

**VIRGIN ISLANDS**

**EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES  
(APPLICATION TO THE VIRGIN ISLANDS)  
(AMENDMENT) ORDER, 2010**

**ARRANGEMENT OF SECTIONS**

Section

1. Citation.
2. Interpretation.
3. Amendment of the principal Order.
4. Commencement.

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2010 NO. 3**

**VIRGIN ISLANDS (COURTS) ORDER 1967  
(U.K.S.I.1967 NO. 231)**

**Eastern Caribbean Supreme Court Civil Procedure Rules  
(Application to the Virgin Islands) (Amendment)  
Order, 2010**

[Gazetted 15<sup>th</sup> February, 2010]

The Chief Justice and two other Judges of the Eastern Caribbean Supreme Court in exercise of the powers conferred upon them by section 6 (3) of the Virgin Islands (Courts) Order 1967, and all other powers thereunto enabling them hereby make the following Order:

- Citation. 1. This Order may be cited as the Eastern Caribbean Supreme Court Civil Procedure Rules (Application to the Virgin Islands) (Amendment) Order, 2010
- Interpretation. S.I. 2001 No. 38 2. In this Order, "the principal Order" means the Eastern Caribbean Supreme Court Civil Procedure Rules (Application to the Virgin Islands) Order, 2001.
- Amendment of the principal Order. 3. The principal Order is amended
- (a) in section 2 by deleting the words "with the following modification, that is to say, the insertion after Part 69, a new Part as set out in the Schedule hereto" appearing after the words "the Virgin Islands" and substituting therefor the words "with the following modifications, that is to say, the insertion after Part 69 of two new Parts as set out in the Schedule hereto";
  - (b) by inserting in the Schedule after Part 69A the following new Part:

## **"PART 69B**

### **PROCEDURE OF THE COMMERCIAL DIVISION**

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#### **Scope of this Part**

**69B.1** This Part regulates the procedure of the Commercial Division of the Supreme Court sitting in the jurisdiction of the Virgin Islands as established by the provisions of Part 69A of these Rules. Except as provided by this Part these Rules and their practice directions apply to the

procedure of the Commercial Division as they otherwise apply within the jurisdiction.

### **Allocation to the Commercial List**

- 69B.2** (1) Except where the Chief Justice otherwise directs, only claims and applications required to be commenced in the Registry of the High Court of the Virgin Islands (“the Registry”) may be placed on the commercial list.
- (2) In addition to the procedure provided in rule 69A.4, the Registry may place on the commercial list any claim or application of its own motion where it appears that the claim or application is a qualifying claim within the meaning of rule 69A.1 (2) and (3) and that it is appropriate for the claim to be placed on the commercial list.
- (3) Any party to a claim or application placed on the commercial list pursuant to paragraph (2) may apply, in the case of a claim proceeding by way of claim form, at any time before the close of pleadings and in the case of a claim proceeding by way of originating application, at any time before the close of evidence, for the claim or application to be transferred from the commercial list to another list.
- (4) An application under paragraph (3) shall be made by way of ordinary application to the Commercial Court Judge.

### **Headings of documents**

- 69B.3** The claim form and every document required to be filed at court in a commercial claim proceeding or intended to proceed in the Commercial Division shall be headed:

“In the Eastern Caribbean Supreme Court  
In the High Court of Justice  
Virgin Islands  
Commercial Division

Claim No: BVIHC (COM) [ ] of 20[ ]”;

and rule 8.1(4) shall be modified accordingly.

## **Disapplications and modifications having general effect in commercial matters**

- 69B.4** (1) Rule 20.1(3) shall not apply in a commercial matter and an application to change a statement of case may be made at any time and whether or not the application is necessitated by a change in circumstances.
- (2) Rule 22.1 shall apply in a commercial matter to partnerships carrying on business without, as well as within the jurisdiction and the remainder of rule 22.1 (with the exception of rule 22.1(7)) shall apply accordingly in a commercial matter.
- (3) Rule 22.2 shall apply in a commercial matter to persons carrying on business without, as well as within the jurisdiction.
- (4) Rule 22.3 shall not apply in a commercial matter and bodies corporate must be represented by a legal practitioner in all commercial matters.
- (5) Where in a commercial matter a party responds to a request for information from another party made under rule 34 or complies with any order that it respond to a request for information made under rule 34, each separate response must be preceded by the exact wording of the request in respect of which that response is supplied.

## **Ordinary applications in commercial matters**

- 69B.5** (1) All applications in a commercial matter shall be made to and heard by the Commercial Court Judge.
- (2) Part 11 (as modified by this Part) applies to applications (“ordinary applications”) made before, during or after a commercial matter including a commercial matter commenced by way of originating application, but shall not apply to the evidence given on or to the conduct of an originating application itself, which shall be governed by rules 69B.6(1) to (4).
- (3) Rule 11.3 shall not apply in a commercial matter.
- (4) In the case of ordinary applications made on notice, the Registry’s Commercial Division Case Management Unit (“the Unit”) will allocate a date for the hearing when the application is issued. If that date or the time available for the hearing of the application is unsuitable for any reason the legal practitioners for the parties must within 7 days after the application

has been served arrange for duly authorised individuals to attend the Unit in person or contact the Unit by telephone to arrange an alternative date and time for hearing of the application.

- (5) Ordinary applications estimated to require a hearing of less than two hours are classed as short applications. Ordinary applications estimated to require a hearing of more than two hours are classed as special applications.
- (6) Rule 11.8(3) shall not apply in a commercial matter. Evidence in support of every ordinary application must be filed and served together with the application except in case of urgency or where circumstances do not permit (in which case the evidence should be filed and served as soon as reasonably practicable) or in cases where the application does not turn on any question of fact.
- (7) Rule 11.9 shall not apply in a commercial matter. Unless the application is made in a case where (apart from rule 11.9) these Rules require that evidence be given by affidavit, evidence in support of or in response to an ordinary application should be given by way of witness statement.
- (8) Rule 30.3(2) shall apply to a witness statement made in an ordinary application in a commercial matter as if the words 'witness statement' were substituted for the word 'affidavit' where it occurs in rule 30.3(2);
- (9) Rules 29.5(1)(d) and (e) shall not apply in a commercial matter. A witness statement made in an ordinary application in a commercial matter must include a statement by its maker that that person believes that the statements of fact it contains are true to the best of the maker's knowledge, information or belief and if the witness statement contains matters of information or belief the witness statement must include a statement by its maker that to the best of his knowledge, information or belief such information is accurate or that such belief is well founded.
- (10) Evidence in answer to an ordinary application must be served within 14 days of service of the evidence in support and evidence in reply within 7 days after service of evidence in answer. This timetable may be extended or abridged by agreement in writing between the parties. If an extension is agreed between the parties which are likely to affect the date of the hearing, the parties must inform the Unit forthwith and arrange for the hearing to be re-listed.

- (11) In an appropriate case the court may abridge the timetable prescribed by paragraph (10), either of its own motion or upon application made, notwithstanding any agreement between the parties to the contrary.
- (12) If the court or the Unit or any party to a special application is of the view that a case management conference (“CMC”) or pre-hearing review (“PHR”) would enable the court to dispose of the special application more efficiently, then upon its own motion or at the suggestion of the Unit or on the application of any party the court may direct that a CMC or, as the case may be, a PHR be held.
- (13) If the court directs a CMC under paragraph (12), it shall direct that the CMC be held on the first available date not earlier than 7 days after making the direction and rule 69B.7 (7) and (8) shall apply with such modifications as may be necessary or appropriate.
- (14) If the court directs a PHR under paragraph (12), it shall direct the PHR to be held not later than 14 days before the date fixed for the hearing of the application and rule 69B.8 (1) and (2) shall apply with such modifications as may be necessary or appropriate.

### **Originating applications**

- 69B.6** (1) If a commercial matter is commenced by way of originating application pursuant to rule 13 of the Insolvency Rules, 2005 the evidence in support must be filed and served together with the originating application except in case of urgency or where circumstances do not permit (in which case the evidence should be filed as soon as reasonably practicable). Rule 69B.5 (4) applies in a commercial matter commenced by way of originating application.
- (2) All evidence given on an originating application shall be given by affidavit.
  - (3) Evidence in answer to an originating application must be served within 21 days of service of the originating application and any evidence in reply within 14 days of service of the evidence in answer. This timetable may be extended or abridged by agreement in writing between the parties.
  - (4) In an appropriate case the court may abridge the timetable set out in paragraph (3), either of its own motion or upon application made, notwithstanding any agreement between the parties to the contrary.

## Case management conferences

- 69B.7** (1) Rules 27.3, 27.5 and 27.6 shall not apply in a commercial matter.
- (2) In a commercial matter proceeding by way of originating application, the applicant must, not later than 14 days after the last of the respondents to do so has served his evidence in answer, provide the Unit with an agreed written statement of the parties' best estimate of the length of the hearing of the originating application, or, if no agreement can be reached, then separate estimates by each party.
  - (3) In a commercial matter proceeding otherwise than by way of originating application, the claimant must, not later than 14 days after the last party to do so has served his defence, provide the Unit with an agreed written statement of the parties' best estimate of the length of the trial or, if no agreement can be reached, then separate estimates by each party.
  - (4) If, in a commercial matter proceeding by way of originating application, the parties' estimate, or the longest of the parties' estimates, of the length of the hearing is more than one full hearing day, the Unit will fix a CMC for the first available date after the date when the respondent is due to serve any evidence in answer.
  - (5) If, in a commercial matter proceeding otherwise than by way of originating application, the parties' estimate, or the longest of the parties' estimates of the length of trial is more than one full hearing day, the Unit will fix a CMC for the first available date six weeks after the last of all defendants intending to defend the claim has filed his defence.
  - (6) The claimant (or applicant) must three clear days before the date set for the CMC lodge with the Judicial Assistant to the Commercial Court Judge ("the Judicial Assistant") a case management bundle.
  - (7) At a CMC in a commercial matter proceeding otherwise than by way of originating application, in addition to any orders or directions given pursuant to the court's general powers of management conferred by rule 26.1, the court will ordinarily give directions as to
    - (a) the nature and extent of any disclosure to be given;
    - (b) whether and to what extent witness statements are required and whether in all the circumstances certain issues or factual matters can more conveniently and economically be dealt with by witness

- summaries (whether or not a party is or is not able to obtain a witness statement from the witness in question);
- (c) the nature of any expert evidence to be called and the identity of the respective parties' experts and the timetable for exchange of experts' reports;
  - (d) whether it is appropriate for evidence on one or more matters in issue to be given by a single expert pursuant to rules 32.9 and 32.11;
  - (e) whether the services of an interpreter will be necessary at trial;
  - (f) whether or not a pre-trial review should be held; and
  - (g) such other matters as appear appropriate.
- (8) Provided that he has sufficiently indicated to the other parties and to the court his intention to apply at the CMC, it is not necessary for a party to make an application under rule 28.5 for the disclosure of specific documents or under rule 32.6 for permission to call expert evidence.
- (9) At a CMC in a commercial matter proceeding by way of originating application, the court will ordinarily consider
- (a) whether points of claim and defence should be served;
  - (b) whether any disclosure should be given;
  - (c) whether any witness should attend for cross examination;
  - (d) whether any expert evidence is required and, if so, what directions are required for the taking of such expert evidence; and
  - (e) such other matters as appear appropriate.

### **Pre-trial review**

- 69B.8 (1)** Rule 38.5 shall not apply to a pre trial review ("PTR") in a commercial matter. If the court directs that a PTR is to be held in a commercial matter, the claimant or applicant must three clear days before the hearing of the PTR lodge with the Judicial Assistant a copy of the original case management bundle, updated by the inclusion of such subsequent material (only) as will enable the court to conduct an efficient and useful PTR, together with an agreed trial timetable.
- (2) The parties must attempt to agree in advance a trial timetable for inclusion in the updated case management bundle for use at a PTR. If agreement cannot be reached, then the parties must put in separate timetables.

- (3) If a PTR is held, the court will give directions as to the timetable to be followed at trial. Such timetable may (among other things) dispense with or limit opening or closing oral submissions.
- (4) If no PTR is held, the parties must agree and not later than two weeks before the trial is to commence lodge with the Judicial Assistant an agreed trial timetable or, if agreement cannot be reached, then separate trial timetables. The Judicial Assistant will as soon as convenient thereafter inform the parties what trial timetable the trial judge proposes to adopt. If any party is dissatisfied with the timetable proposed by the judge, then that party must apply to the Unit to fix a conference for the purpose of settling the trial timetable. If the judge decides that the party at whose instigation the conference was convened acted unreasonably in asking for it, then that party may be ordered to pay to the other parties their costs of attending the conference.
- (5) A party who elects not to call a witness in respect of whom a witness statement, witness summary or affidavit has been put in must notify all other parties of that decision immediately after it has been taken.

### **Trial bundles**

- 69B.9** (1) Rule 39.1(5) shall not apply in commercial matters. Not later than six weeks before the date fixed for trial (which includes the trial of a contested originating application), the claimant or applicant must begin the process of agreeing with the other parties what documents should be included in the trial bundles. If any party objects to the judge reading any particular document before trial, that party must ensure that notice of objection is provided to the claimant or applicant for inclusion in the trial bundle. The completed trial bundles must be served on the other parties no later than two weeks before the date fixed for the commencement of the trial.
- (2) Not later than ten days before the start of the trial the claimant or applicant must lodge with the Judicial Assistant a full copy of the trial bundles.

### **Costs - general**

- 69B.10** Rules 65.3 to 65.10 (inclusive) shall not apply in commercial matters.

## Costs - ordinary applications

- 69B.11** (1) Rule 65.11(1) shall not apply in commercial matters.
- (2) The court will, after giving its decision on an ordinary application, determine, either forthwith or at a hearing fixed for the purpose,
- (a) which (if any) party should pay costs to another party; and
  - (b) how much in principle (taking into account the provisions of rule 64.6 and any other matter appearing to the court to be relevant in all the circumstances) of the costs of the party to be paid (“the receiving party”) are to be paid by the paying party.
- (3) The statement required to be provided by rule 65.11(5) must be provided to the court before the hearing in question and must (in addition to the information required by rule 65.11(5)) particularise the amount of time spent upon the application by the legal practitioner or his partners or employees, specifying, in each case,
- (a) the charge out rate of the relevant legal practitioner, partner or employee (and in the case of employees, identifying the positions held by them within the legal practitioner’s firm);
  - (b) the task or tasks undertaken by the respective legal practitioner, partner or employee; and
  - (c) the precise time spent upon each such task by the relevant practitioner, partner or employee.
- (4) If the hearing of an application has occupied the time of the court for one hearing day or less, the court will summarily assess the quantum of such costs forthwith after giving its determination under paragraph (2). In other cases the court may either fix a hearing for the assessment to be carried out by the Commercial Court Judge or may direct that the quantum be assessed by the Master (or such other officer of the court as may from time to time be charged with making such assessment).
- (5) Where after the hearing of an ordinary application the court orders one party to pay costs to another party, those costs shall, unless the court otherwise orders, be paid within 14 days of the making of the order or the final determination of any assessment, as the case may be.

### **Costs - trials**

- 69B.12** (1) Rule 65.12 does not apply in commercial matters. After trial or earlier conclusion of the proceedings the court will (in the absence of agreement) determine
- (a) which (if any) party should pay costs to another party; and
  - (b) how much in principle (taking into account the provisions of rule 64.6 and any other matter appearing to the court to be relevant in all the circumstances to the incidence of costs in the proceedings) of the costs of the receiving party are to be paid by the paying party.
- (2) Having made its determination under paragraph (1), the court will direct that the costs be assessed upon the principles as so determined. The court may direct that the assessment be carried out by the Commercial Court Judge or may direct that they be assessed by the Master (or such other officer of the court as may from time to time be charged with making such assessment).
- (3) Unless the court otherwise orders, the costs payable by the paying party pursuant to paragraph (1) shall be paid within 14 days after final determination of the assessment made pursuant to paragraph (2).

### **Payment on account of costs**

- 69B.13** (1) The court may, upon application by the receiving party, order the paying party to make a payment on account of costs to be paid by him upon assessment. Unless the court otherwise orders, the paying party is liable to make such payment on account within 14 days of being ordered to do so. If upon assessment the amount assessed as payable by the paying party is less than the amount paid by him on account, then the excess shall be a debt payable forthwith upon the making of the assessment by the receiving party to the paying party, together with interest at 5% per annum from the date upon which the payment on account was made until the date of repayment.
- (2) A party intending to ask the court to make an order under paragraph (1) must provide to the court and serve on all parties affected an itemized schedule of its costs, such schedule to include the information specified in rule 69B.11 (3) (a) to (c).

**Conduct of assessment**

**69B.14** When the court has directed pursuant to rule 69B.11(4) or rule 69B.12 (2) that costs be assessed, any party may apply to the Commercial Court Judge or Master or other officer charged with carrying out the assessment to have the quantum of such costs assessed. The Commercial Court Judge or Master or other such officer shall give directions for the conduct of such assessment.

Commencement. 4. This Order shall come into operation on the 15th day of February, 2010.

Made this 5<sup>th</sup> day of February, 2010.

**(Sgd.) Hugh Rawlins**  
Chief Justice

**(Sgd.) Ola Mae Edwards**  
Justice of Appeal

**(Sgd.) Kenneth Benjamin**  
High Court Judge