

on 13 January 2009

**Panel of Administration of Justice and Legal Services
Implementation of Civil Justice Reform**

PURPOSE

This paper seeks to inform Members of progress in relation to the implementation of Civil Justice Reform (“CJR”).

PREPARATION BY THE JUDICIARY

Legislation

2. The main package of CJR legislative amendments was enacted by the Legislative Council under the Civil Justice (Miscellaneous Amendments) Ordinance 2008 and seven sets of subsidiary legislation¹ in January and July 2008 respectively. The legislative amendments will come into operation on a day to be appointed by the Chief Justice by notice in the Gazette. The notice will be subject to negative vetting by the Legislative Council.

3. Since July 2008, the Judiciary has further identified a number of minor consequential legislative amendments which cover the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009, the District Court Civil Procedure (Fees) (Amendment) Rules 2009 and the Matrimonial Causes Fees (Amendment) Rules 2009. These consequential legislative amendments are technical in nature, and seek to follow certain features on taxation and fee items under the new Rules of High Court (Cap. 4A) and the Rules of District Court (Cap. 336H), which had been accepted and enacted by the Legislative Council under CJR. Details of the proposed legislative amendments and the marked-up version of the draft Rules are in the **Annex**.

4. The Judiciary has been consulting the two legal professional bodies on these draft Rules. They have no comments on the District Court Civil Procedure (Fees) (Amendment) Rules 2009. The comments of the Bar

¹ The subsidiary legislation includes:

- Rules of the High Court (Amendment) Rules 2008
- High Court Suitors’ Funds (Amendment) Rules 2008
- High Court Fees (Amendment) Rules 2008
- Rules of the District Court (Amendment) Rules 2008
- District Court Civil Procedure (Fees) (Amendment) Rules 2008
- District Court Suitors’ Funds (Amendment) Rules 2008
- Lands Tribunal (Amendment) Rules 2008

Association on Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009 have been incorporated into the current draft. As regards the Matrimonial Causes Fees (Amendment) Rules 2009, comments from the legal professional bodies are awaited. The Judiciary will take into account any views when finalizing the Rules.

5. The above amendment Rules would be made by the Court of Final Appeal Rules Committee, the District Court Rules Committee and the Chief Judge of High Court (“CJHC”) with the approval by resolution of the Legislative Council respectively.

6. The Judiciary is firmly on target to implement CJR on 2 April 2009. We propose to table the commencement notice on the operation of CJR by the Chief Justice, together with the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009 and the District Court Civil Procedure (Fees) (Amendment) Rules 2009, for negative vetting by the Legislative Council in February 2009. As regards the Matrimonial Causes Fees (Amendment) Rules 2009, the plan is to seek the Legislative Council’s approval in March 2009.

Practice Direction

7. Practice directions (“PDs”) are issued by the courts from time to time to regulate the conduct of court proceedings.

8. The Steering Committee on CJR (“Steering Committee”) chaired by the CJHC has prepared 24 draft PDs to implement the recommendations in the Final Report prepared by the Chief Justice’s Working Party on CJR. Of the 24 PDs, 13 amend existing PDs and the remaining 11 are new PDs.

9. The Steering Committee has drawn up the draft PDs in close consultation with the legal profession and other relevant parties. Two rounds of consultation were conducted. The draft PDs were first circulated for comments in July 2008. The Steering Committee also met with the two legal professional bodies for discussions. The Steering Committee, having considered the comments received, revised the draft PDs and circulated a second time for comments in November 2008. There have been no major comments received. It is expected the PDs will be finalized in the near future.

10. As regards the timing for the implementation of the new PDs, the Law Society has requested that the implementation of the PD on

Mediation should be deferred to enable solicitors to better prepare themselves in this regard. The Judiciary would soon announce its decision on this request. As for the remaining PDs (except the “Direction Issued by the President of the Tribunal Pursuant to Section 10(5)(a) of the Lands Tribunal Ordinance (Cap. 17) Pilot Scheme for Building Management Cases” regarding the extension of the Pilot Scheme from 1 January to 30 June 2009 which came into effect on 1 January 2009), they would be promulgated for implementation on 2 April 2009 to tie in with CJR coming into effect.

Infrastructural support

11. The Judiciary has been enhancing the case management systems of the High Court and the District Court for implementing CJR. The enhancement work is progressing according to schedule and the enhanced computer systems would be rolled out before April 2009.

12. A set of detailed operational manuals on the reformed areas has also been prepared to provide guidance to support staff on implementation. Adequate staff resources are being deployed to support the implementation work including those involved in the perfection of orders.²

Training

13. The Judiciary has attached great importance to training to support the implementation of CJR. Tailor-made courses on CJR were launched to train Judges and Judicial Officers (“JJOs”) and support staff starting September 2008.

14. Training courses continue to be provided to JJOs at all levels of court. They have been conducted by the CJHC and a team of four High Court Judges. There were three rounds of lectures. In addition, 14 small-class training sessions in which JJOs are grouped by their respective levels of court for interactive training have been and are being conducted.

15. A total of 430 support staff whose work is related to CJR have been identified to attend operational training programmes. The programmes are being conducted by JJOs and senior staff of the Judiciary Administration. The support staff first attended a lecture given by the CJHC and the

² In deploying staff to support CJR implementation work, the workload involved in perfecting orders has already been taken into account. The Judiciary will try its best to ensure that draft orders of the Court of First Instance will normally be approved within 7 working days after receipt of the draft from the party concerned. The Judiciary will closely monitor the situation after the implementation of CJR.

Registrar of the High Court to gain an overview of CJR. They have since been attending small-class operational and information technology (“IT”) training classes on the major reform areas and the change in workflow. A total of one lecture, 13 small-class operational training classes and 13 IT training classes have been arranged.

Assistance to unrepresented litigants

16. With the implementation of CJR, the Judiciary will continue to provide appropriate assistance to the unrepresented litigants. For details, Members are requested to refer to the paper “The Resource Centre for Unrepresented Litigants” prepared by the Judiciary Administration for the meeting of the Panel of Administration of Justice and Legal Services on 13 January 2009.

Enhancing public understanding

17. The Judiciary is taking or will take the following publicity initiatives:

- (a) A video on the major changes under CJR and the benefits it will bring will be uploaded onto the Judiciary’s website for showing to the public at the Resource Centre for Unrepresented Litigants (“Resource Centre”).
- (b) Information sheets on general civil proceedings in the High Court and District Court will be produced for public distribution at the Resource Centre and various court premises.
- (c) The CJR website will be updated.
- (d) Press release will be issued.
- (e) Notices will be produced and displayed at various court premises to inform court users that CJR will take effect on 2 April 2009.

Monitoring

18. The Judiciary regards as important the monitoring of the reformed civil justice system after the implementation of CJR. Active consideration is being given to the setting up an appropriate mechanism.

The Judiciary would soon announce its decision on this matter. Members will be kept informed of its decision in this regard.

PREPARATION BY LEGAL PROFESSION

19. Lawyers are officers of the court. They have an obligation to promote justice and the effective operation of the judicial system. Indeed, Order 1A rule 3 of the Rules of High Court (Cap. 4A) and the Rules of District Court (Cap. 336H) expressly provide that the parties to any proceedings and their legal representatives have the duty of assisting the court to further the underlying objectives of CJR. The legal profession and indeed each individual practitioner are accordingly duty bound to prepare adequately for the implementation of CJR. The Judiciary has been providing assistance to the profession in this regard.

20. In 2007, the Judiciary informed the two legal professional bodies of the plan to implement CJR by April 2009. The Bar Association and the Law Society have confirmed that they have devised extensive training programmes for their members. The Judiciary understands that the two legal professional bodies have organized over 30 CJR training sessions, including the following. The Law Society and the Bar Association have already in October and November 2008 jointly organized two general sessions on the overview of the major changes under CJR. The CJHC and two judges of the High Court were invited to speak. It is expected that there will be another such session in February or March this year. The Law Society has, on its own, arranged nine series of specialized modules with the aim to provide a more in-depth account of different areas of CJR. As regards the Bar Association, it has arranged 13 small group sessions in which its members are taken through each of the various Orders which have been amended under CJR. The Bar Association has also arranged some seminars on specific topics such as mediation and personal injuries.

21. The Judiciary has been assisting the two legal professional bodies to conduct training and will continue to so. The Judiciary has supplied the two legal professional bodies with sufficient copies of marked-up versions of the court rules showing the amendments to assist³. Representatives of the two professional bodies were invited to the small-class training sessions organized for JJOs for the purpose of “training the trainers”. Many JJOs have also contributed as speakers at various training programmes organized by the two bodies and other organizations.

³ The Judiciary has supplied the two legal professional bodies with about 2450 copies in total. It has also supplied copies to individual practitioners and members of the public upon request.

22. The Chief Justice understands from the Chairman of the Bar Association and the President of the Law Society that the legal profession will be ready for the implementation of CJR by 2 April 2009.

Judiciary Administration
January 2009

Consequential subsidiary legislation

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

The draft Hong Kong Court of Final Appeal (“CFA”) Fees (Amendment) Rules 2009 (“the draft CFA(F)R”) are consequential to the taxation procedures under Order 62 of the Rules of High Court (“RHC”) (Cap. 4A) as revised by the RHC (Amendment) Rules 2008.

2. The RHC (Amendment) Rules 2008 were enacted in 2008. They made certain amendments to the provisions governing taxation procedures in Order 62 of the 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)).
- (b) The provision that the party is not entitled to any refund of such fee except (i) if the bill is withdrawn within 7 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. 484A), the CFA should in general follow the taxation procedures under Order 62 of the RHC.

3. Consequential to the above amendments to Order 62 of the RHC, which will generally be applied to the CFA pursuant to rule 57 of the 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, amendments are proposed in the draft CFA(F)R to mirror the amendments to RHC as set out in paragraph 2 above:

- (a) The prescribed taxing fee mentioned in paragraph 2(a) above will be levied on the amount claimed in the bill of costs, instead of the amount allowed as at present.
- (b) Regarding the refund mentioned in paragraph 2(b)(i) above, 10% of the taxing fee is payable if a bill of costs is withdrawn within 7 days after the application for setting down the taxation.

A copy of the marked-up version of the draft CFA(F)R is at Appendix I.

4. The Hong Kong Bar Association and the Law Society of Hong Kong have been consulted on the draft CFA(F)R. While the Law Society of Hong Kong has no comment on the draft, the Hong Kong Bar Association suggested that the words “as applied by rule 57 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A)” in paragraphs 5 and 6 of the Schedule should be enclosed by parentheses. We have incorporated the Hong Kong Bar Association’s suggestion into the draft CFA(F)R into the current draft.

5. Subject to the CFA Rules Committee’s approval of the draft CFA(F)R, the Judiciary would table them at the Legislative Council for negative vetting in February 2009. It is the intention to bring the Rules into operation on 2 April 2009.

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

6. The draft District Court (“DC”) Civil Procedure (Fees) (Amendment) Rules 2009 (“the draft DC(F)R”) are consequential to the amendments of Order 34 of the Rules of DC (“RDC”) (Cap. 336H) as revised by the RDC (Amendment) Rules 2008.

7. The RDC (Amendment) Rules 2008 were enacted in 2008. Under the Rules, Order 23A of the RDC on “directions for actions begun by writ” was repealed and Order 34 of the 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”. The amendments were made to maintain consistency with the RHC.

8. Corresponding to the revised procedure under the new Order 34 of the RDC, the relevant fee items in the DC Civil Procedure (Fees) Rules should also be amended. There will no longer be any mandatory pre-trial reviews as required under the previous Order 23A and Order 34 and parties will directly set the case down for trial without first applying for a pre-trial review. 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 deleted. In addition, to mirror the High Court Fees Rules (Cap. 4D), a new fee item of “Setting down a cause or issue for hearing” at \$630 should be introduced to provide the legal basis for the DC to levy the fees. A copy of the marked up version of the draft DC(F)R is at **Appendix II**.

9. The Hong Kong Bar Association and the Law Society of Hong Kong have been consulted and have agreed on the draft DC(F)R.

10. Subject to the approval of the draft DCC(F)R by the DC Rules Committee, the Judiciary would table them at the Legislative Council for negative vetting in February 2009. It is the intention to bring the DC(F)R into operation on 2 April 2009.

Matrimonial Causes (Fees) (Amendment) Rules 2009

11. Similar to the draft CFA(F)R, the draft Matrimonial Causes (Fees) (Amendment) Rules 2009 (“the draft MCFR”) are consequential to the taxation procedures under Order 62 of the RHC and the RDC as revised by the RHC (Amendment) Rules 2008 and the RDC (Amendment) Rules 2008.

12. Pursuant to rule 91A of the Matrimonial Causes Rules (Cap. 179A), 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 in the District Court.

13. Consequential to the amendments to Order 62 of the RHC and RDC as set out in paragraph 2 above, which should be applied to matrimonial proceedings, and in line with the objective to facilitate early settlement and to deter the inflation of the amount claimed under the bill of costs, similar amendments as set out in paragraph 3 above are proposed in the draft MC(F)R. A copy of the marked up version of the draft MC(F)R is at **Appendix III**.

14. The Judiciary has circulated the draft MC(F)R to the two legal professional bodies for comments. The Judiciary will take into account any views when finalizing the MC(F)R.

15. The draft MC(F)R would be submitted to the Chief Judge of High Court. Subject to the making of the rule by the Chief Judge of High Court, the plan is to seek the Legislative Council’s approval in March 2009. It is the intention to bring the Rules into operation on 2 April 2009.

Appendix I

Marked-up Version of the Draft CFA(F)R

Remarks

1. Fees payable in Court

(1) The fees specified in the Schedule are payable in connection with an appeal in the Court in respect of the matters specified.

(2) The Registrar may reduce, remit or defer payment of a fee in any particular case if he thinks fit and where he does so shall endorse on the relevant document a note of the reduction, remission or deferment and the reason therefor.

2. Method of payment

Fees shall be paid by means of adhesive stamps or by franking the relevant document.

3. Application to HKSAR Government

These Rules apply to proceedings by or against the Government of the Hong Kong Special Administrative Region.

4. Transitional provision relating to the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009

Rule 2

Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of rule 3(b) and (c) (“the amending rule”) of the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009 (L.N. _____ of 2009) –

- (a) nothing in the amending rule applies in relation to the taxation; and
- (b) Fee Nos. 5 and 6 in the Schedule as in force immediately before the commencement of the amending rule continue to apply in relation to the taxation as if they had not been amended by the amending rule.

Remarks

SCHEDULE

[~~rule 1(1)~~ rr.1(1) & 4]

Fee No.	Description	Fee \$	Remarks
5	On the taxation of a bill of costs under rule 57 of the Hong Kong Court of Final Appeal Rules (Cap 484 sub. leg.), for every \$100 or fraction of \$100 of the amount allowed – On filing a notice of commencement of taxation under Order 62, rule 21(1) of the Rules of the High Court (Cap. 4 sub. leg. A) (as applied by rule 57 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A)), for every \$100 or fraction of \$100 of the amount claimed –		Rule 3
	(a) for the first \$100000	6	
	(b) for the next \$150000	4	
	(c) for the next \$250000	3	
	(d) for the remainder	1	
6	Processing of a bill of costs which is withdrawn less than 7 days before the appointment for taxation Withdrawal of a bill of costs within 7 days after the application for setting down the taxation under Order 62, rule 21A(1) of the Rules of the High Court (Cap. 4 sub. leg. A) (as applied by rule 57 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A)) is made	10% of the taxing fee would be payable if the bill was to be allowed in full or \$1000 whichever is the less	Rule 3

Appendix II

Marked-up Version of the Draft DC(F)R

Remarks

1. Citation

These rules may be cited as the District Court Civil Procedure (Fees) Rules.

2. Fees

The fees specified in the Schedule shall be payable in respect of all proceedings taken in any action or matter whatsoever in the Court whenever commenced, save where express provision is made by any other enactment in respect of any particular form of proceedings.

3. Payment of fees

Save where otherwise provided in the Schedule, the fees therein specified shall be payable either by adhesive stamps or by causing the relevant document to be franked with the amount of the relevant fee.

4. Saving of special fee

Where, in relation to any particular proceedings in the Court, a fee is specified in the Schedule, that fee shall be payable in substitution for and not in addition to any general fee specified in the Schedule.

5. (Repealed L.N. 402 of 1992)

6. Power of Registrar

The Registrar may reduce, remit or defer payment of any fee specified in the Schedule as he may think fit in any particular case and shall, in every case where he exercises this power, endorse on the relevant document a note of such reduction, remission or deferment and of the reason therefor.

Remarks

7. Application to the Government

These Rules shall apply to all proceedings by or against the Government.

8. Transitional provision relating to the District Court Civil Procedure (Fees) (Amendment) Rules 2008

Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of rule 3(a) and (b) (“the amending rule”) of the District Court Civil Procedure (Fees) (Amendment) Rules 2008 (L.N. 156 of 2008) –

- (a) nothing in the amending rule applies in relation to the taxation; and
- (b) items 20 and 20a in the Schedule as in force immediately before the commencement of the amending rule continue to apply in relation to the taxation as if they had not been amended by the amending rule.

9. Transitional provision relating to the District Court Civil Procedure (Fees) (Amendment) Rules 2009

Rule 2

Item 2(a) of the Schedule does not apply to a cause or issue if, before the commencement of rule 3(b) of the District Court Civil Procedure (Fees) (Amendment) Rules 2009 (L.N. of 2009), an application has been made for a pre-trial review in respect of the cause or issue.

Remarks

SCHEDULE

Item	Particular	[rule 2 <u>rules 2, 8 & 9</u>] Fee \$	Rule 3
Entry or Setting Down for Trial in Court			
2.	(a) Applying for pre-trial review <u>Setting down a cause or issue for hearing</u>	630	
	(b) Setting down a civil appeal, <u>motion</u> or summons for hearing	630	
	(c) Entering a reference for hearing of an assessment of damages by a judge or the Registrar	630	

Appendix III

Matrimonial Causes (Fees) (Amendment) Rules 2009

The Matrimonial Causes (Fees) Rules (Cap. 179B)

Remarks

1. Citation

These rules may be cited as the Matrimonial Causes (Fees) Rules.

2. Fees payable

The fees specified in the Schedule shall be payable in all proceedings taken under the Ordinance:

Provided that where no provision is made by these rules for any matter for which provision is made by the High Court Fees Rules (Cap 4 sub. leg.), the fees prescribed by the latter rules shall apply in relation to such matter in proceedings under the Ordinance.

3. Means of payment

The fees shall be payable either by means of adhesive stamps or in money, in which case the relevant documents shall be franked with the amount of the fees paid.

4. Transitional provision relating to the Matrimonial Causes (Fees) (Amendment) Rules 2009

Rule 2

Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of rule 3(b) and (c) (“the amending rule”) of the Matrimonial Causes (Fees) (Amendment) Rules 2009 (L.N. of 2009) –

- (a) nothing in the amending rule applies in relation to the taxation; and
- (b) item 13 in the Schedule as in force immediately before the commencement of the amending rule continues to apply in relation to the taxation as if it had not been amended by the amending rule.

Remarks

[~~rule 2~~rr. 2 & 4]

Rule 3

SCHEDULE

COMMENCEMENT OF PROCEEDINGS, ETC.

Fee

TAXATION OF COSTS

13. ~~On the taxation of a bill of costs, for every \$100 or fraction of \$100 of the amount allowed~~ On filing a notice of commencement of taxation under Order 62, rule 21(1) of the Rules of the High Court (Cap. 4 sub. leg. A) or Order 62, rule 21(1) of the Rules of the District Court (Cap. 336, sub. leg. H), for every \$100 or fraction of \$100 of the amount claimed \$ 5

13A. On any assessment or determination of costs pursuant to any court order or Ordinance (except assessment under Order 62, rule 9 or 9A of the Rules of the High Court (Cap. 4 sub. leg. A) or Order 62, rule 9 or 9A of the Rules of the District Court (Cap. 336 sub. leg. H)), for every \$100 or fraction of \$100 of the amount claimed ... \$5

13B. Withdrawal of a bill of costs within 7 days after the application for setting down the taxation under Order 62, rule 21A(1) of the Rules of the High Court (Cap. 4 sub. leg. A) or Order 62, rule 21A(1) of the Rules of the District Court (Cap. 336 sub. leg. H) is made 10% of the taxing fee which would be payable if the bill was to be allowed in full or \$1,000 whichever is the less
