure is to be made by [*], with inspection [*] days after notice.]

2. Signed statements of witnesses of fact, and hearsay notices where required by rule 33.2, are to be exchanged not later than [*].

3. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at trial.

4. Signed reports of experts
   (i) are to be confined to one expert for each party from each of the following fields of expertise: [*];
   (ii) are to be confined to the following issues: [*];
   (iii) are to be exchanged [sequentially/simultaneously];
   (iv) are to be exchanged not later than [date or dates for each report in each field of expertise].

5. Meeting of experts
   (i) The meeting of experts is to be by [*];
   (ii) The joint memorandum of the experts is to be completed by [*];
   (iii) Any short supplemental expert reports are to be exchanged [sequentially/simultaneously] by not later than [date or dates for each supplemental report].

6. [If the experts' reports cannot be agreed, the parties are to be at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged pursuant to 4. above.]
   [Or: The parties are to be at liberty to apply to call as expert witnesses at the trial those experts whose reports they have exchanged pursuant to 4. above, such application to be made not earlier than [*] and not later than [*].]

7. Preparation of trial bundles to be completed in accordance with Appendix 10 to the Commercial Court Guide by not later than [*].

8. The provisional estimated length of the trial is [*].

9. Within [*] days the parties are to attend on the Clerk to the Commercial Court to fix the date for trial which shall be not before [*].

10. The progress monitoring date is [*]. Each party is to lodge a completed progress monitoring information sheet with the Clerk to the Commercial Court at least 3 days before the progress monitoring date (with a copy to all other parties).

11. Each party is to lodge a completed pre-trial checklist not later than 3 weeks before the date fixed for trial.

12. [There is to be a pre-trial review not earlier than [*] and not later than [*]].

13. Save as varied by this order or further order, the practice and procedures set out in the Admiralty & Commercial Courts Guide are to be followed.

14. Costs in the case.

15. Liberty to restore the Case Management Conference.

Appendix 9

Skeleton Arguments, Chronologies and Indices

Part 1 Skeleton arguments

1. A skeleton argument is intended to identify both for the parties and the court those points which are, and are not, in issue and the nature of the argument in relation to those points that are in issue. It is not a substitute for oral argument.

2. Skeleton arguments must therefore
   (a) identify concisely:
      (i) the nature of the case generally and the background facts insofar as they are relevant to the matter before the court;
      (ii) the propositions of law relied on with references to the relevant authorities;
      (iii) the submissions of fact to be made with references to the evidence;

   (b) be in numbered paragraphs and state the name of the advocate(s) who prepared them; and

   (c) should avoid arguing the case at length.

Part 2 Chronologies and indices

3. As far as possible chronologies and indices should not be prepared in a tendentious form. The ideal is that the court and the parties should have a single point of reference that all find useful and are happy to work with.

4. Where there is disagreement about a particular event or description, it is useful if that fact is indicated in neutral terms and the competing versions shortly stated.

5. If time and circumstances allow its preparation, a chronology or index to which all parties have contributed and agreed can be invaluable.

6. Chronologies and indices once prepared can be easily updated and are of continuing usefulness throughout the life of the case.

Appendix 10

Preparation of Bundles

1. The preparation of bundles requires a high level of co-operation between legal representatives for all parties. It is the duty of all legal representatives to co-operate to this high level.

2. Bundles should be prepared as follows:
   (i) No more than one copy of any one document should be included, unless there is good reason for doing otherwise;
   (ii) Contemporaneous documents, and correspondence, should be included in chronological order;
   (iii) Where a contract or similar document is central to the case it may be included in a separate place provided that a page is inserted in the chronological run of documents to indicate
      (A) the place the contract or similar document would have appeared had it appeared chronologically and
      (B) where it may be found instead;
   (iv) Documents in manuscript, or not fully legible, should be transcribed; the transcription should be marked and placed adjacent to the document transcribed;
   (v) Documents in a foreign language should be translated; the translation should be marked and placed adjacent to the document transcribed; the translation should be agreed, or, if it cannot be agreed, each party's proposed translation should be included;
   (vi) If a document has to be read across rather than down the page, it should be so placed in the bundle as to ensure that the top of the text is nearest the spine;
   (vii) No bundle should contain more than 300 pages;
   (viii) Bundles should not be overfilled, and should allow sufficient room for later insertions. Subject to this, the size of file used should not be a size that is larger than necessary for the present and anticipated contents;
   (ix) Bundles should be paginated, in the bottom right hand corner and in a form that can clearly be distinguished from any existing pagination on the document;
   (x) Bundles should be indexed, save that a chronological bundle of contemporaneous documents need not be indexed if an index is unlikely to be useful;
   (xi) Bundles should be numbered and named on the outside and on the inside front cover, the label to include the short title of the case, and a description of the bundle (including its number, where relevant).

3. Documents within bundles should be marked as follows:
   (i) When copy documents from exhibits have been included in the bundle(s), then unless clearly unnecessary, the copy of the affidavit or witness statement to which the documents were exhibited should be

marked in the right hand margin (in manuscript if need be) to show where the document referred to may be found in the bundle(s).

(ii) Unless clearly unnecessary, where copy documents in a bundle are taken from the disclosure of more than one party the documents should be marked in the top right hand corner (in manuscript if need be) to show from which party's disclosure the copy document has been taken;

(iii) Where there is a reference in a statement of case or witness statement to a document which is contained in the trial bundles a note should be made in the margin (if necessary in manuscript) identifying the place where that document is to be found. Unless otherwise agreed this is the responsibility of the party tendering the statement of case or witness statement.

4. For the trial a handy-sized core bundle should normally be provided containing the really important documents in the case. The documents in this bundle should be paginated, but each page should also bear its bundle and page number reference in the main bundles. It is particularly important to allow sufficient room for later insertions (see paragraph 2(viii) above).

5. Large documents, such as plans, should be placed in an easily accessible file.

6. (a) When agreeing bundles for trial, legal representatives should bear in mind the effect of the Civil Evidence Act 1995 and of rules 33.2(3) (notice requiring proof of authenticity) and 32.19 (hearsay notices).

(b) Pursuant to those provisions, documents which have not been the subject of a notice served in accordance with rule 32.19(2) (requiring proof of authenticity) will be admissible as evidence of the truth of their contents even if there has been non-compliance with the notice requirements of s. 2(1) of the 1995 Act and rule 33.2 (see s. 2(4) of the Act). Accordingly, save for documents in respect of which there has been a timely notice to prove authenticity, all documents in the trial bundle will be admissible in evidence without more.

(c) The fact that documents in the trial bundle are admissible in evidence does not mean that all such documents form part of the evidence in the trial. It is the trial advocate’s responsibility to indicate clearly to the court before closing his or her case the written evidence which forms part of that case. This should be done in the written opening statement or in the oral opening statement if the document is then available. Documents which have not previously been put in evidence before the closure of the parties’ cases should not normally be referred to as evidence in the course of final speeches.

Appendix 11

Expert Evidence - Requirements of General Application

1. It is the duty of an expert to help the court on the matters within his expertise: **rule 35.3(1)**. This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom he is paid: **rule 35.3(2)**.

2. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced by the pressures of litigation.

3. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness should never assume the role of an advocate.

4. An expert witness should not omit to consider material facts which could detract from his concluded opinion.

5. An expert witness should make it clear when a particular question or issue falls outside his expertise.

6. If an expert's opinion is not properly researched because he considers that insufficient data is available, this must be stated in his report with an indication that the opinion is no more than a provisional one.

7. In a case where an expert witness who has prepared a report is unable to confirm that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.

8. If, after exchange of reports, an expert witness changes his view on a material matter having read another expert's report or for any other reason, such change of view should be communicated in writing (through the party's legal representatives) to the other side without delay, and when appropriate to the court.

Appendix 12

Progress Monitoring Information Sheet

The information supplied should be printed in bold characters

---

[SHORT TITLE OF CASE and FOLIO NUMBER]
Fixed trial date/provisional range of dates for trial specified in the pre-trial timetable:

Party lodging information sheet:

Name of solicitors:

Name(s) of advocates for trial:

[Note: this information sheet should normally be completed with the involvement of the advocate(s) instructed for trial]

(1) Have you complied with the pre-trial timetable in all respects?

(2) If you have not complied, in what respects have you not complied?

(3) Will you be ready for a trial commencing on the fixed date (or, where applicable, within the provisional range of dates) specified in the pre-trial timetable?

(4) If you will not be ready, why will you not be ready?

[*Signature of solicitors*]

Note: This information sheet must be lodged with the Case Management Unit at least 3 days before the progress monitoring date (with a copy to all other parties): see section D12.2 of the Guide.

Appendix 13

Pre-Trial Checklist

The information supplied should be printed in bold characters

---

[SHORT TITLE OF CASE and FOLIO NUMBER]
a. Trial date:
b. Party lodging checklist:
c. Name of solicitors:
d. Name(s) of advocates for trial:

[**Note**: this checklist should normally be completed with the involvement of the advocate(s) instructed for trial]

1. Have you completed preparation of trial bundles in accordance with Appendix 10 to the Commercial Court Guide?

2. If not, when will the preparation of the trial bundles be completed?

3. Which witnesses of fact do you intend to call?

4. Which expert witness(es) do you intend to call (if directions for expert evidence have been given)?

5. Will an interpreter be required for any witness and if so, have any necessary directions already been given?

6. Have directions been given for any witness to give evidence by video link? If so, have all necessary arrangements been made?

7. What are the advocates' confirmed estimates of the minimum and maximum lengths of the trial? (A confirmed estimate of length signed by the advocates should be attached).

8. What is your estimate of costs already incurred and to be incurred at trial for the purposes of section 46 of the Practice Direction supplementing CPR Part 43? (If the trial is not expected to last more than **one day** the estimate should be substantially in the form of a statement of costs as illustrated in Form H of the Schedule of Costs Forms annexed to the Practice Direction).

[Signature of solicitors]

Appendix 14

Video Conferencing Guidance

(Annex 3 to PD32)

This guidance is for the use of video conferencing (VCF) in civil proceedings. It is in part based, with permission, upon the protocol of the Federal Court of Australia. It is intended to provide a guide to all persons involved in the use of VCF, although it does not attempt to cover all the practical questions which might arise.

Video conferencing generally

1. The guidance covers the use of VCF equipment both (a) in a courtroom, whether via equipment which is permanently placed there or via a mobile unit, and (b) in a separate studio or conference room. In either case, the location at which the judge sits is referred to as the "local site". The other site or sites to and from which transmission is made are referred to as "the remote site" and in any particular case any such site may be another courtroom. The guidance applies to cases where VCF is used for the taking of evidence and also to its use for other parts of any legal proceedings (for example, interim applications, case management conferences, pre-trial reviews).

2. VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs, and such savings may also be achieved by its use for taking domestic evidence. It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognised that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.

3. When used for the taking of evidence, the objective should be to make the VCF session as close as possible to the usual practice in a trial court where evidence is taken in open court. To gain the maximum benefit, several differences have to be taken into account. Some matters, which are taken for granted when evidence is taken in the conventional way, take on a different dimension when it is taken by VCF: for example, the administration of the oath, ensuring that the witness understands who is at the local site and what their various roles are, the raising of any objections to the evidence and the use of documents.

4. It should not be presumed that all foreign governments are willing to allow their nationals or others within their jurisdiction to be examined before a court in England or Wales by means of VCF. If there is any doubt about this, enquiries should be directed to the Foreign and Commonwealth Office (International Legal Matters Unit, Consular Division) with a view to ensuring that the country from which the evidence is to be taken raises no objection to it at diplomatic level. The party who is directed to be responsible for arranging the VCF (see paragraph 8 below) will be required to make all necessary inquiries about this well in advance of the VCF and must be able to inform the court what those inquiries were and of their outcome.

5. Time zone differences need to be considered when a witness abroad is to be examined in England or Wales by VCF. The convenience of the witness, the parties, their representatives and the court must all be taken into account. The cost of the use of a commercial studio is usually greater outside normal business hours.

6. Those involved with VCF need to be aware that, even with the most advanced systems currently available, there are the briefest of delays between the receipt of the picture and that of the accompanying sound. If due allowance is not made for this, there will be a tendency to "speak over" the witness, whose voice will continue to be heard for a millisecond or so after he or she appears on the screen to have finished speaking.

7. With current technology, picture quality is good, but not as good as a television picture. The quality of the picture is enhanced if those appearing on VCF monitors keep their movements to a minimum.

Preliminary arrangements

8. The court's permission is required for any part of any proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the listing officer, diary manager or other appropriate court officer of the intention to seek it, and should enquire as to the availability of court VCF equipment for the day or days of the proposed VCF. The application for a direction should be made to the Master, District Judge or Judge, as may be appropriate. If all parties consent to a direction, permission can be sought by letter, fax or e-mail, although the court may still require an oral hearing. All parties are entitled to be heard on whether or not such a direction should be given and as to its terms. If a witness at a remote site is to give evidence by an interpreter, consideration should be given at this stage as to whether the interpreter should be at the local site or the remote site. If a VCF direction is given, arrangements for the transmission will then need to be made. The court will ordinarily direct that the party seeking permission to use VCF is to be responsible for this. That party is hereafter referred to as "the VCF arranging party".

9. Subject to any order to the contrary, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by, the VCF arranging party. All reasonable efforts should be made to keep the transmission to a minimum and

so keep the costs down. All such costs will be considered to be part of the costs of the proceedings and the court will determine at such subsequent time as is convenient or appropriate who, as between the parties, should be responsible for them and (if appropriate) in what proportions.

10. The local site will, if practicable, be a courtroom but it may instead be an appropriate studio or conference room. The VCF arranging party must contact the listing officer, diary manager or other appropriate officer of the court which made the VCF direction and make arrangements for the VCF transmission. Details of the remote site, and of the equipment to be used both at the local site (if not being supplied by the court) and the remote site (including the number of ISDN lines and connection speed), together with all necessary contact names and telephone numbers, will have to be provided to the listing officer, diary manager or other court officer. The court will need to be satisfied that any equipment provided by the parties for use at the local site and also that at the remote site is of sufficient quality for a satisfactory transmission. The VCF arranging party must ensure that an appropriate person will be present at the local site to supervise the operation of the VCF throughout the transmission in order to deal with any technical problems. That party must also arrange for a technical assistant to be similarly present at the remote site for like purposes.

11. It is recommended that the judge, practitioners and witness should arrive at their respective VCF sites about 20 minutes prior to the scheduled commencement of the transmission.

12. If the local site is not a courtroom, but a conference room or studio, the judge will need to determine who is to sit where. The VCF arranging party must take care to ensure that the number of microphones is adequate for the speakers and that the panning of the camera for the practitioners' table encompasses all legal representatives so that the viewer can see everyone seated there.

13. The proceedings, wherever they may take place, form part of a trial to which the public is entitled to have access (unless the court has determined that they should be heard in private). If the local site is to be a studio or conference room, the VCF arranging party must ensure that it provides sufficient accommodation to enable a reasonable number of members of the public to attend.

14. In cases where the local site is a studio or conference room, the VCF arranging party should make arrangements, if practicable, for the royal coat of arms to be placed above the judge's seat.

15. In cases in which the VCF is to be used for the taking of evidence, the VCF arranging party must arrange for recording equipment to be provided by the court which made the VCF direction so that the evidence can be recorded. An associate will normally be present to operate the recording equipment when the local site is a courtroom. The VCF arranging party should take steps to ensure that an associate is present to do likewise when it is a studio or conference room. The equipment should be set up and tested before the VCF transmission. It will often be a valuable safeguard for the VCF arranging party also to arrange for the

provision of recording equipment at the remote site. This will provide a useful back-up if there is any reduction in sound quality during the transmission. A direction from the court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are court proceedings and, save as directed by the court, no other recording of them must be made. The court will direct what is to happen to the back-up recording.

16. Some countries may require that any oath or affirmation to be taken by a witness accord with local custom rather than the usual form of oath or affirmation used in England and Wales. The VCF arranging party must make all appropriate prior inquiries and put in place all arrangements necessary to enable the oath or affirmation to be taken in accordance with any local custom. That party must be in a position to inform the court what those inquiries were, what their outcome was and what arrangements have been made. If the oath or affirmation can be administered in the manner normal in England and Wales, the VCF arranging party must arrange in advance to have the appropriate holy book at the remote site. The associate will normally administer the oath.

17. Consideration will need to be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree on this. It will usually be most convenient for a bundle of the copy documents to be prepared in advance, which the VCF arranging party should then send to the remote site.

18. Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the VCF arranging party should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VCF transmission. Consideration should be given to whether to use a document camera. If it is decided to use one, arrangements for its use will need to be established in advance. The panel operator will need to know the number and size of documents or objects if their images are to be sent by document camera. In many cases, a simpler and sufficient alternative will be to ensure that there are fax transmission and reception facilities at the participating sites.

The hearing

19. The procedure for conducting the transmission will be determined by the judge. He will determine who is to control the cameras. In cases where the VCF is being used for an application in the course of the proceedings, the judge will ordinarily not enter the local site until both sites are on line. Similarly, at the conclusion of the hearing, he will ordinarily leave the local site while both sites are still on line. The following paragraphs apply primarily to cases where the VCF is being used for the taking of the evidence of a witness at a remote site. In all cases, the judge will need to decide whether court dress is appropriate when using VCF facilities. It might be appropriate when transmitting from courtroom to courtroom. It might not be when a commercial facility is being used.

20. At the beginning of the transmission, the judge will probably wish to introduce himself and the advocates to the witness. He will probably want to know who is at the remote site and will invite the witness to introduce himself

and anyone else who is with him. He may wish to give directions as to the seating arrangements at the remote site so that those present are visible at the local site during the taking of the evidence. He will probably wish to explain to the witness the method of taking the oath or of affirming, the manner in which the evidence will be taken, and who will be conducting the examination and cross-examination. He will probably also wish to inform the witness of the matters referred to in paragraphs 6 and 7 above (co-ordination of picture with sound, and picture quality).

21. The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom. During examination, cross-examination and re-examination, the witness must be able to see the legal representative asking the question and also any other person (whether another legal representative or the judge) making any statements in regard to the witness's evidence. It will in practice be most convenient if everyone remains seated throughout the transmission.

Appendix 15

Service Out of the Jurisdiction: Related Practice

Service out of the jurisdiction without permission

1. Before issuing a claim form or seeking permission to serve out of the jurisdiction, it is necessary to consider whether the jurisdiction of the English courts is affected by the Civil Jurisdiction and Judgments Act 1982. Where each claim in the claim form is a claim which the Court has by virtue of the Civil Jurisdiction and Judgments Act 1982 power to hear and determine, service of the claim form out of the jurisdiction may be effected without permission provided that the requirements of rule 6.19 are satisfied and the claim form is endorsed before issue with a statement that the court has power under the Act to hear and determine the claim against the defendant, and that no proceedings involving the same claim are pending between the parties in Scotland, Northern Ireland or another convention country. Care must be taken to see that the endorsement is not made unless the statement is accurate.

Application for permission: affidavit or witness statement

2. (a) On applications for permission under rule 6.20 the written evidence must, amongst other things:
   (i) identify the paragraph or paragraphs of rule 6.20 relied on as giving the court jurisdiction to order service out, together with a summary of the facts relied on as bringing the case within each such paragraph;
   (ii) state the belief of the deponent that there is a good claim and state in what place or country the defendant is or probably may be found;
   (iii) summarise the considerations relied upon as showing that the case is a proper one in which to subject a party outside the jurisdiction to proceedings within it;
   (iv) draw attention to any features which might reasonably be thought to weigh against the making of the order sought;
   (v) state the deponent's grounds of belief and sources of information;
   (vi) exhibit copies of the documents referred to and any other significant documents.

   (b) Where convenient the written evidence should be included in the form of application notice, rather than in a separate witness statement. The form of application notice may be extended for this purpose.

Application for permission: copies of draft order

3. The documents submitted with the application must include two copies of a draft of the order sought which must state the time allowed for acknowledgment of service in accordance with any applicable practice direction and paragraphs 6 and 7 below.

Application for permission: copy or draft of claim form

4. A copy or draft of the claim form which the applicant intends to issue and serve must be provided for the judge to initial. If the endorsement to the claim form includes causes of action or claims not covered by the grounds on which permission to serve out of the jurisdiction can properly be granted, permission will be refused unless the draft is amended to restrict it to proper claims. Where the application is for the issue of a concurrent claim form, the documents submitted must also include a copy of the original claim form.

Arbitration matters

5. Service out of the jurisdiction in arbitration matters is governed by Part 62. As to the 1968 Convention on Jurisdiction in the context of arbitration, see Article 1(4).

Practice under rules 6.19 and 6.20

6. (a) Although a Part 7 claim form may contain or be accompanied by particulars of claim, there is no need for it to do so and in many cases particulars of claim will be served after the claim form: **rule 58.5**.

(b) A defendant should acknowledge service in every case: **rule 58.6(1)**.

(c) The period for filing acknowledgment of service will be calculated from the service of the claim form, whether or not particulars of claim are to follow: **rule 58.6**.

(d) The period for serving, and filing, particulars of claim (where they were not contained in the claim form and did not accompany the claim form) will be calculated from acknowledgment of service: **rule 58.5(1)(c)**.

(e) The period for serving and filing the defence will be calculated from service of the particulars of claim: **rule 58.10(2)**.

7. Time for serving and filing a defence is calculated as follows:

(i) where particulars of claim were included in or accompanied the claim form the period for serving and filing a defence is 21 or 31 days as prescribed by rule 6.23, or the number of days shown in the table in practice direction 6BPD, in either case plus an additional 14 days;

(ii) where particulars of claim were not included in and did not accompany the claim form, the period for serving and filing a defence is 28 days from the service of the particulars of claim.

Appendix 16

Security for Costs: Related Practice

First applications

1. 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 (see section F5 of the Guide).

Successive applications

2. 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

3. 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

4. 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

5. 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

6. 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 liberty to apply to the court in the event of default. This enables the court to put the claimant to his election and then, if appropriate, to dismiss the case.

Amount of security

7. 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 Costs Judge as an informal assessor. The judge himself may take such an initiative.

Appendix 17

Commercial Court User E-mail Guidance

Introduction

1. This guidance sets out how parties may communicate by e-mail with the Commercial and Admiralty Courts on certain matters with effect from 17 March 2003.

Initial period of application

2. This guidance will apply for an initial period of 6 months. Towards the end of that period, the guidance will be reviewed in the light of the experience gained. It may then be revised as necessary.

Documents for which e-mail may be used

3. E-mail may only be used:

a. to communicate with the Case Management Unit, including the lodging of progress monitoring information sheets;

b. to communicate with the Registry in relation to the approval by the Judge of draft Order following a hearing before that Judge, queries on Orders made, requests to transfer a case into or out of the Commercial Court and general correspondence, including questions on practice;

Note: Orders submitted for sealing must be submitted on paper.

c. to communicate with the Listing Office in matters relating to listing (including the lodging of pre-trial checklists) and to lodge skeleton arguments with the listing office;

d. to communicate with the Admiralty Marshal (except for out of hours business).

Note: The Court cannot accept any other documents by e-mail at present. In particular e-mail cannot be used to lodge pleadings, affidavits, witness statements, case memoranda and lists of issues.

Restrictions

4. A party should not use e-mail to take any step in a claim which requires a fee to be paid for that step. If a party sends by e-mail a document for which a fee is payable upon filing, the document will be treated as not having been filed.

5. Where a party sends or lodges a document by e-mail he should still comply with any rule or practice direction requiring the document to be served on any other person.

6. Nothing in this guidance requires any person to accept service of a document by e-mail.

Sending e-mails to the Court: addresses
7. For Listing matters, the e-mail addresses are:

a. For all matters relating to listing (except Friday applications), for the lodging of pre-trial check lists and for all skeleton arguments:

E-mail Commercial Court Listing

b. For matters relating to Friday applications (except skeleton arguments)

E-mail Friday applications

8. For matters relating to case management and the Case Management Unit (including the lodging of progress monitoring sheets), the address is:

E-mail Case Management

9. For all correspondence for the Registry the address is:

E-mail Registry

10. For all matters for the Admiralty Marshal or the business of the Admiralty Marshal, the address is:

E-mail Admiralty Marshal

The subject line
11. The subject line of the e-mail should contain only the following information which should be in the following order:

a. First, the proper title of the claim (abbreviated as necessary) with the claimant named first and the defendant named second; unless the action is an Admiralty action, the name of the ship should not be used:

b. Second, the claim number.

Form and content of the e-mail
12. Correspondence and documents may be sent either as text or attachments, except that documents required to be in a practice form should be sent in that form as attachments using one of the formats specified in paragraph 17.

13. Parties must not use e-mail to send any document which exceeds 40 pages in the aggregate of normal typescript in length or 2 MB whichever is the smaller. Documents may not be subdivided to comply with this requirement.

14. Where a party files a document by e-mail, he should not send a hard copy in addition, unless there are good reasons for so doing or the Court requires.

15. Parties are advised to bear in mind when sending correspondence or documents of a confidential or sensitive nature that the security of e-mails cannot be guaranteed.

16. Where a time limit applies, it remains the responsibility of the party to ensure that the document is filed in time. Parties are advised to allow for delays or downtime on their server or the servers used by the Court.

Attachments
17. Attachments should be in one of the following formats:

a. Microsoft Word viewer/reader (.doc) in Word 1997 or later format
b. Rich Text Format as (.rtf) files
c. Plain/Formatted Text as (.txt) files
d. Hypertext documents as (.htm) files
e. Adobe Acrobat as (.pdf) files minimum viewer version 4

Receipt of e-mail by the Court
18. A document is not filed until the e-mail is received by the court at the addressee's computer terminal, whatever time it is shown to have been sent.

19. The time of receipt of an e-mail at the addressee's computer terminal will be recorded.

20. If an e-mail is received after 4 p.m. it will be treated as having been received on the next day the court office is open.

21. No automatic acknowledgment of the receipt of an e-mail will be sent; the subject matter of the e-mail will be considered in the ordinary way. If a response to the subject matter of the e-mail is not received within a reasonable period, the sender should assume that the court has not received it and should send the e-mail again, or file the document by another means.

22. Parties should not telephone to enquire as to the receipt of an e-mail. They should observe the procedure set out in paragraph 21.

Replies to e-mails sent to the court
23. The court will normally send any reply by e-mail to documents or correspondence sent by e-mail.

a. All replies will be sent to the e-mail address from which the e-mail has been sent. If the sender wishes the reply to be copied to other parties or to another e-mail address used by the sender of the message, such e-mail addresses must be specified in the copy line.

b. The Court will not send copies to clients or others not on the record; the copy line must therefore not contain the addresses of such persons.

c. The e-mail should also contain in the body of the e-mail the name and telephone number of the sender.

Note: It is important that each firm or set of chambers considers putting in place a system to deal with the absence of the individual who has sent the e-mail and to whom the Court will ordinarily reply. Two possible solutions are:

a. A central mail box within each firm, either from which the e-mail is sent to the Court (and which will therefore receive the reply) or to which it is copied by the individual sender who sends it direct to the Court (and who will receive a copy of the reply);

b. a second individual e-mail address within the firm to which the reply will be copied so that any reply can be monitored.

It must be for each firm and set of chambers to devise its own system.

Communication with the Clerk to a Commercial Judge

24. No documents or correspondence should be sent by e-mail to the Clerk to a Commercial Judge dealing with a case, unless:

a. an arrangement is made with the Clerk in each specific instance in which e-mail is to be used;

b. if such an arrangement is made, the e-mail must be copied to the appropriate Listing Office Address, the Case Management Unit Address, The Registry Address, or the Admiralty Marshal Address, as the case may be.

Note: Draft Orders for the approval of the Judge must be submitted through the Registry.

11 March 2003

Appendix 18

Guidance on practical steps for transferring cases to London Mercantile Court and to the Mercantile Courts

1. If a case is suitable for transfer to the Central London Mercantile List or to a Mercantile Court, either party can apply to the Commercial Judge prior to the CMC for transfer or, if no such application is made, the Commercial Judge will normally consider this with the parties at the CMC. He will expect the parties to have considered this issue prior to the CMC. Among the factors that the parties should consider are the size and complexity of the claim, the location of the parties and their legal advisers and the convenience of the witnesses. If transfer is contemplated, the parties should also contact the appropriate listing officer (at the telephone numbers set out at paragraph 10) to ascertain likely trial dates.

2. If the case is one that is suitable for transfer and a decision is made to transfer prior to the CMC, the Commercial Judge will order that the case be transferred to Central London Mercantile List or to a Mercantile Court and the CMC will take place at the Central London Mercantile List or the Mercantile Court.

3. If the case is one that is suitable for transfer and a decision is made to transfer at the CMC, the Commercial Judge will, in order to save the costs of a further hearing in the Mercantile List or Mercantile Court, usually make all the directions with the appropriate timetable down to trial in the same way as if the case were to remain in the Commercial Court, including a direction to fix the trial date through the appropriate listing officer (see paragraph 10 below) within a specified period of time. If, as is usually the case, it is thought desirable to give the parties time to try and settle the case through direct negotiation or ADR, this will be built into the timetable.

4. The Commercial Judge will consider the time at which transfer is to take place and this must be specified in the Order

5. The Commercial Judge will decide whether he considers a PTR or further CMC appears necessary at that stage; normally a further PTR or CMC (through a hearing at Court) will not be necessary as in the type of case transferred such a PTR or further CMC would not normally take place in the Commercial Court and would add to the costs. Therefore, unless the Order otherwise provides or the Judge of the Mercantile List or Mercantile Court otherwise directs, the next hearing in court will usually be the trial.

6. The Order must be drawn up in the usual way and lodged with the Commercial Registry Room EB13 in the RCJ.

- If the draft Order was not initialled in court by the Judge, the Order will then be sent to the Judge who made the Order to be approved. That normally takes 3-4 days
- If the draft Order was initialled in court by the Judge at the hearing, the Order can be brought straight up to the Registry to be sealed.

7. Once the Order comes back, the Registry will put the Order in the various out trays for the solicitors clerks to collect. If the Order was sent in via the post, then the Registry will return it via the post or, if the firm of solicitors are not one of the regular users, the Registry will inform them of the procedure as to how to collect the Order.

8. Once the Order is sealed, the transfer from the Commercial Court is during normal circumstances effected by the Registry within one week; the transfer is effected by the Registry sending the court file and the Order to the Central London Mercantile List or the Mercantile Court as the case may be. The Registry will also inform all parties on record once the case has been transferred.

9. The Central London Mercantile List or the Mercantile Court will then receive all the papers which were on the Commercial Court file and they will give the case one of their own numbers and inform the parties.

10. The case will then continue in exactly the same way as if at the Commercial Court save that the hearing date must be fixed with the listing office at the Central London Mercantile List or the Mercantile Court within the time limit specified in the Order. The parties must contact the specialist listing officer at the Court to which the case has been transferred. The telephone and fax numbers of the listing officers for the specialist list are:

Central London Mercantile List:
020 7917 7821
Fax 020 7917 7935

Birmingham:
0121 681 3035
Fax 0121 681 3121

Bristol:
0117 976 3098
Fax 0117 976 3074

Leeds:
0113 254 2607
Fax 0113 242 6380

Newcastle:
0191 201 2047

Fax 0191 201 252

Liverpool/Manchester:
0161 954 1779
Fax 0161 954 1705

Wales and Chester:
02920 376476
Fax 02920 376475

Parties are asked to speak to the specialist listing officers who will tell them of the facilities available at other Courts.

11. The Commercial Court monitors compliance with its Orders through the case management unit and the provision of progress monitoring information sheets which have to be provided by the Progress Monitoring Date specified in the Order. The standard directions for the Mercantile Courts provide for a Progress Monitoring Date; such a date should therefore be provided for in any Order. The Central London Mercantile List and the Mercantile Courts monitor progress in accordance with paragraph 8 of the Mercantile Courts Practice Direction supplemental to Part 59. A PTR (either in court or by telephone conference) may be held in the Mercantile List or in the Mercantile Courts if the parties make a request or the Mercantile Judge so directs.

12. The parties are expected to keep the listing officer of the Court to which the case is transferred apprised of any settlement of the case. In an unusual case where the Commercial Judge has not made all the directions or the parties need to make an application either orally or in writing, then the appropriate directions will be considered and made by the Mercantile Judge.

Addresses and Contact Details

The Admiralty Marshal:

Room EB12
Royal Courts of Justice, Strand,
London WC2A 2LL
Tel: 020 7947 6111
Fax: 020 7947 7671

The Admiralty & Commercial Registry:

Room EB13,
Royal Courts of Justice, Strand,
London WC2A 2LL
Tel: 020 7947 6112
Fax: 020 7947 6245
DX 44450 STRAND

The Admiralty & Commercial Court Listing Office:

Room EB09
Royal Courts of Justice, Strand,
London WC2A 2LL
Tel: 020 7947 6826
Fax: 020 7947 7670
DX 44450 STRAND

The Secretary to the Commercial Court Committee:

Mrs Angela Hodgson
Room EB09
Royal Courts of Justice, Strand
London WC2A 2LL
Tel: 020 7947 6826
Fax: 020 7947 7670
DX 44450 STRAND

Out of hours emergency number:
(Security Office at Royal Courts of Justice):
020 7947 6000

Fax number for the procedure under sections B3.11 and B4.4 of the Guide for the issue of claim forms when the Registry is closed: 020 7947 6667.

Forms

[These are not available at present in Word or HTML, but are available on the Commercial Court Website in PDF format]