



LORD CHIEF JUSTICE OF THE KINGDOM OF TONGA

Practice Direction No. 1 of 2022

LEGAL COSTS

Application

1. This Practice Direction:
 - (a) is issued pursuant to clause 89 of the Constitution of Tonga, section 6 of the *Supreme Court Act* and Order 47 rule 4 of the *Supreme Court Rules* 2007;
 - (b) revises the amounts of legal costs allowable upon taxation of any order for costs on a party/party basis;
 - (c) has been prepared following consultation with the Tonga Law Society;
 - (d) commences operation on 1 April 2022 (“*commencement date*”);
 - (e) applies to all proceedings in the Court of Appeal, Supreme Court, Land Court and Magistrates Court commenced on or after the commencement date;
 - (f) is to be read and applied subject to and in conjunction with the applicable rules of court in relation to costs; and
 - (g) repeals Practice Directions No. 4 of 2003 and No. 1 of 2009 for those proceedings to which it applies.

Default judgment

2. A plaintiff's costs of a proceeding which results in an order for judgment in default of defence pursuant to Order 14 of the Supreme Court Rules may be allowed as part of the order, without taxation, in any sum not exceeding \$1,500.
3. Any claim for costs in excess of \$1,500 is to be made in accordance with Orders 46 and 47 of the Supreme Court Rules.

Costs on taxation

4. Unless otherwise specified, costs are ordered on a party/party basis.
5. Unless otherwise ordered or certified by the court which makes the order, on every taxation of an order for costs on a party/party basis, the following hourly rates are the maximum which will be allowed for all legal work performed, in court or out, which was reasonably necessary or proper for the attainment of justice or for maintaining or defending the rights of the party in whose favour the order was made:

Scale	A	B	C
Value of claim or counterclaim	up to \$10,000	\$10,001 to \$100,000	over \$100,000
King's (or Senior) counsel	200	350	400
Counsel	150	250	300
Locally qualified	100	150	200

6. The above rates are exclusive of consumption or any other tax applicable to the provision of the relevant legal services.
7. Orders for party/party costs in criminal proceedings in the Supreme Court, or in any other proceedings in the Supreme Court which do not involve a monetary claim, shall be taxed in accordance with scale B unless otherwise certified by the presiding judge.
8. Orders for party/party costs in proceedings in the Land Court:
 - (a) which include a monetary claim shall be taxed in accordance with the relevant scale; and
 - (b) which do not include any monetary claim, shall be taxed in accordance with scale B,
 unless otherwise certified by the presiding judge.
9. Orders for party/party costs in the Magistrates Court may be fixed in accordance with scale A.
10. Where in a proceeding for debt or damages, the plaintiff (or claimant) obtains a judgment (excluding interest) for an amount greater or lesser than the amount claimed, and the amount of the judgment falls within a different scale to that which applied to the amount of the claim, the Court may, upon application by any affected party or of its own initiative, order that costs be taxed in accordance with the scale applicable to the amount of the judgment.
11. Any request by a client or the client's lawyer for taxation as between the client and the lawyer of the lawyer's claimed legal fees shall be conducted by the Registrar in accordance with Order 47 rule 3.
12. Upon taxation of an order for costs on a solicitor and client or indemnity basis:
 - (a) all costs incurred by the receiving party for legal work performed shall be allowed except for any which have been unreasonably incurred or are of an unreasonable amount; and
 - (b) the reasonableness or otherwise of the amount or rate of legal costs claimed on such basis may be informed by, but shall not be determined by or limited to, the scale rates provided for herein applicable to orders for costs on a party/party basis.

Additional costs

13. Further to paragraphs 7 and 8 above, any party who considers that due to the nature and/or complexity of the relevant proceeding, or for any other reason, that party, if successful, should be entitled to recover costs at a higher rate than provided for in this Practice Direction, that party must make application for certification of same in accordance with Order 47 rule 5.
14. For the avoidance of doubt, and in the absence of consent from all other opposite parties, any application pursuant to Order 47 rule 5 is to be made as soon as practicable upon a party's decision to incur additional costs in the proceeding, such as engaging overseas counsel.

Disbursements

15. Unless otherwise ordered by the relevant court, and subject to paragraphs 13 and 14 above, upon taxation, disbursements shall be allowed to the extent that they were:
 - (a) incurred, whether by payment of same or a legal liability to pay; and
 - (b) reasonably necessary for the proper conduct of the proceeding and/or performance of the relevant legal work; and
 - (c) reasonable in nature and amount; and
 - (d) evidenced in writing.
16. Consumption tax on legal fees may be charged only by law practitioners who are or were registered under the Consumption Tax Act at the time the relevant legal work was performed.
17. Subject to paragraph 15, all claims for costs of filing and service of documents are to be assessed in accordance with the following:
 - (a) the filing and service of documents does not constitute legal professional services;
 - (b) the maximum rate allowable is \$25 per hour;
 - (c) the time claimable shall commence upon leaving the law practitioner's office, travelling directly to the relevant registry or place of service and returning directly to the law practitioner's office.



Michael H. Whitten QC
Lord Chief Justice of the Kingdom of Tonga
8 March 2022