

LEGISLATIVE COUNCIL BRIEF

District Court Ordinance (Chapter 336)

RULES OF THE DISTRICT COURT (AMENDMENT) RULES 2004

INTRODUCTION

Annex A

On 10 May 2004, the District Court Rules Committee made the Rules of the District Court (Amendment) Rules 2004 (“the Amendment Rules”) at **Annex A** under section 72 of the District Court Ordinance (Cap. 336) to refine the existing rule on fees for counsel where costs may be allowed without a counsel’s certificate. The relevant rule, i.e. paragraph 2(3) of Part II to Schedule 1 of Order 62 (hereafter referred to “the existing Rule”), to be amended is set out at **Annex B**.

Annex B

JUSTIFICATIONS

Review of the Existing Rule

2. The Judiciary has reviewed the requirement of counsel’s certificate in paragraph 2(3) of the existing Rule -

“2. Fees to counsel

... ..

(3) *No costs shall be allowed in respect of counsel appearing before the Court unless –*

- (a) *the Court has certified the attendance as being proper in the circumstances of the case; or*
- (b) *the amount recovered exceeds \$150,000.”*

The Judiciary considered that whilst the existing Rule should be retained, it should be revised to clarify how the threshold of \$150,000 for counsel’s certificate should apply in different situations where different parties other than the plaintiff obtain the costs orders.

How the Existing Rule Works

3. In practice, the existing Rule works as follows:
 - (1) Where the amount recovered is less than \$150,000 a counsel's certificate must be obtained. Otherwise no costs shall be allowed in respect of counsel's fees.
 - (2) But where the amount recovered is more than \$150,000:
 - (i) Counsel's certificate may still be applied for from the judge. Where the judge grants counsel's certificate, the taxing master will assess counsel's fees accordingly.
 - (ii) Where the certificate is not applied for from the judge, then the taxing master will decide whether to allow counsel's fees.
4. The following points should be made. First, it should be stressed that under s.53 District Court Ordinance ("DCO")^{Note}, the Court has full discretion whether to award counsel's certificate. Even where the amount recovered exceeds \$150,000, there is no entitlement to counsel's certificate if applied for. The Court has discretion whether to grant it. The primary consideration of the Court remains whether the attendance of the counsel is proper or necessary in the circumstances of the case.
5. Secondly, a defendant (usually where successful) **must** obtain counsel's certificate from the trial judge/master to recover the counsel's fees from the paying party (usually the losing party), irrespective of the sum defended against. This is because under the existing Rule, the threshold is expressed in terms of "amount recovered", instead of "amount defended against".
6. Thirdly, it should be noted that the \$150,000 threshold has no relevance to counter-claims, third party proceedings, or claims and issues made under Order 16 rule 8 between a defendant and one who is already a party to the action ("contribution proceedings"). It has no relevance to non-monetary claims. For these instances, both the plaintiff and defendant **must**

^{Note} Section 53 of the DCO provides that –

“The costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, are in the discretion of the Court, and the Court has full power to determine by whom and to what extent the costs are to be paid.”

obtain counsel's certificate from the trial judge/master to recover the counsel's fees from the paying party (usually the losing party).

Considerations

7. In reviewing the existing Rule, the Judiciary has taken the view that the requirement of counsel's certificate should be retained but that it should be refined as detailed below.

8. There is a need to provide for a defendant who has successfully defended a monetary claim (see paragraph 5). The Judiciary also considers it desirable to set out how third party proceedings, counterclaims and contribution proceedings should be dealt with (see paragraph 6). In this regard, it is proposed that in setting out the Rule, the following situations where different parties obtain the costs orders should be considered and dealt with accordingly -

- (a) As regards the plaintiff, by the amount recovered by the plaintiff;
- (b) As regards the defendant, by the amount claimed against the defendant;
- (c) As regards third party proceedings, as per (a) and (b) as if the party issuing the third party notice were the plaintiff and the third party were the defendant;
- (d) As regards a counterclaim, as per (a) and (b), with necessary modifications; and
- (e) The same principle should apply to contribution proceedings.

THE AMENDMENT RULES

9. The Amendment Rules at **Annex A** amend the existing Rule to apply the threshold of \$150,000 for determining whether costs can be allowed in respect of counsel appearing for a plaintiff in the District Court to cases in which counsel appears for a party to a counterclaim, third party proceedings or other similar proceedings.

LEGISLATIVE TIMETABLE

10. The Amendment Rules will be gazetted on 14 May 2004 and tabled at the Legislative Council on 19 May 2004. Subject to the Legislative Council's approval of the Rules by negative vetting, the Judiciary aims to bring the Amendment Rules into operation in the second half of 2004. The commencement date of the Amendment Rules will be appointed by the Chief Justice by notice published in the Gazette.

PUBLIC CONSULTATION

11. The Judiciary consulted the Law Society of Hong Kong and the Hong Kong Bar Association in March 2003. Both the Law Society and the Bar Association have agreed to the proposed refinement of the existing Rule.

12. The proposed refinements to the existing Rule were submitted to the Legislative Council Panel on Administration of Justice and Legal Services in July 2003. At the meeting on 29 July 2003, Members had no objection to the Judiciary submitting the relevant amendments to the Legislative Council for negative vetting.

ENQUIRY

13. Any enquiry on this brief can be addressed to Miss Vega Wong, Assistant Judiciary Administrator (Development), at 2825 4244.

Judiciary Administration
May 2004

**RULES OF THE DISTRICT COURT (AMENDMENT)
RULES 2004**

(Made by the District Court Rules Committee under section 72
of the District Court Ordinance (Cap. 336))

(a) Commencement

These Rules shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

(b) Costs

Order 62 to the Rules of the District Court (Cap. 336 sub. leg. H) is amended, in Part II of Schedule 1, in paragraph 2(3), by repealing everything after “unless -” and substituting -

- “(a) where counsel appears for a plaintiff, the amount recovered exceeds \$150,000;
- (b) where counsel appears for a defendant, the amount claimed by the plaintiff exceeds \$150,000;
- (c) where counsel appears for a party making a counterclaim, the amount recovered exceeds \$150,000;
- (d) where counsel appears for a party against whom a counterclaim is made, the amount of the counterclaim exceeds \$150,000;
- (e) where counsel appears for a party to third party proceedings who issues the third party notice, the amount recovered exceeds \$150,000;
- (f) where counsel appears for a party to third party proceedings against whom the third party notice is issued, the amount claimed in the third party notice exceeds \$150,000;

- (g) where counsel appears for a party to proceedings on a notice issued by that party under Order 16, rule 8, the amount recovered exceeds \$150,000;
- (h) where counsel appears for a party to proceedings on a notice issued against that party under Order 16, rule 8, the amount claimed in the notice exceeds \$150,000; or
- (i) the Court has certified the attendance of counsel as being proper in the circumstances of the case.”.

Made this 10th day of May 2004.

(Andrew Li)
The Hon Chief Justice

(Barnabas Fung)
H. H. Judge Fung
Chief District Judge

(Ian Carlson)
H. H. Judge Carlson

(David Lok)
H. H. Judge Lok

(Pui Yin Lo)

(Ho Kwan Yiu Junius)

(Roy Yu)

Explanatory Note

The object of these Rules is to apply the threshold of HK\$150,000 for determining whether costs can be allowed in respect of counsel appearing for a plaintiff in the District Court to cases in which counsel appears for a party to a counterclaim, third party proceedings or other similar proceedings.

**The Rules of the District Court (Chapter 336H)
Order 62 Costs**

SCHEDULE 1

Part II

GENERAL

“2. Fees to counsel

(1)

(2)

(3) No costs shall be allowed in respect of counsel appearing before the Court unless-

(a) the Court has certified the attendance as being proper in the circumstances of the case; or

(b) the amount recovered exceeds \$150000.

(3A)
