

立法會
Legislative Council

LC Paper No. LS47/08-09

**Paper for the House Committee Meeting
on 6 March 2009**

**Legal Service Division Report on
Proposed Resolution under section 54 of the
Matrimonial Causes Ordinance (Cap. 179)**

The Chief Secretary for Administration has given notice to move a motion at the Legislative Council meeting of 18 March 2009. The motion seeks the Legislative Council's approval of the Matrimonial Causes (Fees) (Amendment) Rules 2009 (the MC(A) Rules) made by the Chief Judge of High Court under section 54 of the Matrimonial Causes Ordinance (Cap. 179).

2. Under section 54(2) of the Matrimonial Causes Ordinance, the Chief Judge, with the approval of the Legislative Council, may make rules prescribing the fees and costs to be paid, charged or allowed under that Ordinance.

3. Members may recall that the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008) (the Ordinance) was passed on 30 January 2008 to give effect to the proposals made by the Steering Committee on Civil Justice Reform (CJR) appointed by the Chief Justice with a view to -

- (a) preserving the best features of the adversarial system but curtailing its excesses by giving even greater case management powers to the courts;
- (b) streamlining and improving the civil procedures; and
- (c) facilitating early settlements by parties, cutting out unnecessary applications and, if necessary, penalizing such applications.

4. As an integral part of the CJR package, amendments were introduced to seven sets of rules governing the practice and procedure in the High Court, the District Court and the Lands Tribunal. These amendment rules were published in the Gazette on 6 June 2008 and tabled in the Legislative Council on 11 June 2008 (L.N. 152, 153, 154, 155, 156, 157 and 158).

5. Under the new Order 62 rule 21(5) of the Rules of the High Court (RHC) and the new Order 62 rule 21(5) of the District Court Rules (RDC), a party shall, when he files a notice of commencement of taxation, pay to the court a prescribed taxing fee. The party is not entitled to any refund of such fee except where -

- (a) the bill is withdrawn within seven days after application to set down, or
- (b) the court otherwise directs (new Order 62 rule 21D of RHC and new Order 62 rule 21D of RDC).

Consequential amendments to reflect the above reforms in taxation were made in the High Court Fees (Amendment) Rules 2008 (L.N. 154 of 2008) and the District Court Civil Procedure (Fees) (Amendment) Rules 2008 (L.N. 156 of 2008) in June 2008, being part of the amendment rules mentioned in paragraph 4 above.

6. In January 2009, amendments were introduced in the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009 (L.N. 16 of 2009) (the CFA Fee Rules) to give effect to the reforms in taxation referred to in paragraph 5 above in the Court of Final Appeal.

7. Under rule 91A of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) (the MC Rules), where the costs of and incidental to any matrimonial proceedings are directed to be taxed, Order 62 of RHC shall have effect in relation to the costs of proceedings in the Court of First Instance, and Order 62 of RDC shall have effect in relation to the costs of proceedings of the District Court.

8. The MC(A) Rules, the subject matter of this motion, seek to amend the MC Rules as a consequence of the reforms in taxation in the new Order 62 of RHC and new Order 62 of RDC in that -

- (a) the proposed rule 3(b) amends item 13 in the Schedule to the MC Rules to provide that the fee specified in that item is payable on filing a notice of commencement of taxation instead of the taxation of a bill of costs;
- (b) the proposed item 13A in rule 3(c) specifies the fee payable on any assessment or determination of cost pursuant to any court order or Ordinance. The specified fee is not payable on summary assessment of costs; and
- (c) the proposed item 13B in rule 3(c) specifies the fee payable where a bill of costs is withdrawn within seven days after the application for setting down the taxation is made.

9. When the Panel on Administration of Justice and Legal Services was briefed on the progress in relation to the implementation of CJR at its meeting on 13 January 2009, the Judiciary Administration (JA) informed members of the details of, inter alia, the proposed MC(A) Rules. Members of Panel noted that the Law Society of Hong Kong and the Hong Kong Bar Association were generally agreeable to these amendments which were technical in nature. Members did not raise any queries.

10. By the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (Commencement) Notice (L.N. 18 of 2009) (the Commencement Notice), the Chief Justice appoints 2 April 2009 as the day on which the Ordinance shall come into operation. The CFA Fees Rules shall also come into operation on the day appointed for the commencement of the Ordinance. A Subcommittee (the Subcommittee) was formed to examine, inter alia, the CFA Fees Rules and the Commencement Notice and it did not propose any amendment to these items of subsidiary legislation. At the meeting of the Subcommittee held on 17 February 2009, JA informed the Subcommittee about its plan to introduce the MC(A) Rules, which would seek to introduce amendments similar to those in the CFA Fee Rules, into the Legislative Council for positive vetting in March 2009 (LC Paper No. CB(2)901/08-09).

11. The proposed amendments in MC(A) Rules are similar to the amendments made in the CFA Fees Rules and the drafting of the proposed amendments presents no difficulty.

12. Under section 1 of the proposed MC(A) Rules, the MC(A) Rules shall come into operation on the day appointed for the commencement of the Ordinance, i.e. 2 April 2009.

Prepared by

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