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**Paper for the House Committee meeting
on 20 February 2009**

**Report of the Subcommittee on Hong Kong Court of Final Appeal
Fees (Amendment) Rules 2009, District Court Civil Procedure
(Fees) (Amendment) Rules 2009 and Civil Justice (Miscellaneous Amendments)
Ordinance 2008 (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009, District Court Civil Procedure (Fees) (Amendment) Rules 2009 and Civil Justice (Miscellaneous Amendments) Ordinance 2008 (Commencement) Notice.

Background

Objective of the Civil Justice Reform (CJR)

2. In February 2000, the Chief Justice (CJ) appointed the Working Party on CJR (the Working Party) to review the rules and procedure of the High Court (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 CJ in its Final Report in March 2004, making a total of 150 recommendations.

3. The objective of CJR is to –

- (a) preserve 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) streamline and improve the civil procedures; and
- (c) facilitate early settlement by parties, cut out unnecessary applications and, if necessary, penalize such 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 utilized.

4. CJ accepted the Working Party's Final Report and set up the Steering Committee on CJR (the Steering Committee) to oversee the implementation of the recommendations therein relating to the Judiciary. CJ subsequently decided that the proposed changes should be implemented not just in HC, but also in the District Court (DC) and the Lands Tribunal where such changes are appropriate.

Amendments to primary and subsidiary legislation under CJR

5. After two rounds of consultation in April 2006 and October 2007, the Steering Committee decided on a package of proposed amendments to both primary and subsidiary legislation. The primary legislation¹ for implementing CJR, *viz.*, the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008) ((CJR Ordinance) was enacted on 30 January 2008.

6. Given the complexity and volume of subsidiary legislation² relating to CJR, a Subcommittee was appointed under the House Committee in January 2008 to study seven sets of subsidiary legislation in draft form before they were formally tabled before the Legislative Council (LegCo). As a result, amendments have been made to the draft and are reflected in the final text. The seven sets of Amendments Rules were gazetted on 6 June 2008 and tabled in the Council on 11 June 2008.

The subsidiary legislation

Civil Justice (Miscellaneous Amendments) Ordinance 2008 (Commencement) Notice

7. According to section 2 of the CJR Ordinance, the Ordinance shall come into operation on a day to be appointed by CJ by notice published in the Gazette. By this Notice, CJ appoints 2 April 2009 as the commencement date.

¹ Legislative amendments have been made to six Ordinances, namely, the High Court Ordinance (Cap. 4), Lands Tribunal Ordinance (Cap. 17), Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), District Court Ordinance (Cap. 336), Small Claims Tribunal Ordinance (Cap. 338) and Arbitration Ordinance (Cap. 341).

² Amendments have been made to three main sets of subsidiary legislation, *viz.* Rules of the High Court (Cap. 4A), Rules of the District Court (Cap. 336H); and Lands Tribunal Rules (Cap. 17A). In addition, consequential amendments have been made to four sets of subsidiary legislation, *viz.* the High Court Fees Rules (Cap. 4D), District Court Civil Procedure (Fees) Rules (Cap. 336C), High Court Suitors' Funds Rules (Cap. 4B) and District Court Suitors' Funds Rules (Cap. 336E).

Hong Kong Court of Final Appeal (CFA) Fees (Amendment) Rules 2009

8. The Rules of High Court (Amendment) Rules 2008 made certain amendments to the provisions governing taxation procedures in Order 62 of the Rules of High Court (Cap. 4 sub. leg. A) (RHC) including:

- (a) the requirement for a party to pay to the Court a prescribed taxing fee when filing a notice of commencement of taxation (Order 62 rule 21(5)); and
- (b) the provision that the party is not entitled to any refund of such fee except (i) if the bill is withdrawn within seven days after application to set down under rule 21A(1) or (ii) where the court otherwise directs (Order 62 rule 21D(3)).

Under rule 57 of the CFA Rules (Cap. 484 sub. leg. A), CFA is required to follow the taxation procedures under Order 62 of RHC in general.

9. Consequential to the above amendments to Order 62 of RHC, which will generally be applied to CFA pursuant to rule 57 of CFA Rules, and in line with the objective to facilitate early settlement and to deter the inflation of the amount claimed under the bill of costs, the CFA Rules Committee made the CFA Fees (Amendment) Rules 2009 on 21 January 2009 to mirror the aforesaid amendments to Order 62 of RHC as follows:

- (a) the prescribed taxing fee required under Order 62 rule 21(5) of RHC will be levied on the amount of costs claimed in the bill of costs, instead of the amount of costs allowed as at present; and
- (b) regarding the refund of taxing fee prescribed under Order 62 rule 21D(3) of RHC, 10% of the taxing fee is payable if a bill of costs is withdrawn within seven days after the application for setting down the taxation.

District Court Civil Procedure (Fees) (Amendment) Rules 2009

10. Under the Rules of District Court (Amendment) Rules 2008, Order 23A of Rules of District Court (Cap. 336 sub. leg. H) (RDC) on "directions for actions begun by writ" was repealed and Order 34 of RDC on "pre-trial review and fixing date for trial of actions begun by writ" was repealed and replaced by a new Order 34 on "setting down for trial action begun by writ".

11. In order to correspond to the revised procedure under the new Order 34 of RDC, the DC Rules Committee made the DC Civil Procedure (Fees) (Amendment) Rules 2009 on 21 January 2009 to amend the relevant fee items in the DC Civil Procedure (Fees) Rules accordingly. The proposed amendments to the DC Civil Procedure (Fees) Rules are as follows:

- (a) the original item 2(a) of the Schedule to the DC Civil Procedure (Fees) Rules, which sets out the fee for "Applying for pre-trial review" at \$630, will become obsolete and should be repealed, because there will no longer be any mandatory pre-trial reviews as required under the previous Order 23A and Order 34 of RDC and parties will directly set the case down for trial without first applying for a pre-trial review; and
- (b) a new fee item of "Setting down a cause or issue for hearing" at \$630 is introduced to provide the legal basis for DC to levy the fees.

The Subcommittee

12. At the House Committee meeting on 6 February 2009, Members formed a Subcommittee to study the CFA Fees (Amendment) Rules 2009, DC Civil Procedure (Fees) (Amendment) Rules 2009 and Civil Justice (Miscellaneous Amendments) Ordinance 2008 (Commencement) Notice. The membership list of the Subcommittee is in **Appendix**. Under the chairmanship of Dr Hon Margaret NG, the Subcommittee has held one meeting with the Judiciary Administration (JA) and the Department of Justice (DoJ).

Deliberations of the Subcommittee

Preparation by the Judiciary for the implementation of CJR

13. The primary concern of the Subcommittee is whether the Judiciary has made adequate preparation work for the implementation of CJR on 2 April 2009. According to JA, the Judiciary is taking or will take a number of publicity initiatives including production of a video on the major changes under CJR, publication of leaflets, updating of the CJR website, display of notices/posters at various court premises and provision of training programmes on CJR to judges at all levels of court and relevant support staff.

14. Members are of the view that the Judiciary should carry out its publicity initiatives on CJR as early as possible and the work should be extended to reach the general public as far as possible. They have suggested that publicity and explanatory materials relating to the implementation of CJR should be (a) issued to non-governmental organizations (NGOs) which have provided legal or related services to members of the public and (b) made available at district offices (DOs). At the Subcommittee's request, JA has provided further information on the various publicity initiatives as follows -

- (a) a detailed press release on the implementation of CJR will be issued in mid March 2009;

- (b) posters on the implementation of CJR will be displayed by mid March 2009 at various court premises to inform court users that CJR will take effect on 2 April 2009. Sufficient copies of the posters will also be sent to the two legal professional bodies and other concerned organizations, DOs and other NGOs providing free legal advice for display;
- (c) a series of 12 leaflets, covering the following topics, are being prepared or updated in the light of the implementation of CJR for publication by mid March 2009:
 - (i) What should be considered before taking legal action;
 - (ii) What should be noted about civil proceedings;
 - (iii) What are the stages in a civil action;
 - (iv) How to prepare for a hearing or trial;
 - (v) How is a trial or hearing conducted in court;
 - (vi) What are Statements of Truth;
 - (vii) How to shorten legal proceedings: Order 13A admissions;
 - (viii) How to shorten legal proceedings: Sanctioned offers and sanctioned payments;
 - (ix) How to apply for judicial review;
 - (x) How to appeal;
 - (xi) What is taxation of costs; and
 - (xii) Civil Justice Reform: Transitional Arrangements.

These leaflets will be made available at various court premises, the Resource Centre for Unrepresented Litigants (the Resource Centre) and DOs, and they will be uploaded to the Judiciary's website and provided to NGOs providing free legal advice;

- (d) a video on the major changes under CJR and the benefits it will bring will be uploaded onto the Judiciary's website and will be shown to the public at the Resource Centre as from 2 April 2009;
- (e) the dedicated website on CJR is being updated, and the revamped website will be fully launched on 2 April 2009; and

- (f) a further press release on the implementation of CJR will be issued on 1 April 2009.

15. JA has also informed the Subcommittee that the Judiciary has made arrangements to train existing staff and to deploy additional trained and experienced staff to answer enquiries at the HC Registry, DC Registry and the Resource Centre. Staff handling relevant telephone hotlines are also being trained to answer enquiries relating to the implementation of CJR.

16. Members stress that as the various changes in CJR would impact on litigants in persons (LIPs) in dealing with the applicable procedures in the conduct of their cases, it is important for the Judiciary to alert these litigants of the changes and provide adequate assistance and facilities to them. JA has advised the Subcommittee that to prepare for the implementation of CJR on 2 April 2009, the facilities and services in the Resource Centre have been enhanced at various fronts. Members have suggested that the Judiciary should take the initiative to inform litigants in persons (LIPs) with on-going cases being handled by the courts about the implementation of CJR.

17. JA has consulted the Chairman of the Steering Committee on CJR on members' suggestion. JA has explained that not all LIPs would be affected by the implementation of CJR, and in relation to those affected, the extent to which each LIP would be affected may be different. It is therefore considered that it would not be advisable and would be potentially confusing to inform LIPs of the implementation of CJR on an individual basis. The Judiciary, however, would display posters at various court premises, in particular at prominent locations at filing registries and the Resource Centre, to inform court users, including LIPs, of the implementation of CJR. JA has further pointed out that LIPs could obtain assistance from the Resource Centre and when they attend court hearings, the impact of CJR (in so far as they are affected) would be explained to them.

Preparation by the legal profession

18. Members note that the Hong Kong Bar Association and the Law Society of Hong Kong have organized extensive training programmes and would continue to do so to prepare their members for the implementation of CJR. Members also note that both the Bar Association and the Law Society have confirmed that the legal profession would be ready for the implementation by 2 April 2009. Some members including Hon Albert HO and Hon Ronny TONG, however, have expressed concern that there are still a number of lawyers who have not attended any training programmes on CJR. Hon Margaret NG has pointed out that she has received emails mostly from small law firms and less experienced lawyers expressing concern about the impact of CJR on their business. She considers that it demonstrates that many members of the legal profession are not well-informed of the changes in CJR.

19. Members have suggested that the Steering Committee should consider writing to the Bar Association and the Law Society, inviting them to consider (i) making CJR

related training mandatory for their members; and (ii) conducting a survey to ascertain how many legal practitioners have attended CJR training.

20. JA has consulted the Chairman of the Steering Committee on the suggestion. According to JA, the Chairman of the Steering Committee considers that lawyers have the obligation to promote justice and the effective operation of the judicial system. Under the CJR court rules, the parties and their legal representatives have an express duty to assist the court to further the underlying objectives of the rules. The legal profession is accordingly duty bound to prepare adequately for the implementation of CJR. Training is important to help equip the legal profession to operate competently under the reformed civil justice system. As such, the Judiciary has all along been actively encouraging the two legal professional bodies to provide training for their members and has been providing every assistance and cooperation in this regard, including participating in seminars for lawyers. The Judiciary will continue to provide every assistance and co-operation if required. The Chairman of the Steering Committee, however, considers that this is essentially a matter for the legal professional bodies and the lawyers themselves to decide how the training should be provided. Hon Albert HO has reiterated his view that given the impact of CJR on the liabilities of lawyers, the Law Society should remind law firms to get prepared for the implementation of CJR. Hon Paul TSE has also expressed disappointment that the Steering Committee was not very receptive to members' suggestions.

Monitoring of the reformed civil justice system

21. Members note that CJ has decided to set up a committee to monitor the working of the reformed civil justice system after the implementation of CJR and to make suggestions to ensure its effective operation (the Monitoring Committee). JA has advised the Subcommittee that the Monitoring Committee would be chaired by the Chief Judge of High Court and would comprise judges, a barrister, a solicitor, a member of DoJ and the Legal Aid Department (LAD) and an experienced mediator. JA has also provided to the Subcommittee the membership list of the Monitoring Committee, the three-year term of appointment of which, apart from its ex-officio members, starts from 2 April 2009.

22. Members stress that it is important to monitor rigorously the reformed civil justice system and gauge feedback from the relevant stakeholders on the effectiveness of the reformed system. They have requested JA to provide further information about the work and operation of the Monitoring Committee and to confirm whether any complaint-handling mechanism would be put in place.

23. JA has informed the Subcommittee that the Chairman of the Monitoring Committee intends to arrange an informal meeting with members in March 2009 to discuss how the Monitoring Committee should monitor the various aspects of the implementation of CJR, including:

- (a) the gathering and receiving of feedback from all concerned parties on the operation of the new legislation and the revised and new Practice Directions (PDs). This includes getting and receiving feedback from both within and outside the Judiciary. Within the Judiciary, feedback will be obtained from relevant Judges and Judicial Officers (JJOs) and support staff including staff of the Resource Centre; outside the Judiciary, from the legal profession and other court users including DoJ and LAD;
- (b) the gathering, compiling and analyzing of relevant statistics regarding CJR;
- (c) considering the need for on-going training for all concerned; and
- (d) making appropriate suggestions to CJ to ensure the effective operation of the reformed civil justice system after having regard to all relevant materials.

24. JA has also explained that the Monitoring Committee would not deal with specific complaints about judicial decisions. Under the principle of judicial independence, judicial decisions, including those related to the exercise of discretion under the CJR legislation, must not be interfered with administratively. Anyone who feels aggrieved by a judicial decision can only appeal (where this is available) through legal channels. In accordance with existing mechanisms, complaints against the conduct of a judge (as opposed to the judge's judicial decision) are handled by CJ and/or the Court Leader of the relevant level of court. Complaints against support staff are handled by the Judiciary Administrator.

25. According to JA, it is possible that there may be complaints or concerns relating not to individual cases but to the general operation of the procedural rules and PDs, or the system. The Chairman of the Monitoring Committee considers that the Monitoring Committee may look into issues arising or emanating from all feedback, including complaints, against or concerns about the general operation of the reformed civil justice system. In this regard, it should be noted that the Chief District Judge and the Registrars of both HC and DC are ex-officio members of the Monitoring Committee. The Court Leaders and the Registrars will take a close monitoring role over the operation of the reformed civil justice system, and would provide effective inputs to the Monitoring Committee on any issues or problems identified. JA has further advised the Subcommittee that the Judiciary intends to keep the Panel on Administration of Justice and Legal Services informed of the progress of the implementation of CJR in about a year's time.

26. Members are of the view that the primary problem might lie in the implementation of the various changes in CJR at operational level. They have requested JA to further explain how possible implementation problems would be addressed.

27. JA has advised the Subcommittee that in the course of preparing for CJR and consultation with the relevant interested parties, in particular the legal profession, the Judiciary has already identified possible issues which may arise during implementation and provided directions on how they should be addressed in the 24 PDs concerning CJR. In addition, tailor-made courses on CJR have been launched to train all JJOs and about 430 support staff. Issues which may arise and how to address them have also been tackled at the various training sessions. In addition to the Court Leaders and Registrars of HC and DC who take a close monitoring role over the operation of the reformed civil justice system as stated above, Panel Masters, all of whom are fully conversant with CJR, have also been designated at both HC and DC to provide guidance to staff and litigants on issues arising if needed.

The CFA Fees Amendment Rules 2009

The DC Civil Procedure (Fees) Amendment Rules 2009

28. Members note that the main package of CJR legislative amendments has already been enacted by LegCo in January and July 2008 respectively. Since then, the Judiciary has identified a number of minor consequential legislative amendments which cover the CFA Fees Amendment Rules 2009, the DC Civil Procedure (Fees) Amendment Rules 2009 and the Matrimonial Causes Fees (Amendment) Rules 2009. Members further note that the JA's plan is to introduce the Matrimonial Causes Fees (Amendment) Rules 2009 into LegCo for positive vetting in March 2009. JA has advised the Subcommittee that the Matrimonial Causes Fees (Amendment) Rules 2009 seeks to introduce amendments similar to those in the CFA Fees Amendment Rules 2009.

29. JA has confirmed that both the CFA Fees Amendment Rules 2009 and the DC Civil Procedure (Fees) Amendment Rules 2009 are consequential amendments and are technical in nature. The CFA Fees Amendment Rules seek to follow the taxation procedures under Order 62 of RHC as revised by the RHC Amendment Rules 2008. The DC Fees Amendment Rules seek to follow the amendments of Order 34 of RDC as revised by the RDC (Amendment) Rules 2008. Members note that the CFA Fees Amendment Rules 2009 and the DC Civil Procedure (Fees) (Amendment) Rules 2009 provide for transitional arrangements so that the position of the relevant appointments to tax obtained and applications made before the commencement of them would not be affected.

Recommendation

30. The Subcommittee supports the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009, District Court Civil Procedure (Fees) (Amendment) Rules 2009 and Civil Justice (Miscellaneous Amendments) Ordinance 2008 (Commencement) Notice.

Advice sought

31. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
19 February 2009

**Subcommittee on Hong Kong Court of Final Appeal
Fees (Amendment) Rules 2009, District Court Civil Procedure
(Fees) (Amendment) Rules 2009 and Civil Justice (Miscellaneous
Amendments) Ordinance 2008 (Commencement) Notice**

Membership list

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| Chairman | Dr Hon Margaret NG |
| Members | Hon Albert HO Chun-yan Hon LAU Kong-wah, JP Hon LEUNG Kwok-hung Hon Ronny TONG Ka-wah, SC Hon CHIM Pui-chung Hon Paul TSE Wai-chun Total : 7 Members |
| Clerk | Miss Flora TAI |
| Legal Adviser | Miss Kitty CHENG |
| Date | 13 February 2009 |