

LEGISLATIVE COUNCIL BRIEF

MATRIMONIAL CAUSES (AMENDMENT) RULES 2002

INTRODUCTION

This brief explains the Matrimonial Causes (Amendment) Rules 2002 (Amendment Rules) at **Annex**, made by the Chief Justice, that –

- (a) make it clear that the District Court Registrar and Deputy Registrars have the requisite jurisdiction to tax bills of costs in matrimonial proceedings; and
- (b) introduce other technical amendments to tidy up the Matrimonial Causes Rules (MCR).

BACKGROUND

2. With the increase in the financial limits of the civil jurisdiction of the District Court in September 2000, it is appropriate for bills of costs in matrimonial proceedings to be taxed by the District Court Registrar and Deputy Registrars.

3. However, there is doubt as to whether the District Court registrars possess the requisite jurisdiction under the MCR to tax costs of matrimonial proceedings in the District Court. It is uncertain whether the relevant District Court rules apply to the taxation of such costs. The Administration is inclined to the view that the District Court registrars do have the power to tax such costs, although the power can only be discerned by circuitous way of reasoning. It is desirable to amend the MCR to make it clear that the District Court registrars do have authority to tax costs of and incidental to matrimonial proceedings in the District Court under Order 62 of the Rules of the District Court (RDC).

4. To provide for the District Court registrars the requisite

jurisdiction mentioned above and to introduce other technical amendments to tidy up the MCR, the Chief Justice has made the Amendment Rules, which will be gazetted on 1 March 2002.

THE AMENDMENT RULES

Power of Registrar, District Court to tax costs of matrimonial proceedings

5. Sections 2 and 9 of the Amendment Rules put beyond doubt that the District Court Registrar and Deputy Registrars do have the authority to tax costs of and incidental to matrimonial proceedings in the District Court.

Amendments consequent upon the enactment of the Rules of the District Court

6. When the present RDC came into force in September 2000, the District Court Civil Procedure (General) Rules were repealed. Consequential amendments, however, have not been made to the MCR to delete the references made to the District Court Civil Procedure (General) Rules. Section 4 of the Amendment Rules replaces the existing rule 28 of the MCR that makes such a reference. Similarly, section 7 amends rule 88(6)(d) of the MCR that makes a reference to the District Court Civil Procedure (Costs) Rules which have already been repealed.

Technical amendments

7. Section 3 of the Amendment Rules amends rule 25 of the MCR because the reference made to the Rules of the High Court (RHC) Order 20, rule 6 is no longer valid as the rule has already been repealed.

8. Section 5 amends rule 29 of the MCR, the sub-paragraph (2) of which overlaps with paragraph (a).

9. Section 8 amends rule 90(1) of the MCR because the reference to RHC Order 52, rule 4(1) is no longer valid as the rule has already been repealed.

Standardization

10. Section 10 of the Amendment Rules standardizes all references made to the term “district court” in the MCR by changing them to “District Court” as used in the District Court Ordinance. As there is only one District Court now, the Amendment Rules repeal rule 118 of the MCR.

Minor correction

11. Section 6 of the Amendment Rules corrects a clerical error in rule 45 of the MCR.

PUBLIC CONSULTATION

12. The Hong Kong Bar Association and Law Society of Hong Kong have been consulted on the Amendment Rules. Both of them have no comments.

BASIC LAW IMPLICATIONS

13. The Department of Justice advises that the Amendment Rules are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

14. The Department of Justice advises that the Amendment Rules have no human rights implications.

BINDING EFFECTS OF THE LEGISLATION

15. The Amendment Rules will not affect the current binding effect of any Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

16. The Amendment Rules carry no financial or staffing

implications.

LEGISLATIVE TIMETABLE

17. The Amendment Rules will be gazetted on 1 March 2002 and tabled in the Legislative Council on 6 March 2002.

PUBLICITY

18. A press release will be issued and a spokesman will be available to answer enquiries.

ENQUIRY

19. Enquiries on this brief should be directed to Mrs Nancy Hui, Principal Assistant Secretary for Home Affairs, at telephone number 2835 1383.

Home Affairs Bureau
27 February 2002
HAB/CR/1/19/99

MATRIMONIAL CAUSES (AMENDMENT) RULES 2002

(Made under section 54 of the Matrimonial Causes Ordinance (Cap. 179))

Commencement

These Rules shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

Interpretation

Rule 2 of the Matrimonial Causes Rules (Cap. 179 sub. leg.) is amended –

- (a) in paragraph (2), in the definition of “registrar” –
 - (i) in paragraph (a), by adding “(being proceedings other than taxation of costs of proceedings)” after “proceedings”;
 - (ii) by adding –
 - “(aa) in relation to taxation of costs of proceedings in the District Court, the Registrar as defined in section 2 of the District Court Ordinance (Cap. 336);”;
- (b) in paragraph (6), by repealing “(高等法院規則)”;
- (c) by adding –

"(6A) In these rules any reference to an Order and rule if prefixed by the letters "R.D.C." is a reference to that Order and rule in the Rules of the District Court (Cap. 336 sub. leg.).".

Service and amendment of pleadings in Summer Vacation

Rule 25 is amended –

- (a) by repealing "rule 3," and substituting "rule 3 and";
- (b) by repealing ", and R.H.C. Order 20, rule 6";
- (c) by repealing "Long" and substituting "Summer".

Rule substituted

Rule 28 is repealed and the following substituted –

"28. Discovery of documents in defended cause

(1) This rule applies to a defended cause begun by petition.

(2) Unless the court makes an order under paragraph (3), the formal procedure for discovery and inspection of documents prescribed by the Rules of the High Court (Cap. 4 sub. leg.) shall apply.

(3) The court may, of its own motion but subject to any proper claim of privilege, do either or both of the following –

- (a) make such order for discovery of documents, including the mode of discovery, as it may consider necessary

or desirable;

- (b) order any party to produce any relevant document in his possession or under his control for inspection by any other party and may order that any such inspection shall take place in the presence of an officer of the court.

(4) R.H.C. Order 24, rule 16 shall apply with the necessary modifications to any failure to comply with an order for discovery or inspection of documents.

(5) A party who fails to comply with an order for discovery or inspection of documents shall not, except with the leave of the court, be permitted to rely at the trial of the cause on any document mentioned in the order.

(6) The powers of the court with regard to the making of orders for discovery or inspection of documents may be exercised by the registrar.

(7) Any party dissatisfied with an order for discovery or inspection of documents made by the registrar may, within 5 days of the making of such order and upon giving not less than 2 days' notice to any other party, apply to the court to set aside such order.

(8) In this rule -

"court" (法院) includes any judge of the court sitting in court or in chambers."

Discovery by interrogatories in defended cause

Rule 29 is amended -

- (a) in paragraph (1) -

- (i) by repealing subparagraph (a);
 - (ii) in subparagraph (b), by repealing
", and" and substituting a
semicolon;
 - (iii) by adding -
 - "(ba) in rule 4(1), the words
"or the notice under
Order 25, rule 7," ; and" ;
- (b) by repealing paragraph (2).

Trial of issue

Rule 45 is amended by repealing "register" and substituting "registrar".

Special provisions as to judgment summons

Rule 88(6)(d) is amended by repealing "the District Court Civil Procedure (Costs) Rules (Cap. 336 sub. leg.)" and substituting "R.D.C. Order 62".

Committal and injunction

Rule 90 is amended -

- (a) in paragraph (1), by repealing everything from
"Notwithstanding" to ", an" and substituting
"An" ;
- (b) by adding -
 - "(1A) R.H.C. Order 52, rule 6
(which, except in certain cases,
requires an application for an order of
committal to be heard in open court)
shall apply to the hearing of the
application mentioned in paragraph
(1)."

Rule added

The following is added before the heading “APPLICATIONS RELATING TO CHILDREN” –

“91A. Taxation of costs

Where the costs of and incidental to any matrimonial proceedings are directed to be taxed, R.H.C. Order 62 shall have effect in relation to the costs of proceedings in the Court of First Instance, and R.D.C. Order 62 shall have effect in relation to the costs of proceedings in the District Court.”.

“District Court” substituted for “district court”, etc.

The Matrimonial Causes Rules (Cap. 179 sub. leg.) are amended to the extent and in the manner indicated in the Schedule.

SCHEDULE

[s. 10]

“District Court” SUBSTITUTED FOR “district court”, etc.

1. Rule 2(2) of the Matrimonial Causes Rules (Cap. 179 sub. leg.) is amended –
 - (a) in the definitions of “court” and “judge”, by repealing “district court” wherever it appears and substituting “District Court”;
 - (b) in the definition of “registrar”, in paragraph (a) –
 - (i) by repealing “a district court” and substituting “the District Court”;
 - (ii) by repealing “the district court” and substituting “the District Court”.

2. Rules 3, 33(2) and (2A), 39(5)(a), 42(1), 109(1) and 116(1) are amended by

repealing “a district court” wherever it appears and substituting “the District Court”.

3. Rules 5(2), 6(4), 12(1) and (4), 32(1) and (3), 44, 52(1)(b), 55(1), 64(2), 65(3) and (4), 69(b), 70(a), 72(1), 88(6)(d), 96 and 126A(2) are amended by repealing “district court” and substituting “District Court”.

4. Rule 80 is amended –

(a) in paragraphs (3) and (5), by repealing “district court” and substituting “District Court”;

(b) by repealing paragraph (8).

5. Rule 91(1) is amended –

(a) by repealing “a district court” and substituting “the District Court”;

(b) by repealing “the district court” where it twice appears and substituting “the District Court”.

6. Rules 98(2) and 100(2) are amended by repealing “any district court” and substituting “the District Court”.

7. Rule 118 is repealed.

8. Rule 122 is amended by repealing “district courts” and substituting “District Court”.

Chief Justice

2002

Explanatory Note

These Rules amend the Matrimonial Causes Rules (Cap. 179 sub. leg.) (“the principal Rules”) to –

- (a) make it clear that the Registrar of the District Court has the power to tax costs of matrimonial proceedings in the District Court (sections 2 and 9);
- (b) introduce amendments consequential to the enactment of the Rules of the District Court (Cap. 336 sub. leg.) (sections 4 and 7);
- (c) introduce some technical amendments (sections 3, 5 and 8); and
- (d) standardize the use of the term “District Court” in the principal Rules and repeal those provisions that are spent (section 10 and the Schedule).