

PRACTICE DIRECTION – 11.1

EX PARTE, INTERIM AND INTERLOCUTORY APPLICATIONS FOR RELIEF (INCLUDING INJUNCTIVE RELIEF)

A Procedure for Urgent Applications

(1) General

1. Applications should, save in exceptional circumstances, be made on affidavit to a Judge or the Practice Master.
2. Enquiries should be made of the Clerk of Court if the application is to be to a Judge.
3. If the application is to the Practice Master, the papers, appropriately marked, should be handed in at the Registry counter.

(2) Urgent Applications to a Judge

4. Solicitors who have an urgent application should, as early as possible, contact the Clerk of Court who will direct them to any Judge or Deputy Judge who is free. This applies during opening hours of the Registry (i.e. from 9 a.m. to 1 p.m. and from 2 p.m. to 5 p.m.) from Mondays to Fridays.
5. If no Judge is free during usual court sitting hours, or if there is good reason why the application cannot be made earlier, the Duty Judge will be available at 4:30 p.m.
6. Outside the above opening hours of the Registry, the Duty Judge should be approached in the usual way. Solicitors should first contact the Duty Judge who may either deal with the matter himself or otherwise refer the matter to another Judge as he sees fit and give all necessary directions.
7. Solicitors should distinguish between:
 - (1) an urgent application which requires an immediate order; and
 - (2) an application which, because of confidentiality, requires an *ex parte* hearing but does not necessarily require an immediate order.

In the latter case, solicitors should ask the Clerk of Court for an appointment before a Judge in the usual way.

(3) Urgent Applications to the Judge in Charge of the Admiralty List

8. As far as reasonably practicable, urgent applications in ongoing or anticipated proceedings in the Admiralty List should be made to the Judge in charge of the Admiralty List (“the Admiralty Judge”).

9. Solicitors who have an urgent application of the nature specified in paragraph 8 should, as early as possible, contact the Clerk of Court during the opening hours of the Registry as set out in paragraph 4 above, and inform him that the application is one which should be made to the Admiralty Judge. The Clerk of Court will direct them to the Admiralty Judge if he is free.

10. If the Admiralty Judge is not free, or if there is some reason why the application cannot be made before him during usual court sitting hours, the Clerk of Court will endeavour to place the application before a Judge familiar with Admiralty matters. If no such Judge is available, the application will generally be placed before the Admiralty Judge outside usual court sitting hours.

11. In cases of real urgency during usual court sitting hours, when a matter cannot wait but neither the Admiralty Judge nor a Judge familiar with Admiralty matters is readily available, the application will be placed before the Duty Judge.

12. In cases of real urgency outside the opening hours of the Registry as set out in paragraph 4 above, solicitors should in the first instance contact the Duty Judge. Solicitors should then inform the Duty Judge about the nature of the application and request that the application be heard by the Admiralty Judge. The Duty Judge may in his discretion hear the application himself, or if it is in his opinion that the matter should be heard by the Admiralty Judge, direct that the application be made instead to the Admiralty Judge or a Judge familiar with Admiralty matters if either such Judge is available, and provide solicitors with their contact telephone numbers to enable solicitors to make arrangements for an urgent hearing before either of them.

(3A) Urgent Applications to the Judge in Charge of the Commercial List

12A. As far as reasonably practicable, urgent applications in ongoing or anticipated proceedings in the Commercial List should be made to the Judge in charge of the Commercial List (“the Commercial Judge”).

12B. Solicitors who have an urgent application of the nature specified in paragraph 12A should, as early as possible, contact the Clerk of Court during the opening hours of the Registry as set out in paragraph 4 above, and inform him that the application is one which should be made to the Commercial Judge. The Clerk of Court will direct them to the Commercial Judge if he is free.

12C. If the Commercial Judge is not free, or if there is some reason why the application cannot be made before him during usual court sitting hours, the Clerk of Court will endeavour to place the application before a Judge familiar with commercial matters. If no such Judge is available, the application will generally be placed before the Commercial Judge outside usual court sitting hours.

12D. In cases of real urgency during usual court sitting hours, when a matter cannot wait but neither the Commercial Judge nor a Judge familiar with commercial matters is readily available, the application will be placed before the Duty Judge.

12E. In cases of real urgency outside the opening hours of the Registry as set out in paragraph 4 above, solicitors should in the first instance contact the Duty Judge. Solicitors should then inform the Duty Judge about the nature of the application and request that the

application be heard by the Commercial Judge. The Duty Judge may in his discretion hear the application himself, or if it is in his opinion that the matter should be heard by the Commercial Judge, direct that the application be made instead to the Commercial Judge or a Judge familiar with commercial matters if either such Judge is available, and provide solicitors with their contact telephone numbers to enable solicitors to make arrangements for an urgent hearing before either of them.

12F. This section 3A of Practice Direction 11.1 supersedes Practice Direction 7.3 (Urgent Applications in Commercial List) from 1 November 2009.

(4) Urgent Applications to the Companies Judge

13. In addition to urgent applications in Bankruptcy or Winding-up List matters, (which should, pursuant to Practice Direction 3.1, Part III, paragraph 2.1, be made to the Companies Judge), urgent applications in ongoing or anticipated proceedings involving any matter relating to the internal management of companies should, as far as practicable, be made to the Companies Judge. Such matters would include:

- (1) applications for an injunction to restrain the holding of meetings of directors or shareholders of companies;
- (2) applications for an injunction to restrain any person from acting in the capacity of director of a company;
- (3) applications for the appointment of receivers and / or managers of companies;
- (4) applications relating to the transfer or registration of transfer of shares in companies; and
- (5) applications in which the standing of a party or intending party to make applications on behalf of a company by way of derivative action (whether at common law or pursuant to the provisions of Part IVAA of the Companies Ordinance (Cap. 32)) is or may be in issue.

14. Solicitors who have an urgent application of the nature specified in paragraph 13 should, as early as possible, contact the Clerk of Court during the opening hours of the Registry as set out in paragraph 4 above, and inform him that the application is one which should be made to the Companies Judge. The Clerk of Court will direct them to the Companies Judge if he is free.

15. If the Companies Judge is not free, or if there is some reason why the application cannot be made before him during usual court sitting hours, the Clerk of Court will endeavour to place the application before a Judge familiar with company law matters. If no such Judge is available, the application will generally be placed before the Companies Judge outside usual court sitting hours.

16. In cases of real urgency during usual court sitting hours, when a matter cannot wait but neither the Companies Judge nor a Judge familiar with company law matters is readily available, the application will be placed before the Duty Judge.

17. In cases of real urgency outside the opening hours of the Registry as set out in paragraph 4 above, solicitors should in the first instance contact the Duty Judge. Solicitors should then inform the Duty Judge about the nature of the application and request that the application be heard by the Companies Judge. The Duty Judge may in his discretion hear the application himself, or if it is in his opinion that the matter should be heard by the Companies Judge, direct that the application be made instead to the Companies Judge or a Judge familiar with company law matters if either such Judge is available, and provide solicitors with their contact telephone numbers to enable solicitors to make arrangements for an urgent hearing before either of them.

(5) Urgent Applications to a Master

18. Solicitors who have an urgent application to a Master should contact the clerk to the Practice Master who will arrange an attendance before the Practice Master or, if he is engaged, any other Master who is available.

B Materials Required in *Ex Parte* Applications for Interim Relief

(1) General

19. In all applications *ex parte* for the grant, continuance or discharge of an order for interim relief (including, but not limited to, injunctive relief), the papers together with a draft of the Order which the Court will be invited to make should be delivered to the Court sufficiently long before the hearing to enable the Judge to read and digest them all before the hearing.

20. Usually the issue of a writ or originating summons and the swearing of an affidavit in support of an *ex parte* application for interim relief is required before the application is made. This includes the situation where interim relief is sought in aid of proceedings outside of Hong Kong pursuant to High Court Ordinance (Cap. 4), section 21M (see Order 29, rule 8A).

21. Where disclosures not contained in the evidence or skeleton argument are made orally during the *ex parte* hearing, an undertaking to the Court will be required to file and serve a supplemental affidavit setting out these further disclosures.

22. If in very exceptional circumstances precise compliance with this Practice Direction is not possible, the Court will expect an explanation as to why this is so.

(2) Affidavits

23. The affidavit(s) in support of the application should be limited to evidence necessary to give a clear, concise and fair statement of relevant facts.

24. Affidavits should not contain submissions and argument.

25. Exhibits to affidavits should be strictly limited to the issues in the application. No documents should be exhibited which are not of essential importance.

26. The affidavit in support should contain a clear and concise statement of the following:

- (1) the facts giving rise to the claim against the defendant;
- (2) the facts giving rise to the claim for interim relief;
- (3) the facts relied upon as justifying the application *ex parte* for each part of the Order sought (including details of any prior notice given to the defendant or the reasons for giving no such notice);
- (4) any answer either asserted or likely to be asserted by the defendant in response to the applicant's claims for interim and substantive relief;
- (5) any facts known to the applicant which might lead the Court not to grant the relief sought or not to grant such relief *ex parte*; and
- (6) the precise relief sought.

(3) Skeleton Arguments

27. The application should be accompanied by a skeleton argument setting out precisely and succinctly how it is said that the case meets the requirements for the Order sought.

28. Where it is claimed that there are any exceptional circumstances justifying the interim relief being sought, those circumstances should be specified.

29. The skeleton argument should also specify the relevant passages in any affidavits and documentary evidence being relied upon.

30. The skeleton argument lodged with the Court must be served on the opposite party (including where the hearing is *ex parte* on notice) together with the Order and evidence.

(4) Orders

31. Applicants for *ex parte* relief should prepare and lodge with the papers relating to the application a draft minute of the Order sought. Such minute should specify the precise relief which the Court is asked to grant.

32. While the undertakings required of an applicant will vary from case to case, an applicant will usually be required:

- (1) to give an undertaking in damages;
- (2) to notify the defendant of the terms of the Order forthwith by appropriate means;
- (3) to pay the reasonable costs and expenses of compliance with the Order incurred by a third party to whom notice of the Order is given;

- (4) if proceedings have not been issued, to issue them forthwith; and
- (5) if a draft affidavit has not been sworn, or where other facts have been placed before the Court or disclosures made orally, to procure the swearing of the affidavit or the verification on affidavit of the disclosures made or facts orally outlined to the Court.

33. The Order should, as a general rule, contain provision:

- (1) for the defendant to apply on notice for discharge or variation of the Order;
- (2) for a return date, of an *inter partes* hearing; and
- (3) for the costs to be reserved.

C Commencement Date

34. This Practice Direction supersedes the previous Practice Direction on *Ex Parte*, Interim and Interlocutory Applications for Injunctions dated 12 February 2009.

35. This Practice Direction shall come into effect on 1 November 2009.

Dated this 5th of October 2009.

(Andrew Li)
Chief Justice