



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : JUD DEV 1-145/6
本函檔號 OUR REF : LS/B/25/13-14
電話 TELEPHONE : 3919 3506

傳真 FAX : 2877 5029
電郵 E-MAIL : bloo@legco.gov.hk

By Fax (2501 4636)

By Email (wendystcheung@judiciary.gov.hk)

10 June 2014

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)
Judiciary
Administrative Services Development Division
Lower Ground 2/F, High Court Building
38 Queensway
Hong Kong

Dear Ms CHEUNG,

District Court Equal Opportunities (Amendment) Rules 2014 (L.N. 86)

As L.N. 86 will be considered by the House Committee at its meeting this Friday, 13 June 2014, I should be grateful for your clarification of the issues set out in the **Annex**. Your early response in both languages would be very much appreciated.

Yours sincerely,

(Mr Bonny LOO)
Assistant Legal Adviser

c.c. Judiciary (Attn: Miss Stella CHANG, Sr Administrative Officer (Development)
(By Fax: 2501 4636))

DoJ (Attn: Mr Allen LAI, Sr Govt Counsel (By Fax: 2869 1302)
Ms Carmen CHAN, Govt Counsel (By Fax: 2845 2215))

LA

Rule 3 (Part 1 heading added)

1. Is it necessary to specify for the sake of clarity where in the District Court Equal Opportunities Rules (Cap. 336G) (for example, "before rule 2 (interpretation)") the heading is to be added?

Rule 4 (Rule 2 amended (interpretation))

2. "Respondent" is defined as the person against whom a claim under a relevant Ordinance (i.e. the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) or the Race Discrimination Ordinance (Cap. 602)) is made in accordance with the new rule 7 of Cap. 336G. For the sake of clarity, should the definition refer to the respondent specifically as the person named in the notice in Form 1 under the new rule 7(3)(c)?

Rule 6 (Rule 4 substituted)

3. Please clarify in what circumstances the Court may direct that the Rules of the District Court (Cap. 336H) apply to and in relation to an action or proceeding under a relevant Ordinance pursuant to the new rule 4(3).

Rule 7 (Part 2 added)

New rule 8

4. In view of the manner in which the Chinese text of the new rule 8(2)(b) is drafted, and for the sake of clarity and consistency, please consider whether the English text should similarly be rephrased to make clear that the District Court (the Court) may make an order under rule 13 in default of response, or an order under rule 14 in default of appearance.

The Court's power to award costs

5. Under sections 73B(3), 73C(3), 73D(3) and 73E(3) of the District Court Ordinance (Cap. 336), each party to any proceedings in the Court in the exercise of its jurisdiction under a relevant Ordinance shall bear its own costs unless the Court otherwise orders on the grounds that the proceedings were brought maliciously or frivolously, or there are special circumstances which warrant an award of costs. Insofar as the new rules 9(3), 11(3) and 13(1)(a) empower the Court to award costs, please consider whether they should be

made subject to sections 73B(3), 73C(3), 73D(3) and 73E(3) of Cap. 336, to which the Court's power to order costs under the new rule 15(3) is also subject.

Default of response

6. The new rule 10(1) requires a respondent who wishes to oppose a claim to file with the Court the notice of response in Form 3 and serve on the claimant a copy of that notice. Yet it appears from the new rule 13 (and the warning notice in Form 2) that the Court's power to make an order under that rule is only triggered by the respondent's failure to file a notice in Form 3. Please clarify whether a respondent who has filed (but failed to serve) a notice in Form 3 in accordance with the new rule 10(1) is intended to be subject to a default order under the new rule 13. If not, is there any other sanction against failure to serve the said notice?

Default of appearance

7. Should the Court also have the power under the new rule 14(2)(b) to strike out a notice of response if the respondent fails to appear at the hearing?

Service of process

8. It is noted that under the new rule 16, a party must provide in the first document he files with the Court his "address for service". The new rule 18(1)(b)(i) provides that the notice in Form 2 accompanied by a copy of the notice in Form 1 should be sent to the respondent's "address for service" by registered post. However, at the time when the notice in Form 2 is served under rule 8, the respondent will not have filed any document with the Court and will not therefore have provided an address for service within the meaning of the new rule 16. Consequently, the Court will only be able to send the notice in Form 2 (and a copy of the notice in Form 1) to the address provided by the claimant in the notice in Form 1. As such, please consider whether the requirements under the new rule 18(1)(b) need to be amended.
9. The new rule 19 provides for the time at which service by ordinary post is taken to have been effected. Please consider adding similar provisions to determine the time at which a document is deemed to have been served by registered post under the new rule 18(1)(b), especially in circumstances where the recipient is unavailable at the time of the postman's attempted delivery and then fails to collect the document from the post office.

"on any term"

10. While the new rules 13(4), 14(2)(c) and 21(2) of Cap. 336G use the singular expression "on any term", other court rules (for example, rules 15(7), 23(2)(c) and 12(4) of the Lands Tribunal Rules (Cap. 17A)) use the plural expression "on such terms" in similar contexts. Why do the new rules use the singular expression?

Forms

11. In relation to Form 1:

- (a) The first two items of Section C (remedies or reliefs claimed) render "conduct" and "redress" as "行徑" and "彌補" respectively according to the language used in section 70(4)(a) and (b) of Cap. 602. However, it is noted that those two terms are rendered as "行為" and "舒緩" (or "紓緩") respectively in section 76(3A)(a) and (b) of Cap. 480, section 72(4)(a) and (b) of Cap. 487 and section 54(4)(a) and (b) of Cap. 527. Please explain the discrepancies among these renditions.
- (b) In the penultimate item of Section C, "in part" and "made" are rendered as "局部" and "訂立" respectively, whereas the same terms are rendered as "部分" and "作出" respectively in section 70(4)(g) of Cap. 602. Why are different renditions used?
- (c) Should the last item of Section C deal with both "any other remedy or relief" and "any relevant question that the Claimant wishes to have determined", given that they are provided for separately under the new rule 7(3)(a)(ii) and (iii) respectively?

12. As regards Form 3:

- (a) Paragraphs 1 and 3 require the respondent to "set out in full" (which is rendered in the Chinese text as "詳列") the grounds of denial. Please consider whether the requirement to set out the grounds "in full" (as opposed to "in detail") is inconsistent with rule 10(2) which merely requires the notice in Form 3 to include "a concise statement" of the extent and grounds of the respondent's opposition.
- (b) Should "the grounds of rejecting any question to be determined" be included under Section C which deals with the respondent's response

to the remedies or reliefs claimed by the claimant? Please see paragraph 11(c) above.

13. Should Form 4 specify that the requested party must reply within 14 days after having been served with the request or any extended period that the Court may allow in accordance with the new rule 9(2) or 11(2)?
14. Apart from Forms 1 to 4, should the Appendix also set out standard forms for the following purposes in order to assist litigants in person:
 - (a) a notice of application to join an interested person (rule 12(2)(a));
 - (b) an application for an order in default of response (rule 13(1)(a));
 - (c) a notice of discontinuance or withdrawal (rule 15(1)(a)(i)); and
 - (d) a notice of change of address for service (rule 17(a))?

Rule 9 (transitional provisions)

15. Since rule 9(1) of L.N. 86 provides for the application of Cap. 336H as if rule 4 (among others) of L.N. 86 had not been enacted, and rule 4 modifies the definition of "Court" in rule 2 of Cap. 336G, please clarify whether the definition of "Court" in rule 9(2) of L.N. 86 should refer to rule 2 of the pre-amended Rules instead of rule 2 of Cap. 336G.

Membership of the District Court Rules Committee

16. L.N. 86 was signed by, among others, Mr Reuden LAI who is not now a member of the District Court Rules Committee. Please confirm whether Mr LAI was the Registrar of the Court when L.N. 86 was made on 29 May 2014, and the date when he was succeeded by the present Registrar.

Practice Direction

17. When the Panel on Administration of Justice and Legal Services (the Panel) was briefed on the amendments to Cap. 336G at its meeting of 25 February 2014, Members were informed that a new practice direction for equal opportunities claims was being prepared. Please advise whether the practice direction will be finalized and published in time before L.N. 86 comes into operation on 1 November 2014.