

Criminal
CB2/PL/AJLS

BY FAX (25099055) AND BY POST

12 December 2002

Mrs. Percy Ma
Legislative Council
Legislative Council Building
8 Jackson Road,
Central, Hong Kong

Dear Mrs. Ma,

PART IV OF THE LAW AMENDMENT AND REFORM (MISCELLANEOUS PROVISIONS) BILL - COSTS IN CRIMINAL CASES ORDINANCE

I refer to Part IV of the Law Amendment and Reform (Miscellaneous Provisions) Bill concerning the proposed amendments to Costs in Criminal Cases Ordinance (Cap.492), which the LegCo Panel on Administration of Justice and Legal Services will discuss under Agenda Item IV at tomorrow's meeting,

I am pleased to confirm that the Society's Criminal Law & Procedure Committee supports the legislative proposal put forward in the Bill and will not be sending any representative to attend the meeting on this subject.

The Committee would wish to take this opportunity to express its concern on the 3-month time limit requirement imposed under Rule 6 of the Costs in Criminal Cases Rules ("the Rules") for the filing of claims of costs. For your ease of reference, copies of rules 6 to 9 (inclusive) of the Rules are attached.

Under rule 6, where a costs order is made and ordered to be taxed, the claim for costs can be lost if not submitted within 3 months from the date the order is made. The Committee believes that the need of this 3-month time limit requirement should be reviewed as practices have indicated that this is too short for practitioner to comply with.

The Committee also fails to see the logic of this strict time requirement when an order of costs has been made and the only issue regards the amount to be awarded. Nor does it understand why a different rule should apply in criminal cases when there is no corresponding requirement in civil proceedings. Delay in the submission of the claim of costs may be justified, particularly in intricate and complex commercial crime cases where great volumes of files may be involved. Whilst it is observed that rule 9 has provided for a right to apply for extension of the 3-month time limit, it is believed that this will only be in exceptional circumstances and may not cover complex commercial cases.

Yours sincerely,

Christine W.S. Chu
Assistant Director of Practitioners Affairs

Encl.

5. 訟費評定當局

(1) 為施行本條例第 20 條，凡法院命令評定訟費，則該等訟費必須由訟費評定當局按照本條以及第 6 及 7 條而評定。

(2) 除第 (3) 款另有規定外——

(a) 就在裁判法院或區域法院進行的法律程序而言，訟費評定當局為區域法院司法常務官；(2000 年第 28 號第 47 條)

(b) 就在原訟法庭或上訴法庭進行的法律程序而言，訟費評定當局為高等法院司法常務官。(1999 年第 39 號第 3 條)

(3) 訟費評定當局可委任或授權委任公職人員為訟費評定主任，以代訟費評定當局根據本條以及第 6 及 7 條並按照以書面發出的或代訟費評定當局發出的指示而行事。

6. 訟費的申索

(1) 除第 9 條另有規定外，除非訟費的申索在有關訟費命令作出之日的 3 個月內提出，否則不得受理。

(2) 除第 (3) 款另有規定外，訟費申索書必須由申索人按訟費評定當局指示的格式和方式向訟費評定當局提交，並須附有訂明費用，以及任何支持所申索的代墊付費用的收據、訟費單或其他文件。

(3) 申索書必須——

(a) 撮錄由律師、法律代表或其他代表進行的工作項目；

(b) (如情況適當的話) 說明工作項目進行的日期、耗用的時間和所申索的款額；及

(c) 指明所申索的代墊付費用(包括大律師的費用)，招致該等費用的情況及就該等費用而申索的款額。

(4) 如有要促使訟費評定當局注意的特殊情況，則申索人必須指明該等情況。

(5) 申索人必須提供訟費評定當局所要求的進一步詳情、資料及文件。

(6) 申索人必須向任何有利害關係的一方送達申索書、任何支持所申索的代墊付費用的收據、訟費單或其他文件的副本，以及向訟費評定當局提供的任何進一步詳情、資料及文件的副本。

(7) 申索人必須證明是否意欲出席聆訊和陳詞或由他人代表，如他有此意欲，則訟費評定當局必須將聆訊申索的地點和時間通知該申索人及任何有利害關係的一方。

5. Taxing authority

(1) For the purposes of section 20 of the Ordinance, where a court orders that costs are to be taxed, those costs must be taxed by the taxing authority in accordance with this rule and rules 6 and 7.

(2) Subject to subrule (3), the taxing authority is—

(a) the Registrar of the District Court in the case of proceedings in a magistrates' court or the District Court;

(b) the Registrar of the High Court in the case of proceedings in the Court of First Instance or the Court of Appeal. (39 of 1999 s. 3)

(3) The taxing authority can appoint or authorize the appointment of public officers as taxing officers to act on behalf of the taxing authority under this rule and rules 6 and 7 in accordance with directions given in writing or on behalf of the taxing authority.

6. Claims for costs

(1) Subject to rule 9, no claim for costs can be entertained unless it is submitted within 3 months of the date on which the costs order was made.

(2) Subject to subrule (3), a claim for costs must be submitted to the taxing authority by the claimant in such form and manner as it directs and must be accompanied by the prescribed fee and by any receipts, bills of costs or other documents in support of any disbursements claimed.

(3) A claim must—

(a) summarise the items of work done by the solicitor or legal or other representative;

(b) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed; and

(c) specify any disbursements claimed, including counsel's fees, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where there are any special circumstances which are to be drawn to the attention of the taxing authority, the claimant must specify them.

(5) The claimant must supply such further particulars, information and documents as the taxing authority requires.

(6) The claimant must serve on any interested party a copy of the claim, any receipts, bills of costs or other documents in support of any disbursements claimed, and any further particulars, information and documents supplied to the taxing authority.

(7) The claimant must state whether he wishes to appear and be heard or to be represented and, if he so wishes, the taxing authority must give notice to the claimant and any interested party of the venue and time at which the claim is to be heard.

7. 訟費的評定

(1) 訟費評定當局必須考慮有關申索，由申索人根據第 6 條提供的任何進一步詳情、資料或文件，以及由任何利害關係的一方作出的任何申述，並且必須就——

- (a) 訟費評定當局覺得已確實且合理地辦理的工作；及
(b) 訟費評定當局覺得已確實且合理地招致的代墊付費用，

准予支付其認為合理地足夠補償該申索人在有關法律程序中恰當地招致的開支。

(2) 訟費評定當局根據第 (1) 款評定訟費時，必須考慮個案的一切有關情況，包括工作的性質、重要性、複雜程度或困難程度，以及所涉及的時間。

(3) 為施行本條，必須就一切合理地招致的訟費准予支付合理的款額。如訟費評定當局對於訟費是否已確實且合理地招致，或其款額是否合理地足夠的問題存有任何疑問，則必須以不利申索人為原則而予以解決。

(4) 訟費評定當局在評定須支付予申索人的訟費後，必須向該申索人發出關於憑藉本條准予支付和須予支付的訟費的通知。

(5) 凡訟費評定當局已根據第 (4) 款將憑藉本條准予支付和須予支付的訟費通知申索人後，該申索人必須向每一利害關係的一方送達該通知的副本。

8. 由訟費評定當局覆核訟費的評定

(1) 申索人或利害關係的一方（“申請人”）如因訟費評定當局根據第 7 條作出的訟費評定而感到受屈，可向訟費評定當局申請覆核該項評定。

(2) 除第 9 條另有規定外，申請必須在收到憑藉第 7(4) 條發出關於准予支付和須予支付訟費的通知的日期的 21 天內，藉向訟費評定當局發出書面通知而提出，並必須按訟費評定當局指示的格式和方式提出。如申請是就某些項目而提出的，申請通知書須指明該等項目，並須指明反對的理由。

(3) 除本條另有規定外，〈高等法院規則〉（第 4 章，附屬法例）第 62 號命令第 33 及 34 條規則適用於根據本條進行的覆核，而上述規則須經必需的變通，使其適用於該覆核的情況。（1999 年第 39 號第 3 條）

(4) 申請人必須向任何利害關係的一方送達根據第 (1) 款提出的申請的通知書的副本。

7. Taxation of costs

(1) The taxing authority must consider the claim, any further particulars, information or documents supplied by the claimant under rule 6 and any representation by any interested party and must allow such costs in respect of—

- (a) such work as appears to the taxing authority to have been actually and reasonably done; and
(b) such disbursements as appear to the taxing authority to have been actually and reasonably incurred,

as it considers reasonably sufficient to compensate the claimant, for any expenses properly incurred by the claimant in the proceedings.

(2) In taxing costs under subrule (1) the taxing authority must take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved.

(3) For the purposes of this rule, there must be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing authority may have as to whether the costs were actually and reasonably incurred or were reasonably sufficient in amount must be resolved against the claimant.

(4) Having taxed the costs payable to the claimant, the taxing authority must give notice to the claimant of the costs allowed and payable by virtue of this rule.

(5) Where the taxing authority under subrule (4) has notified a claimant of the costs allowed and payable by virtue of this rule, that claimant must serve on every interested party a copy of that notification.

8. Review of taxation of costs by the taxing authority

(1) A claimant or an interested party (the “applicant”) who is aggrieved with a taxation of costs under rule 7 by a taxing authority may apply to the taxing authority for a review of that taxation.

(2) Subject to rule 9, the application must be made, within 21 days of the receipt of notification of the costs allowed and payable by virtue of rule 7(4), by giving notice in writing to the taxing authority specifying the items in respect of which the application is made and the grounds of objection and must be made in such form and manner as the taxing authority directs.

(3) Subject to this rule, rules 33 and 34 of Order 62 of the Rules of the High Court (Cap. 4 sub. leg.) shall apply to a review under this rule with such modifications as may be necessary to make the same applicable to the circumstances of the review. (39 of 1999 s. 3)

(4) The applicant must serve on any interested party a copy of the notice of application made under subrule (1).

(5) 申請通知書必須述明申請人是否意欲出席或由他人代表，如申請人有此意欲，則訟費評定當局必須將覆核該項評定的地點和時間通知申請人和任何有利害關係的一方。

(6) 申請通知書必須附有根據第 6 條提供的任何詳情、資料及文件，而申請人必須提供訟費評定當局所要求的進一步詳情、資料及文件。

(7) 訟費評定當局必須因應由申索人或代表申請人提出的反對意見以及任何有利害關係的一方作出的申述而覆核訟費，不論是藉增加、減少或維持原本評定的訟費的公式，訟費評定當局並且必須將其決定通知各方。

(8) 申請人或任何有利害關係的一方可要求訟費評定當局以書面說明其決定的理由，而訟費評定當局在上述人士要求下必須遵照要求辦理。

(9) 除第 9 條另有規定外，任何根據第 (8) 款提出的要求必須在收到有關決定的通知的 21 天內以書面提出。

9. 時限

(1) 除第 (2) 款另有規定外，第 6 條所指的申索人提出或提起訟費申索的時限、第 8 條所指的申請人提出覆核申請的時限，或第 8 條所指的申請人或任何有利害關係的一方要求訟費評定當局說明其覆核決定的理由的時限，可由訟費評定當局應申請並基於好的理由而延展。

(2) 凡申索人、申請人或任何有利害關係的一方(視屬何情況而定)在缺乏好的理由的情況下不遵守或(如不獲准延期)會不遵守第 (1) 款提及的時限，則訟費評定當局可在特殊情況下應申請將時限延展一段不超過 21 天的進一步期間。

10. 費用

(1) 為施行第 4(3) 條，須為對判決訟費提出上訴而繳付的費用的款額與《高等法院費用規則》(第 4 章，附屬法例)附表 1 第 2 項所指明的費用的款額相同。

(2) 為施行第 6(2) 條，須為就訟費評定提出申索而繳付的費用須——

- (a) 按照《區域法院民事訴訟程序(費用)規則》(第 336 章，附屬法例)所列出的訟費表計算(如訟費評定當局是區域法院司法常務官)；及
(2000 年第 28 號第 47 條)

(5) The notice of application must state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the taxing authority must give notice to the applicant and any interested party of the venue and time at which the taxation is to be reviewed.

(6) The notice of application must be accompanied by any particulars, information and documents supplied under rule 6 and the applicant must supply such further particulars, information and documents as the taxing authority requires.

(7) The taxing authority must review the costs, whether by way of increase, decrease or at the level previously taxed, in the light of the objections made by the claimant or on behalf of the applicant and any representation by any interested party and must give notice to all parties of its decision.

(8) The applicant or any interested party can request the taxing authority to give reasons in writing for its decision and, if so requested, the taxing authority must comply with the request.

(9) Subject to rule 9, any request under subrule (8) must be made in writing within 21 days of receiving notice of the decision.

9. Time limits

(1) Subject to subrule (2), the time limit within which there must be made or instituted a claim for costs by a claimant under rule 6, an application by an applicant for a review under rule 8, or a request by an applicant or any interested party for the taxing authority to give reasons for its decision on a review under rule 8 can on application, for good reason, be extended by the taxing authority.

(2) Where a claimant, an applicant or any interested party, as the case may be, without good reason has failed, or, if an extension were not granted, would fail, to comply with a time limit of the description mentioned in subrule (1), the taxing authority can on application, in exceptional circumstances, extend the time limit for a further period not exceeding 21 days.

10. Fees

(1) For the purposes of rule 4(3), the fee payable on appeal against an award of costs is to be the same amount as the fee specified in item 2 of the First Schedule to the High Court Fees Rules (Cap. 4 sub. leg.).

(2) For the purposes of rule 6(2) the fee payable on a claim for taxation of costs—

- (a) where the taxing authority is the Registrar of the District Court, is to be calculated according to the scales set out in the District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg.); and