

Updates to the Eastern Caribbean Supreme Court Civil Procedure Rules

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Significant updates to key provisions of the Eastern Caribbean Supreme Court Civil Procedure Rules are to come into force on 31 July 2023.

Eastern Caribbean Supreme Court Civil Procedure Rules, Revised Edition 2023

Whilst there have been amendments to the Eastern Caribbean Supreme Court Civil Procedure Rules (the **CPR**) over the years, practitioners and Court users have not seen an overhaul of the scale contained in the CPR Revised Edition 2023 (the **2023 Rules**) since the existing CPR 2000 (the **Existing Rules**) came into force.

The 2023 Rules come into effect on 31 July 2023. They contain a number of significant amendments. This update focuses on three of the key areas of change:

1. Part 7 – Service of Court Process out of the Jurisdiction;
2. Part 38A – Judicial Settlement Conferences; and
3. Part 62 – Appeals to the Court of Appeal.

Part 7 - Service of Court Process Out of the Jurisdiction

Under the Existing Rules, permission of the Court was always required for service out of the jurisdiction, and this was reflected in the wording of rule 7.2, whereby the Court was able to permit service out if the proceedings fell within one or more of the jurisdictional gateways under rule 7.3.

Under the 2023 Rules, the provision is recast to provide that the Court *may set aside* service out (rather than grant it) if the proceedings do not fall within one or more of the gateways under rule 7.3. This gives effect to the new rule 7.2 which states that the Court's permission for service out will not be required for the specified proceedings under 7.3.

Accordingly, under the 2023, it will no longer be necessary to make an application to the Court for permission to serve out of the jurisdiction. Provided that the subject matter of a claim falls within a gateway in rule 7.3, the claimant simply files a '*Certificate for service out of the jurisdiction*', and service is then carried out in accordance with rule 7.9 or 7.17.

The requirements for a '*Certificate for service out of the jurisdiction*' are set out in rule 7.6, which provides that such a certificate must be filed and served by the claimant or their legal practitioner, and must state:

- a. the gateway(s) listed in rule 7.3 on which the claimant relies;
- b. that, in the belief of the person signing the certificate, the case is a proper one for the Court's jurisdiction;
- c. that, in the belief of the person signing the certificate, the claimant has a good arguable case; and
- d. that, in the belief of the person signing the certificate, the proposed method of service does not infringe the law of the foreign state in which the proceedings are to be served.

Part 38A – Judicial Settlement Conferences

The 2023 Rules contain a notably greater emphasis on alternative dispute resolution (ADR) than the Existing Rules. For example, rule 8.16 provides that the Chief Justice may prescribe any pre-action protocols, including mediation, with which the parties are required to comply in relation to any prospective legal claim. There are no pre-action protocols currently in force in the British Virgin Islands. The introduction of such protocols would further align the civil procedure processes of the BVI (and across the Eastern Caribbean Supreme Court generally) with that of England.

Part 38A is intended to complement the provisions for mediation as an ADR mechanism for promoting the early disposition of cases by facilitating the making of an order or recommendation for a judicial settlement conference. The process is designed to assist parties in their negotiation of a settlement of the proceedings or of any of the issues in the proceedings.

This Part contemplates judicial involvement in the settlement process at two stages –

1. During the case management conference process and the stages leading up to trial or the hearing of an appeal; and
2. During the hearing or trial provided it is undertaken with the parties' consent.

Part 38A is an entirely new Part introducing the process of judicial settlement conferences. A judge may order the convening of a settlement conference, whereby the judge may act as facilitator to settlement. A judge involved in such settlement conferences may not have any further part in the proceedings relating to the case, unless the parties consent to their involvement.

If a party fails to attend or participate in a judicial settlement conference, then they may be ordered to pay the costs of the conference. Additionally, the judge conducting the judicial settlement conference may refer the conduct of a party during a conference to the docketed judge assigned to the proceedings. Accordingly, there could be severe cost consequences for parties that do not properly engage in the process. This marks a departure from the previous regime where parties were entitled to proceed, full steam ahead, to litigation without any consideration of ADR.

Part 62 – Appeals to the Court of Appeal

There have been some notable changes to rule 62.2 which sets out '*How to obtain leave to appeal*':

1. Under rule 62.2 the time for applying for leave to appeal has been increased from 14 days to 21 days of the order being appealed;
2. Under rule 62.3, where an application for leave has been refused by the Court below, an application for leave may be made to the Court within 7 days of such refusal or within 21 days of the date of the order against which leave to appeal is sought, whichever is later;
3. Under rule 62.4, an application for leave to appeal a judgment or order may be made orally at the time when such judgment or order is given. Otherwise, the application for leave to appeal must be made in writing and set out concisely the grounds of the proposed appeal.
4. Under the new rule 62.8, leave to appeal may be given only where –
 - i. the Court considers that the appeal would have a realistic prospect of success; or
 - ii. there is some other compelling reason why the appeal should be heard.
5. Under the new rule 62.9, an application for leave to appeal shall be made without notice, unless the Court directs otherwise.

Part 62 introduces a new rule 62.8 '*Expedited appeals*' which provides that the Court may dispense with the timelines under Part 62 and determine that an appeal is to be heard on an expedited basis. The rule sets out the procedure and the factors that the Court shall take into consideration.

This Part also introduces new rule 62.11 '*Respondent's notice*' which makes provision for the filing of a respondent's notice by a party upon whom a notice of appeal is served and who wishes to support the decision of the Court below on grounds not set out in the judgment. Where a party seeks to support the Court's decision on different grounds but also seeks to challenge the decision on other grounds, the party must file a counter-notice.

Transitional Provisions - Part 75

This Part deals with the way in which proceedings in existence prior to 31 July 2023 become subject to the 2023 Rules.

Rule 75.3 provides that:

1. The 2023 Rules do not apply to proceedings commenced before 31 July 2023 in which a trial date has been fixed, unless the trial fixing is adjourned.
2. In proceedings commenced before the 31 July 2023, an application to adjourn a trial date is to be treated as a pre-trial review and the 2023 Rules apply from the date that such application is heard.
3. If a trial date for a pre-existing case has not been fixed, the Court must fix a date for a case management conference (**CMC**) after a defence has been filed and give notice of that CMC to the parties. The 2023 Rules are then deemed to apply from the date of the CMC.

These provisions ensure that the vast majority of the cases going through the BVI Courts will be subject to the new 2023 Rules, save for those that are fixed for trial, thereby ensuring consistency in the way that cases are handled.

Conclusion

The changes brought in by the 2023 Rules are extensive. This update highlights some of the new exciting and innovative changes that the Eastern Caribbean Supreme Court has introduced to continue the development, and increase the efficiency, of the local Courts in this region, thus enabling jurisdictions such as the BVI to remain at the forefront of providing modern, reliable and thorough justice to those that use its legal system.

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