Questions Raised by LegCo's Assistant Legal Advisor on the Proposed Amendments to the District Court Equal Opportunities Rules (Cap 336G) vide his letter dated 10 June 2014

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?**

   Since Part 1 must be before all sections, it is in order if no location for the addition is indicated in the amendment.

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)?**

   To define "respondent" as "the person against whom under a relevant Ordinance is made under rule 7" is more easily understood by legislation users since it indicates the relationship between the action and a "relevant Ordinance".

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).**

   The general effect of the new rule 4(2) is that the Rules of the District Court ("RDC") would apply with necessary modifications to equal opportunities proceedings insofar as no special provision is made by Part 2 of the District Court Equal Opportunities Rules (Cap 336G) ("EO Rules"). For example, the new rule 7 of the EO Rules (*Making a claim: notice in Form 1*) prescribes the

mode of making a claim. This will displace the application of Order 5 of the RDC (*Mode of beginning civil proceedings in the Court*) and other related Orders in the RDC (e.g. Order 18 (*Pleadings*)).

The purpose of the new rule 4(3) is to confer a discretion on the Court to re-apply aspects of the RDC which have been displaced by the EO Rules. For example, whilst the claim and the defence in an equal opportunities proceeding may be generally set out in a notice in Form 1 (see the new rule 7) and a notice in Form 3 (see the new rule 10) respectively, the Court may consider directing formal pleadings to be filed to better define the issues to be tried. This may be the case where, for example, the allegations or incidents involved are relatively well-defined and the parties are represented. And even so, the Court may not direct the whole of Order 18 of the RDC to apply (e.g. a reply under Order 18, rule 3 of the RDC may not be warranted). So very generally speaking, the Court will consider invoking the new rule 4(3) on a case-by-case basis.

Since the circumstances relevant to different aspects of the RDC may vary so much, we are unable to specify the circumstances where the Court may invoke 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 Department of Justice considers that the drafting of the English text of new rule 8(2)(b) is clear. According to the arrangement of the elements in the provision, the "default of response" must relate to rule 13 and the "default of appearance" must relate to rule 14. It is considered that there cannot be any misunderstanding in this respect.

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(l)(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.

The EO Rules are made under sections 73B, 73C, 73D and 73E of Cap. 336 ("the enabling provisions"). All provisions in the EO Rules, including the new rules 9(3), 11(3) and 13(1)(a), must be construed subject to the enabling provisions without stating this fact. Specifically mentioning sections 73B(3), 73C(3), 73D(3) and 73E(3) in new rule 15(3) is for the purpose of avoidance of doubt in the context of awarding costs against the party who, without leave of the Court, discontinued or withdrew a claim.

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 <u>and</u> 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?

It is <u>not</u> the intention of the new rule 13 as presently provided to catch a respondent who has filed his Form 3 but failed to serve it on the claimant.

Under the new rule 22, any failure to comply with any provision in Part 2 of the EO Rules (e.g. failure to serve a Form 3) will <u>not</u> render anything done in the proceeding invalid (e.g. the filing of the Form 3), unless the court directs otherwise. There may be different reasons why a Form 3 does not reach the

claimant. It may be due to the fault of the respondent (in failing to serve it) or not (e.g. failure of postal service under the new rule 18(1)(b)(ii)).

A claimant has the means to find out whether the respondent has filed a Form 3 by searching the court file before he makes an application under the new rule 13. In any event, the Court will be able to deal with any dispute relating to service of Form 3 at the First Hearing as set out in Form 2 (e.g. any application for costs by the claimant).

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?

As the burden to prove a claim is on the claimant and given the nature of equal opportunities proceedings, the claimant should still prove his/her claim before the Court will grant him/her relief even though the respondent may be absent after filing a Form 3. This is provided by the new rule 14(2)(a). In such scenario, it does not matter if there is a Form 3 or not as there will be no evidence from the respondent to substantiate the opposition.

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(l)(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(l)(b) need to be amended.

The term "address for service" is not specifically defined to mean only the address provided under the new rule 16. Before the respondent files a Form 3

and provides his address, the address provided by the claimant on Form 1 (see the new rule 7(3)(c)) is nonetheless an address for service of the respondent.

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.

For the scenario under discussion (i.e. 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), the post office will, as we understand from experience, return the package to the court marked undelivered. In the new Practice Direction that we are preparing for equal opportunities proceedings, we will indicate that the court will notify the claimant for the claimant to take necessary action to bring the claim to the attention of the respondent.

Similarly, for the service of documents other than Forms 1 and 2 under the new rule 18(1)(b)(ii), the serving party will be notified by the post office and may consider effecting service by other means under the new rule 18 or invoking the new rule 20.

"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?

Section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that words and expressions in the singular include the plural and words and expressions in the plural include the singular.

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.

The Chinese equivalents adopted in Form 1 (and Cap. 602) are slightly different from those in Cap. 480, 487 and 527. This is a drafting improvement to enhance the readability and the clarity of the provisions by adopting the most natural and suitable wording. There is no change in substance despite the different renditions used.

(b) In the penultimate item of Section e, "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?

Similar to (a) above, this is also another drafting improvement by adopting the most natural and suitable wording. Again, there is no change in substance despite the 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?

Though "any other remedy or relief" and "any relevant question that the Claimant wishes to have determined" are separately provided for in the rules, we prefer grouping them together in the last item of Section C in Form 1 so as reduce the number of entries in the form. This would make the form look simpler, especially for unrepresented litigants.

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.

The respondent must provide sufficient particulars to enable the court and the other side to appreciate his defence. The phrases "concise statement of the extent and grounds of the opposition" (反對的範圍及理由的扼要陳述) or "set out in full the grounds of denial" (詳列否認的理由) or "set out in full the grounds on which the remedies or reliefs are denied, or the grounds of rejecting any question to be determined" (詳列拒絕有關補救或濟助的理由，或反對將有關問題交由區域法院裁定的理由) basically refer to the same obligation although described differently.

In short, this means that while the respondent should state with sufficient particulars his/her grounds of opposition, denial or rejection in the response, the statement as a whole should be concise.

(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.

Similar to our response to question 11(c) above, we do <u>not</u> prefer separating "the grounds of rejecting any question to be determined" in Section C of Form 3 to form another entry. Our proposed approach would reduce the number of entries in the form, thereby simplifying the form especially for unrepresented litigants.

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)?

Anyone having the benefit of a Form 4 prescribed under the EO Rules would have access to the EO Rules, and the title of the form already draws attention to the relevant rules (i.e. the new rules 9 & 11) which set out the time limit. We do not prefer specifying this in Form 4 because this may make the form look complicated.

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 (rule12(2)(a));
(b) an application for an order in default of response (rule 13(1)(a));
(c) a notice of discontinuance or withdrawal (rule l5(1)(a)(i)); and
(d) a notice of change of address for service (rule 17(a))?

After the amendments, Order 32 of the RDC (*Interlocutory applications and other proceedings in chambers*) will continue to apply to equal opportunities proceedings. A litigant may use the usual form of summons to apply to join an interested party or for default judgment. As regards notice of discontinuance/withdrawal or change of address for service, for flexibility, we consider that it is not necessary to prescribe any form of notice. So long as the notice is clear, it will do.

If any unrepresented litigants do not know how to take forward the above applications, the court may give guidance as necessary.

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.

The intention behind the transitional arrangement is that if a writ has already been issued prior to the commencement of the new rules, the old procedure shall apply unless "the Court" orders otherwise. Notwithstanding the

application of the old procedure, it would be "the Court" as defined in the new rules which would handle such cases, which may direct the new procedure to apply.

As such, the definition of "Court" under the new rule 9(2) should refer to the new definition. This is reflected in the present drafting as the old rules is defined as "pre-amended Rules" and the definition makes reference to rule 2 of "the District Court Equal Opportunities Rules (Cap 336 sub leg G)" which is a reference to the new rules.

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.**

Mr Reuden Lai was the Temporary Registrar, District Court when L.N. 86 was made on 29 May 2014. He has ceased sitting as the Temporary Registrar since 3 June 2014.

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.**

We have just completed our consultation with the stakeholders on the new draft practice direction. We are finalizing the practice direction. It is our intention that the new practice direction will take effect at the same time as the L.N. 86, i.e. on 1 November 2014.

Judiciary Administration
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