

**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 (“The Subcommittee”)**

**Response to Issues Raised
at the Subcommittee Meeting on 13 February 2009**

Purpose

This paper provides information on the issues raised by Members at the Subcommittee meeting held on 13 February 2009.

Background

2. At the Subcommittee meeting on 13 February 2009, the Judiciary Administration was requested to:

- (a) Provide further information on the Judiciary’s publicity initiatives for the implementation of the Civil Justice Reform (“CJR”);
- (b) Provide further information on the Monitoring Committee of CJR;
- (c) Advise on major issues which are expected to arise upon the implementation of CJR and plans on how they would be addressed; and
- (d) Relay the Subcommittee’s suggestion to the Steering Committee on CJR that it may consider writing to the Hong Kong Bar Association and the Law Society of Hong Kong, inviting the two legal professional bodies to consider (i) making CJR-related training mandatory for their members; and (ii) conducting a survey to ascertain how many practitioners have attended CJR training and are ready for the implementation of CJR.

3. At the meeting of the Legislative Council Panel on Administration of Justice and Legal Services (“AJLS Panel”) held on 13 January 2009, Members were informed of the progress made in relation to the implementation of CJR including the preparation made by the Judiciary and the legal profession (Panel Paper “Implementation of CJR”: LC Paper No. CB(2)601/08-09(06));

and the preparation of the Resource Centre for Unrepresented Litigants in the Judiciary for the implementation of CJR (“Resource Centre for Unrepresented Litigants”: LC Paper No. CB(2)601/08-09(04)). Members of the Subcommittee may also wish to refer to the two papers for background information.

Judiciary’s publicity initiatives for the implementation of CJR

4. The Judiciary is taking or will take a number of publicity initiatives to enhance public understanding of CJR. The publicity initiatives include :

- (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 organisations, District Offices of the Administration and other non-governmental organizations 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 :
 - (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.

The leaflets will be published by mid March 2009. They will be made available at various court premises and the Resource Centre for Unrepresented Litigants, and will be uploaded to the Judiciary’s website. In addition, the Judiciary will make arrangements for the

leaflets to be distributed at District Offices of the Administration and non-governmental organizations providing free legal advice;

- (d) A video on the major changes under CJR and the benefits it will bring is being produced. It will be uploaded onto the Judiciary's website and will be available for showing to the public at the Resource Centre for Unrepresented Litigants 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.

5. In addition to the above measures, the Judiciary has made arrangements to train existing staff and to deploy additional trained and experienced staff to answer enquiries at the High Court Registry, District Court Registry and the Resource Centre for Unrepresented Litigants upon the implementation of CJR. Staff handling relevant telephone hotlines are also being trained to answer enquiries relating to the implementation of CJR.

6. The Judiciary Administration has consulted the Chairman of the Steering Committee on CJR on the suggestion that the Judiciary may notify litigants in person ("LIPs") with on-going cases being handled by the courts about the implementation of CJR. It should be noted that not all LIPs will be affected by the implementation of CJR, and in relation to those affected, the extent to which each LIP will be affected may be different. It is therefore considered that it would not be advisable and would be potentially confusing to inform the LIPs of the implementation of CJR on an individual basis. The Judiciary will display posters at various court premises, in particular at prominent locations at filing registries and the Resource Centre for Unrepresented Litigants, to inform court users, including the LIPs, of the implementation of CJR. Further, LIPs can obtain assistance from the Resource Centre and when they attend court hearings, the impact of the CJR (in so far as affects them) will be explained to them.

Monitoring Committee of CJR

7. The Chief Justice ("CJ") has established a Monitoring Committee on CJR. Its terms of reference are to monitor the working of the reformed civil justice system and to make suggestions to CJ to ensure its effective operation. The Monitoring Committee will be chaired by the Chief Judge of High Court

and will comprise judges, a barrister, a solicitor, a member of the Department of Justice and the Legal Aid Department and an experienced mediator. The Judiciary Administration will provide secretariat support. Apart from its ex-officio members, the term of appointment is 3 years starting from 2 April 2009. The appointment process has just been completed and the membership list is at the Annex.

8. Although the term of the Monitoring Committee will only start on 2 April 2009, the Chairman 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 for Unrepresented Litigants; outside the Judiciary, from the legal profession and other court users including the Department of Justice and the Legal Aid Department;
- (b) The gathering, compiling and analyzing of relevant statistics regarding CJR;
- (c) Considering the need for on-going training for all concerned; and
- (d) Having regard to all relevant materials, the Monitoring Committee will make appropriate suggestions to CJ to ensure the effective operation of the reformed civil justice system.

9. The Monitoring Committee will 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. And complaints against support staff are handled by the Judiciary Administrator.

10. It is noted that 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 the High Court and the District Court 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.

11. The Judiciary considers that it will take time to see how the reformed civil justice system will be working. The Judiciary intends to keep the AJLS Panel informed of the progress of the implementation of CJR in about a year's time.

Issues which are expected to arise and how they would be addressed

12. 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. The PDs (English version) were promulgated on or before 12 February 2009. It should be noted that two rounds of consultations had been conducted on the draft PDs, and many discussions had been held with the legal professional bodies before they were finalised.

13. In addition, tailor-made courses on CJR have been launched to train all Judges and Judicial Officers and about 430 support staff. Issues which may arise and how to address them have also been tackled at the various training sessions.

14. In addition to the Court Leaders and Registrars of the High Court and District Court 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 the High Court and the District Court to provide guidance to staff and litigants on issues arising if needed.

Relaying the Subcommittee's Suggestion to the Steering Committee on CJR

15. The Judiciary Administration has consulted the Chairman of the Steering Committee on CJR regarding the Subcommittee's suggestion that the Steering Committee may consider writing to the Hong Kong Bar Association and the Law Society of Hong Kong, inviting them to consider (i) making CJR-related training mandatory for their members; and (ii) conducting a survey to ascertain how many practitioners have attended CJR training and are ready for the implementation of CJR.

16. The Chairman of the Steering Committee considers that lawyers have the obligation to promote justice and the effective operation of the judicial system. Indeed, 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 encourage the legal profession to provide training on CJR and will continue to provide every assistance and cooperation if required. It should also be noted that as to how training should be provided, the Chairman of the Steering Committee considers that this is essentially a matter for the legal professional bodies and the lawyers themselves.

17. The Chairman of the Steering Committee notes that the Bar Association and the Law Society have confirmed that they have devised extensive training programmes for their members. They have organized over 30 CJR training sessions and are going to conduct more. The Chairman of the Bar Association and the President of the Law Society have also stated that the legal profession will be ready for the implementation of CJR by 2 April 2009.

Judiciary Administration
February 2009

Membership List of Civil Justice Reform Monitoring Committee

- Chairman** : The Hon Mr Justice Ma, Chief Judge of High Court
(ex-officio)
- Members** : The Hon Mr Justice Lam
- The Hon Mr Justice Reyes
- The Hon Mr Justice Fung
- His Honour Judge Li, Chief District Judge (ex-officio)
- His Honour Judge AU
- Ms Au-Yeung Kwai-yue, Queeny, Registrar, High Court (ex-officio)
- Mr Poon Siu-tung, Temporary Registrar, District Court (ex-officio)
- Miss Emma Lau, Judiciary Administrator
- Mr Wesley Wong, Senior Assistant Law Officer (Civil Law)
(Member of the Department of Justice appointed in consultation with the Secretary for Justice)
- Mr Thomas Kwong, Deputy Director of Legal Aid (Litigation) (Member of the Legal Aid Department appointed in consultation with Director of Legal Aid)
- Mr Joseph Fok SC (Barrister appointed in consultation with the Chairman of the Hong Kong Bar Association)
- Mr Alex Lai (Solicitor appointed in consultation with the President of the Law Society of Hong Kong)
- Mr Chan Bing-woon (Member of the mediation community)