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on 13 June 2008**

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 6 June 2008**

**Date of tabling in LegCo** : 11 June 2008

**Amendment to be made by** : 9 July 2008 (or the 1<sup>st</sup> meeting of the next session if extended by resolution)

**PART I CIVIL JUSTICE REFORM**

**High Court Ordinance (Cap. 4)**

**Rules of the High Court (Amendment) Rules 2008 (L.N. 152)**

**High Court Fees (Amendment) Rules 2008 (L.N. 154)**

**High Court Suitors' Funds (Amendment) Rules 2008 (L.N. 155)**

**District Court Ordinance (Cap. 336)**

**Rules of the District Court (Amendment) Rules 2008 (L.N. 153)**

**District Court Civil Procedure (Fees) (Amendment) Rules 2008 (L.N. 156)**

**District Court Suitors' Funds (Amendment) Rules 2008 (L.N. 157)**

**Lands Tribunal Ordinance (Cap. 17)**

**Lands Tribunal (Amendment) Rules 2008 (L.N. 158)**

**Background**

In February 2000, the Chief Justice appointed the Working Party (Working Party) on Civil Justice Reform (CJR) to review the rules and procedure of the High Court in civil proceedings and to recommend changes thereto with a view to ensuring and improving access to justice at reasonable costs and speed. The Final Report of the Working Party (Final Report) was made to the Chief Justice in March 2004. A Steering Committee on Civil Justice Reform (Steering Committee) was appointed by the Chief Justice in March 2004 to oversee the implementation of the recommendations of the Final Report relating to the Judiciary. The Steering Committee has decided on a package of proposed amendments to both primary and

subsidiary legislation. The Civil Justice (Miscellaneous Amendments) Bill 2007 (Ordinance No. 3 of 2008) (CJR Ordinance) was passed on 30 January 2008 to make amendments to primary legislation. The CJR Ordinance shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Given the complexity and the volume of subsidiary legislation relating to the CJR, the Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007 recommended that in order to allow sufficient time for scrutiny, the subsidiary legislation should be studied in draft form before they are formally tabled before the Council. On 18 January 2008, the House Committee agreed to form the Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform (the Subcommittee) for the purpose.

3. The Subcommittee held 14 meetings and completed its scrutiny of the English version of the proposed amendments to the relevant subsidiary legislation. Members may refer to the Report of the Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform (LC Paper No. CB(2)2222/07-08) for more information about the deliberations of the Subcommittee.

### **Procedure in the High Court**

#### *Rules of the High Court (Amendment) Rules 2008 (L.N. 152)*

4. L.N. 152 deals with the following issues relating to the procedure in civil proceedings in the High Court as provided in the Rules of the High Court (Cap. 4 sub. leg. A) -

<b><i>L.N. 152</i></b>	<b><i>Issues</i></b>	<b><i>Recommendations in the Final Report</i></b>
Part 1	Commencement	-
Part 2	Objectives and case management powers	2, 3, 4, 81 and 82
Part 3	Non-compliance with rules and court orders	84
Part 4	Costs-only proceedings	9
Part 5	Commencement of proceedings	11 to 16
Part 6	Dispute as to jurisdiction	17
Part 7	Default judgments and admissions	18
Part 8	Pleadings	22 to 24, 26 to 35
Part 9	Sanctioned offers and sanctioned payments	38, 39, 41, 42 and 43, 132

Part 10	Interim remedies and Mareva injunctions in aid of proceedings outside Hong Kong	49
Part 11	Case management timetabling and milestones	52 to 60 and 62
Part 12	Vexatious litigants	69
Part 13	Discovery	76 and 79
Part 14	Interlocutory applications	83, 85 and 86
Part 15	Interlocutory applications and summary assessment of costs	88, 89 and 92
Part 16	Wasted costs	94 to 97
Part 17	Witness statements and evidence	100
Part 18	Expert evidence	102, 103 and 107
Part 19	Case managing trials	108
Part 20	Leave to appeal	109, 110 and 112
Part 21	Appeals	120
Part 22	General approach to inter-party costs	122
Part 23	Taxing the other side's costs	131, 134, 135 and 136
Part 24	Judicial review	144, 145 and 148
Part 25	Costs against non-party to the proceedings	-
Part 26	Miscellaneous amendments	-

5. Members may refer to the Explanatory Note of L.N. 152 for detailed information about the changes brought by these amendments.

*High Court Fees (Amendment) Rules 2008 (L.N. 154)*

6. L.N. 154 amends the High Court Fees Rules (Cap. 4 sub. leg. D) to provide that -

- (a) the fee prescribed in item 1 in the First Schedule is not payable on sealing of an originating document by which proceedings are instituted pursuant to leave to institute proceedings by a person who is subject to a vexatious litigant order;
- (b) the fee prescribed in item 19 in the First Schedule is payable on the filing of a notice of commencement of taxation or on any assessment or determination of costs pursuant to any court order or ordinance. The prescribed fee is however not payable on the summary assessment of

costs under Order 62, rule 9 or 9A of Cap. 4 sub. leg. A. The amount of the fee is determined on the basis of the amount claimed instead of on the basis of the amount allowed;

- (c) the fee prescribed in item 19a in the First Schedule is payable where a bill of costs is withdrawn within 7 days after the application for setting down the taxation is made;
- (d) the fee prescribed in item 23 in the First Schedule is also payable on sealing of an order made under section 21M (Interim relief in the absence of substantive proceedings) of Cap. 4;
- (e) a new item 25 to the First Schedule is added to Cap. 4 sub. leg. D to prescribe the fee payable for applying for leave to institute or continue proceedings by a person who is subject to a vexatious litigant order.

High Court Suitors' Funds (Amendment) Rules 2008 (L.N. 155)

7. Under rule 16(3A) of the High Court Suitors' Funds Rules (Cap. 4 sub. leg. B), if money is paid in court as security for costs, or by way of satisfaction or amends, or in compliance with an order giving leave to defend upon the payment, interest is to be credited on the ledger credit in respect of the payment as from the day beginning 14 days after the money is paid in. L.N. 155 amends rule 16 of Cap. 4 sub. leg. B to provide that where the money so paid in court is an offer made by way of a payment into court in accordance with the new Order 22 of Cap. 4 sub. leg. A, interest is to be credited on the ledger credit in respect of the payment as from the day beginning 28 days after the money is paid in.

**Civil Procedure in the District Court**

Rules of the District Court (Amendment) Rules 2008 (L.N. 153)

8. In December 2005, the Chief Justice decided that legislative amendments should apply to the procedures of the District Court and the Lands Tribunal (LT) where appropriate and expanded the terms of reference of the Steering Committee to include overseeing the application of the recommendations in the Final Report to the District Court and Lands Tribunal.

9. L.N. 153 makes amendments to the Rules of the District Court (Cap. 336 sub. leg. H), where applicable, similar to those amendments to the Cap. 4 sub. leg. A as contained in L.N. 152 with a view to implementing the recommendations in the Final Report at the District Court level.

10. However, as leave is generally required to appeal against any decision made in the civil proceedings in the District Court whereas leave to appeal is only required for interlocutory decisions in the High Court, different amendments are made to Order 58 of Cap. 336 sub. leg. H to -

- (a) provide that an appeal against an order for imprisonment made by a master under Order 49B of the Cap. 336 sub. leg. H lies to the Court of Appeal as of right;
- (b) extend the period within which an application for leave to appeal against a judgment, order or decision of a master may be made from 14 days to 28 days;
- (c) extend the period within which an appeal to the Court of Appeal may be made from 14 days to 28 days;
- (d) add a new rule to clarify what are not interlocutory judgments or orders for the purpose of determining the time limits for appeal to the Court of Appeal from a judgment or order of a District Judge (Part 19 of L.N. 153).

*District Court Civil Procedure (Fees) (Amendment) Rules 2008 (L.N. 156)*

11. L.N. 156 amends the District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg. C) to provide that -

- (a) the fee prescribed in item 20 in the Schedule is payable on the filing of a notice of commencement of taxation or on any assessment or determination of costs pursuant to any court order or Ordinance. The prescribed fee is however not payable on the summary assessment of costs under Order 62, rule 9 or 9A of Cap. 336 sub. leg. H. The amount of the fee is determined on the basis of the amount claimed instead of on the basis of the amount allowed;
- (b) the fee prescribed in item 20a in the Schedule is payable where a bill of costs is withdrawn within 7 days after the application for setting down the taxation is made.

*District Court Suitors' Funds (Amendment) Rules 2008 (L.N. 157)*

12. Under rule 16(3)(a) of the District Court Suitors' Funds Rules (Cap. 336 sub. leg. E), no interest is to be credited to any money lodged in court on any ledger credit if the money is paid in court as security for costs, or by way of satisfaction or amends, or in compliance with an order giving leave to defend upon the payment, unless an order of the District Court directs otherwise. L.N. 157 amends rule 16 of Cap. 336 sub. leg. E to provide that interest is to be credited on the ledger credit as

from the day beginning 14 days after the money is paid in. Where the money so paid in court is an offer made by way of a payment into court in accordance with the new Order 22 of Cap. 336 sub. leg. H, interest is to be credited on the ledger credit in respect of the payment as from the day beginning 28 days after the money is paid in.

### **Procedure in the Lands Tribunal**

#### *Lands Tribunal (Amendment) Rules 2008 (L.N. 158)*

13. L.N. 158 amends the Lands Tribunal Rules (Cap. 17 sub. leg. A) to -
- (a) make it clear that the powers of the Lands Tribunal under rule 14(2) of Cap. 17 sub. leg. A are in addition to and do not derogate from any power of the Lands Tribunal conferred by any enactment or rule of law;
  - (b) prescribe the procedure for an appeal against a judgment, order or decision of the Registrar of the Lands Tribunal or of a deputy registrar or assistant registrar of the Lands Tribunal;
  - (c) prescribe the procedure for an application for leave to appeal against a judgment, order or decision of the Lands Tribunal, and for any subsequent appeal to the Court of Appeal.
14. Members may refer to the LegCo Brief (File Ref.: JUD ADM 1-55/2/9) issued by the Judiciary Administration on 4 June 2008 for background information.

### **Deliberations of the Subcommittee**

15. The Subcommittee has scrutinized the English text of the draft of the above subsidiary legislation and relevant comments of the Subcommittee were noted by the Judiciary Administration. The Judiciary Administration has made certain revisions to the draft subsidiary legislation in accordance with the suggestions of the Subcommittee. The Legal Service Division is scrutinizing the above subsidiary legislation and will report further to the House Committee if necessary.

16. L.N. 152 to L.N. 158 shall come into operation on the day appointed for the commencement of the CJR Ordinance. The Subcommittee has requested the Judiciary Administration to report to the Panel on Administration of Justice and Legal Services on, inter alia, the progress on preparing and providing training to members of the two legal professional bodies for the implementation of CJR by early January 2009, before the commencement notice for the above subsidiary legislation is made.

## **PART II NOTICES ON PENSION INCREASE**

### **Pensions (Increase) Ordinance (Cap. 305)**

#### **Declaration of Increase in Pensions Notice 2008 (L.N. 160)**

### **Widows and Orphans Pension (Increase) Ordinance (Cap. 205)**

#### **Widows and Orphans Pension (Increase) Notice 2008 (L.N. 161)**

17. Under the Pensions (Increase) Ordinance (Cap. 305) (P(I)O), if the average monthly Consumer Price Index (A) (Average Index) of a period of 12 months ending on 31 March of a year exceeds the Average Index of the immediately preceding 12 months by a percentage that is more than 0.1%, a basic pension to which the P(I)O applies has to be increased by the same percentage.

18. The Average Index of the 12 months ending on 31 March 2008 exceeds the Average Index of the immediately preceding 12 months by 2.5%. Accordingly, L.N. 160 declares that the percentage of increase in respect of a basic pension is 2.5% with effect on 1 April 2008.

19. Under the Widows and Orphans Pension (Increase) Ordinance (Cap. 205) (WOP(I)O), if the Average Index of a period of 12 months ending on 31 March of a year exceeds the Average Index of the immediately preceding 12 months by a percentage that is more than 0.1%, the pensions described in WOP(I)O have to be increased by the same percentage.

20. The Average Index of the 12 months ending on 31 March 2008 exceeds the Average Index of the immediately preceding 12 months by 2.5%. Accordingly, L.N. 161 specifies that the percentage of increase in respect of those pensions is 2.5% and that the increase is effective from 1 April 2008.

21. Members may refer to LegCo Brief File Ref: CSBCR/AP/4-075-005/5 Pt. 11 issued by Civil Service Bureau on 29 May 2008 for background information.

22. L.N. 160 and L.N. 161 have not been discussed by the Panel on Public Service.

23. No difficulties in relation to the legal and drafting aspects of L.N. 160 and L.N. 161 have been identified.

### **PART III MISCELLANEOUS ITEM**

#### **Prevention and Control of Disease Ordinance (14 of 2008)**

#### **Prevention and Control of Disease Regulation (L.N. 159)**

24. The object of the Regulation is to consolidate and bring up-to-date measures to prevent the introduction into Hong Kong of infectious diseases and to prevent and control their spread in or transmission from Hong Kong. These measures were formerly in the Quarantine and Prevention of Disease Ordinance (Cap. 141) and the Prevention of the Spread of Infectious Diseases Regulation (Cap. 141 sub. leg. B). Both the Quarantine and Prevention of Disease Ordinance and the Prevention of the Spread of Infectious Diseases Regulation are repealed by the Prevention and Control of Disease Ordinance (14 of 2008). The Regulation also gives effect to the International Health Regulations (2005) promulgated by the World Health Organization (WHO).

25. Members may refer to the Explanatory Note to the Regulation published in the Gazette for a summary of the provisions of the Regulation.

26. Members may also refer to LegCo Brief File Ref: FH CR 4/3231/96 of June 2008 issued by the Food and Health Bureau for background information.

27. According to paragraphs 11 and 12 of the LegCo Brief, the Administration has consulted various stakeholders who expressed general support for the proposed measures. Some expressed concerns over the impacts of the proposed measures on their business operations, and pointed out the need for the Department of Health to provide guidelines in due course for the implementation of health measures. According to the LegCo Brief, the Department of Health will work closely with the relevant stakeholders to address such concerns and to ensure smooth implementation of the proposed measures.

28. The Bills Committee on the Prevention and Control of Disease Bill has considered the draft Regulation. At the Bills Committee's meeting on 5 May 2008, the Administration submitted a revised draft Regulation, which incorporates various suggestions made by Members and contains some textual amendments for Members' consideration. Members supported generally the revised draft Regulation.

29. A marked-up version showing the changes made to the revised draft Regulation is at Annex C to the LegCo Brief. Besides some further technical amendments, the Regulation changes the authority who may designate a specified infectious disease as a designated disease from the Director of Health to the Secretary for Food and Health (SFH). Both the disease specification and prescription of fees can in future be done by SFH in one single instrument which is subsidiary legislation.



30. The Administration intends the Regulation and the Prevention and Control of Disease Ordinance to come into operation immediately after the expiry of the scrutiny period of L.N. 159 on 9 July 2008 (without extension of the scrutiny period by LegCo's resolution).

31. No difficulties in relation to the legal and drafting aspects of L.N. 159 have been identified.

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