

## **LEGISLATIVE COUNCIL BRIEF**

### **CIVIL JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2007**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 20 March 2007, the Council ADVISED and the Chief Executive ORDERED that the Civil Justice (Miscellaneous Amendments) Bill 2007 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council.

#### **JUSTIFICATIONS**

2. As in many common law jurisdictions, our present civil justice system has to keep abreast with the needs and developments of modern times. With Hong Kong’s economic development and social and technological advances, there has been over the years a sharp increase in the number and complexity of transactions, in particular commercial ones. The increase in the scope and complexity of legislation reflects this. All this has put pressure on our civil justice system, generating large numbers of disputes and consequent civil proceedings. The increase in and volume of litigation over the past 20 years is a clear indication of this. Our civil justice system, largely unchanged for several decades, has been criticised for not having kept up with the times.

3. The objective of the present exercise is to reform our civil justice system by –

- (a) Preserving the best features of the adversarial system but curtailing its excesses. One of the primary ways to achieve this is by giving even greater case management powers to the courts. This would prevent tactical manipulation of the rules to delay proceedings and also ensure that court and judicial resources are fairly distributed;
- (b) Streamlining and improving the civil procedures; and
- (c) Facilitating early settlement by parties, cutting out unnecessary

steps and discouraging (and if necessary, penalising) unnecessary applications.

In consequence, civil proceedings would become more efficient, expeditious and promote a sense of reasonable proportion and economy. The intention is to reduce delay and eliminate unnecessary expenses in litigation. There would also be greater equality between parties to proceedings and settlements would be both encouraged and facilitated. As far as the administration of the court is concerned, its resources would be more fairly distributed and utilised.

4. Work began in February 2000 with the appointment by the Chief Justice of the Working Party on Civil Justice Reform (“CJR”) to review the rules and procedure of the HC in civil proceedings and to recommend changes thereto, with a view to ensuring and improving access to justice at reasonable cost and speed. The Working Party submitted its recommendations to the Chief Justice in its Final Report in March 2004. The Chief Justice in the same month accepted the Working Party’s Final Report and set up a Steering Committee on CJR (“Steering Committee”) to oversee the implementation of the recommendations therein. The Chief Justice subsequently decided that the proposed changes should be implemented not just in the HC (which comprises the Court of Appeal “CA” and Court of First Instance “CFI”), but also in the DC and the LT, where such changes are appropriate.

5. The Steering Committee has decided on a package of proposed amendments to both primary and subsidiary legislation. Amendments are recommended for:

- (a) Six Ordinances, namely -
  - (i) High Court Ordinance (“HCO”) (Cap. 4);
  - (ii) Lands Tribunal Ordinance (“LTO”) (Cap. 17);
  - (iii) Law Amendment and Reform (Consolidation) Ordinance (“LARCO”) (Cap. 23);
  - (iv) District Court Ordinance (“DCO”) (Cap. 336);
  - (v) Small Claims Tribunal Ordinance (“SCTO”) (Cap. 338);
  - (vi) Arbitration Ordinance (“AO”) (Cap. 341); and

- (b) Three sets of subsidiary legislation -
  - (i) Rules of the High Court (“RHC”) (Cap. 4A);
  - (ii) Lands Tribunal Rules (“LTR”) (Cap. 17A); and
  - (iii) Rules of the District Court (“RDC”) (Cap. 336H).

6. The Bill covers proposed amendments to the six Ordinances set out at paragraph 5(a) and its key features are described below in paragraphs 8 to 20. The proposed amendments to subsidiary legislation are briefly described in **Annex B**.

B

## **OTHER OPTIONS**

7. The improvements to our civil justice system cannot be achieved without the package of legislative amendments. No other option is available.

## **THE BILL**

8. The Bill at Annex A is divided into 12 Parts.

9. **Part 1** contains preliminary provisions, stating the short title and providing for the commencement of the Bill.

10. **Part 2** relates to *costs-only proceedings*. To facilitate settlement, amendments are proposed to introduce a new cause of action called “costs-only proceedings” to enable parties who have reached settlement on a substantive dispute and have agreed who should pay the costs, but cannot agree on the amount of costs of the dispute, to apply for such costs to be taxed by the CFI or the DC. At present, where parties cannot agree on the amount of costs even though the substantive dispute has been resolved, it is necessary to litigate the whole dispute in order just to resolve the question of costs. This Part seeks to amend the HCO and the DCO to empower the CFI and the DC to make an order to tax such costs even though no proceedings relating to the dispute have been commenced. It sets out the circumstances in which such proceedings may commence and the scale on which costs are to be taxed. It also empowers the CFI to order the transfer of such proceedings to the DC

and vice-versa. This Part also amends the Schedule to the SCTO to make it clear that the Small Claims Tribunal does not have jurisdiction to hear and determine such proceedings.

11. **Part 3** amends LARCO to *extend the common law defence of tender before action to a claim for unliquidated damages*. The common law defence can be raised when a defendant admits liability to the whole or part of a claim, offers to pay the whole sum claimed or that part of which he admits liability before an action is commenced, and pays the sum into court after an action is commenced. This defence however only applies to liquidated claims, i.e. claims in the nature of a debt. To facilitate early settlement, amendments are proposed to extend this defence to unliquidated claims, such as claims for damages.

12. **Part 4** relates to *interim relief in aid of proceedings outside Hong Kong*. Currently, a plaintiff in proceedings outside Hong Kong involving a defendant with assets in Hong Kong cannot seek interim relief from the Hong Kong courts. Only when substantive proceedings exist in Hong Kong can such interim relief be obtained. In the case of proceedings outside Hong Kong, interim relief can only be obtained if a judgment obtained in those proceedings is sought to be enforced in Hong Kong or if the same proceedings are instituted in Hong Kong. To provide assistance to plaintiffs in proceedings outside Hong Kong, amendments are proposed under the HCO to empower the CFI to grant interim relief, including granting an interlocutory injunction to restrain the defendant from dealing with his assets in Hong Kong or appointing a receiver, in aid of proceedings outside Hong Kong which are capable of giving rise to a judgment that is capable of being enforced in Hong Kong. This Part also amends the AO to give similar powers to the CFI to grant interim relief in relation to arbitration proceedings in or outside Hong Kong, provided that those proceedings are capable of being enforced in Hong Kong. It further provides that the Rules Committee of the HC can make rules of court relating to such applications for interim relief.

13. **Part 5** relates to *vexatious litigants*. At present, applications to restrict a vexatious litigant from issuing fresh proceedings except with the leave of the court, can only be made by the Secretary for Justice under very narrow circumstances. To help screen out vexatious litigation, thereby enabling fairer distribution of the court's resources for genuine disputes, amendments are proposed under the HCO to allow a vexatious litigant order to be made not only on the application of the Secretary for Justice, but also on the application of any person who is or has been a party to vexatious proceedings instituted by a vexatious party, or who has

directly suffered adverse consequences resulting from such proceedings.

14. **Part 6** relates to *discovery*. Currently, the court's jurisdiction to order potential parties to make pre-action disclosure is limited to personal injury and fatal accident claims. To promote greater transparency between the parties at an earlier stage with a view to facilitating settlement, amendments are proposed under the HCO and DCO to widen the current jurisdiction of the CFI and DC respectively to make such orders for disclosure in all types of cases. Such an order may be made as regards documents which are directly relevant to an issue in the anticipated proceedings. It also amends the HCO and DCO so that the current jurisdiction of the CFI and the DC to order post-commencement disclosure of documents against non-parties would apply to all types of cases and not just to personal injury and fatal accident claims.

15. **Part 7** amends the HCO and the DCO to empower the CA, CFI and the DC to make *wasted costs order against barristers and solicitors*. Currently, the court may make wasted costs orders against solicitors whom it considers to be responsible for any costs improperly incurred or wasted by undue delay or other misconduct. Amendments are proposed to make barristers also subject to the same liability for wasted costs.

16. **Part 8** relates to *leave to appeal*. Currently, appeals from the CFI to the CA are as of right, i.e. leave is not required. To screen out unmeritorious appeals on interlocutory matters which do not determine substantive rights, amendments are proposed under the HCO to introduce the requirement that an interlocutory appeal to the CA can only be brought with leave of the CFI or the CA. Leave would only be granted where there is a real prospect of success or some other compelling reason exists for an appeal. Refusal of leave by the CA is final. It also provides that one or two Justices of Appeal can deal with such applications for leave to appeal. This Part also amends the DCO to similarly improve the procedures for applications for leave to appeal to the CA.

17. **Part 9** relates to *appeals*. Currently, interlocutory applications of pending appeals may be heard and determined by two Justices of Appeal. To streamline procedures, Part 9 amends the HCO to clarify that the CA comprising two Justices of Appeal has jurisdiction to hear or determine such applications on paper without a hearing.

18. **Part 10** relates to *costs against a non-party*. To allow the court to order costs to fall where they are appropriate in cases where costs have

been incurred as a result of the conduct of someone who is not a party to the proceedings, this Part amends the HCO and DCO to empower the CA, CFI and DC to make a costs order against a person who is not a party to the relevant proceedings.

19. **Part 11** amends the DCO to equip the DC with the power to nominate a person to execute documents where another person having such obligation has failed to do so or cannot be found after reasonable inquiry. The amendment would align the practice of CFI and DC in this respect and benefit judgment creditors who have obtained judgments involving execution of documents.

20. **Part 12** amends the LTO to *provide greater flexibility for the LT to adopt the practice and procedures of the CFI and streamline the processing of claims.* Specifically, this Part –

- (a) Provides that the LT does have jurisdiction to make an order for possession of any premises or for ejectment of a tenant from those premises, and make orders for the payment of damages in respect of a breach of tenancy or sub-tenancy in relation to any application for possession or for ejectment;
- (b) Makes it clear that the LT has the same jurisdiction, powers and duties of the CFI in respect of its practice and procedure;
- (c) Makes it clear that, unless provided for by other enactment, the LT does not have jurisdiction to deal with cost-only proceedings;
- (d) Empowers the LT to make costs orders against non-parties and wasted costs orders against barristers and solicitors; and
- (e) Specifies the persons who may tax the costs ordered by the LT.

This Part also amends the HCO and the DCO to empower the CFI and DC respectively to order the transfer to the LT of any action or proceeding brought before them and which is within the jurisdiction of the LT.

## LEGISLATIVE TIMETABLE

21. The legislative timetable is as follows –
- |  |                |
|--|----------------|
| Publication in the Gazette   | 30 March 2007  |
| First Reading and commencement of the Second Reading debate            | 25 April 2007  |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

22. The proposed amendments to subsidiary legislation will be made by the relevant Rules Committees and the Chief Justice after the passage of the Bill, and will be submitted to the Legislative Council for approval by negative vetting.

## IMPLICATIONS OF THE PROPOSAL

C 23. The proposal has financial, manpower, economic and sustainability implications as set out at **Annex C**. It has no environmental implications.

24. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill does not affect the current binding effect of the Ordinances being amended.

## PUBLIC CONSULTATION

25. In November 2001, the Working Party published an “Interim Report and Consultative Paper” containing various recommendations on changes to the civil justice system for seven months of consultation. During the consultation period, the Judiciary held various public seminars and briefings and almost 100 written submissions were received. Most of the proposals received significant support from those who responded in the consultation exercise, including the Bar Association and the Law Society. Having examined the responses, the Working Party submitted its Final Report in March 2004.

26. After the Steering Committee decided on a package of proposed

legislative amendments, it issued a “Consultation Paper on Proposed Legislative Amendments for the Implementation of the CJR” in April 2006 for a 3-month consultation ending in July 2006. The Steering Committee received 30 responses including responses from the two legal professional bodies, commenting mostly on technical and drafting details. The Steering Committee subsequently held meetings with the two legal professional bodies for detailed discussions. It accepted a number of comments from respondents and accordingly revised the package of proposed legislative amendments.

27. The Administration of Justice and Legal Services (“AJLS”) Panel of the Legislative Council has been briefed from time to time on the CJR recommendations and the proposed legislative amendments. Specifically, the Working Party conducted briefings for the AJLS Panel and other interested members on both the Interim Report and the Final Report in 2001 and 2004 respectively. The Judiciary Administration briefed the AJLS Panel on the Consultation Paper on Proposed Legislative Amendments at the meeting on 26 June 2006, and the outcome of the 3-month consultation exercise at the meeting on 12 December 2006. The Panel had no objection in principle to the proposals and looks to examining the details of the Bill and the proposed amendments to the subsidiary legislation in due course.

## **PUBLICITY**

28. A press release will be issued on 28 March 2007. A spokesman will be available to answer media and public enquiries.

## **ENQUIRY**

29. Any enquiry of this brief should be addressed to Mrs Alice Cheung, Assistant Director of Administration, at telephone number 2810 2576 or Miss Vega Wong, Assistant Judiciary Administrator (Development), at telephone number 2825 4244.

**Administration Wing**  
**Chief Secretary for Administration’s Office**  
**28 March 2007**

## CIVIL JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2007

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A BILL

To

Amend the High Court Ordinance, District Court Ordinance, Lands Tribunal Ordinance, Small Claims Tribunal Ordinance, Law Amendment and Reform (Consolidation) Ordinance and Arbitration Ordinance as proposed by the Steering Committee on Civil Justice Reform, to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform and to implement several recommendations proposed by the Steering Committee.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

**1. Short title**

This Ordinance may be cited as the Civil Justice (Miscellaneous Amendments) Ordinance 2007.

**2. Commencement**

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

PART 2

COSTS-ONLY PROCEEDINGS

**Recommendation 9**

**High Court Ordinance**

**3. Sections added**

The High Court Ordinance (Cap. 4) is amended by adding immediately after section 52A -

**"52B. Costs-only proceedings**

(1) This section applies where -

- (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;
- (b) the agreement has been made or confirmed in writing;
- (c) no proceedings relating to the dispute have been commenced; and
- (d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.

(2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.

(3) In any proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336), the Court of First Instance may -

- (a) make an order for the costs of and incidental to the dispute to be taxed or assessed;
- (b) make an order awarding costs to or against any party to the proceedings; and
- (c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.

(4) In subsection (3), "Court of First Instance" (原訟法庭) includes the Registrar and a Master.

**52C. Transfer of costs-only proceedings to District Court**

(1) The Court of First Instance may, either of its own motion or on the application of any party, order the transfer of proceedings commenced under section 52B(2) to the District Court.

(2) An order may be made under this section at any stage of the proceedings.

**52D. Scale of costs on which costs awarded under section 52A or 52B are taxed**

(1) Where the Court of Appeal or the Court of First Instance has made an award of costs under section 52A(1) or (2) or 52B(3), it may order that those costs be taxed in accordance with -

- (a) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A); or
- (b) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H).

(2) Where an award of costs under section 52B(3) is made by the Registrar or a Master, the power of the Court of First Instance under subsection (1) in relation to those costs may be exercised by the Registrar or that Master (as the case may be)."

#### **District Court Ordinance**

#### **4. Costs in transferred cases, etc.**

Section 44A(6) of the District Court Ordinance (Cap. 336) is repealed.

#### **5. Sections added**

The following are added immediately after section 53 -

##### **"53A. Costs-only proceedings**

- (1) This section applies where -
  - (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;
  - (b) the agreement has been made or confirmed in writing;

(c) no proceedings relating to the dispute have been commenced; and

(d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.

(2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.

(3) In any proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4), the Court may -

(a) make an order for the costs of and incidental to the dispute to be taxed or assessed;

(b) make an order awarding costs to or against any party to the proceedings; and

(c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.

(4) The Court has jurisdiction to make an order under subsection (3) if the amount of the party's claim for those costs does not exceed \$1,000,000.

(5) In this section, "Court" (區域法院) includes the Registrar and a master of the Court.

**53B. Transfer of costs-only proceedings  
to Court of First Instance**

(1) The Court may, either of its own motion or on the application of any party, order the transfer of proceedings commenced under section 53A(2) to the Court of First Instance.

(2) An order may be made under this section at any stage of the proceedings.

**53C. Scale of costs on which costs awarded  
under section 53A are taxed**

(1) Where the Court has made an award of costs under section 53A(3), it may order that those costs be taxed in accordance with -

(a) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H); or

(b) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A).

(2) Where an award of costs under section 53A(3) is made by the Registrar or a master of the Court, the power of the Court under subsection (1) in relation to those costs may be exercised by the Registrar or that master (as the case may be).".

**Small Claims Tribunal Ordinance**

**6. Jurisdiction of tribunal**

The Schedule to the Small Claims Tribunal Ordinance (Cap. 338) is amended, in paragraph 1, in the proviso -

- (a) in the Chinese text, by adding "或法律程序" after "以下訴訟";
- (b) in subparagraph (e), by repealing the full stop at the end and substituting a semicolon;
- (c) by adding -
  - "(f) any action or proceeding for an order for the costs of and incidental to a dispute in relation to which no proceedings have been commenced in the tribunal."

PART 3

PLEADINGS

**Recommendation 25**

**Law Amendment and Reform (Consolidation) Ordinance**

**7. Long title amended**

The long title to the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) is amended by repealing the full stop and substituting "; and to amend the law relating to the defence of tender before action."

**8. Section added**

The following is added -

**"30. Defence of tender before action**

(1) Notwithstanding any rule of law to the contrary, in proceedings for a monetary claim, whether liquidated or unliquidated, it is a defence for the defendant to prove that before the claimant commenced the proceedings, the defendant had unconditionally offered to the claimant -

- (a) the amount due where the claim is liquidated;  
or
- (b) an amount sufficient to satisfy the claim where the claim is unliquidated.

(2) The defendant is not entitled to rely on the defence under subsection (1) unless, before serving his defence on the claimant, he has -

- (a) made a payment into court of the amount offered; and
- (b) notified the claimant of the payment into court.

(3) This section does not apply in relation to proceedings commenced before the commencement of this section."

PART 4

INTERIM REMEDIES AND MAREVA INJUNCTIONS  
IN AID OF PROCEEDINGS OUTSIDE HONG KONG

**Recommendations 45 to 48**

**High Court Ordinance**

**9. Injunction and receiver**

Section 21L(3) of the High Court Ordinance (Cap. 4) is amended by adding "or section 21M" after "subsection (1)".

**10. Sections added**

The following are added -

**"21M. Interim relief in the absence  
of substantive proceedings**

(1) Without prejudice to section 21L(1), the Court of First Instance may by order appoint a receiver or grant other interim relief in relation to proceedings which -

- (a) have been or are to be commenced in a place outside Hong Kong; and
- (b) are capable of giving rise to a judgment which may be enforced in Hong Kong under any Ordinance or at common law.

(2) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court of First Instance thinks just.

(3) Subsection (1) applies notwithstanding that -

- (a) the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court of First Instance would have jurisdiction; or
- (b) the appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in Hong Kong.

(4) The Court of First Instance may refuse an application for appointment of a receiver or interim relief under subsection (1) if, in the opinion of the Court, the fact that the Court has no jurisdiction apart from this section in relation to the subject matter of the proceedings concerned makes it unjust or inconvenient for the Court to grant the application.

(5) The power to make rules of court under section 54 includes power to make rules of court for -

- (a) the making of an application for appointment of a receiver or interim relief under subsection (1); and
- (b) the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief.

(6) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee considers necessary or expedient.

(7) In this section, "interim relief" (臨時濟助) includes an interlocutory injunction referred to in section 21L(3).

**21N. Supplementary provisions as to interim relief in the absence of substantive proceedings**

(1) In exercising the power under section 21M(1), the Court of First Instance shall have regard to the fact that the power is -

- (a) ancillary to proceedings that have been or are to be commenced in a place outside Hong Kong; and
- (b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over such proceedings.

(2) The Court of First Instance has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under section 21M as if the order were granted under section 21L in relation to proceedings commenced in Hong Kong."

**Arbitration Ordinance**

**11. Special powers of Court in relation to arbitration proceedings**

Section 2GC of the Arbitration Ordinance (Cap. 341) is amended -

(a) in subsection (1), by repealing "The Court or a judge of the Court may, in relation to a particular arbitration proceeding" and substituting "Subject to subsection (1A), the Court or a judge of the Court may, in relation to particular arbitration proceedings which have been or are to be commenced in Hong Kong or in a place outside Hong Kong";

(b) by adding -

"(1A) In relation to arbitration proceedings that have been or are to be commenced in a place outside Hong Kong, the Court or a judge of the Court, may make an order under subsection (1), grant an interim injunction or direct any other interim measure to be taken under that subsection, only if the arbitration proceedings are capable of giving rise to an arbitral award (whether interim or final) which may be enforced in Hong Kong under this Ordinance or any other Ordinance.

(1B) Subsection (1A) applies notwithstanding that -

(a) the subject matter of the arbitration proceedings would not, apart from that subsection, give rise to a cause of action over which the

- Court or a judge of the Court would have jurisdiction; or
- (b) the order sought, the interim injunction or other interim measure is not ancillary or incidental to any arbitration proceedings in Hong Kong.

(1C) In exercising the power under subsection (1) in relation to arbitration proceedings in a place outside Hong Kong, the Court or a judge of the Court, shall have regard to the fact that the power is -

- (a) ancillary to arbitration proceedings outside Hong Kong; and
- (b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over the arbitration proceedings.

(1D) The Court or a judge of the Court, has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of interim relief granted in relation to arbitration proceedings in a place outside Hong Kong as if the interim relief

were granted in relation to arbitration proceedings in Hong Kong.

(1E) In subsection (1D), "interim relief" (臨時濟助) means -

- (a) an order made under subsection (1);
- (b) an interim injunction granted under that subsection; or
- (c) any other interim measure directed to be taken under that subsection."

## **12. Section added**

The following is added -

### **"49. Rules of court**

(1) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court for -

- (a) the making of an application for an order under section 2GC(1) or for an interim injunction or any other interim measure under that section; and
- (b) the service out of the jurisdiction of an application for such order, interim injunction or other interim measure.

(2) Any rules made by virtue of this section may include such incidental, supplementary and consequential

provisions as the authority making the rules considers necessary or expedient."

PART 5

VEXATIOUS LITIGANTS

**Recommendations 67 and 68**

**High Court Ordinance**

**13. Sections substituted**

Section 27 of the High Court Ordinance (Cap. 4) is repealed and the following substituted -

**"27. Restriction of vexatious legal proceedings**

(1) The Court of First Instance may, on the application of the Secretary for Justice or an affected person, make an order that -

(a) no legal proceedings shall without the leave of the Court of First Instance be instituted by the person against whom the order is made; and

(b) any legal proceedings instituted by that person in any court before the making of the order shall not be continued by him without the leave of the Court of First Instance.

(2) The Court of First Instance may not make an order under subsection (1) unless -

(a) it is satisfied that the person against whom the order is to be made has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons; and

(b) it has heard the person against whom the order is to be made or given him an opportunity of being heard.

(3) An order made under subsection (1) -

(a) may be made on such terms and conditions as the Court of First Instance thinks just; and

(b) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(4) A copy of an order made under subsection (1) shall be published in the Gazette.

(5) In subsection (1), "affected person" (受影響的人) means a person who -

(a) is or has been a party to any of the vexatious legal proceedings; or

(b) has directly suffered adverse consequences resulting from such proceedings.

**27A. Leave to institute or continue proceedings**

(1) Leave for the institution or continuance of any legal proceedings by a person who is the subject of an order for the time being in force under section 27(1) shall not be given unless the Court of First Instance is satisfied that -

- (a) the proceedings are not an abuse of the process of the court in question; and
- (b) there are reasonable grounds for the proceedings.

(2) No appeal lies from a decision of the Court of First Instance granting or refusing leave required under this section, unless leave to appeal has been granted by the Court of First Instance."

PART 6

DISCOVERY

**Division 1 - Recommendations 75 and 77**

**High Court Ordinance**

**14. Power of Court of First Instance to order disclosure, etc. of documents before commencement of proceedings**

Section 41 of the High Court Ordinance (Cap. 4) is amended -

- (a) by renumbering it as section 41(1);
- (b) in subsection (1) -

- (i) by repealing "in respect of personal injuries to a person or in respect of a person's death";
  - (ii) by adding "directly" before "relevant";
- (c) by adding -
- "(2) For the purposes of subsection (1), a document is only to be regarded as directly relevant to an issue arising or likely to arise out of a claim in the anticipated proceedings if -
- (a) the document would be likely to be relied on in evidence by any party in the proceedings; or
  - (b) the document supports or adversely affects any party's case."

#### **District Court Ordinance**

#### **15. Power of the Court to order disclosure, etc. of documents before commencement of proceedings**

Section 47A of the District Court Ordinance (Cap. 336) is amended -

- (a) in subsection (1) -
  - (i) by repealing "for personal injuries or arising out of the death of a person";
  - (ii) by adding "directly" before "relevant";

(b) in subsection (3), by adding "directly" before "relevant";

(c) by adding -

"(4) For the purposes of subsections (1) and (3), a document is only to be regarded as directly relevant to an issue arising out of a claim in the anticipated proceedings if -

(a) the document would be likely to be relied on in evidence by any party in the proceedings; or

(b) the document supports or adversely affects any party's case."

## **Division 2 - Recommendation 78**

### **High Court Ordinance**

#### **16. Extension of powers of Court of First Instance to order disclosure of documents, inspection of property, etc.**

Section 42(1) of the High Court Ordinance (Cap. 4) is amended by repealing "in respect of personal injuries to a person or in respect of a person's death".

**District Court Ordinance**

**17. Extension of powers of the Court to order disclosure of documents, inspection of property, etc.**

Section 47B(1) and (3) of the District Court Ordinance (Cap. 336) is amended by repealing "for personal injuries or arising out of the death of a person".

PART 7

WASTED COSTS

**Recommendations 94 to 97**

**High Court Ordinance**

**18. Costs in Court of First Instance and Court of Appeal in its civil jurisdiction**

Section 52A of the High Court Ordinance (Cap. 4) is amended by adding -

"(4) In any civil proceedings before it, the Court of Appeal or the Court of First Instance may, in accordance with rules of court, by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

(5) When determining whether or not to make an order under subsection (4), the Court of Appeal or the Court of First Instance shall, in addition to all other relevant

circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(6) In subsection (4), "wasted costs" (虛耗訟費) means any costs incurred by a party as a result of -

(a) an improper or unreasonable act or omission;

or

(b) any undue delay or other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

(7) In this section, "legal representative" (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party."

### **District Court Ordinance**

#### **19. Costs**

Section 53 of the District Court Ordinance (Cap. 336) is amended by adding -

"(3) In any civil proceedings before it, the Court may, in accordance with rules of court, by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

(4) When determining whether or not to make an order under subsection (3), the Court shall, in addition to all other relevant circumstances, take into account the interest

that there be fearless advocacy under the adversarial system of justice.

(5) In subsection (3), "wasted costs" (虛耗訟費) means any costs incurred by a party as a result of -

(a) an improper or unreasonable act or omission;

or

(b) any undue delay or other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

(6) In this section, "legal representative" (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party."

## PART 8

### LEAVE TO APPEAL

#### **Recommendations 110, 111, 112, 113 and 115**

### **High Court Ordinance**

#### **20. Appeals in civil matters**

Section 14(1) of the High Court Ordinance (Cap. 4) is amended by adding "and section 14AA" after "subsection (3)".

**21. Sections added**

The following are added before section 14A -

**"14AA. Leave to appeal required for  
interlocutory appeals**

(1) Except as provided by rules of court, no appeal lies to the Court of Appeal from an interlocutory judgment or order of the Court of First Instance in any civil cause or matter unless leave to appeal has been granted by the Court of First Instance or the Court of Appeal.

(2) Rules of court may specify a judgment or order of any prescribed description to which subsection (1) does not apply and accordingly an appeal lies as of right from the judgment or order.

(3) Leave to appeal for the purpose of subsection (1) may be granted -

- (a) in respect of a particular issue arising out of the interlocutory judgment or order; and
- (b) subject to such conditions as the court hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal for the purpose of subsection (1) shall not be granted unless the court hearing the application for leave is satisfied that -

- (a) the appeal has a reasonable prospect of success; or

- (b) there is some other compelling reason why the appeal should be heard.

**14AB. Decision on leave to appeal final**

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted."

**22. Composition of Court of Appeal  
in its civil jurisdiction**

Section 34B(4) is amended -

- (a) in paragraph (a), by repealing "hearing and determining" and substituting "hearing or determining";
- (b) by adding -
  - "(aa) hearing or determining any application for leave to appeal (except an application for leave to appeal to the Court of Final Appeal);";
- (c) in paragraphs (b) and (e), by repealing "hearing and determining" and substituting "hearing or determining";
- (d) in paragraph (c), by repealing "hearing and determining" and substituting "hearing or determining".

**23. Powers of single judge in Court of Appeal**

Section 35(1) is amended by repealing "the appeal" and substituting "an appeal to the Court of Appeal (including an order or direction giving leave to appeal to the Court of Appeal)".

**District Court Ordinance**

**24. Appeal to Court of Appeal**

Section 63 of the District Court Ordinance (Cap. 336) is amended -

- (a) by repealing the heading and substituting "**Appeals in civil matters**";
- (b) in subsection (1), by adding "of a judge or the Court of Appeal" after "with leave";
- (c) by adding -

"(1A) Subject to subsection (1B), an appeal lies as of right to a judge in chambers from a judgment, order or decision of a master in any civil cause or matter.

(1B) Where rules of court provide that an appeal from a specified judgment, order or decision of a master lies to the Court of Appeal, the appeal may be made to the Court of Appeal with leave of a master or the Court of Appeal.";

- (d) in subsection (3), by repealing "or 52D" and substituting ", 52D, 52E or 53(3)";

(e) by adding -

"(4) In this section, "master" (聆案官) means the Registrar, a deputy registrar or assistant registrar."

## **25. Sections added**

The following are added -

### **"63A. Leave to appeal**

(1) Leave to appeal granted under section 63 may be granted -

- (a) in respect of a particular issue arising out of the judgment, order or decision; and
- (b) subject to such conditions as the judge, the master or the Court of Appeal hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(2) Leave to appeal shall not be granted unless the judge, the master or the Court of Appeal hearing the application for leave is satisfied that -

- (a) the appeal has a reasonable prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(3) In this section, "master" (聆案官) means the Registrar, a deputy registrar or assistant registrar.

**63B. Decision on leave to appeal final**

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted."

PART 9

APPEALS

**Recommendation 120**

**High Court Ordinance**

**26. Composition of Court of Appeal  
in its civil jurisdiction**

Section 34B(4) of the High Court Ordinance (Cap. 4) is amended by adding -

"(ab) hearing or determining any interlocutory application in relation to a cause or matter pending before it;".

PART 10

COSTS AGAINST NON-PARTY

**High Court Ordinance**

**27. Costs in Court of First Instance  
and Court of Appeal in its civil  
jurisdiction**

Section 52A(2) of the High Court Ordinance (Cap. 4) is repealed and the following substituted -

"(2) Without prejudice to the generality of subsection (1), the Court of Appeal or the Court of First Instance may, in accordance with rules of court, make an order awarding costs against a person who is not a party to the relevant proceedings, if the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that it is in the interests of justice to do so."

### **District Court Ordinance**

#### **28. Costs**

Section 53(2) of the District Court Ordinance (Cap. 336) is repealed and the following substituted -

"(2) Without prejudice to the generality of subsection (1), the Court may, in accordance with rules of court, make an order awarding costs against a person who is not a party to the relevant proceedings, if the Court is satisfied that it is in the interests of justice to do so."

### **PART 11**

#### **EXECUTION OF INSTRUMENTS**

#### **29. Section added**

The District Court Ordinance (Cap. 336) is amended by adding -

##### **"38A. Execution of instruments by order of the Court**

(1) Subsection (2) applies where -

- (a) the Court has given or made a judgment or order directing a person to -
  - (i) execute any conveyance, contract or other document; or
  - (ii) endorse any negotiable instrument; and
- (b) that person -
  - (i) neglects or refuses to comply with the judgment or order; or
  - (ii) cannot, after reasonable inquiry, be found.

(2) The Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document is to be executed, or that the negotiable instrument is to be endorsed, by such person as the Court may nominate for that purpose.

(3) A conveyance, contract, document or instrument executed or endorsed in accordance with subsection (2) has the same effect as if it had been executed or endorsed by the person originally directed to execute or endorse it.

(4) Nothing in this section abridges the powers of the Court to proceed by attachment against any person neglecting or refusing to execute or endorse any such instrument."

## PART 12

### LANDS TRIBUNAL

**Lands Tribunal Ordinance**

**30. Jurisdiction of the Tribunal**

Section 8 of the Lands Tribunal Ordinance (Cap. 17) is amended -

(a) by repealing subsection (6) and substituting -

"(6) The Tribunal shall have jurisdiction to make an order for the recovery of possession of any premises or for the ejectment of a tenant from those premises, whether under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) or otherwise.";

(b) by repealing subsection (7);

(c) in subsection (8), by repealing everything after "any such application," and substituting -

"to make one or more of the following orders -

(a) an order for the payment of rent and mesne profits

(including interim payments of rent and mesne profits);

(b) an order for the payment of any other money which is due under the tenancy or sub-tenancy;

(c) an order for the disposal of any property left in the

premises concerned by the  
tenant or sub-tenant; and

(d) an order for the payment of  
damages in respect of any  
breach of a condition of the  
tenancy or sub-tenancy.";

(d) in subsection (10), by repealing ", (7)";

(e) by repealing subsection (11);

(f) by adding -

"(12) Except as provided by any other  
Ordinance, the Tribunal does not have  
jurisdiction to make an order for the costs of  
and incidental to a dispute in relation to  
which no proceedings have been commenced in  
the Tribunal.".

**31. Jurisdiction under section 8(7)**

Section 8B is repealed.

**32. Practice and procedure of Tribunal**

Section 10 is amended -

(a) by repealing subsection (1) and substituting -

"(1) The Tribunal may, so far as it  
thinks fit, follow the practice and procedure  
of the Court of First Instance in the exercise  
of its civil jurisdiction, and for this  
purpose, has the same jurisdiction, powers and

duties of the Court of First Instance in respect of such practice and procedure.

(1A) Without prejudice to the generality of subsection (1), the Tribunal has the same jurisdiction, powers and duties of the Court of First Instance in respect of the punishment of a person guilty of contempt.";

(b) in subsection (3), by adding -

"(ba) the practice and procedure to be followed for dealing with any action or proceedings transferred from the Court of First Instance or the District Court;".

### **33. Section substituted**

Section 12 is repealed and the following substituted -

#### **"12. Costs**

(1) The costs of and incidental to all proceedings in the Tribunal are in the discretion of the Tribunal, and the Tribunal has full power to determine by whom and to what extent the costs are to be paid.

(2) Without prejudice to the generality of subsection (1), the Tribunal may make an order awarding costs against a person who is not a party to the relevant proceedings, if the Tribunal is satisfied that it is in the interests of justice to do so.

(3) In any proceedings before it, the Tribunal may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

(4) When determining whether or not to make an order under subsection (3), the Tribunal shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(5) Where the Tribunal has made an award of costs under subsection (1), (2) or (3), it may order that those costs be taxed in accordance with -

- (a) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A); or
- (b) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H).

(6) The Registrar or a Master of the High Court, or the registrar or a deputy registrar or assistant registrar of the Tribunal may tax the costs ordered to be taxed under subsection (5).

(7) Subject to subsection (5) and any rules made by the Chief Justice under section 10(3), Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies, with the necessary modifications, to the award, taxation and recovery of costs in the Tribunal.

(8) In this section -

"legal representative" (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party;

"Master" (聆案官) has the meaning given to it by sections 37, 37AC, 37A and 37B of the High Court Ordinance (Cap. 4);

"wasted costs" (虛耗訟費) means any costs incurred by a party as a result of -

- (a) any improper or unreasonable act or omission;  
or
- (b) any undue delay or any other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative."

#### **34. Section added**

The following is added -

##### **"12A. Costs in transferred cases, etc.**

(1) This section applies to an action or proceedings transferred -

- (a) from the Court of First Instance or the District Court to the Tribunal; or
- (b) from the Tribunal to the Court of First Instance or the District Court.

(2) The court or the Tribunal that orders the transfer may make an order for costs prior to the transfer and of the transfer.

(3) The costs of the whole action or proceedings both before and after the transfer are in the discretion of the court or the Tribunal to which the action or proceedings are transferred subject to any order made by the Tribunal or the court which ordered the transfer.

(4) The court or the Tribunal to which the action or proceedings are transferred may make -

(a) an order for costs; and

(b) an order as to the scales on which the costs of the action or proceedings are to be taxed, as if the action or proceedings were originally commenced in the court or the Tribunal.

(5) Subject to section 12(6), the costs of the whole action or proceedings are to be taxed in the court or the Tribunal to which the action or proceedings are transferred."

### **High Court Ordinance**

#### **35. Section added**

The High Court Ordinance (Cap. 4) is amended by adding -

#### **"12F. Transfer of proceedings to the Lands Tribunal**

The Court of First Instance may, either of its own motion or on the application of any party, order at any stage the transfer to the Lands Tribunal of all or part of any action or proceedings before it which are within the jurisdiction of the Lands Tribunal."

**36. Rules of court**

Section 54(2)(a) is amended by adding ", and between the Court of First Instance and the Lands Tribunal" after "District Court".

**District Court Ordinance**

**37. Section substituted**

Section 42 of the District Court Ordinance (Cap. 336) is repealed and the following substituted -

**"42. Transfer of proceedings to  
the Court of First Instance  
or the Lands Tribunal**

The Court may, either of its own motion or on the application of any party, order at any stage the transfer to the Court of First Instance or the Lands Tribunal of all or part of any action or proceedings before it which are within the jurisdiction of the Court of First Instance or the Lands Tribunal, as the case may be."

**38. Rules of court**

Section 72(2)(a) is amended by adding ", and between the Court and the Lands Tribunal" after "Court of First Instance".

### **Explanatory Memorandum**

The purpose of this Bill is to amend certain Ordinances as proposed by the Steering Committee on Civil Justice Reform to -

- (a) implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform ("the Report") published in 2004; and
- (b) implement several recommendations proposed by that Steering Committee.

2. The recommendations made in the Report to which the Bill relates are set out in the attached Schedule.

3. The Bill is divided into 12 Parts.

#### Part 2 - Costs-only Proceedings

4. Clause 3 relates to Recommendation 9 in section 5 of the Report. It adds new sections 52B, 52C and 52D to the High Court Ordinance (Cap. 4). The new section 52B makes it clear that the Court of First Instance has jurisdiction to make a costs order even though no proceedings seeking substantive relief have been commenced. It also sets out the circumstances in which a party may commence proceedings for such a costs order (costs-only proceedings). The new section 52C empowers the Court of First Instance to order the transfer of such proceedings to the District Court. The new section 52D provides for the scale of costs on which costs (including costs awarded in costs-only proceedings) are to be taxed.

5. Clause 5 makes similar amendments to the District Court Ordinance (Cap. 336). Clause 4 repeals section 44A(6) of the District Court Ordinance (Cap. 336) as the section is considered to be no longer necessary upon the addition of the new section 52D to the High Court Ordinance (Cap. 4).

6. Clause 6 amends the Schedule to the Small Claims Tribunal Ordinance (Cap. 338) to make it clear that the Small Claims Tribunal does not have jurisdiction to hear and determine any action or proceeding for a costs order if no proceedings seeking substantive relief have been commenced in the Tribunal.

#### Part 3 - Pleadings

7. Clause 8 implements Recommendation 25 in section 9 of the Report. At present, the case law has established that the common law defence of tender before action only applies to a liquidated claim but not to a claim for unliquidated damages. Clause 8 adds a new section to the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) to extend the defence of tender before action to a claim for unliquidated damages.

8. Clause 7 consequentially amends the long title of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) upon the addition of the new section 30 contained in clause 8.

#### Part 4 - Interim Remedies and Mareva Injunctions in aid of Proceedings outside Hong Kong

9. Clause 9 amends section 21L(3) of the High Court Ordinance (Cap. 4) so that the power of the Court of First Instance to grant an interlocutory injunction under the new section 21M is also

exercisable irrespective of whether the party against whom the injunction is made is domiciled, resident or present in Hong Kong.

10. Clause 10 adds 2 new sections to the High Court Ordinance (Cap. 4) to implement Recommendations 45 to 48 in section 12 of the Report. The new section 21M empowers the Court of First Instance to appoint a receiver or grant other interim relief in aid of proceedings outside Hong Kong which are capable of giving rise to a judgment which may be enforced in Hong Kong. Under the new section, the appointment of a receiver or the other interim relief may be sought as an independent form of relief without being ancillary or incidental to substantive proceedings in Hong Kong.

11. Recommendations 45 to 48 in section 12 of the Report relate to proceedings and arbitrations outside Hong Kong. Amendments to the Arbitration Ordinance (Cap. 341) are thus also necessary. Clause 11 amends section 2GC of that Ordinance to clarify that the power of the Court of First Instance to grant interim relief under that section applies in relation to arbitration proceedings in or outside Hong Kong. But the power may only be exercised in relation to arbitration proceedings outside Hong Kong if those proceedings may be enforced in Hong Kong (new section 2GC(1A)). Clause 12 adds a new section to the Arbitration Ordinance (Cap. 341) to empower the Rules Committee of the High Court to make rules of court relating to the making of applications for interim relief under that section 2GC and the service out of the jurisdiction of such applications and orders for interim relief.

Part 5 - Vexatious Litigants

12. Clause 13 implements Recommendations 67 and 68 in section 14 of the Report. The existing section 27 of the High Court Ordinance (Cap. 4) is replaced by new sections 27 and 27A which introduce the following changes -

- (a) it allows a vexatious litigant order to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been a party to the vexatious legal proceedings instituted by the respondent or who has directly suffered adverse consequences resulting from such proceedings;
- (b) it raises the threshold for granting leave to a vexatious litigant to institute fresh proceedings, requiring the Court of First Instance to be satisfied that the proceedings are not an abuse of the process and that there are reasonable, not just prima facie, grounds for the proceedings;
- (c) it makes it clear that a vexatious litigant order may be made for a specific period or remain in force indefinitely; and
- (d) it also makes it clear that there is no appeal against a grant or refusal of leave unless leave to appeal has been given by the Court of First Instance.

Part 6 - Discovery

13. Clause 14 implements Recommendations 75 and 77 in section 16 of the Report. Section 41 of the High Court Ordinance (Cap. 4) presently provides for pre-action disclosure in cases where the plaintiff is suing for personal injury or in respect of someone's death. Clause 14 amends that section to widen the jurisdiction of the Court of First Instance to order disclosure before commencement of proceedings to cover cases other than those in relation to personal injury and death claims. It should be noted that as a general rule, an order granted under the amended section 41 will relate to disclosure and inspection of documents that are directly relevant to an issue in the anticipated proceedings, i.e. documents that would likely be relied on in evidence by the parties themselves or documents that support or adversely affect any party's case in the anticipated proceedings.

14. Clause 15 makes similar amendments to section 47A of the District Court Ordinance (Cap. 336).

15. Clause 16 implements Recommendation 78 in section 16 of the Report. It amends section 42(1) of the High Court Ordinance (Cap. 4) so that the jurisdiction of the Court of First Instance to order post-commencement, pre-trial disclosure applies to all types of cases (and not merely to personal injury and death claims). Clause 17 makes a similar amendment to section 47B of the District Court Ordinance (Cap. 336).

#### Part 7 - Wasted Costs

16. Clause 18 relates to Recommendations 94 to 97 in section 18 of the Report. As these Recommendations concern wasted costs

orders against counsel and solicitors, clause 18 empowers the High Court to make such an order against them. Clause 19 makes similar amendments to the District Court Ordinance (Cap. 336).

#### Part 8 - Leave to Appeal

17. Clause 20 amends section 14 of the High Court Ordinance (Cap. 4) and clause 21 adds new sections 14AA and 14AB to that Ordinance to implement Recommendations 110, 111, 112, 113 and 115 in section 22 of the Report. Under section 14(1) of that Ordinance, an appeal lies as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil cause or matter. The new section 14AA introduces a requirement that an interlocutory appeal to the Court of Appeal be brought only with leave of the Court of First Instance or the Court of Appeal. Under the new section, rules of court to be made under section 54 of that Ordinance may however specify judgments or orders of the Court of First Instance to which the requirement does not apply. The new section 14AB specifies that no appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.

18. Clause 22 relates to Recommendation 112 in section 22 of the Report. It adds a new paragraph (aa) to section 34B(4) of the High Court Ordinance (Cap. 4) to provide that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine (with or without a hearing) an application for leave to appeal. The other amendments in clause 22 make it clear that the

Court of Appeal comprising 2 Justices of Appeal has jurisdiction to determine without necessarily hearing the specified appeals.

19. Clause 23 amends section 35(1) of the High Court Ordinance (Cap. 4) to make it clear that a single judge of the Court of Appeal may deal with an application for leave to appeal to the Court of Appeal.

20. Clause 24 amends section 63 of the District Court Ordinance (Cap. 336) to -

- (a) specify that leave to appeal against a judgment, order or decision of a judge may be granted by the District Court judge or the Court of Appeal;
- (b) provide for an appeal from a judgment, order or decision of a master; and
- (c) provide that a person against whom an order prohibiting him from leaving Hong Kong is made or against whom a wasted costs order is made, is also entitled to appeal to the Court of Appeal without leave.

21. Clause 25 adds 2 new sections to the District Court Ordinance (Cap. 336). The new section 63A (which regulates the grant or refusal of leave to appeal) and the new section 63B (which provides that the decision of the Court of Appeal on the grant or refusal of leave to appeal to it is final) are similar to the new sections 14AA(3) and (4) and 14AB of the High Court Ordinance (Cap. 4) introduced by clause 21.

22. Clause 26 relates to Recommendation 120 in section 22 of the Report. It adds a new paragraph (ab) to section 34B(4) of the High Court Ordinance (Cap. 4) to clarify that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine an application that is interlocutory to an appeal pending before it.

Part 10 - Costs against Non-party

23. Clause 27 amends section 52A of the High Court Ordinance (Cap. 4) to empower the Court of Appeal and the Court of First Instance to make a costs order against a person who is not a party to the relevant proceedings. Clause 28 makes a similar amendment to section 53 of the District Court Ordinance (Cap. 336).

Part 11 - Execution of Instruments

24. Clause 29 adds a new section to the District Court Ordinance (Cap. 336) to empower the District Court to nominate a person to execute certain instruments if the person originally ordered to execute them fails to do so or cannot be found. Under section 25A of the High Court Ordinance (Cap. 4), the Court of First Instance has such a power.

Part 12 - Lands Tribunal

25. Clause 30 amends section 8 of the Lands Tribunal Ordinance (Cap. 17) so that -

- (a) the Lands Tribunal may have comprehensive jurisdiction to make an order for possession of any

premises or for ejectment of a tenant from any premises; and

- (b) the Lands Tribunal may, in any application for possession or for ejectment, also make an order for the payment of damages in respect of any breach of a condition of a tenancy or sub-tenancy.

26. Clause 30 also adds a new subsection (12) to section 8 of the Lands Tribunal Ordinance (Cap. 17) to make it clear that the Lands Tribunal does not have jurisdiction to make a costs order if no proceedings seeking substantive relief have been commenced in the Tribunal.

27. Clause 31 consequentially repeals section 8B of the Lands Tribunal Ordinance (Cap. 17) upon the repeal of section 8(7) of that Ordinance.

28. Clause 32 amends section 10 of the Lands Tribunal Ordinance (Cap. 17) to -

- (a) make it clear that the Lands Tribunal has the same jurisdiction, powers and duties of the Court of the First Instance in respect of its practice and procedure in the exercise of its civil jurisdiction; and
- (b) empower the Chief Justice to make rules prescribing the practice and procedure to be followed for dealing with any action or proceedings transferred from the Court of First Instance or the District Court.

29. Clause 33 replaces section 12 of the Lands Tribunal Ordinance (Cap. 17) with a new section 12 so that the Lands Tribunal has the additional power to -

- (a) make a costs order against a person who is not a party to the proceedings before it; and
- (b) make a wasted costs order against counsel and solicitors.

The new section 12 also specifies the persons who may tax the costs ordered by the Lands Tribunal to be taxed.

30. Clause 34 adds a new section to the Lands Tribunal Ordinance (Cap. 17) to provide for costs in respect of cases transferred from the Court of First Instance or the District Court to the Lands Tribunal and vice versa.

31. Clause 35 adds a new section to the High Court Ordinance (Cap. 4) to empower the Court of First Instance to order the transfer to the Lands Tribunal of any action or proceedings brought before the Court of First Instance which are within the jurisdiction of the Lands Tribunal.

32. Clause 36 amends section 54(2)(a) of the High Court Ordinance (Cap. 4) to empower the High Court Rules Committee to make rules of court prescribing the procedure in connection with the transfer of proceedings between the Court of First Instance and the Lands Tribunal.

33. Clause 37 replaces section 42 of the District Court Ordinance (Cap. 336) with a new section 42 so that the District Court may also order the transfer to the Lands Tribunal of any action or

proceedings brought before the District Court which are within the jurisdiction of the Lands Tribunal.

34. Clause 38 amends section 72(2)(a) of the District Court Ordinance (Cap. 336) to empower the District Court Rules Committee to make rules of court prescribing the procedure for the transfer of proceedings between the District Court and the Lands Tribunal.

#### SCHEDULE

##### **Recommendation 9**

A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.

##### **Recommendation 25**

The defence of tender before action should be extended to apply to claims for unliquidated damages.

##### **Recommendation 45**

Proposal 17 (for introducing Mareva injunctions and incidental relief in aid of foreign proceedings) should be adopted as modified and supplemented by Recommendations 46 to 51.

##### **Recommendation 46**

The jurisdiction to grant a Mareva injunction in aid of foreign

proceedings or arbitrations should be confined to proceedings and arbitrations capable of leading, in the ordinary course, to a judgment or arbitral award which can be enforced in Hong Kong.

**Recommendation 47**

Section 21L of the HCO should be amended to make it clear that a Mareva injunction can be sought in aid of foreign proceedings and arbitrations as an independent, free-standing form of relief, without being ancillary or incidental to substantive proceedings commenced in Hong Kong, followed by relevant amendments to O 29.

**Recommendation 48**

Section 21L or some other appropriate provision of the HCO should be amended to give the Rules Committee clear authority to amend O 11 with a view to making applications for free-standing Mareva injunctions an eligible category for the grant of leave to effect service of process abroad, followed by relevant amendments to O 11.

**Recommendation 67**

Section 27 of the HCO should be amended to introduce enhancements equivalent to those introduced by section 42 of the Supreme Court Act 1981 in England and Wales.

**Recommendation 68**

The HCO should furthermore make provision for vexatious litigant orders to be made not only on the application of the Secretary

for Justice but also on the application of any person who is or has been party to vexatious proceedings presently instituted by or with the participation of the respondent or who has directly suffered adverse consequences resulting from such proceedings or from vexatious applications made by the respondent in such proceedings.

**Recommendation 75**

The HCO should be amended to broaden the jurisdiction of the court under section 41 to order disclosure before commencement of proceedings to encompass all types of cases (and not merely cases involving personal injury and death claims).

**Recommendation 77**

Orders for pre-action disclosure should relate to disclosure and inspection of specific documents or classes of documents which are "directly relevant" to the issues in the anticipated proceedings, being documents which would be likely to be relied on by the parties themselves or documents directly affecting adversely or directly supporting any party's case in the anticipated proceedings, the procedure for such applications being that prescribed by O 24 r 7A, subject to any necessary modifications.

**Recommendation 78**

Section 42(1) of the HCO should be amended so that the court's

jurisdiction to order post-commencement, pre-trial disclosure from persons who are not parties to the proceedings applies to all types of cases (and not merely to personal injury and death claims).

**Recommendation 94**

Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the exercise of the court's discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.

**Recommendation 95**

Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.

**Recommendation 96**

Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side's lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.

**Recommendation 97**

Barristers should be made subject to liability for wasted costs under O 62 r 8.

**Recommendation 110**

Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.

**Recommendation 111**

Where leave to appeal is required, the court should have power to limit the grant of such leave to particular issues and to grant leave subject to conditions designed to ensure the fair and efficient disposal of the appeal.

**Recommendation 112**

A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered necessary, the Court of Appeal should be able to direct that there be an oral hearing

before the original two judges or before a panel of three judges.

**Recommendation 113**

A refusal of leave to appeal by the Court of Appeal in relation to such purely interlocutory questions should be final. Where, however, the Court of Appeal hears the appeal, it should be open to the parties to apply for leave to appeal to the Court of Final Appeal in accordance with section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance.

**Recommendation 115**

Leave to appeal from the CFI judge to the Court of Appeal should only be granted where the court considers that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

**Recommendation 120**

Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges (the last option being dictated where the two judges are unable to agree).

## **KEY FEATURES OF THE PROPOSED AMENDMENTS TO SUBSIDIARY LEGISLATION**

### **Underlying Objectives**

It is proposed that courts would exercise their powers with regard to the underlying objectives to -

- (a) increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court;
- (b) ensure that a case is dealt with as expeditiously as is reasonably practicable;
- (c) promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) promote greater equality between the parties;
- (e) facilitate settlement of disputes; and
- (f) ensure that the resources of the Court are distributed fairly.

### **Case Management Powers**

2. It is proposed that courts have such case management powers as-

- (a) identifying the issues at an early stage;
- (b) fixing timetables and controlling the progress of the case; and
- (c) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

### **Court-determined Timetables**

3. It is proposed that court-determined timetables be set at an early stage of proceedings, taking into account the needs of the particular case and the reasonable requests of the parties, with firm milestone dates for the major steps, such as case management conferences, pre-trial reviews and the trial or trial period. Only in the most exceptional circumstances would a milestone date be changed.

## **Commencement of Proceedings**

4. It is proposed that the present system, with four different modes of commencement of proceedings - writs, originating summonses, originating motions and petitions – be simplified, so that the modes of commencement would be confined to –

- (a) writs where substantial factual disputes are likely to arise; and
- (b) originating summonses where questions of law involving no or little factual investigation are to be placed before the court.

## **Pleadings**

5. It is proposed that new requirements be introduced for pleadings to be verified by “statements of truth” and for substantive defences to be properly identified. This would enable the relevant issues in proceedings to be more easily identified at an early stage and discourage the raising of unmeritorious allegations or defences.

## **Admissions and Default Judgments**

6. It is proposed that a new procedure for making admissions to money claims be introduced. This would facilitate settlements and save court time and costs by enabling payment terms (as to, say, time and instalments) to be proposed by defendants who submit to default judgments.

## **Sanctioned Offers and Payments**

7. It is proposed that a system of sanctioned offers and payments be introduced so that, effectively, offers to settle any type of dispute (not just money ones) may be made, thereby bringing the whole action or a part of it, to an end. The proposals substantially alter the existing system of payments into court and would considerably widen the ambit of offers to settle cases. For example, under the existing rules, only defendant may offer to settle claims by payments into court, thereby putting a plaintiff at risk as to costs. Under the proposed system, a plaintiff, by making an offer to the defendant, can put the defendant at such risk.

## **Expert Evidence**

8. It is proposed that in order to counter the possible lack of impartiality or independence of expert witnesses, amendments be introduced to –

- (a) declare that expert witnesses owe a duty to the court which overrides any obligation to those instructing or paying them;
- (b) require the expert to acknowledge that overriding duty in his report; and
- (c) require the expert to declare his agreement to be bound by an approved code of conduct for experts.

9. It is also proposed that amendments be introduced to (a) empower the court, in appropriate cases, to order the parties to appoint a single joint expert (“SJE”), and (b) set out the factors which the court has to take into account in deciding whether or not to appoint an SJE.

## **System of Interlocutory Applications**

10. It is proposed that changes be introduced to the system of interlocutory applications to cut down the number of applications and hearings by –

- (a) making orders “self-executing”, i.e. prescribing an appropriate sanction which automatically applies for non-compliance, without the need to apply to the court for enforcement;
- (b) dealing with interlocutory applications on paper as far as practicable; and
- (c) penalising unwarranted interlocutory appeals with appropriate costs and other sanctions.

## **Procedures for Costs Assessment**

11 It is proposed that changes be introduced to the procedures for costs assessment to –

- (a) provide for summary assessment of costs, whereby the court, can assess the amount of costs payable and then order payment to be made within a certain period of time;

- (b) empower Masters to do provisional taxation on paper without a hearing;
- (c) empower Chief Judicial Clerks to tax costs if the amount of the bill of costs does not exceed the sum of \$200,000 (currently \$100,000).

The introduction of summary assessment of costs is aimed at discouraging unwarranted interlocutory applications. The proposed changes are also intended to dispense with the present elaborate and lengthy taxation procedures, thereby saving time and costs.

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## IMPLICATIONS OF THE PROPOSAL

The proposal aims to improve the civil procedures and avoid undue delay and expenses.

### **Financial and Manpower Implications**

2. The proposed legislative amendments would streamline civil proceedings and eliminate unnecessary steps, thereby tending to lessen the strain on judicial resources. However, some of the proposed legislative amendments may increase the workload of the courts. It is difficult to estimate with any degree of precision at this stage as to the financial implication for the Judiciary. The Judiciary will continue to assess the possible resource implications of the implementation of the reform. Any additional resource requirements will be acquired in accordance with normal procedures of resource allocation.

3. As regards the wasted costs provisions which apply equally to legal officers and Legal Aid Officers, the Administration anticipates that the financial implications will be negligible<sup>1</sup>, and will be absorbed from within the existing resources of the Department of Justice and the Legal Aid Department as appropriate.

### **Economic Implications**

4. Through improving our civil justice system, the proposal would ensure that our judicial system, one of the most important cornerstones for Hong Kong's long-term prosperity, would develop in line with the increasingly complex global socio-economic progression. Upon effective implementation, the proposal would strengthen Hong Kong's competitiveness as a dispute resolution centre and its position as an international business centre.

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<sup>1</sup> For cases assigned to private practitioners by the two departments, the concerned assigned lawyers will be personally responsible for any wasted costs orders awarded against them. Hence, there is no implication against the general revenue in this respect.

## **Sustainability Implications**

5. In line with the sustainability principle of fostering an equitable and progressive society, the proposal would improve the civil procedures and enable a fairer distribution of the judicial resources, thereby enhancing the public's access to justice.

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