The European Rules of Civil Procedure

PART I – GENERAL PROVISIONS

SECTION 1 – Scope

Rule 1. Scope

(1) These Rules apply to the resolution of domestic and cross-border disputes in civil and commercial matters whatever the nature of the court.

(2) These Rules do not apply to:

(a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

(c) social security;

(d) arbitration;

(e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;

(f) wills and succession, including maintenance obligations arising by reason of death.

(3) These Rules may also apply where incidental issues arise which fall within Rule 1(2), if the principal matter in dispute is within the scope of Rule 1(1).

SECTION 2 – Principles

A. Co-operation

Rule 2. General

Parties, their lawyers and the court must co-operate to promote the fair, efficient and speedy resolution of the dispute.

Rule 3. Role of the parties and their lawyers

Parties and their lawyers must:

(a) take reasonable and appropriate steps to settle disputes amicably;

(b) contribute to the proper management of the proceedings;

(c) present facts and evidence;

(d) assist the court in the determination of the facts and the applicable law;

(e) act in good faith and avoid procedural abuse when dealing with the court and other parties.

Rule 4. Role of the Court – the General Case Management Duty

The court is responsible for active and effective case management. The court must ensure that parties enjoy equal treatment. Throughout proceedings it shall monitor whether parties and their lawyers comply with their responsibilities under these Rules.

B. Proportionality

Rule 5. Role of the Court

(1) The court must ensure that the dispute resolution process is proportionate.

(2) In determining whether a process is proportionate the court must take account of the nature, importance and complexity of the particular case and of the need to give effect to its general

management duty in all proceedings with due regard for the proper administration of justice.

Rule 7. Proportionality of sanctions

Sanctions for breach of any of the rules must be proportionate to the seriousness of the matter involved and the harm caused and reflect the extent of participation and the degree to which the conduct was deliberate.

Rule 8. Proportionality of costs

Costs of proceedings should, in so far as possible, be reasonable and proportionate to the amount in dispute, the nature and complexity of the particular proceedings, their importance for the parties and the public interest.

C. Settlement

Rule 9. Role of the parties and their lawyers

(1) Parties must co-operate in seeking to resolve their dispute consensually, both before and after proceedings begin.

(2) Lawyers must inform the parties about the availability of consensual dispute resolution methods, assist them in selecting the most suitable method, and, where appropriate, encourage its use. They must ensure that they use any mandatory method.

(3) Parties may ask the court to render a settlement agreement enforceable.

(4) When a consensual settlement as a whole cannot be reached, parties must take all reasonable opportunities to reduce the number of contested issues prior to adjudication.

Rule 10. Role of the Court

(1) The court must facilitate settlement at any stage of the proceedings. Particularly, it must ensure that the parties consider settlement in the preparatory stage of proceedings and at case management conferences. If necessary for furthering the

settlement process, it may order the parties to appear before it in person.

(2) The court must inform the parties about the availability of different types of settlement methods. It may suggest or recommend the use of specific consensual dispute resolution methods.

(3) The court may participate in settlement attempts and assist the parties in reaching a consensual resolution. It may also assist in drafting settlement agreements.

(4) Where a judge mediates during a settlement process and receives information in the absence of one of the parties, that judge must not decide the case.

D. Right to be heard

Rule 11. Fair opportunity to present claim and defence

The court must manage proceedings to ensure that parties have a fair opportunity to present their case and evidence, to respond to their respective claims and defences and to any court orders or matters raised by the court.

Rule 12. Basis of Court Decisions

(1) In reaching any decision in proceedings the court must consider all factual, evidential, and legal issues advanced by the parties. Court decisions must specifically set out their reasoning concerning substantial issues.

(2) The court must not base its decisions on issues that parties have not had an opportunity to address.

Rule 13. Communications with the Court

(1) The court must not communicate with a party in the absence of other parties. This prohibition does not apply to without-notice proceedings or to routine procedural administration.

(2) All communications by parties with the court must be provided to all other parties at the time when they are made to the court.

(3) When the court becomes aware of a failure to comply with the requirement in Rule 13(2), it must promptly provide the parties with the content of the communication.

E. Representation and assistance

Rule 14. Self-representation and mandatory representation

Except when legal representation is required by law, parties have a right to represent themselves in proceeding.

Rule 15. Representation and assistance in Court

(1) Parties may engage a lawyer of their own choice. They may do so both when they choose to be and when they are required by law to be represented by a lawyer. This right includes the right to representation by a lawyer admitted to practice in the forum and to receive active assistance before the court from a lawyer admitted to practice elsewhere.

(2) Parties may, where the law permits it, be represented or assisted in court by an individual or organisation other than a lawyer.

(3) When representing or assisting a party the court must respect a lawyer's professional independence. This includes ensuring that lawyers are able to fulfil their duty of loyalty to their client and maintain client confidentiality.

Rule 16. Hearing Parties

(1) Parties have the right to be heard in person by the court.

(2) The court may always hear parties in person.

F. Oral, written and public Proceedings

Rule 17. Public proceedings

(1) Hearings and court decisions, including their reasoning, must, as a general rule, be public.

(2) The court may order the proceedings, or parts thereof, especially oral hearings and the taking of evidence, to be in private

(in camera) for reasons of public policy, including national security, privacy, or professional secrets, including business confidentiality, or in the interests of the administration of justice. Where necessary the court may make suitable protective orders to maintain the privacy or confidentiality of hearings held or evidence taken in private.

(3) Judgments and their reasoning shall be accessible to the public to the extent that proceedings are open to the public. When hearings have been in private, publicity of the judgment may be limited to its operative part.

(4) Court files and records shall be publicly accessible at least to persons with a legal interest in them and to those making a legitimate inquiry.

(5) The identity of parties, witnesses and other natural persons mentioned in the judgment may be private where strictly necessary.

Rule 18. Oral and Written Proceedings

(1) Pleadings and applications must be presented initially in writing.

(2) The court may order parties to present oral argument and carry out the oral examination of witnesses or experts. Where a party requests it, the court must permit oral argument, and may permit oral examination.

(3) The court may order witnesses and experts to submit written statements.

(4) In so far as appropriate, proceedings may be conducted using any available means of information and communication technology.

G. Languages, interpretation and translation

Rule 19. Language of the Court

Proceedings, including documents and oral communications, must as a general rule be in a language of the court. The court may permit all or part of the proceedings to be conducted in other

languages where doing that would not prejudice the parties or the right to a public hearing.

Rule 20. Interpretation and translation

(1) Interpretation or translation must be provided by the court to parties who are not sufficiently competent in the language used in the proceedings. The right to interpretation includes the right of parties with hearing or speech impediments to receive appropriate assistance. Such interpretation and translation shall ensure the proceedings are fair by enabling the parties to participate in them effectively.

(2) Where documents are translated, the parties may agree, or the court may order, that such translation be limited to such parts of the documents as necessary to ensure the proceedings are fair and that the parties are able to participate effectively in them.

SECTION 3 – Proceedings

A. Commencement, termination, Concentration and scope

Rule 21. Commencement and termination

(1) Proceedings may only be instituted by a party. The court cannot institute proceedings on its own motion.

(2) Parties may terminate proceedings in whole or in part by withdrawal, admission of the claim or settlement.

Rule 22. Concentration of Legal and Factual Issues

(1) Parties must bring all the legal and factual elements in support of, or in objection to, a claim for relief that arise out of the same cause of action in one single proceeding.

(2) Non-compliance with Rule 22(1) renders proceedings on the same claim for relief arising out of the same cause of action inadmissible. This preclusion does not apply if

(a) subsequent to the earlier proceeding, there has been a change in relevant facts on which judgment in those proceedings was based, or

(b) the non-compliant party has obtained or acquired a new right since judgment was given in the earlier proceeding.

Rule 23. Scope

(1) The scope of the dispute is determined by the claims and defences of the parties in the pleadings, including amendments.

(2) The court must decide on, and only on, the relief claimed.

B. Facts, evidence and applicable law

Rule 24. Facts

(1) The parties must put forward such facts as support their claim or defence. The court may invite the parties to clarify or supplement these facts.

(2) The court must not consider facts not introduced by the parties.

(3) The court may consider such facts not specifically addressed by a party but that are necessarily implied by matters of fact put forward by the parties or which are contained within the case file. It may only do so if they are relevant to a party's claim or defence and the parties have been given a reasonable opportunity to respond.

Rule 25. Evidence

(1) Each party is required to prove all the relevant facts supporting its case. Parties must offer evidence supporting their factual contentions. Substantive law determines the burden of proof.

(2) Each party has, in principle, a right to access all forms of relevant, non-privileged and reasonably identified evidence. In so far as appropriate, parties and non-parties must contribute to disclosure and production of evidence. It is not a basis of objection to such disclosure by a party that disclosure may favour the opponent or other parties.

(3) In so far as appropriate the court may invite the parties to supplement their offers of evidence. Exceptionally, it may take evidence on its own motion.

Rule 26. Applicable law

(1) While taking account of any applicable special provisions, the parties may present legal arguments supporting their claim or defence.

(2) The court must determine the correct legal basis for its decision. This includes matters determined on the basis of foreign law. It may only do so having provided the parties a reasonable opportunity to present their arguments on the applicable law.

(3) Where parties are free to dispose of their rights, they may agree on the legal basis of the claim or on specific issues in the claim. Such an agreement must be explicit and must, even if it was made before commencement of the proceedings, be set out in the pleadings. The agreement binds the court.

C. Sanctions for non-compliance and relief from sanctions

Rule 27. Sanctions for Non-Compliance with Rules and court Orders

(1) The court shall disregard factual allegations, modifications of claims and defences, and offers of evidence that are introduced later than permitted by these rules or by court orders, including those concerning amendment. Preclusion does not apply if the court could have taken notice of the party's failure or mistake and itself failed to raise with the parties whether they wished to seek an amendment or relief from sanction.

(2) As a general rule, the court may continue the proceedings and decide on the merits based on the facts and evidence available to it.

(3) The court may draw negative factual inferences, order a party or their lawyer to bear the costs of non-compliance, or in serious cases of non-compliance render an *astreinte*, an order for payment of a fine, administrative sanction as provided by national law, or hold the non-compliant party in contempt.

(4) In assessing the nature of any compensation or fine under this rule, the court may require payment on the following bases: a lump sum; an amount per period of breach; or, an amount per offence. In the latter two cases the amount may be subject to a maximum as determined by the court.

Rule 28. Relief from the consequences of procedural non-compliance

Where a sanction for non-compliance with a rule or court order has been imposed, the subject of the sanction may apply for relief from that sanction. In considering whether, on application by a party, to exercise its discretion to grant relief the court must take account of the need for proceedings to be conducted consistently with the principles of co-operation and proportionality.

PART II – PARTIES

SECTION 1 – General Part

Rule 29. The Parties to Proceedings

(1) Parties to civil proceedings are all the persons by and against whom the proceedings are brought.

(2) Anyone who has the capacity to hold a right under substantive law may be a party to civil proceedings.

Rule 30. Litigation Capacity of Natural Persons

(1) Litigation capacity is the capacity to exercise rights in civil proceedings.

(2) Anyone who has the capacity to exercise rights or obligations in their own name under the substantive law shall be deemed to have litigation capacity.

(3) Anyone not within the scope of Rule 30(2) must be represented in proceedings by a representative according to the rules of the applicable law.

Rule 31. Representation of Legal Persons and other entities

Legal persons and other entities that are parties must exercise their rights through natural persons who are entitled to represent them according to the substantive law.

Rule 32. Proof of Representation

The court may, at any time in the proceedings, order the representative to prove the existence or scope of their power to act.

Rule 33. Court Review of its own motion (*ex officio* review)

The Court shall at all times ensure compliance with Rules 29 to 31 and make any appropriate order.

Rule 34. Persons Entitled to Bring Proceedings

Persons with litigation capacity must bring proceedings in their own name and on the basis of their own substantive rights unless either these Rules or substantive law otherwise permit.

Rule 35. Public Interest

A person who is authorised by law to act in the public interest, may act as a party or intervene in any proceedings.

SECTION 2 – Special Part

A. Multiple Parties

1. Joinder of parties

Rule 36. Voluntary Joinder of Parties

(1) Multiple parties may bring or defend claims in a single proceeding. They may do so if

(a) their claims are closely connected, and

(b) the court has jurisdiction with respect to all parties.

(2) The court may, where it is necessary for the purpose of properly managing the proceedings, order the claims to continue as separate proceedings.

(3) Each of the joined parties acts on their own account. Their actions or omissions in the proceedings shall not prejudice the other joined parties.

Rule 37. Consolidation of Separate Proceedings

The court may order the consolidation of separate proceedings pending before it to enable them to be managed properly in a single proceeding.

Rule 38. Necessary Joinder of Parties

(1) A proceeding must be brought by or against parties jointly where either the joint nature of the legal right or the substantive law requires a judgment to bind all of the joined parties in the same terms.

(2) A procedural act carried out by one or more of the joined parties shall affect all such parties.

(3) In the case of settlement, waiver of claim, or an admission, all the joined parties must consent to be bound by the act.

2. Intervention and Third Parties

Rule 39. Principal Intervention

Anyone not a party to proceedings who claims a right in its subject matter, may bring a claim directly against one or more of the parties in the court, in which the dispute is pending at first instance or, if the Court so permits, on appeal.

Rule 40. Voluntary Intervention in Support of a Party

(1) Anyone who has a legitimate interest in one or more parties succeeding in proceedings may intervene in support of their claim or defence. They may intervene at any time before the final hearing is concluded.

(2) The intervenor in support of a party may not object to any procedural step already taken in the proceeding. Intervenors may, however, take any procedural step that the party they support may take if this is not in conflict with any procedural step taken by that party.

Rule 41. Notice by Voluntary Intervenors

(1) Anyone seeking to participate in proceedings as an intervenor under the preceding Rules must make an application to the court. The application must state the basis on which intervention is sought. Notice of the application shall be given to the parties.

(2) The parties shall be heard concerning the proposed intervention. The court may order the applicant and the parties to attend an oral hearing.

(3) An application to intervene does not suspend the proceedings unless the court orders otherwise.

Rule 42. Third-Party Notice

(1) A party may give any person notice of the dispute if, in the event of that party's claim or defence being unsuccessful, they might have a claim against or be subject to a claim by that person.

(2) A person given notice under Rule 42(1) becomes a party to the proceedings unless the court, upon application, orders otherwise.

(3) The third-party notice must state the matter at issue and the reason why they have been given such notice.

Rule 43. Amicus Curiae

(1) Any natural or legal person, or other entity, may provide the court with submissions concerning important issues in proceedings with the consent of the court. The court may also invite such submissions.

(2) Before giving its consent, or inviting submissions, under Rule 42(1) the court must consult the parties.

B. Substitution and Succession of Parties

Rule 44. Substitution and Succession

(1) At any time after proceedings are commenced the court must permit the substitution or the succession of a party by another person where the law requires it.

(2) At any time after proceedings are commenced the court may permit the substitution or the succession of a party by another person if that is appropriate in the interest of the good administration of justice.

(3) Unless the court orders otherwise, the proceedings continue upon substitution or succession of a party from the position they had reached at the time substitution or succession was effected.

SECTION 3 – Cross border issues

Rule 45. Capacity of foreign nationals to be a party

The capacity of foreign nationals or legal persons incorporated outside the forum State shall be assessed for foreign nationals according to the law of the country of their habitual residence or their citizenship, and for legal persons according to the law of the State of their incorporation.

Rule 46. Litigation capacity

(1) A non-resident's litigation capacity shall be assessed according to the law of their habitual residence or their citizenship.

(2) A non-resident who lacks capacity to conduct litigation under the law of their habitual residence or citizenship but has such capacity under the law of the forum State may take procedural steps in proceedings on their own behalf.

(3) A legal person, incorporated outside the forum state, shall have its litigation capacity assessed according to the law of the place of incorporation.

PART III – CASE MANAGEMENT

Rule 47. Careful Conduct of litigation by the Parties

Parties must present their claims, defences, factual allegations and offers of evidence as early and completely as possible and as appropriate to the careful conduct of litigation in order to secure procedural expedition.

Rule 48. Court control of proceedings

At all stages of the proceedings the court must monitor whether parties and their lawyers comply with Rule 47 and any order made under Rule 49.

Rule 49. Means of Case management

Where necessary for the proper management of proceedings, the court shall, in particular:

(1) encourage parties to take active steps to settle their dispute or parts of their dispute and, where appropriate, to use alternative dispute resolution methods;

(2) schedule case management conferences;

(3) determine the type and the form of the procedure;

(4) set a timetable or procedural calendar with deadlines for procedural steps to be taken by parties and/or their lawyers;

(5) limit the number and length of future submissions;

(6) determine the order in which issues should be tried and whether proceedings should be consolidated or separated;

(7) determine the separation of questions concerning jurisdiction, provisional measures and statutes of limitation for early decision upon special hearings;

(8) consider necessary amendments regarding the parties' proper representation, the consequences of changes related to the parties to litigation and the participation of third parties, intervenors, or other persons;

(9) consider amendments to the pleadings or offers of evidence in the light of the parties' contentions;

(10) require a party's appearance in person or require a party's representative, who should be fully informed of all matters relevant to the proceedings, to be present at a court hearing;

(11) address the availability, admissibility, form, disclosure and exchange of evidence and, if adequate to the state of proceedings,

(a) determine the admissibility of evidence;

(b) order the taking of evidence.

Rule 50. Case Management Orders

(1) The court may make any case management order on its own motion or on application of a party. When orders or decisions are made without prior consultation with the parties or on a without-notice (*ex parte*) basis, parties not previously heard may apply for the order or decision to be reconsidered at a hearing or on the basis of written submissions.

(2) If the parties agree on a case management measure the court shall not determine differently without good reason.

(3) The court may vary or revoke any case management order upon a party's or its own motion.

PART IV – COMMENCEMENT OF PROCEEDINGS

SECTION 1 – Pre-commencement procedural duties

Rule 51. Duty to promote consensual resolution and effective management

(1) Before proceedings are issued, parties shall co-operate with each other in order to avoid unnecessary disputes and costs, to facilitate the early consensual resolution of their dispute and, where such a resolution is not possible, the proportionate management of future proceedings according to Rules 2-11 and 47-50.

(2) In order to further the general duty set out in Rule 51(1) parties may:

(a) provide each other with concise details of their potential claims or defences;

(b) clarify and, wherever possible, narrow the legal and factual issues in dispute; and

(c) identify relevant evidence so as to facilitate effective and early assessment of the merits of their positions.

(3) Parties may also:

(a) consider a possible timetable for proceedings;

(b) estimate the potential cost of proceedings;

(c) consider issues of limitation, jurisdiction, provisional measures, and of any other procedural matter.

SECTION 2 – Commencement and pleadings

A. Statement of claim

Rule 52. Submission of the Statement of Claim

To commence proceedings the claimant must submit a statement of claim to the court, as provided in Rule 53. Notice shall be given as provided in Part VI.

Rule 53. Contents of the Statement of Claim

(1) The statement of claim must state, as a minimum, the designation of the specific court and of the parties, the relief sought and the grounds therefore.

(2) The statement of claim should:

(a) state the relevant facts on which the claim is based in reasonable detail as to time, place, participants and events;

(b) describe with sufficient specification the available means of evidence to be offered in support of factual allegations;

(c) refer to the legal grounds that support the claim, including foreign law, in a way that is sufficient to permit the court to determine the claim's legal validity;

(d) state the detailed remedy requested, including the monetary amount or the specified terms of any other remedy sought;

(e) allege compliance with any applicable condition precedent, according to applicable national law, to bringing the claim, such as parties having to engage in pre-commencement conciliation or mediation, or having to issue a formal demand concerning the subject matter of the dispute.

(3) If a claimant does not fully comply with the requirements of Rule 53(2), the court must invite the claimant to amend the statement of claim. If a claimant shows good cause why it is not possible to provide details of relevant facts or specify the means of evidence in their statement of claim but the statement of claim nevertheless demonstrates that there is plausible dispute on the merits, the court should give due regard to the possibility that relevant detailed facts will develop later in the course of the taking of evidence.

(4) Whenever possible, means of evidence on which a claimant relies, must be attached to the statement of claim, if feasible with a copy for the defendant and other parties.

(5) A claimant may apply, in their statement of claim, for access to evidence under the custody or control of a defendant or non-party and which are to be offered in support of the claimant's allegations.

(6) The claimant may respond in a statement of claim to the defendant's defence as known from any exchange of arguments before commencement of proceedings. In this case Rule 54 applies to this part of their statement of claim.

(7) If the claimant makes a third party claim or cross-claim seeking relief from a third party or a co-claimant Rule 53 applies correspondingly.

Rule 54. Statement of Defence and Counterclaims

(1) A defendant must, within 30 consecutive days from the date of service of notice, respond to the claimant's statement of claim. In appropriate cases, the court may properly extend the time for answer by court order.

(2) Rule 53 concerning the details of statements of claims applies to the defendant's response.

(3) Any failure by a defendant, whether explicit or tacit to deny an allegation contained in the claimant's statement of claim may be considered an admission for the purpose of the proceeding and obviates proof thereof.

(4) A defendant must set out in their response to the claimant's statement of claim which allegations are admitted or contested. A contested allegation is one that is either denied, neither admitted nor denied, or for which an alternative statement of facts is alleged. Where the defendant can neither admit nor deny reasons must be given in the defence why that is the case.

(5) If a defendant relies on an affirmative defence, their response to the claimant's statement of claim must allege all facts sufficient to permit the court to determine the legal validity of the defence, and offer means of evidence in support of the factual allegations. Rule 53(2)(a)-(c), (3) and (4) applies. The claimant may answer affirmative defences.

(6) The defendant may state a counterclaim seeking relief from a claimant. The defendant may also state a claim against a co-defendant or a third party. Rule 53 applies. The parties so addressed must answer these claims as provided in the previous provisions.

Rule 55. Amendments to Pleadings

(1) A party, upon showing good cause to the court and upon notice to other parties, has a right to amend its claims or defences when the amendment does not unreasonably delay the proceeding or otherwise result in injustice. In particular, amendments may be justified to take account of events occurring after those alleged in earlier pleadings, newly discovered facts or evidence that could not previously have been obtained through reasonable diligence, or new evidence obtained from the exchange of evidence.

(2) Permission to amend must be granted on such terms as are just, including, where necessary, adjournment or continuance, or compensation by an award of costs to another party.

(3) The amendment must be served on the opposing party who has 30 consecutive days in which to respond, or such time as the court may order.

(4) Any party may apply to the court for an order requiring another party to provide by amendment a more specific statement of that party's pleading on the ground that the challenged statement does not comply with the requirements of these Rules. Such a request temporarily suspends the duty to answer.

Rule 56. Withdrawal and admission of the claim

(1) With the defendant or defendants' consent, the claimant may terminate the proceeding or any part of it by complete or partial withdrawal of the claim without prejudice save as to costs. Unilateral withdrawal without prejudice is only permitted if made before the first hearing of the court. In any case the claimant shall bear the reasonable and adequate costs of other parties.

(2) A defendant may terminate the proceeding or any part of it by admission of the whole claim or a part of the claim. The claimant may thereafter file a request to obtain judgment.

B. Joint application for party agreed proceedings

Rule 57. Contents of the joint application

(1) A joint application is a statement of claim in which parties jointly may submit to the court their agreement according to Rule 26, their respective claims and defences, the issues on which they disagree and which are to be determined by the court, and their respective arguments on those disputed issues.

(2) In order to be admissible, the joint application must contain:

- (a) the designation of the parties;
- (b) the designation of the court before which the proceedings are brought;
- (c) the relief sought, including the monetary amount or the specified terms of any other remedy sought; and
- (d) the relevant facts and the legal grounds, on which the action is based.

(3) A joint application must describe the available means of evidence to be offered in support of factual allegations. Whenever possible, such evidence must be attached to the application.

(4) It must be signed and dated by the parties.

Rule 58. Related agreements

In so far as procedural rules are subject to party disposition, parties may agree on any procedural matter, such as the jurisdiction of the court, provisional measures, and publicity of hearings (see Rule 26(3)).

Rule 59. Amendment

(1) Parties have a right to amend their joint application when the amendment does not unreasonably delay management of the proceedings. In particular, amendments may be justified in order to take account of events occurring after those alleged in earlier pleadings, or newly discovered facts or evidence that could not previously have been obtained through reasonable diligence.

(2) Amendments are only admissible upon agreement of the parties.

Rule 60. Termination of party-agreed-proceedings

Before party-agreed-proceedings are determined by the court, parties may terminate them or any part of them by complete or partial joint withdrawal.

PART V – PROCEEDINGS PREPARATORY TO A FINAL HEARING

Rule 61. Case management hearings to prepare for the final hearing and determination

(1) To prepare for a final hearing, the court may hold an early case management hearing and if necessary further ones as the case progresses.

(2) Case management hearings may be held in person. If appropriate the court may proceed in written form or use any available electronic means of communication.

(3) In or immediately after a case management hearing, the court should, upon consultation with the parties: set a timetable or procedural calendar with deadlines for parties to complete their procedural obligations; set the timetable for a final hearing; and, the possible date by which judgment will be given.

(4) Whenever appropriate, the court may provide parties with advice relevant to their preparation for the final hearing and judgment. Such advice should, in so far as possible, be given in the early case management hearing. Case management orders should be made in or immediately after the early case management hearing.

Rule 62. Means of Case Management during the pre-final hearing phase

(1) The court may use all the means of case management set out in Rule 49(1), (3)- (6).

(2) Appropriate measures for the disclosure of evidence and the taking of evidence before a final hearing are, particularly,

(a) the production and mutual exchange of documents;

(b) requests for written witness statements and their exchange;

(c) the appointment of a court expert and expert conferences between a court-appointed expert and experts appointed by the parties, or between court-appointed experts;

(d) requests for information from third parties, including public authorities;

(e) personal inspection of evidence by the court.

Rule 63. The Closing of Preparatory Proceedings

(1) As soon as the court is satisfied that both parties have had a reasonable opportunity to present their case during the preparatory proceedings and that it has had an opportunity to clarify issues and take any relevant evidence before the final hearing in accordance with Rule 62(2), it will close the proceedings and refer the case to the final hearing. Once the pre-final hearing phase of proceedings is closed, no further submissions, arguments or evidence are allowed, except as provided by Rule 63(2) and Rule 64(4).

(2) Only under very exceptional circumstances may the court, on its own motion (*ex officio*) or upon a party's well-founded application, permit further statements and submissions.

Rule 64. The Final Hearing

(1) In so far as practicable, the final hearing should be concentrated. A concentrated final hearing may be adapted to the use of electronic communication techniques.

(2) The final hearing must be before the judge or judges who are to give the final judgment.

(3) Ordinarily, the court should take oral evidence and evidence on those issues that are still matters of serious dispute between the parties.

(4) All relevant evidence not received by the court in the preparatory proceedings may be taken in the final hearing. New evidence not offered in the pleadings or upon amendment in the preparatory stage may be admitted only if a party shows strong and overwhelming reasons for not having produced it earlier.

(5) The court must properly manage the final hearing according to Rules 48-49. In particular, it must

(a) determine the order in which issues shall be tried;

(b) require a party's appearance in person or require a party's representative, who should be fully-informed of all matters relevant to the proceedings, to be present at the hearing;

(c) order the taking of evidence.

(6) Documentary or other tangible evidence must have been disclosed to all other parties prior to the final hearing. Oral evidence may be taken only if notice has been given to all parties of the identity of the person to be examined and the substance of their intended evidence.

(7) Parties must have an opportunity to submit their final conclusions including statements on the results of evidence-taking.

Rule 65. Early Final Judgments

(1) The court, on its own motion or on the application of a party, may give an early final judgment upon simplified proceedings.

(2) In an early final judgment the court may

(a) determine that it lacks jurisdiction or competence to adjudicate the dispute or whether the claim is

inadmissible due to a failure to comply with other procedural requirements; or

(b) give a final judgment or a judgment on part of the claim for relief by only deciding questions of law based on non-contested facts, or on the basis that there has been a failure by the parties to assert necessary and relevant facts timeously, or there has been a failure to proffer necessary means of evidence timeously; or

(c) give a judgment upon the withdrawal of a claim, whether that was permitted or consented to, or upon an admission by the defendant.

(3) Rules 61–64 and Part VIII of these Rules apply, as appropriate to an early final judgment.

Rule 66. Judgments on Preliminary Procedural Issues or on Legal Issues on the Merits

(1) The court on its own motion or on the application of a party may give a judgment

(a) deciding a preliminary procedural issue, or

(b) deciding a legal issue on the merits

(2) Rules 61–64 and Part VIII of these Rules apply, as appropriate to the issue to be determined under this Rule. Judgments on preliminary procedural requirements according to Rule 133 are subject to independent appeal.

Rule 67. Provisional Measures and Interim Payment Orders

The court may make any order for provisional measures according to Part X or for an interim payment as provided by Part X, Rules 199 and following.

PART VI – SERVICE AND DUE NOTICE OF PROCEEDINGS

SECTION 1 – General part - Service, Due Notice and the Right to be Heard

Rule 68. Service of documents and minimum content

(1) Statements of claim and any other procedural documents amending the relief sought or seeking new relief under Rule 55 should be served in accordance with Rules 74-78 and 80-81.

(2) The statement of claim or documents seeking to amend proceedings must comply with the requirements of Rules 53 and 55.

Rule 69. Information about the procedural steps necessary to contest the claim

The statement of claim must clearly state the following:

(a) the procedural requirements for contesting the claim, including where applicable: the time limit for contesting the claim; the time of any scheduled court hearing; the name and address of the court or other institution to which a response to the claim should be sent or before which to appear, and whether representation by a lawyer is mandatory; and

(b) the consequences of a failure to respond or to appear in court, in particular, where applicable, the possibility that a judgment may be entered against the defendant in default of responding to the claim and the liability for costs related to the court proceedings.

Rule 70. Where the defendant fails to enter an appearance

Where the defendant has not responded to the statement of claim or not appeared in court, default judgment shall only be given according to Rule 138(3).

SECTION 2 – Responsibility for and methods of service

A. General Provisions

Rule 71. Responsibility for service

(1) Responsibility for service of documents lies with the court/parties.

(2) If responsibility lies with the court, upon application the court may entrust a party with service of documents if appropriate.

(3) Where responsibility lies with the parties the court retains supervisory control which may include the power to set aside service.

Rule 72. Applicability of rules

The following rules on service methods apply to the documents referred to in Rule 68 and to any other documents required to be served including court decisions.

Rule 73. Priority of methods guaranteeing receipt

Documents shall be served using a method that guarantees receipt (Rules 74-76). If such service is not possible, alternative service methods, as specified in Rule 78. Where the address for service is unknown or other methods of service have failed, methods of last resort, specified in Rule 80, may be used to effect service.

B. Methods of Service

Rule 74. Service guaranteeing receipt

(1) Service guaranteeing receipt includes

(a) service by physical delivery attested to by an acknowledgement of receipt signed by the addressee or by a document signed by a court officer, bailiff, post officer or other competent person who effected the service stating that the addressee has accepted the document, and the date of the service;

(b) service via a designated electronic information system using appropriately high technical standards attested to by an acknowledgement of receipt that the system generates automatically where the addressee has a legal obligation to register with that system. Such an obligation shall be imposed on legal persons and on natural persons engaging in independent professional activities for disputes relating to their trade or profession;

(c) service by other electronic means if the addressee has previously and explicitly agreed to use this service method or is under a legal obligation to register an e-mail address for the purpose of service. Such service must be attested to by the addressee's acknowledgement of receipt, which must include the date of receipt, and which is returned by the addressee;

(d) postal service attested to by an acknowledgement of receipt, which must include the date of receipt, and which is signed and returned by the addressee.

(2) Where an acknowledgment of receipt, under Rule 74(1)(c) or (d), is not received within a designated time, service according to Rule 74(1)(a) or (b), if available, should be attempted before alternative service methods can be used.

Rule 75. Service on legal persons by physical delivery

If Rule 74(1)(a) or (d) applies, service on a statutory representative of a legal person can be effected at the business premises. Business premises include the principal place of business, the place of the legal person's statutory seat, the central administration, or a branch, agency or establishment if the dispute arises out of the activity of that branch, agency or establishment.

Rule 76. Service on representatives

(1) If a minor or a party that lacks legal capacity has a legal custodian or guardian, service on them is equivalent to service on the addressee.

(2) Service on a person nominated to receive service by the addressee is equivalent to service on the addressee.

Rule 77. Refusal to accept service

Service according to Rule 74(1)(a) also includes service attested to by a document signed by the competent person who effected the service and stating that the addressee refused to receive the document. The document must be deposited at a specified place for a certain period of time for the purpose of collection by the addressee who has been informed where and when to collect the document.

Rule 78. Alternative service methods

(1) If the addressee is not available for service according to Rule 74, the following alternative service methods effected by a court officer, bailiff, postal officer or other competent person are available

(a) service at the addressee's home address on persons who are living in the same household as the addressee or are employed by the addressee, and who have are able and willing to accept the document;

(b) in the case of a self-employed addressee or a legal person, service at the addressee's business premises on persons who are employed by the addressee, and who are able and willing to accept the document;

(c) depositing the document at a post office or with competent public authorities and placing written notification of that deposit in the addressee's mailbox. In such a case the notification must clearly identify the document as a court document, the date by which it must be collected, the place where it can be collected and the contact details of the relevant person effecting service. Service is only effected when the document is collected.

(2) Service according to Rule 78(1)(a) and(b) shall be attested to by:

(a) a document signed by the competent person who effected service, indicating:

(i) the method of service used;

(ii) the date of service; and

(iii) the name of that person and their relationship to the addressee,

or

(b) an acknowledgement of receipt by the person served.

(3) Service according to Rule 78(1)(a) and (b) is not allowed if the recipient is the party opposing the addressee in the proceedings.

(4) Service according to Rule 78(1)(c) shall be attested to by:

(a) a document signed by the competent person who effected service, indicating:

(i) the method of service used; and

(ii) the date of collection,

or

(b) an acknowledgement of receipt by the person served.

Rule 79. Service of documents during proceedings

(1) During proceedings, if a party is represented by lawyer, service of documents may normally be effected on the lawyer or from lawyer-to-lawyer without Court intervention. Lawyers must provide an electronic address that can be used for service of documents.

(2) During proceedings, if a party is represented by a lawyer, they must notify the Court and any lawyer who represents other parties or intervenors of any change of postal or electronic address.

(3) During proceedings, parties must notify the court of any change of residence, of place of business or of their postal or electronic address.

Rule 80. Service methods of last resort

(1) If service by methods that guarantee receipt (Rules 74-77) or alternative service (Rule 78) is not possible because the addressee's address is unknown or service has otherwise failed, service of documents may be effected as follows:

(a) by publication of a notice to the addressee in a form provided for by law of the forum state, including

publication in electronic registers accessible to the public, and

(b) by sending a notice to the addressee's last known address or e-mail address, if applicable.

(c) For the purpose of subparagraphs (a) and (b), notice means information which clearly states the character of the document to be served as a court document, the legal effect of the notification as effecting service, information as to where the addressee can collect the documents or copies thereof, and the date by which they have to be collected.

(2) The address is unknown if the Court or the party responsible for service has made every reasonable effort to discover the addressee's present address. Efforts to find the present address must be documented in the Court files.

(3) Service shall be deemed to be effected within two weeks after publication of the notice and after having sent the notice to the last known address or e-mail address, as applicable. If there is no last known address or e-mail address service shall be deemed to be effected within two weeks after publication of the notice.

Rule 81. Cure for defective service

If service of documents does not meet the requirements of Rules 74-79, such non-compliance will be cured if the addressee's conduct proves that they received the document to be served personally and in sufficient time for them to arrange their defence or in any other way respond as required by the nature of the document.

SECTION 3 – Cross border issues

A. In the European Union

Rule 82. Language requirements

(1) In the case of natural persons not engaging in independent professional activities the documents referred to in Rule 68 and the information referred to in Rule 69 must be in a language of the

proceedings and, unless it is evident that the addressee understands the language of the forum, also in a language of the European Union member State of the individual's habitual residence.

(2) In the case of legal persons the documents referred to in Rule 68 and the information referred to in Rule 69 must be in a language of the proceedings, and also the language of the legal person's principal place of business, its statutory seat or of the principal documents in the transaction.

Rule 83. Non-application of Rule 81

If service of documents does not comply with the language requirements of Rule 82, Rule 81 does not apply.

Rule 84. Modification of time periods

If the addressee is domiciled in a European Union Member State different from the forum State then the time periods provided in Rule 80(3) are four weeks instead of two weeks.

B. Outside the European Union

Rule 85. General Rule

The preceding rules also apply when the addressee has no domicile or habitual residence within the European Union, subject to Rule 86.

Rule 86. Relationship to the Hague Service Convention

Where there is occasion to transmit a judicial or extra-judicial document for service outside the European Union, the application of the preceding rules is without prejudice to the application of the Hague Convention of 15 November 1965 on the Service abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters.

PART VII – ACCESS TO INFORMATION AND EVIDENCE

SECTION 1 – General part

A. General Provisions on Evidence

Rule 87. Standard of Proof

A contested issue of fact is proven when the court is reasonably convinced of its truth.

Rule 88. Matters Not Requiring Positive Evidence

(1) The following do not require positive evidence:

(a) admitted facts;

(b) uncontested facts;

(c) facts which are notorious to the court.

(2) The existence of facts can be presumed on the basis of other proven facts.

(3) When a party has possession or control of evidence concerning a relevant fact and that party, without justification, fails to produce it, the court may consider that relevant fact to be proven.

Rule 89. Relevance

(1) Relevant evidence is admissible.

(2) The court, whether of its own motion or on application by a party, shall exclude evidence that is irrelevant. Relevance is determined by the court by reference to the matters alleged in the parties' pleadings.

Rule 90. Illegally Obtained Evidence

(1) Except where Rule 90(2) applies, illegally obtained evidence must be excluded from the proceedings.

(2) Exceptionally, the court may admit illegally obtained evidence if it is the only way to establish the facts. In exercising its discretion to admit such evidence the court must take into

account the behaviour of the other party or of non-parties and the gravity of the infringement.

Rule 91. Evidentiary Privileges and Immunities

(1) Effect should be given to privileges, immunities, and similar protections for all persons who are heard in order to provide information in a case or concerning the production of evidence or other information.

(2) In particular, evidence may not be elicited in violation of:

(a) the right of a spouse, partner equal to a spouse or close relative of a party to refuse testimony;

(b) the right of a person not to incriminate themselves;

(c) legal professional privilege, any other professional privilege, confidence, trade secrets and other similar interests as provided by law;

(d) confidentiality of communications in settlement negotiations unless the negotiations have occurred in a public hearing or overriding public interests so require;

(e) national security interests, State secrets or other equivalent public interest issues.

(3) The court should consider whether these protections justify a party's failure to disclose evidence or other information when deciding whether to draw adverse inferences or to impose sanctions.

(4) The court should recognise these protections when imposing sanctions on a party or non-party in order to compel disclosure of evidence or other information.

(5) A claim of privilege, immunity or other similar protection made with respect to a document shall describe it in sufficient detail to enable another party to challenge the claim.

B. Management of Evidence

Rule 92. Management and Presentation of Evidence

(1) Whenever necessary and appropriate, the court must order the taking of relevant evidence offered by a party. Where the court

makes such an order it may make case management orders concerning the sequence and timing of the production of evidence. The court may also make orders, where appropriate, concerning the form in which evidence will be produced. Rules 49(9) and (11), 50, 62, 64(3)-(6) and 107 apply.

(2) The court, while affording the parties an opportunity to respond, may suggest evidence not previously proposed by a party, which it considers may be relevant to an issue in dispute. If a party accepts such a suggestion, the court will order the taking of that evidence so that it may be offered in support of that party's contentions of fact and law.

(3) Exceptionally, the court may, while affording the parties an opportunity to respond, order the taking of evidence not previously proposed by a party.

(4) The court shall provide each party with a fair opportunity and adequate time to respond to evidence presented by another party or taken by the court.

Rule 93. Admission by a Failure to Challenge Evidence

The court may take a party's unjustified failure to make a timely response to an opposing party's contention as a sufficient basis for considering that contention to be admitted or accepted. Before doing so the court must inform the party that it is considering drawing such a conclusion concerning the evidence and provide them with an opportunity to respond.

Rule 94. Early Party Identification of Evidence

Parties must identify evidence which they intend to produce to support the factual allegations set out in their pleadings.

Rule 95. Notification of Evidence

(1) Parties must make documentary or tangible evidence available to other parties.

(2) Parties may only propose witness evidence if notice is given to all other parties of the relevant witnesses' identity and the subject-matter of their proposed evidence.

(3) The court may direct that parties keep evidence of which they have been notified confidential.

Rule 96. Additional Evidence after Amendment

The court may, while affording the parties an opportunity to respond, permit or invite a party to clarify or amend their factual contentions and to offer additional evidence accordingly.

C. Presentation and Evaluation of Evidence

Rule 97. Conduct of Hearings where evidence is to be adduced

(1) Whenever appropriate, the court will hear and receive evidence directly at a hearing before the parties unless, exceptionally, it has authorised evidence to be taken by an individual authorised to act on its behalf or at another location.

(2) Any hearing where evidence is taken shall be video recorded, provided that the necessary technical equipment is available. The video recording must be kept under the court's direction.

(3) The taking of evidence, in hearings or in camera, can involve, where appropriate, the use of technology, such as videoconferencing or similar distance communication technologies.

Rule 98. Evaluation of Evidence

The court will freely evaluate evidence.

Rule 99. Sanctions concerning Evidence

The court, whether on its own motion or on application by a party, may impose sanctions under Rule 27 when:

(a) a person has unjustifiably failed to attend to give evidence or to answer proper questions, or to produce a document or other item of evidence;

(b) a person has otherwise obstructed the fair application of the rules concerning evidence.

SECTION 2 – Access to evidence orders

Rule 100. General Framework

When making orders under the Rules in this Part the court will give effect to the following principles:

(a) as a general rule, each party should have access to all forms of relevant and non-privileged evidence;

(b) in response to a party's application, under Rule 101, seeking access to evidence, the court will, if the application is granted, direct the production of relevant, non-privileged, and sufficiently identified evidence held or controlled by another party or, if necessary, by a non-party, even if such production might be adverse to that person's interests.

Rule 101. Application for Access to Evidence

(1) Subject to the considerations and procedure contained in these Rules, any claimant or defendant, or any prospective claimant who intends to commence proceedings, can apply to the court for an order securing access to relevant and non-privileged evidence held or controlled by other parties or non-parties.

(2) An application for an order securing access to evidence may include an application for the imposition of measures to protect or preserve evidence, including an application for provisional or protective measures under Part X.

(3) Material or information supplied under this rule only becomes evidence when it is formally introduced as such into the proceedings by a party or exceptionally by the court according to Rules 25 (3), 92 (2) and (3) and 107 (2).

Rule 102. Relevant Criteria where an application for access to evidence is made

(1) A party or prospective party applying for an order for access to evidence must

(a) identify, as accurately as possible in the light of the circumstances of the case, the specific sources of evidence to which access is sought, or alternatively

(b) identify closely defined categories of evidence by reference to their nature, content, or date.

(2) An application must satisfy the court of the plausibility of the merits of the applicant's claim or defence by demonstrating that

(a) the requested evidence is necessary for the proof or proposed proof of issues in dispute in proceedings or in contemplated proceedings;

(b) the applicant cannot otherwise gain access to this evidence without the court's assistance; and

(c) the nature and amount of evidence subject to the application is reasonable and proportionate. For this purpose the court will take into account the legitimate interests of all parties and all interested non-parties.

(3) If an application for access to evidence is made prior to the commencement of proceedings, the applicant must indicate with sufficient precision all elements necessary to enable the court to identify the claim for relief which the applicant intends to make.

(4) The court may not grant any application under this Rule which involves a vague, speculative, or unjustifiably wide-ranging search for information.

Rule 103. Confidential Information

(1) The court shall consider whether an application under Rule 101 for access to evidence concerns or includes confidential information, especially in relation to non-parties. In so doing, the court must have regard to all relevant rules concerning the protection of confidential information.

(2) Where necessary, in the light of the circumstances of the case, the court, amongst other things, may make an order for access to evidence containing confidential information adjusted in one or more of the following ways in order to protect the relevant interest in maintaining confidentiality

(a) redacting relevant sensitive passages in documents;

(b) conducting hearings *in camera*;

(c) restricting the persons allowed to gain access to or inspect the proposed evidence;

(d) instructing experts to produce a summary of the information in an aggregated or otherwise non-confidential form;

(e) writing a non-confidential version of a judicial decision in which passages containing confidential data are deleted;

(f) limiting access to certain sources of evidence to the representatives and lawyers of the parties and to experts who are subject to a duty of confidentiality.

Rule 104. Sanctions for Breach of Confidentiality

(1) If a person breaches any duty of confidentiality the aggrieved party may apply to the court for an order imposing one or more of the following sanctions

(a) wholly or partially dismissing a party in breach's claim or defence, where the substantive proceedings are still pending;

(b) declaring the party or other person in breach liable for damages and ordering payment of such compensation;

(c) ordering the party in breach to pay the costs of the substantive proceedings irrespective of the outcome of those proceedings;

(d) imposing on the party or the person in breach a fine appropriate to the breach;

(e) imposing on the party's representative or representatives or the person in breach a fine appropriate to the breach.

(2) Any sanction imposed by the court under Rule 104(1) must be proportionate to the nature of the breach. In determining the proportionality of the sanction the court must take particular account of the fact that a breach occurred before proceedings on the merits were commenced, where that is the case.

Rule 105. Access to Evidence held by Public Authorities

(1) Except where information is protected on public interest grounds, Government and other public agencies must comply with an order made under these Rules.

(2) Where a Government or public agency seeks to refuse access to evidence on public interest grounds, they must provide the court with a reasoned explanation of the basis for their refusal and must satisfy with the requirements set out in Rule 91(5).

Rule 106. Time of Applications

(1) Applications for access to evidence may be made prior to the initiation of proceedings, in a statement of claim, or in pending proceedings.

(2) If an order has been made prior to the initiation of proceedings, where appropriate, the successful applicant may be required to initiate proceedings within a specified, reasonable, period of time. If the applicant fails to comply with this requirement the court may set aside the order, direct the return of any evidence supplied to the applicant further to the order, impose an appropriate sanction on the party in default, or make any other appropriate order.

Rule 107. The Process for Granting Access Orders

(1) The court shall determine an application for an order under Rule 101(1) for access to evidence according to Rule 50.

(2) Orders under Rule 101(1) may be made by the court on a without-notice basis in very exceptional cases only. Where it does so it must permit parties and affected non-parties to be heard at a with-notice hearing.

(3) If applications for access to evidence are made prior to the commencement of proceedings the court should ordinarily determine the application only after giving any affected party or non-party an opportunity to respond and make representations concerning the grant of the order, its scope and proposed implementation.

(4) The party or non-party from whom access to evidence is sought may apply for the grant of a different but no less effective form or method of access. Such an application must demonstrate that the proposed alternative will be less burdensome to the party to whom it is to provide access.

Rule 108. Costs and Security

(1) The cost of implementing an order for access to evidence shall be borne by the applicant. Where appropriate the court may require the applicant to make an immediate payment of costs to a party or non-party against whom the order is made.

(2) The court may, upon the application of the person against whom an order for access to evidence is made, order security to be given by the party in whose favour the order is made. The order shall be for any predictable expense to be incurred in the implementation of that order. If security is required by the court, it must be provided before any order for access can be given effect.

(3) At the conclusion of the proceedings the court may determine the incidence of costs differently from the general rule.

Rule 109. Implementation

The court shall ensure that any such necessary and practical steps required to implement orders for access to evidence are implemented fairly and effectively. Such steps may include:

(a) issuing directions concerning the appropriate place and manner in which the order is to be carried out;

(b) directing that the applicant may be assisted by an expert;

(c) or, by making any relevant order under Part X of these Rules.

Rule 110. Non-compliance with Access Orders

(1) The court may impose any one or more of the following sanctions upon any party or non-party who is subject to, and aware of, an order requiring the giving of access to evidence, and destroys or conceals such evidence, or otherwise renders it impossible to carry out the order successfully

(a) declaring as admitted the facts which form the subject-matter of the relevant order for access to sources of evidence;

(b) treating the defendant or prospective defendant as having impliedly conceded the basis or any relevant part

of the claim which has been made or which was proposed by the applicant;

(c) imposing on the relevant respondent to the order (and in accordance with the relevant court's established disciplinary powers) an appropriate penalty per day of delay in implementing the order.

(2) An order made under Rule 110(1) must be proportionate to the nature of the non-compliance and may only be made on application of the party in whose favour the order requiring access to evidence was made.

(3) This Rule is without prejudice to any other sanctions or disciplinary procedural measures available to the court, including measures according to Rules 27 and 99.

SECTION 3 – Types of evidence

A. Documents

Rule 111. Documentary and Electronic Evidence

(1) Parties may offer any relevant document as evidence.

(2) Document means anything in which information is recorded or maintained in any form, including but not limited to paper or electronic form. Information may be recorded in writing, pictures, drawings, programmes, voice messages, or electronic data, including e-mail, social media, text or instant messages, metadata, or other technological means. It may be maintained electronically on, but not limited to, computer, portable electronic devices, cloud-based or other storage media.

(3) Documents that a party maintains in electronic form must ordinarily be submitted or produced in electronic form, unless the court orders otherwise.

(4) Parties may challenge the authenticity of any document submitted as evidence. In such a case, the court must order the parties to take such steps as are necessary to establish the document's authenticity.

Rule 112. Authentic Instruments

(1) An authentic instrument is a document, which has either been formally drawn up or the authenticity of which has been certified by a public authority.

(2) Electronically recorded authentic instruments have the same probative force as those recorded in paper.

Rule 113. Documents: Language and Translation

(1) On the application of a party or on the court's own motion, any document shall be produced in or translated into a language of the court.

(2) Translation of lengthy or voluminous documents may be limited according to Rule 20(2).

B. Testimonial Evidence

Rule 114. Witnesses of Fact

(1) Subject to considerations of relevance, admissibility, case management and privilege or immunity, a party may present the evidence of any witness of fact.

(2) If a witness whose evidence satisfies the requirements of Rule 114(1) refuses to give evidence, whether in whole or in part, they can be ordered to do so by the court.

(3) A witness is under an obligation to tell the truth while giving their evidence. The court may require a witness to give their evidence under oath. The court may instruct the witness accordingly prior to the examination.

Rule 115. Witness evidence

(1) Ordinarily, witness evidence should be received orally. The court may, however and upon having received submissions from the parties on the issue, require that such evidence be given initially in writing. Such written evidence must be supplied to all other the parties in advance of the hearing where the witness is to give oral evidence. Oral evidence at a hearing may be limited to

supplemental questioning following the presentation of a witness's written evidence.

(2) Each witness shall appear in person unless the court allows the use of video-conferencing or of similar technology with respect to that witness.

(3) A person giving evidence may be questioned first by the court or the party adducing their evidence. Where a witness has first been questioned by the court or by party other than the one adducing their evidence, that party must be given the opportunity to put supplemental questions directly to the witness.

(4) Parties may challenge the reliability of witness evidence.

Rule 116. Witnesses: Language and Translation

(1) Where a witness is not competent in an official language in which the proceeding is being, or may be, conducted interpretation or translation must be provided by the court.

(2) Where appropriate, and with the court's and parties' consent, a witness may testify in a language other than the official language of proceedings.

Rule 117. Witness Statements

(1) A party may, with the court's consent, present a written statement of sworn testimony from any person. Such a statement must be in their own words and contain their testimony about relevant facts.

(2) The court, in its discretion, may consider such written statements as if they were made by oral testimony at a hearing before the court.

(3) A party may apply for an order requiring the personal appearance of the author of such a written statement before the court. Where such an order is made, the witness may be examined by way of supplemental questioning by the court or the opposing party.

C. Examination of Parties

Rule 118. Examination of Parties and Consequences of Refusal to Respond

(1) The court may accord evidentiary effect to any statement made by a party that has been questioned before the court. Rule 114(3) applies correspondingly.

(2) Each party shall be given an opportunity to question their opponent in front of the court on relevant issues of fact.

(3) The court can draw relevant inferences if a party unjustifiedly refuses to appear at a hearing or to answer any relevant question put to them by their opponent or by the court or refuses to swear an oath.

(4) If the party to be questioned is a legal person, it shall provide the identity of the natural person or persons who participated directly in the relevant course of events on its behalf, in order for them to be questioned, provided they can still be considered as a representative of that legal person. The court may draw relevant inferences if a legal person fails, without justification, to provide this information.

D. Expert Evidence

Rule 119. Party-appointed Experts

Parties may present expert evidence on any relevant issue for which such evidence is appropriate. They may do so through an expert of their choice.

Rule 120. Court-appointed Experts

(1) The court may appoint one or more experts to give evidence on any relevant issue for which expert evidence is appropriate, including foreign law.

(2) Experts can be individuals or legal entities. In the case of legal entities at least one individual must assume responsibility for the expert's report.

(3) If the parties agree upon an expert, the court ordinarily should appoint that expert.

(4) Parties may object to the appointment of a court-appointed expert on grounds of bias. Where there is a reasonable apprehension of bias, the court must either, as relevant, refuse to appoint the expert, rescind their appointment or set aside their evidence in its entirety.

Rule 121. Instructions to Court-appointed Experts

(1) The court shall instruct experts concerning the issues on which they are to provide evidence. It should set reasonable time limits within which any such expert should submit their written report or reports.

(2) In an appropriate case, the court may extend or limit the scope of its instructions to an expert. It may also vary any time limit for submission by an expert of their report.

(3) The court must inform the parties of any orders given or varied under this Rule.

(4) Where a party objects to the nature or scope of instructions given by the court to an expert, it may apply to the court to vary those instructions.

Rule 122. Duties of Experts

(1) An expert, whether appointed by the court or by a party, owes a duty to the court to present a full, objective and impartial assessment of the issue addressed.

(2) No expert may give evidence outside their field of expertise. An expert may also refuse to give evidence for the same reasons a witness may refuse to give evidence.

(3) An expert must not delegate their task to third parties unless authorised to do so by the court.

(4) Where an expert, without a reasonable explanation, fails to render their evidence within time limits set by the court, the court may impose appropriate sanctions.

Rule 123. Expert Access to Information

(1) Court-appointed experts should be provided with access to all relevant and non-privileged information necessary to enable them to prepare their written report.

(2) In particular, a court-appointed expert may ask a party to provide any information, to provide access to any documents, permit inspection of property or entry upon land for the purposes of inspection, to the extent that such are relevant and material to the proceedings.

(3) In appropriate circumstances, an expert may examine a person or have access to information derived from a physical or mental examination of that person.

Rule 124. Expert Reports and Oral Evidence

(1) Expert evidence should ordinarily be given in the form of a written report. However, in simple cases, the court may order that expert evidence be given orally.

(2) An expert may give oral testimony to explain their written report either on the court's request or on the application of any party. Subject to any applicable legal provisions, such oral testimony may be given at a hearing or via any appropriate means of distance communication, such as, but not limited to, video-conferencing.

(3) The court may require an expert to give their evidence, whether that is in the form of a written report or by way of oral testimony, on oath.

(4) Where an expert gives oral testimony, parties may only ask the expert questions that are relevant to their report.

(5) If a party-appointed expert fails to appear when duly summoned to attend an oral hearing, and does so without a valid reason, the court may disregard that expert's written report.

Rule 125. Costs

(1) The fees and expenses of a court-appointed expert shall form part of the costs of the proceedings. The court may order that a party who applies for an expert to be appointed pay their fees in advance.

(2) The fees and expenses of a party-appointed expert shall only be recoverable from the other party if the court so orders.

E. Judicial Inspection

Rule 126. Judicial Inspection in General

(1) A party may apply for an order permitting the examination of persons or things. To facilitate such an examination the court may authorise access to evidence, including access to land or private premises. To ensure the adequacy of inspection, access may be subject to such conditions as the court considers just with regard to the special circumstances of the case and in accordance with applicable law.

(2) A party may apply for permission to carry out a physical or mental examination of a person. The court, in consultation with the parties, shall determine the timing and arrangements for such an examination.

(3) The court may inspect or require the inspection of evidence by a court-appointed or party-appointed expert, as it deems appropriate.

(4) Parties and their representatives may attend an inspection or examination ordered under this Rule, unless the court provides otherwise.

(5) In this Rule and in Rule 127(1), 'things' refers to any physical or electronic item, movable or immovable elements of such items.

Rule 127. Non-Parties and Judicial Inspection

(1) The court may order non-parties to produce things for inspection by the court or a party.

(2) The provisions set in Section 2 of Part VII of these Rules apply to any order to be made or made under Rule 127(1).

SECTION 4 - Cross-border issues

A. In the European Union

Rule 128. Cross-border Evidence-Taking within the European Union

(1) When evidence has to be taken in another European Union Member State and when access is needed to evidence located in another Member State, the court and the parties may rely on the provisions of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

(2) Without prejudice to the application of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters,

(a) the court may directly summon a witness residing in another Member State;

(b) the court may appoint an expert to submit a report, the preparation of which requires the undertaking of activities (inspection of persons or premises located) in another Member State;

(c) a party or non-party, to whom an order for access to evidence is addressed, and who is residing or domiciled in the Member State of the court, is under a duty to produce the required documents and evidence, even if they are located in a Member State different to the one of the court issuing the order;

(d) a court may address an order for access to evidence to prospective parties and to non-parties domiciled in another Member State.

B. Outside the European Union

Rule 129. Cross-border Evidence Taking of outside the European Union

When evidence needs to be taken outside the European Union or when the addressee of an order for access to evidence has no domicile or habitual residence within the European Union, the court and the parties may rely on the provisions of the Convention on the taking of evidence abroad in civil or commercial matters (Hague Evidence Convention of 18 March 1970) or of other relevant international conventions.

PART VIII – JUDGMENT, *RES JUDICATA* AND *LIS PENDENS*

SECTION 1 – General Part

Rule 130. Types of judgment

(1) The court may give

(a) a final judgment, which is a judgment deciding the whole of a claim for relief;

(b) a judgment deciding part of a claim for relief (a partial judgment);

(c) where more than one claim for relief is made, a final judgment deciding one or more, but not all, of the claims for relief;

(d) a judgment on preliminary procedural issues or on specific legal issues on the merits (see Rule 66);

(e) a judgment in default.

(2) Where the court gives a judgment that does not decide the whole of a claim for relief, the proceedings continue in respect of such parts for which judgment has not been given. If the court's judgment on a part of the claim for relief, on a procedural issue, or on legal issues on the merits is subject to appeal the court may exercise its discretion whether to continue or stay the proceedings according to the circumstances of the case.

Rule 131. Structure of a judgment

A judgment must contain

(a) the court's designation and composition;

the place and date of the judgment;

(b) the names of the parties and, if applicable, of their lawyers;

the relief claimed;

the order of the court;

(c) the legal and factual grounds for the judgment;

(d) the signature of the judge or judges, if necessary;

(e) the signature of the court clerk, if necessary; and

(f) where relevant, information on formal requirements of any available means to challenge the decision.

Rule 132. Contents of judgments

(1) A judgment, depending on the nature of the relief claimed, may

(a) order a defendant to do or not to do something,

(b) create, alter or terminate a legal relationship,

(c) make a declaration of rights, or

(d) dismiss the claim for relief either on procedural grounds or where it determines it to be without merit.

(2) The court may only grant a declaratory judgment, including a negative declaratory judgment, if the claimant can establish that they have a legitimate interest in obtaining the declaration sought.

Rule 133. Procedural requirements of judgments on the merits

The court may only give a judgment on the merits when it is satisfied that

(a) the parties have litigation capacity according to Rules 29(2)-31, 34, 35, and 45-46;

(b) the court has subject matter and territorial jurisdiction;

(c) there are no pending proceedings involving the same parties and the same cause of action in another court unless an exception provided for in the Rules on *lis pendens* applies;

(d) the cause of action between the parties is not *res judicata*;

(e) the claimant has a legitimate interest to commence the proceedings on its claim for relief; and

(f) any other procedural requirement specified in these Rules is met.

Rule 134. Service of judgment

A judgment must be served on all parties by a method provided for in Part VI of these Rules.

SECTION 2 – Special Part

A. Default Judgment

Rule 135. Entry of Default judgment against a claimant

(1) The court must enter a default judgment dismissing proceedings where

(a) a claimant has failed to appear at a hearing at which they were required to appear; and

(b) a defendant has applied for default judgment to be entered.

(2) The court may not enter default judgment under this Rule on its own motion.

Rule 136. Entry of Default judgment against a defendant

(1) The court must enter a default judgment against the defendant, where a defendant has

(a) failed to reply to a statement of claim within the time limit for filing a defence, or

(b) failed to appear at a hearing at which they were required to appear; and

(c) a claimant has applied for default judgment to be entered.

(2) A court entering judgment on the application of a claimant shall

(a) where the facts submitted by the claimant justify it on the merits, grant the relief sought, or

(b) where the facts submitted by the claimant do not justify the grant of relief, dismiss the proceedings on the merits.

Rule 137. Default judgments on a part of a claim for relief or on one of several claims for relief

(1) The court may enter a default judgment on part of a claim for relief or on one of several claims for relief where

(a) a party fails to appear at a hearing that is dedicated exclusively to that part of the claim, or to one of several claims, for relief, or

(b) a defendant fails to reply to the statement of claim in respect of that part of the claim, or to one of several claims, for relief.

(2) Where the court is able to give, but has not yet given, judgment under Rule 130 on part of a claim for relief or on one of several claims for relief, and a party is in default, the court must

(a) enter judgment on that part of a claim for relief or on one of several claims for relief, and

(b) enter a default judgment in respect of the other part or parts of the claim for relief or other claims for relief.

Rule 138. Conditions precedent for granting a default judgment

(1) The Court may enter a default judgment on the basis of a party's failure to appear at a hearing only if

(a) notice of the date and time of the hearing was served on that party by a method provided for by these Rules, and

(b) the Court is satisfied that the period between service and the hearing was adequate.

(2) The Court may only enter a default judgment against a defendant for failing to reply to a statement of claim if

(a) the statement of claim was served on the defendant by a method provided for by these Rules,

(b) the time limit for filing a defence has expired, and

(c) where no time limit was prescribed by the rules, service was effected in sufficient time to enable the defendant to arrange their defence.

(3) The court may enter a default judgment against a defendant even if no receipt of service has been submitted to the court if

(a) no proof of any other kind has been received although reasonable efforts have been made to obtain evidence that the defendant actually received the documents instituting the proceedings, and

(b) a period of time not less than three months, which is considered to be adequate by the court to enable the defendant to arrange their defence has elapsed since the date of service by a method provided for by these Rules.

(4) Notwithstanding Rule 138(3)(a) and (b), the court may grant, in case of urgency, any provisional or protective measures.

Rule 139. Application to set aside a default judgment

The party against whom a default judgment has been entered may apply to have the judgment set aside on the basis that

(a) any of the conditions precedent for entry of the default judgment were not met, or

(b) the party against whom the default judgment was entered was either not responsible for the default or the default was excusable.

Rule 140. Time limit to apply to set aside a default judgment

(1) An application to set aside must be made within 30 days of the date of service of the default judgment. In cross-border cases,

the application must be made within 60 days of the date of the service of the default judgment.

(2) The court may extend the time limit under Rule 140(1) where the defendant can show good reason for their non-compliance. No application to set aside can, however, be brought more than one year and, in cross-border cases, two years after the default judgment was entered.

B. Judicial Settlements

Rule 141. Judicial settlements

(1) When parties reach a consensual settlement of their dispute, either before or after proceedings have commenced or during proceedings, they may apply to the court to enter a decision giving effect to the agreement.

(2) A decision giving effect to the agreement shall not be entered if it is contrary to law or the court would not have the power to enter a judgment in the terms of the parties' agreement.

(3) If the court refuses to give effect to the settlement, any party to it can appeal from the refusal. The rules applicable to first appeals apply to such an appeal (See Part XI, Section 2).

SECTION 3 – Effects of Pendency and Judgments

A. *Lis pendens* and related actions

Rule 142. Pendency

(1) Where proceedings involving the same cause of action and between the same parties are brought in different courts, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established (the priority principle).

(2) Where Rule 142(1) applies, the court seised of the dispute may request any other court seised to provide it with information about the proceedings pending before it and the date on which it was seised in accordance with Rule 145. The court providing the information shall provide it the requesting court without delay.

(3) Where the jurisdiction of the court first seised is established, the court shall order parallel proceedings to be consolidated in accordance with Rule 146. Where proceedings have been consolidated, any court other than the court first seised shall decline its jurisdiction in favour of that court. When the requirements for consolidation are not met any court other than the court first seised shall, as appropriate, stay or dismiss the proceedings.

Rule 143. Exceptions from the Priority Principle

(1) When the court second seised has exclusive jurisdiction, the court first seised must decline jurisdiction in favour of that court. In such a case the court that has exclusive jurisdiction must not stay its proceedings.

(2) Rule 143(1) does not apply when both courts have exclusive jurisdiction.

(3) Without prejudice to Rules protecting weaker parties and without prejudice to jurisdiction by appearance, where a court upon which an agreement confers exclusive jurisdiction is seised, any other court must stay proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under it.

(4) Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any other court shall decline jurisdiction in favour of that court.

Rule 144. Related Proceedings

(1) Where related proceedings are pending in different courts, any court other than the court first seised may stay its proceedings.

(2) Where the proceeding in the court first seised is pending at first instance, any other court must also decline jurisdiction if the court first seised has consolidated proceedings according to Rule 146.

(3) For the purposes of this Rule, proceedings are deemed to be related where there is a relationship between the causes of action such that it would be in the interests of justice to determine them together.

Rule 145. Time at which a court is seised for the purposes of pendency and relatedness

(1) The court is deemed to be seised:

(a) at the time when the statement of claim or an equivalent document is filed with the court, provided that the claimant has not subsequently failed to effect service on the defendant according to these Rules, or

(b) if the statement of claim or an equivalent document has to be served before being filed with the court, at the time when it is received by an authority responsible for service, provided that the claimant has not subsequently failed to take steps required to file it with the court.

The authority responsible for service referred to Rule 145(1)(b) is the first authority that receives the documents to be served.

(2) Where a statement of claim is filed during proceedings it becomes pending at the time when it is invoked in the hearing or when it has been filed with the court or served on the other party.

(3) The court, or the authority responsible for service, referred to in Rule 145(1), shall note, respectively, the date the statement of claim or the equivalent document is filed, or the date of receipt of the documents to be served.

Rule 146. Consolidation of Proceedings

(1) Where the jurisdiction of the court first seised is established, it may, upon application of one of the parties, order the consolidation of several sets of proceedings under Rules 142 and 144.

(2) The court first seised may only consolidate proceedings when it has jurisdiction to hear them and when such parallel proceedings are pending at the first instance.

(3) Before ordering consolidation the court shall hear the parties and communicate with any other courts seised.

(4) When the court first seised has assumed jurisdiction over the proceedings and has consolidated them, any other court must decline jurisdiction.

(5) Consolidation does not prejudice any procedural or substantive consequences of the filing or pendency of parallel proceedings.

(6) When consolidation is not possible in the court first seised, the court second seised may, on application of any party, consolidate the proceedings, as appropriate, under Rule 146(1)- (5).

B. Res judicata

Rule 147. Types of judgment that become *res judicata*

(1) Final, including partial judgments, default judgments, and judgments that decide procedural issues or issues on the merits are *res judicata.*

(2) Provisional measures do not have *res judicata* effects on the merits of the issues in dispute in proceedings.

Rule 148. Judgments that are *res judicata*

A judgment is *res judicata* when ordinary means of recourse are not or are no longer available.

Rule 149. Material Scope of *res judicata*

(1) The material scope of *res judicata* is determined by reference to the claims for relief in the parties' pleadings, including amendments, as decided by the court's judgment.

(2) *Res judicata* also covers necessary and incidental legal issues that are explicitly decided in a judgment where parties to subsequent proceedings are the same as those in the proceedings determined by the prior judgment and where the court that gave that judgment could decide those legal issues.

(3) Res *judicata* also applies where a defendant brings a defence based on set-off and

(a) the claim and that defence are upheld by the court, or

(b) the claim is admitted and the defence of set-off is rejected.

(4) Where a claim is rejected on grounds other than set-off, so that the court does not decide the set-off defence, only the judgment on the claim becomes *res judicata.*

Rule 150. Modification of judgments requiring periodical performance

(1) Where a judgment that has become *res judicata* requires periodic performance, on application by a party, the court may vary the judgment prospectively.

(2) A judgment may only be varied under this Rule where there is a substantial change of circumstances.

Rule 151. Persons bound by *res judicata*

Only parties to proceedings, the heirs and successors are bound by those parts of a judgment that are *res judicata*.

Rule 152. Court assessment of *res judicata* of its own motion (*ex officio*)

The court shall take *res judicata* into account of its own motion.

PART IX – MEANS OF REVIEW

SECTION1- General Part

Rule 153. Right of appeal or to seek recourse

Where a party, or exceptionally a non-party, has a legal interest in a judgment, subject to the provisions in this Part, they may appeal from, or rely on other types of recourse against, it.

Rule 154. Waiver of right to appeal or to seek recourse

(1) A party may waive their right of appeal or to seek recourse. Waiver must be informed and express. Waiver may be given to the court in writing before or during a court hearing, or given orally in a court hearing.

(2) Waiver may be effected before a first instance judgment or other decision or a first appeal judgment is made. Such a waiver may only be made where it is agreed by all the parties.

(3) Where a party is bringing or defending proceedings as a consumer, they cannot waive their right to appeal before judgment has been made.

(4) All waivers must be recorded by the court in a judgment or other official record, if any.

SECTION 2 – Appeals

Rule 155. Notice of appeal - General

(1) An appeal is commenced by way of filing a notice of appeal with the relevant court of Appeal.

(2) Upon being filed with the court, notice of appeal must be served on the respondent, in accordance with Part VI of these Rules.

Rule 156. Time limits for appeals

(1) For a first appeal, the notice must be filed with the court within one month of service of the judgment.

(2) For a second appeal, the notice must be filed with the court within two months of the service of the judgment.

Rule 157. Contents of the notice of and reasons for appeal – First Appeal

(1) A notice of appeal for a first appeal must state that an appeal is being commenced and must identify the judgment subject to the appeal. It may also provide reasons for the appeal. Reasons for the appeal if not set out in the notice of appeal should be set out in a separate document.

(2) The reasons for the appeal must specify

(a) the relief sought;

(b) the legal arguments, substantive and procedural, on which the appeal is based in respect of both its admissibility and substance;

(c) if applicable, the grounds for which any evaluation of evidence was seriously wrong; and

(d) if applicable, any new facts to be alleged and new means of evidence that will be introduced in the appeal, and the reasons why they ought to be admitted.

(3) Where reasons for the appeal are set out in a separate document from the notice of appeal they must be served within two months of service of the judgment, unless the court orders otherwise.

Rule 158. Contents of the notice of and reasons for appeal – Second Appeal

(1) A notice of appeal for a second appeal must state that an appeal is being commenced and must identify the judgment subject to the appeal. It must also provide the reasons for the appeal.

(2) The reasons for the second appeal must contain:

(a) the relief sought; the legal arguments, procedural and substantive, on which the second appeal is based.

Rule 159. Response to the notice of appeal – General

(1) The respondent to an appeal must file with the court and serve on the appellant a reply to the notice of appeal (the reply) within two months of service of the notice of appeal, unless the court orders otherwise.

(2) The appellant must respond to the reply within two weeks of service, unless the court orders otherwise.

Rule 160. Contents of a respondent's reply

A reply may contain the following

(a) reasons why the appeal court should uphold the judgment subject to appeal; or

(b) notice of and reasons for appeal from the judgment subject to appeal, which seek to uphold the judgment for different reasons to those given in the judgment.

Rules 157(2) and Rule 158(2) apply according to whether the reply concerns a first or second appeal.

Rule 161. Derivative appeals

(1) A party that has lost their right of appeal due to the expiry of the time limit for filing a notice of appeal in Rule 156(2), may appeal if another party (the appellant) appeals from the judgment.

(2) The party bringing a derivative appeal (a derivative appellant) must serve a Notice of Appeal. Rules 156 – 159 apply accordingly.

(3) A derivative appeal lapses if the appellant's appeal is not heard on its merits.

(4) A respondent to a derivative appeal must file a response to it. Rules 159-160 apply accordingly.

Rule 162. Provisional enforcement

(1) Unless otherwise provided for, final judgment and any appellate court judgments are enforceable immediately regardless of whether an appeal has been commenced by filing a notice of appeal.

(2) An appellant may apply to the appellate court to stay enforcement if they have filed a notice of appeal and enforcement is manifestly excessive.

(3) Security may be required from an appellant as a condition of granting a stay or from a respondent as a condition of refusing to grant a stay.

Rule 163. Withdrawal

(1) A party that has commenced a first appeal can withdraw their appeal at any time.

(2) A second appeal can only be withdrawn by a party with the consent of the other party and the court.

(3) A party that withdraws an appeal must bear the costs, including any court fees, incurred by other parties because of the appeal.

Rule 164. Representation in an Appeal Court

(1) If representation is not mandatory according to applicable law, afirst appeal court may require a party to be represented by a lawyer if they are incapable of representing themselves in an understandable manner or if it is necessary for the proper administration of justice.

(2) Parties must be represented by a lawyer in proceedings before a second appeal court.

Rule 165. Extension of deadlines – non-domiciled parties

Where a party is not domiciled in the State whose court is seised of the proceedings, any time limit applicable to an appeal is extended by one month unless the court provides otherwise.

SECTION 3 – First Appeals

Rule 166. Right to appeal

(1) A party has a right to appeal against a first instance judgment if

(a) the value of the appealed claim exceeds [the value of the appealed claim as determined by applicable law, for instance twice the average monthly wage in the forum State] or

(b) the appeal court grants permission to appeal based on the contents of the notice and reasons for appeal.

(2) In deciding whether to grant permission to appeal, the appeal court shall take the following into account

(a) whether the legal issue in dispute is of fundamental significance, or

(b) the further development of the law, or the public interest in securing uniform adjudication require an appellate decision, or

(c) fundamental procedural requirements have been violated.

(3) The appeal court shall, on its own motion, assess whether the requirements of Rule 166(1) and (2) have been met.

Rule 167. Scope of a first appeal

(1) A first appeal can be brought against the whole, or part, of a first instance judgment.

(2) In general, the relief sought is limited by what was claimed or defended at first instance.

(3) However, the relief sought may be broadened or amended within a first appeal if

(a) all parties to the appeal consent, or

(b) the court considers it appropriate for the proper administration of justice.

Rule 168. New facts and taking evidence

(1) Within the relief sought, the appellate court shall consider new facts alleged by the parties

(a) in so far as those facts could not have been introduced before the first instance court, or

(b) in so far as the first instance court failed to invite the parties to clarify or supplement facts that they had introduced to support their claim or defence under Rules 24(1) and 53(3).

(2) Within the relief sought, the appellate court shall take evidence offered by the parties only if

(a) the evidence could not have been offered to the first instance court;

(b) the evidence was offered to the first instance court and was erroneously rejected or could not be taken for reasons outside the party's control; or

(c) the evidence concerns new facts admissible according to Rule 168(1).

Rule 169. Scope of appellate review – first appeal

(1) Within the relief sought, the appellate court's review shall encompass

(a) the application of the law in the judgment;

(b) the legality of the proceedings in the first instance court, provided that the appellant challenged the error

complained about immediately before the first instance court if such challenge was possible;

(c) evaluation of the evidence if the appellate court determines that such a review is warranted in order to prevent serious injustice.

(2) The appellate court will reverse a first instance judgment for procedural error only if it potentially influenced the judgment or if it was so grave that such influence need not be proven.

Rule 170. First appeal court decisions

(1) In general, the appellate court shall decide the matter that forms the substance of the appeal.

(2) The appellate court may refer the matter back to the first instance court, if necessary, for it to decide the matter.

(3) If the parties to the appeal agree to it, the appellate court must decide the matter.

Rule 171. Contents of the First Appeal Court's judgment

In so far as it agrees with the first instance court's judgment, the appellate court's judgment may refer to the legal and factual grounds in that judgment. It may also set out its own reasons in its judgment. In the latter case, the appellate court is deemed to have adopted the legal and factual grounds of the first instance judgment which are not contrary to its own reasoning.

SECTION 4 – Second Appeals

Rule 172. Right to a second appeal

(1) A party may only appeal from a first appeal judgment if such an appeal is necessary to

(a) correct a violation of a fundamental right,

(b) secure uniformity in the law,

(c) decide a fundamental question which is not limited to the case at issue, or

(d) develop the law.

(2) A second appeal court shall, on its own motion, assess whether the requirements of Rule 172(1) have been met.

Rule 173. Scope of a second appeal

(1) A second appeal can be brought against the whole, or part, of a first appeal judgment.

(2) The relief sought is limited by what was claimed or defended in the first appeal.

Rule 174. Scope of appellate review – second appeal

(1) Within the relief sought, as far as admissible, the second appeal court's review shall encompass

(a) the interpretation and application of the law in the first appeal judgment;

(b) the legality of the proceedings in the first appeal court, provided that the appellant challenged the error complained about immediately before that court.

(2) The second appeal court will reverse the first appeal judgment for a procedural error only if the procedural error has potentially influenced the judgment or if it was so serious that such influence need not be proven.

Rule 175. Second Appeal Court decisions

(1) The second appeal court shall determine the substantive issue before it if

(a) it is to reverse the first appeal judgment having held that there had been a violation of the law, and

(b) it has concluded that it can determine the issue.

(2) In all other circumstances, the second appeal court must refer the matter back to the first appeal court for it to finally determine the matter. In such a circumstance, the first appeal court is bound by the second appeal court's assessment of the law.

Rule 176. Contents of the Second Appeal Court's judgment

A second appeal court must provide its own reasons in its judgment. If they are adequate, it may refer to the reasons given in the first appeal court's or the first instance court's judgment.

Rule 177. Leapfrog appeal

(1) Instead of a regular appeal to the first appeal court, an appeal may be brought directly to the second appeal court (a leapfrog appeal).

(2) A second appeal court may only grant permission to bring a leapfrog appeal if

(a) an appellant applies directly to it to bring such an appeal, setting out its reasons why permission should be granted, and does so within the time limits applicable to a first appeal;

(b) the appellant's application complies with Rule 158;

(c) the requirements of Rule 172(1) are met.

(3) An appeal under this rule is deemed to be a second appeal, and the Rules applicable to second appeals apply accordingly.

SECTION 5 - Review of procedural error and miscellaneous appeals

Rule 178. Immediate review of procedural error

(1) If a party, or non-party affected by a procedural order, fails to challenge a procedural error that was caused by the court or another party immediately upon it being made the error is waived.

(2) Rule 178(1) does not apply if a party acted carefully pursuant to the requirements of Rule 47 or if the rule affected is not subject to waiver by the parties. This Rule applies to non-parties *mutatis mutandis*.

(3) Upon objection and having heard the parties the court may render, revoke or vary court rulings. Rules 49 and 50 apply accordingly.

Rule 179. Separate Appeal Against the Review of Procedural Orders by the Court

(1) Unless otherwise provided for in Rule 179(2), a decision on a challenge toa procedural error cannot be made the subject of a separate appeal.

(2) A separate appeal is available against decisions made in respect of

(a) a stay of proceedings;

(b) the transfer of proceedings to another court;

(c) security for costs;

(d) the exclusion of a party from a hearing or the imposition of a fine on a party;

(e) a refusal to disqualify a judge or court-appointed expert; and

(f) if provided for in a specific rule.

(3) A separate appeal must be filed with the court within two weeks of notice of the decision.

Rule 180. Appeals against procedural decisions that affect non-parties

(1) A person who is not a party to litigation but directly affected by a procedural ruling given by the court has a right of appeal.

(2) The right of appeal must be exercised in accordance with Rule 179(3).

SECTION 6 – Extraordinary Recourse

Rule 181. Scope of an extraordinary motion for review

(1) An extraordinary motion for review re-opens proceedings that have otherwise been finally determined either at first instance or on appeal.

(2) Such a review may, if successful, rescind a judgment that has become *res judicata*. Where it does so the court will give case management directions for the future management of the proceedings.

Rule 182. Grounds for an extraordinary motion for review

(1) An extraordinary motion for review may only be brought against a judgment on the following grounds

(a) the court was wrongly constituted,

(b) a party's right to be heard was violated severely,

(c) a judgment was obtained by fraud or violence,

(d) after a judgment is issued, evidence that would have been decisive to it is recovered or obtained, and such evidence was not available prior to judgment being given due either to force majeure or improper conduct by the party in whose favour the judgment was made, or

(e) The European Court of Human Rights has ruled that the judgment given in national proceedings infringed any of the rights established in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, provided that the infringement, due to its nature and seriousness, entails persistent effects, which can only be stopped by means of such a review; however, in no case may the review affect rights acquired in good faith by third parties.

(2) The motion shall only be admissible under Rule 182(1)(a),(b) or (c) if the applicant was unable, without any fault on their behalf, to raise the ground on which they rely before the judgment that is to be subject to review became *res judicata*.

Rule 183. Time limits and withdrawal

(1) An application by a party for an extraordinary motion for review must be made within three months from the date on which that party became aware of the grounds for review.

(2) In no case may an application be made after ten years have elapsed from the time the judgment, which is to be the subject of such a review, has become *res judicata*.

(3) An extraordinary motion for review can be withdrawn at any time.

PART X – PROVISIONAL AND PROTECTIVE MEASURES

SECTION 1 – General part

Rule 184. Provisional and Protective Measures

(1) A provisional or protective measure is any temporary order that has one or more of the following functions:

(a) to ensure or promote effective enforcement of final decisions concerning the substance of the proceedings, whether or not the underlying claim is pecuniary, including securing assets and obtaining or preserving information concerning a debtor and his assets; or

(b) to preserve the opportunity for a complete and satisfactory determination of the proceedings, including securing evidence relevant to the merits or preventing its destruction or concealment; or

(c) to preserve the existence and value of goods or other assets which form or will form the subject-matter of proceedings (pending or otherwise); or

(d) to prevent harm from being suffered, to prevent further harm, or to regulate disputed issues, pending final judgment.

(2) A provisional or protective measure ordered should be suitable for its purpose.

Rule 185. Proportionality of provisional and protective measures

(1) A provisional and protective measure should impose the least burden on the respondent.

(2) The court must ensure that the measure's effects are not disproportionate to the interests it is asked to protect.

Rule 186. Without-notice (*Ex parte*) procedure

(1) The court may order a provisional or protective measure without-notice ('ex parte') only if, in the circumstances, proceedings with-notice ('inter partes') would frustrate the

prospect of the applicant receiving effective protection of their interests.

(2) When granting an order without-notice the court must give the respondent an opportunity to be heard at the earliest possible time, that date to be specified in the order that was made without-notice. The respondent should be given notice of the order and of all the matters relied upon before the court to support it as soon as possible.

(3) An applicant must fully disclose to the court all facts and legal issues relevant to the court's decision whether to grant relief and, if so, on what terms.

(4) The court must make a prompt decision concerning any objection to the grant of a provisional or protective measure or its terms.

Rule 187. Security

(1) When assessing whether to grant or continue a provisional or protective measure the court may consider whether security can be provided by the respondent in lieu of the order.

(2) As a condition of granting or continuing a provisional or protective measure the applicant may, depending on the circumstances, be required to provide appropriate security.

(3) Security must not be required solely on the basis that the applicant or respondent is not a national or resident of the forum state.

Rule 188. Initiation of Proceedings

(1) Where the applicant has been granted a provisional or protective measure before initiating proceedings under Rules 21(1), 53, such proceedings must be initiated before the date set by the court. Where the court does not set such a date or it is not otherwise specified by the applicable law, the applicant shall initiate such proceedings within two weeks of the date of the issue of the decision granting the remedy. The court can extend the period on the request of a party.

(2) If proceedings have not been initiated as required by Rule 188(1), the measure shall lapse, unless the court provides otherwise.

Rule 189. Review and Appeal

(1) The court may, either on application of a party or on its own motion, modify, suspend, or terminate a provisional or protective measure if satisfied that a change in circumstances so requires.

(2) Decisions that grant, deny, modify, suspend or terminate provisional or protective measures are subject to appeal. Rule 179(3) applies accordingly.

Rule 190. Applicant Liability

(1) If a provisional or protective measure is set aside, lapses, or if the proceedings are dismissed on procedural grounds or on their merits, the applicant must compensate the respondent for such loss or damage caused by the measure.

(2) The applicant is liable to compensate non-parties for any damages, and expenditure incurred as a consequence of complying with the measure.

Rule 191. Sanctions for non-compliance

Except in respect of interim payments, where there is non-compliance with a provisional or protective measure the court may impose a sanction under Rule 27, as appropriate.

SECTION 2 – Special part

A. Asset Preservation

Rule 192. Types of Asset Preservation Measure

A court may grant, on application by a party, any of the following asset preservation orders for the purpose of protecting their claim:

(a) an attachment order, which is an order authorising provisional attachment of the respondent's assets,

(b) an asset restraining order, which is an interim order preventing the respondent from disposing of, or dealing with, their assets, or

(c) a custodial order, which is an order that the respondent's assets shall be placed in the custody of a neutral non-party (a custodian).

Rule 193. Criteria for Awarding Asset Preservation Orders

A party seeking an order under Rule 192 must show that:

(a) their claim for relief has a good chance of succeeding on its substantive merits, and

(b) it is likely that, without such an order, enforcement of a final judgment against the respondent will be impossible or exceedingly difficult.

Rule 194. Limitations on Asset Preservation Orders

Asset Preservation Orders must ensure that a respondent is not prevented from receiving financial allowances, provided the amounts are reasonable, for

(a) ordinary living expenses, and/or

(b) legitimate business expenses, and/or

(c) to enable it to fund legal advice and representation in respect of the proceedings, including such as are necessary for it to respond to the order, including seeking its variation or discharge under Rules 186(4) or 189.

Rule 195. Notification of Asset Preservation Orders and their effects to Respondent

(1) At the earliest possible time after an order has been made under Rule 192, the respondent and any non-parties who are the addressees of an order must be given formal notice of it. Where necessary to enforce the order, non-parties may be given formal notice before the respondent.

(2) The applicant may, if it wishes, inform a non-party of an order before the respondent is given formal notice.

(3) The respondent or any non-parties who are the addressees of an order made under Rule 192 must comply with it as soon as they are notified of the order. In the event of breach, they will be subject (without limitation) to the sanctions listed in Rule 191.

B. Regulatory Measures

Rule 196. Measures to Perform or Refrain from Performing an Action

The court may grant the applicant a measure to regulate the relationship between parties in relation to a non-pecuniary claim for relief on a provisional basis. Such a measure may require the respondent to act or to refrain from acting in a manner specified in the court's order.

Rule 197. Criteria for awarding a Regulatory Measure

A party seeking an order under Rule 196 must show:

(a) it has a good chance of succeeding in the proceedings; or

where there is a significant risk that damages to the respondent will not be capable of providing adequate compensation for any interference with their rights if the proceedings are dismissed, that there is a very strong possibility that the applicant will succeed in the proceedings;

and

(b) the order is necessary to regulate the substantive issue or issues in dispute pending final determination of the proceedings.

C. Evidence Preservation

Rule 198. Evidence Preservation Orders

(1) The court has the power to secure evidence on the application of a party to proceedings through the following interim measures:

(a) hearing witness evidence or taking of witness evidence by a third party acting on its behalf;

(b) requiring the preservation or protection of evidence by the parties or by requiring it to be placed in the custody of a custodian;

(c) appointing an expert to provide expert opinion evidence.

(2) Evidence preservation orders may, where necessary, authorise access to the evidence. Access may be subject to such conditions as the court considers just.

Rule 199. Criteria for awarding an Evidence Preservation Measure

A party seeking an evidence preservation order must show that:

(a) there is a real risk that unless the order is made the evidence will not be available for determining the substantive proceedings on their merits; and

(b) if the order requires access to a party or non-party's property the applicant has a strong prima facie case in respect of the merits of the applicant's claim or proposed claim for relief.

D. Interim Payment

Rule 200. Interim Payment Measures

A court may grant the claimant an interim payment order in relation to a monetary claim, either wholly or in part to satisfy the claim in the proceedings, in anticipation of the expected outcome.

Rule 201. Criteria for awarding an Interim Payment

(1) An applicant seeking an order under Rule 200 must show that:

(a) the defendant has admitted that they are liable to pay a monetary sum to the applicant, or the applicant has obtained a final judgment on liability, or it is highly likely

that the applicant will obtain at least the amount sought in a final judgment; and

(b) they are in urgent need of payment by the defendant.

(2) In assessing whether to make an interim payment order the court should consider all the circumstances, including any potential or actual hardship to the applicant or the respondent as a result of refusing or granting the order.

(3) An interim payment order cannot be made on a without-notice basis.

(4) Where judgment in the proceedings is for a lesser amount than that paid, any over-payment must be repaid.

(5) An interim payment order will ordinarily be made subject to the applicant giving security. If the applicant's claim is absolutely well founded and the requirement to obtain security would frustrate the order's purpose of securing urgent relief for the applicant's economic distress, where that has been at least partially caused by the defendant's delay, the court may grant an interim payment order without or upon reduced security.

SECTION 3 – Cross border issues

Rule 202. International jurisdiction

(1) Within the scope of the European Union Regulations or international conventions, the international jurisdiction of the court in relation to provisional and protective measures is governed by those Regulations or conventions.

(2) In any event, the court having jurisdiction in respect of the proceedings will have jurisdiction to grant provisional and protective measures.

(3) Without prejudice to applicable European Union rules and international conventions, another court may grant such provisional and protective measures necessary to protect interests located within the jurisdiction or the subject-matter of which have a real connecting link with the territory of the court, or that are necessary to support proceedings brought in another country.

Rule 203. Recognition and enforcement

(1) Within the scope of European Union Regulations or international conventions, the recognition and enforcement of provisional and protective measures is governed by those Regulations or conventions.

(2) Where no European Union Regulation or international convention applies, provisional and protective measures will be recognised and enforced in accordance with domestic law.

(3) Courts should, at the request of the parties, take into account provisional and protective measures granted in another country and, where appropriate, and in accordance with these Rules, cooperate in order to secure the effectiveness of those measures.

PART XI – COLLECTIVE PROCEEDINGS

SECTION 1 –Collective Interest Injunctions

Rule 204. Scope of Application

(1) The Rules in Part XI, Section 1 apply to orders, known as collective interest injunction, made by a court, which direct any person to cease any conduct or behaviour that is infringing the law.

(2) A collective interest injunction cannot be made on an interim basis under Part X of these Rules.

Rule 205. Entitlement to apply for a Collective Interest Injunction

(1) Any entity authorised under national law to bring actions in the collective interest may apply for a collective interest injunction that requires the cessation of any infringement of the law.

(2) Where appropriate the court may order additional measures such as the publication of its decision with a view to eliminating the continuing effects of the infringement.

Rule 206. Effect of collective interest injunctions

A collective interest injunction binds the defendant in all future proceedings.

SECTION 2 – Collective Proceedings

A. General Part

Rule 207. Collective Proceedings

Collective proceedings are proceedings brought by a qualified claimant on behalf of a group of persons who it is alleged are affected by an event giving rise to a mass harm, but where those persons, known as group members, are not parties to the action.

Rule 208. Claimants Qualified to Bring Collective Proceedings

A qualified claimant is:

(a) an organisation authorised, in accordance with national law, to bring collective proceedings and whose purpose has a direct relationship with the event giving rise to the mass harm,

(b) an entity which is established solely for the purpose of obtaining redress for group members and which satisfied the requirements of Rule 209; or

(c) a person who is a group member and who meets the requirements of Rule 209(a)-(c).

Rule 209. Requirements for qualified claimants

A person or entity shall not be a qualified claimant unless:

(a) they have no conflict of interest with any group member,

(b) they have sufficient capability to conduct the collective proceeding. In assessing this issue, the court shall take account of the financial, human and other resources available to the putative qualified claimant If

appropriate, the court may require security for costs (see Rule 243),

(c) they are legally represented, and

(d) they are neither a lawyer nor exercising any legal profession.

Rule 210. Collective Proceedings – Statement of Claim

(1) A statement of claim in collective proceedings must include all relevant information available concerning

(a) the event giving rise to the mass harm,

(b) the group,

(c) the causal connection between the event of mass harm and the loss suffered by the group members,

(d) the similarity of the claims of the group members in law and fact,

(e) whether compensation or other collective remedies are sought,

(f) the financial and other resources available to the qualified claimant to pursue the collective proceeding,

(g) evidence of the qualified claimant's attempt to settle the group members' claims.

(2) Before commencing collective proceedings and upon the application of a qualified claimant, the court may issue an order preventing a potential defendant from bringing an action with respect to the event of mass harm.

Rule 211. Registration of Collective Proceedings

(1) Upon the qualified claimant submitting a collective proceedings statement of claim to the court, the court must enter the proceedings into a publicly accessible electronic register.

(2) After registration any other court must dismiss any collective proceedings against the same defendant(s) in respect of the same mass harm.

B. Admissibility of Collective Proceedings

Rule 212. Conditions of Admissibility

(1) The court may admit a collective proceeding if

(a) it will resolve the dispute more efficiently than joinder of the group members' individual claims,

(b) all of the claims for relief made in the proceeding arise from the same event or series of related events causing mass harm to the group members,

(c) the claims are similar in law and fact, and

(d) except in cases of urgency, the qualified claimant has allowed the defendant or defendants at least three months to respond to a settlement proposal.

(2) Upon application, the court may order any proceeding to continue as a collective proceeding.

Rule 213. Collective Proceeding Order

(1) An order made under Rule 212 must include the following information:

(a) the name and address, and other relevant contact details of the qualified claimant

(b) a concise description of the event of mass harm giving rise to the collective proceeding;

(c) the names or a description of all of the persons allegedly affected by the mass harm. The description must contain sufficient detail to enable any person allegedly affected by the event causing mass harm to know if they are within the group or not;

(d) the type of collective proceeding under Rule 215.

(2) Before making an order under this Rule the court shall advertise a draft of the order and set a deadline for any other potential qualified claimants to apply under Rule 207.

(3) The court shall determine which of several potential qualified claimants, if any, shall become the qualified claimant in the proceedings. It shall do so on the basis of the criteria set out in,

among others, Rule 209. Where more than one qualified claimant is selected they must act jointly.

(4) The collective proceeding order shall be advertised in a manner which the court considers will best bring it to the attention of any person likely to be affected by the event causing mass harm on which the proceeding is based. The advertisement shall invite such persons to opt-in to the proceeding and shall give information on how to do so.

(5) The collective proceeding order or the refusal to grant such an order are subject to appeal by the qualified claimant and the defendant.

Rule 214. Obligation of Qualified Claimant

A qualified claimant must at all times act in the best interests of the whole group or sub-group, if a qualified claimant for a sub-group.

Rule 215. Types of Collective Proceeding

(1) Collective proceedings shall operate on an opt-in basis unless the court makes an order under Rule 215 (2).

(2) The court may order that the proceedings will include all group members who have not opted-out of the proceedings under Rule 215(3) where it concludes that:

(a) the group members' claims cannot be made in individual actions because of their small size; and

(b) a significant number of group members would not opt-in to the collective proceeding.

(3) Where the court makes an order under Rule 215(2) it must set a deadline for group members to notify the court that they wish to opt-out. In exceptional circumstances the court may permit group members to opt-out after the deadline has expired.

(4) The court shall decide to whom and how notification under Rule 215(3) shall be given.

Rule 216. Opt-in Proceedings

(1) Where collective proceedings operate on an opt-in basis, group members must notify the court if they wish to join the proceedings in the manner specified by the court.

(2) The court shall ensure that group member notifications are properly recorded in a public register, which may be established in accordance with Rule 220.

Rule 217. Individual Actions

(1) Group members who have opted-in under Rule 216 or who have not opted-out under Rule 215(3) cannot bring an individual court action in respect of the same event of mass harm against a defendant to the collective proceeding.

(2) In cases under Rule 215(2) any group member who brings an individual action against a defendant to collective proceedings during the opt-out period shall be treated as having opted-out of the proceedings.

(3) Any time limit provided in national law for individual actions to be brought by a group member in respect of loss caused by the event of mass harm shall be suspended from the date of commencement of the collective proceeding. The period of suspension shall end when

(a) the collective proceeding is withdrawn or dismissed; or

(b) the group member opts-out under Rule 215(2)-(4).

(4) Where Rule 217(3)(a) or (b) apply, the remaining limitation period for individual claims will start six months after the withdrawal, dismissal or the date on which the opt-out was effected.

C . Case Management of Collective Proceedings

Rule 218. Case Management Powers

(1) In collective proceedings, the court has additional case management powers, including the power

(a) to remove a qualified claimant of a group or any sub-group if they no longer satisfy the conditions in Rule 208

and Rule 209 or fails to act in the interests of all group members,

(b) to authorise, with their consent, a new qualified claimant,

(c) to modify the description of the group,

(d) to divide a group into sub-groups and to authorise, with their consent, a qualified claimant for each sub-group,

(e) to dismiss the collective proceeding or to order it to continue as individual proceedings if there is no longer a qualified claimant

(f) to direct the correction of the group register (Rules 216(2) and 220).

(2) The court may hear any person it considers has an interest in the management of the case before making any case management order under this Rule.

Rule 219. Advertisements

(1) In collective proceedings the court shall advertise or shall require advertisement

(a) when a qualified claimant is removed or authorised,

(b) when the description of the group is modified or the group is divided into sub-groups,

(c) when a collective settlement is offered,

(d) when any order or judgment is made,

(e) of information about the secure electronic platform under Rule 220; and

(f) if the collective proceeding is dismissed or withdrawn.

(2) The advertisement shall be made in a manner which the court considers will best attract the attention of any person likely to be affected by the event causing mass harm and in sufficient time to allow affected persons a reasonable opportunity to participate as they see fit in the proceedings.

Rule 220. Communication – Secure Electronic Platform

The court must create or authorise the creation of a secure electronic platform for the efficient management of the collective proceeding.

D . Settlements in Commenced Collective Proceedings

Rule 221. Court Approval

A group member will not be bound by any agreement settling a collective proceeding in whole or in part unless that agreement is approved by the court.

Rule 222. Application for the approval of a settlement agreement

(1) A party to a proposed settlement agreement may apply to the court for approval under Rule 221.

(2) The application for approval shall include:

(a) The description of the group whose members will the bound by the settlement,

(b) a copy of the proposed settlement agreement. In a collective proceeding for compensation, the proposed agreement shall include the total amount of compensation payable, and the criteria for distributing the compensation to each group member;

(c) the proposed administration of the compensation fund and method of distributing the compensation payment to group members, and

(d) a concise statement of reasons showing why the terms of the settlement agreement are fair and adequate.

Rule 223. Procedure for Approving Settlements

(1) Before approving a settlement the court may

(a) make any order necessary to obtain further information in order to assess the fairness and adequacy of the proposed settlement,

(b) appoint an expert to assist the court.

(2) The court must

(a) advertise the proposed settlement according to Rule 219, ensuring that it is clear that the court has not reached a conclusion on the fairness of the settlement,

(b) fix a period within which any comments may be made, and

(c) consider all comments made by the group members and the parties.

(3) The court may consider all other relevant comments received.

Rule 224. Settlement Approval Orders

The court shall not make an order approving a settlement agreement where

(a) the amount of compensation agreed for the group or any sub-group is manifestly unfair,

(b) the terms of any other undertaking by a defendant are manifestly unfair,

(c) the settlement is manifestly contrary to the public interest (*ordre public*) or

(d) the terms, whether contained in the proposed settlement agreement or not, as to the payment of legal and other associated costs of the action are manifestly unreasonable.

Rule 225. Approved Settlements in Opt-in Actions

An approved settlement binds all group members who have opted-in at the time the order approving the settlement is made.

Rule 226. Approved Settlements in Opt-out Proceedings

An approved settlement binds all group members unless they have opted-out of the collective proceedings at the time the order approving the settlement is made.

E. Judgments in Collective Proceedings

Rule 227. Effect of Final Judgments

(1) A final judgment of the court in collective proceedings binds

(a) all of the parties, and all group members who have opted-in to the proceedings; or

(b) all of the parties, and all of the group members resident in the forum State who have not opted-out of the proceedings within the period set by the court in Rule 215(3).

(2) No other collective proceeding may be commenced in respect of any claims for relief determined in a final judgment.

(3) A final judgment may be enforced by the qualified claimant. If the qualified claimant does not enforce the final judgment within a reasonable time any group member, with the court's permission, may enforce the final judgment.

Rule 228. Amount of Compensation

A final judgment that sets the amount of compensation in a collective proceeding shall include

(a) the total amount of compensation payable in respect of the group or any sub-group. If an exact calculation of this amount is impossible or excessively difficult, the court may estimate the amount,

(b) the criteria for distributing the compensation to each group member, and the method of administration of the compensation fund.

F. Collective Settlements outside Collective Proceedings

Rule 229. Standing to Reach Settlement

(1) Any entity fulfilling the requirements in Rule 208 (a) and (b) to be a qualified claimant may reach a collective settlement agreement for a group even where a collective proceeding order has not been made.

(2) Any such collective settlement agreement shall be negotiated in good faith for the benefit of all group members.

Rule 230. Application for Approval of Collective Settlement

(1) An application to the court for approval of a collective settlement agreement in accordance with Rule 229 must be made by all of the parties to it.

(2) The application shall include all of the information required under Rule 222(2). It shall also specify whether a binding settlement shall be reached on an opt-in or an opt-out basis.

Rule 231. Approval Procedure

The procedure for approval of collective settlements in Rule 223 applies to any application to approve a collective settlement following an application under Rule 230.

Rule 232. Approval Order and Opt-in/Opt-out Procedure

The court must approve the proposed collective settlement on the basis of Rule 224.

(a) If the court does not approve the proposed collective settlement it must give its reasons for refusing to approve it, and must remit the agreement to the parties.

(b) The court must advertise the approved settlement in accordance with Rule 219(2), give information on whether the settlement shall become binding based on an opt-in or opt-out procedure, and fix a period of at least three months for the group members to opt-in or opt-out. The court shall decide to whom and how the notification to opt-in or to opt-out shall be given. If the terms of the settlement require a fixed number or percentage of group members to accept the settlement this must also be communicated clearly.

(c) After the period fixed for opt-in or opt-out notifications and, where applicable, if the necessary number or percentage of group members have opted-in or have not opted-out, the court shall declare the approved

settlement binding. Otherwise the court shall declare that the approval proceedings have been terminated without a binding settlement.

(d) An approved settlement shall bind all of the persons who have opted-in to the settlement or who have not opted- out of the settlement.

SECTION 3 – Cross Border Issues

Within the European Union

Rule 233. Recognition of Qualified Claimant

The recognition of a claimant as a qualified claimant by a court in an order made under Rule 213(1)(a) binds every other court in European Union member States without the need for further application for recognition in relation to actions arising from the same event of mass harm.

Rule 234. Judicial Co-ordination

(1) When a mass harm has cross-border effects, the registry entries for each collective proceeding shall be made available on the European e-justice platform or any similarly effective platform.

(2) European Union Member States' courts must use their best effort to co-ordinate collective proceedings in different member states in order to avoid irreconcilable judgments or settlement approvals.

Rule 235. Group Members outside the Forum State

(1) The court shall ensure that group members outside the forum State are informed of the collective proceeding in accordance with Rule 219.

(2) No order made under Rule 215(2) binds group members outside the forum state.

(3) Group members outside the forum State must, if they choose, be allowed to opt-in.

(4) Rule 235(1)-(3) also apply to collective settlement proceedings under Rules 229-232.

Rule 236. Multiple Substantive Laws

(1) Group members shall not be prevented from participating in a single collective proceeding if they are subject to different substantive laws.

(2) In any case where group members are subject to different substantive law, the court may divide the group into sub-groups under Rule 218(1)(d).

SECTION 4 - Costs, Expenses and Funding

Rule 237. Third Party Funding

(1) A qualified claimant may use third-party litigation funding.

(2) Rule 245 applies to any such third-party funding agreement. A court may, however, require a qualified claimant to disclose the details of any such funding agreement relevant for the instance at stake to the court and, in so far as appropriate, to the parties.

Rule 238. Costs and Expenses of Collective Proceedings

(1) Only a qualified claimant is liable for the costs and expenses of a collective proceeding if it is unsuccessful.

(2) If the proceeding is successful, the total amount of compensation received by the qualified claimant shall form a common fund.

(3) The qualified claimant's costs and expenses incurred in bringing the proceeding must be paid from the common fund before any distribution of compensation to group members in accordance with Rule 228. Rule 245(4) applies accordingly.

PART XII – COSTS

Rule 239. Decision on Costs

(1) A court rendering a final judgment or terminating the proceedings in any other way shall determine which party is required to reimburse the other party or parties' costs of the proceedings, unless the parties have agreed otherwise. Any recovery of costs shall be limited to those that are reasonable and proportionate.

(2) If the parties enter into a settlement, each party shall bear its own costs unless they have agreed otherwise.

Rule 240. Scope and Amount of Costs

(1) Parties may seek to recover the costs of the proceedings, in particular

(a) reasonable and proportionate costs of their legal representation in the proceedings,

(b) court and other fees such as those of court-appointed experts, interpreters, court reporters etc.,

(c) other reasonable financial outlays resulting from the conduct of the proceedings, such as costs of party-appointed experts, travel expenses, and fees for the service of documents.

(2) Costs under Rule 240(1) may also include costs reasonably incurred for the preparation of proceedings before they were commenced.

(3) Parties may only recover costs which they have reasonably and proportionately incurred for the conduct of the proceedings, taking into account the amount in dispute, the nature and complexity of the issues, the significance of the case for the parties.

(4) Where national law specify tariffs for the recovery of certain fees (such as, where relevant, court fees and fees for the parties' legal representation, for experts, and interpreters), any award of costs should nevertheless be consistent with the Rules of this Part.

Rule 241. General Rule

(1) When determining upon which party the obligation to reimburse costs shall be placed under Rule 239, the court shall take into account the circumstances of the specific proceedings, in particular whether and to what extent the parties' claims were successful.

(2) The court may also take into account the parties' conduct, in particular, whether and to what extent they acted in good faith and contributed to the fair, efficient and speedy resolution of the dispute.

Rule 242. Review

(1) The court's decision on costs may be subject to an appeal.

(2) An appeal is limited to a review of whether the court exercised its discretion properly according to Rules 240 and 241.

(3) A decision on an appeal under Rule 242(2) is final and binding. It cannot be subject to a second appeal.

Rule 243. Security for Costs

(1) A party may apply for the other party to provide reasonable security for costs.

(2) In deciding an application for security for costs, the court shall take into account

(a) the likelihood that the applicant will be able to claim reimbursement of the costs of the proceedings,

(b) the financial means of the parties and the prospect of enforcement of the costs decision against the other party,

(c) whether such security for costs is compatible with the parties' right of access to justice and a fair trial.

Rule 244. Legal Aid

(1) Parties are entitled to legal aid, as provided by national law, if their right of access to justice and to a fair trial so requires.

(2) Such legal aid should be sufficient to cover reasonable and proportionate legal representation where legal provisions, the complexity of the case, or the vulnerability of a party so require.

Rule 245. Third-Party Funding and Success Fees

(1) A party who receives funding for the proceedings from a professional third party funder or from a crowd-funder shall disclose this fact and the identity of the funder to the court and the other party at the commencement of proceedings. The details of such a third party funding arrangement are, however, not subject to this requirement.

(2) Such a third party funding arrangement must be in accordance with applicable law and must not provide for inadequate compensation for the funder or enable the funder to exercise any undue influence on the conduct of the proceedings.

(3) Parties may enter into success fee arrangements with counsel or a third party funder. Such arrangements must nevertheless be consistent with applicable law, the parties' access to fair legal representation and the integrity of the proceedings.

(4) A violation of the requirements of Rule 245(1), (2) and (3) does not constitute a defence against the claim of the party availing itself of third party funding or a success fee arrangement. But, having made its decision on the claim, the court may ask for details of fee arrangements with a third party or counsel relevant for the instance at stake, and, upon consultation with the parties, it may take into account any disregard of applicable law or lacking fairness of the arrangement when it renders the final decision on costs determining the part of the claimant’s costs to be reimbursed.

(5) As far as provided in Rules 237, 238 (3), Rule 245 applies to collective proceedings.