

For information

**Legislative Council
Panel on Administration of Justice and Legal Services**

**Proposed Amendments to
the Rules of the High Court and Rules of the District Court
on Interpleader Proceedings**

PURPOSE

This paper briefs Members on the Judiciary's proposed legislative amendments to give the parties to interpleader proceedings a right of appeal to the Court of Appeal directly from a master's decision given after a full trial.

BACKGROUND

Interpleader Proceedings

2. Interpleader proceedings in the Court of First Instance ("CFI") are governed by Order 17 of the Rules of the High Court ("the RHC") (Cap 4A) and in the District Court ("DC") by Order 17 of the Rules of the District Court ("the RDC") (Cap 336H).

In the CFI

3. Order 17, rule 1 of the RHC stipulates that where –
- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, or
 - (b) claim is made to any money, goods or chattels taken or intended to be taken by a bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under liability as mentioned in sub-paragraph (a), or the bailiff, may apply to the Court¹ for relief by way of interpleader.

4. There are two ways in which interpleader proceedings may be determined by the Court, namely:

- (a) a **summary determination** of an interpleader issue; and
- (b) the determination of an interpleader issue **after trial**.

5. The **summary determination** of an interpleader issue is governed by Order 17, rule 5(2) of the RHC. Where (a) the applicant on a summons under this Order is a bailiff; or (b) all the claimants consent or any of them so requests; or (c) the question at issue between the claimants is a question of law and the facts are not in dispute, the Court may **summarily determine** the question at issue between the claimants and make an order accordingly on such terms as may be just.

6. The **trial** of an interpleader issue is governed by Order 17, rule 5(1)(b) and rule 11 of the RHC. Rule 5(1)(b) provides that where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (i.e. the claimants) appear, the Court may order that an issue between the claimants be stated and **tried** and may direct which of the claimants is to be plaintiff and which defendant. And rule 11(2) provides that the Court by which an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

7. It should be noted that an interpleader issue may be determined, whether summarily or otherwise, by a **judge** or by a **master**².

Rights of Appeal

8. The rights of appeal are different, depending on by whom and how an interpleader issue is determined, as follows –

¹ “The Court” here means, unless the context otherwise requires, “the Court of First Instance or any one or more of the judges thereof whether sitting in court or in chambers or the registrar or any master ...” (Order 1, rule 4(2) of the RHC).

² Under Order 1, rule 4(2) of the RHC, the meaning of “Court” in the RHC includes any master. See footnote 1 above.

By a judge

- (a) summary determination – an appeal shall lie to the Court of Appeal, subject to leave (see Order 58, rule 7(1) of the RHC³ and section 14(3)(f) of the High Court Ordinance (Cap 4)⁴);
- (b) after trial – an appeal shall lie to the Court of Appeal without leave, as of right (see Order 58, rule 7(2)⁵ and section 14(1) of Cap 4⁶);

By a master

- (c) summary determination – an appeal shall lie to a CFI judge in chambers (see Order 58, rule 1(1) of the RHC⁷).

³ Order 58, rule 7(1) provides that any judgment, order or decision of a judge given or made in summarily determining under Order 17, rule 5(2)(b) or (c), any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.

⁴ Section 14(3)(f) of Cap 4 states that no appeal shall lie without the leave of the CFI or the Court of Appeal, from a judgment or order of the CFI given or made in summarily determining under rules of court any question at issue in interpleader proceedings : Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury.

⁵ Order 58, rule 7(2) provides that where an interpleader issue is tried by a judge (with or without a jury), an appeal shall lie to the Court of Appeal, without the leave of the judge or that Court, from any judgment, order or decision given or made by the judge on the trial.

⁶ Section 14(1) of Cap 4 provides that subject to section 14(3) and section 14AA, an appeal shall lie as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil cause or matter. See also the proviso of section 14(3)(f) of Cap 4 at footnote 4 above.

⁷ Order 58, rule 1(1) reads as follows:

“(1) Except as provided by rule 2, Order 5, rule 6, and Order 12, rule 1, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master, irrespective of whether the judgment, order or decision was given or made on the basis of written submissions only or after hearing.”

- (d) after trial - (i) an appeal shall lie to the Court of Appeal (no leave is required) if an interpleader issue had been tried before a master **with the consent of the parties** (see Order 58, rule 2(a)⁸ and Order 36, rule 1 of the RHC⁹), but (ii) an appeal shall lie to a CFI judge in chambers if an interpleader issue had been tried before a master **without the consent of the parties** (see Order 58, rule 1(1) of the RHC).

In the DC

9. The position applicable to interpleader proceedings of the High Court as described in paragraphs 3 to 8 above is essentially the same as that applicable to interpleader proceedings in the DC under the District Court Ordinance (Cap 336) and the RDC¹⁰ except that in the case of an interpleader issue tried before a master with the consent of the parties, **leave is required** for an appeal against the master's decision to the Court of Appeal¹¹.

Review

10. Under the existing provisions, an appeal against a master's decision in general cases, subject to certain exceptions, shall be made to a CFI judge in chambers or a judge of the DC in chambers, as the case may be under Order 58, rule 1 of the RHC and Order 58, rule 1 of the RDC. Under the existing law, that appeal hearing is and is intended to be *de*

⁸ Order 58, rule 2(a) reads as follows:

“(2) An appeal shall lie to the Court of Appeal from any judgment, order or decision (other than an interlocutory judgment, order or decision) of a master, given or made –

(a) on the hearing or determination of any cause, matter, question or issue tried before him under Order 14, rule 6(2) and Order 36, rule 1;”

⁹ Order 36, rule 1 reads “In any cause or matter other than a criminal proceeding by the Crown, the Court may, with the consent of the parties, order that the cause or matter, or any question or issue of fact arising therein, be tried before a master or that the master do inquire and report thereon and, in the case of inquiry and report, giving consequential directions.”

¹⁰ Order 17, rule 1, rule 5 and rule 11 of the RDC; Order 1, rule 4(2) of the RDC; Order 36, rule 1 of the RDC; and Order 58, rules 1 and 2 of the RDC.

¹¹ Order 58, rule 2(2) and (4) of RDC; section 63(1B) of Cap 336.

novo, i.e. entirely a fresh hearing. We do not intend to propose any change to this general appeal procedure and consider that this approach should remain applicable to appeals against a master's decision on a summary determination of an interpleader issue¹².

11. An exception to the general appeal procedure, is in the case of an appeal of a master's decision, made after full trial of an interpleader issue with the consent of the parties. In this case, the appeal shall be made to the Court of Appeal. However, if the interpleader issue is tried **without the consent** of the parties, the general appeal procedure mentioned in paragraph 10 would apply and the appeal shall be made to a judge in chambers¹³.

12. The Court of Appeal in *Chun Sang Plastics Company Limited v. The Commissioner of Police and Ors*, CACV No. 37 of 2011 (29 June 2011¹⁴) identified the unsatisfactory position arising from the existing rules of the High Court in respect of the appeal mechanism against a decision of a master after trial of an interpleader issue. The concern is that after a full trial of the interpleader issue before a master pursuant to Order 17, rule 5(1)(b) (**without the consent of the parties**), the right of appeal would take the parties not to the Court of Appeal, but only to a CFI judge, where the appeal would be heard *de novo*. Witnesses would have to be called and cross-examined again. There would, in effect, be a new trial before the CFI judge, and then there could be a further appeal from the said CFI judge's decision, as of right, to the Court of Appeal. Such an appeal procedure would cause an unnecessary duplication of efforts and costs. The Court of Appeal considers that there is a case for amending the RHC to give a right of appeal directly from the master's decision given after a full trial to the Court of Appeal.

13. We have reviewed the existing arrangements for appeals against a master's order and judgment in interpleader proceedings. We agree with the Court in *Chun Sang Plastics Company Limited* and are of the view that an appeal against a master's decision of an interpleader issue tried without the parties' consent (either in the CFI or the DC) should be made to the Court of Appeal instead of a judge in chambers of the CFI or the DC.

¹² See paragraph 8(c) above.

¹³ See paragraph 8(d) above.

¹⁴ [2011] 4 HKLRD 74

FINANCIAL AND MANPOWER IMPLICATIONS

14. Given the small number of related proceedings, the proposal has insignificant financial or manpower implications for the Judiciary.

PROPOSED LEGISLATIVE AMENDMENTS

15. The Judiciary proposes that Order 58, rule 2 of the RHC and Order 58, rule 2 of the RDC should be amended in such a way as to allow the parties to interpleader proceedings to appeal to the Court of Appeal direct against a master's decision after a full trial of an interpleader issue conducted without the parties' consent. This would then make uniform the appeal mechanism after trials of interpleader issues, whether they have taken place before a judge or master, with or without consent of parties.

16. A marked-up version of the proposed amendments to the RHC and the RDC is at **Annexes A and B** respectively.

CONSULTATION

17. We have consulted the High Court Rules Committee, the District Court Rules Committee, the Bar Association and the Law Society. They have no comments to the proposed legislative amendments.

WAY FORWARD

18. Members are invited to note the contents of this paper. We intend to invite the two Rules Committees to introduce amendments to the rules concerned which will then be tabled at the Legislative Council for negative vetting as soon as practicable.

Judiciary Administration
April 2014

**Proposed Amendments to Order 58, rule 2 of the Rules of the
High Court (Cap 4A) in Marked-up Mode**

Order 58 Appeals from Masters

**2. Appeals from certain decisions of masters
to Court of Appeal (O. 58, r. 2)**

An appeal shall lie to the Court of Appeal from any judgment, order or decision (other than an interlocutory judgment, order or decision) of a master, given or made-

- (HK) (a) on the hearing or determination of any cause, matter, question or issue tried before him under Order 14, rule 6(2) and Order 36, rule 1;
- (HK) (b) on an assessment of damages under Order 37 or otherwise; or
- (HK) (c) on the hearing or determination of an application under Order 84A, rule 3; or
- (HK) (d) on the hearing or determination of an application under Order 49B; or
- (HK) (e) on the hearing of a petition for winding-up or bankruptcy; or
(f) on the trial of an issue under Order 17, rule 11(2).

Proposed Amendments to Order 58, rule 2 of the Rules of the District Court (Cap 336H) in Marked-up Mode

Order 58 Appeals

2. Appeals to Court of Appeal (O. 58, r. 2)

(1) Subject to the provisions of this rule, an appeal shall lie to the Court of Appeal from any judgment, order or decision of a judge.

(2) Subject to the provisions of this rule, an appeal lies to the Court of Appeal from-

(a) a judgment, order or decision of a master on any cause, matter, question or issue tried or assessed before him under Order 14, rule 6(2), Order 36, rule 1, Order 37 or Order 84A, rule 3; ~~and~~

(b) a judgment, order or decision (other than an interlocutory judgment, order or decision) of a master given or made under Order 49B-; ~~and~~

(c) a judgment or order of a master given or made under Order 17, rule 11(2).

(2A) Notwithstanding paragraph (2)(b), an appeal lies to the Court of Appeal as of right from an order for imprisonment given or made by a master under Order 49B.

(3) (Repealed L.N. 153 of 2008)

(4) An application for leave to appeal must be made to a judge, or to a master in the case of an appeal under paragraph (2), within-

(a) in the case of an appeal from a judgment, order or decision of a master under paragraph (2), 28 days from the date of the judgment, order or decision;

(b) in the case of an appeal from a judgment, order or decision (other than an interlocutory judgment, order or decision) of a judge, 28 days from the date of the judgment, order or decision;

(c) in the case of an appeal from an interlocutory judgment, order or decision of a judge, 14 days from the date of the interlocutory judgment, order or

decision.

(4A) If the judge or master (as the case may be) refuses an application for leave made under paragraph (4), a further application for leave may be made to the Court of Appeal within 14 days from the date of refusal.

(4B) An application under paragraph (4) or (4A) must be made inter partes if the proceedings to which the judgment, order or decision relates are inter partes.

(5) So far as is practicable, every application for leave to appeal made to a judge or a master shall be made to the judge or the master against whose judgment, order or decision the appeal is sought.

(6) In any case in which the Court of Appeal may so allow, any such application may be made direct to the Court of Appeal.

(7) (Repealed L.N. 153 of 2008)

(8) Where leave to appeal is granted under paragraph (4) or (4A), the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap 4 sub. leg. A), not later than 7 days after the date when leave is granted.

(9) In the case of an appeal from an order specified in section 63(3) of the Ordinance or an order for imprisonment given or made under Order 49B, the notice of appeal must be served under Order 59, rule 3(5) of the Rules of the High Court (Cap 4 sub. leg. A), not later than 28 days from the date of the order of the Court.

(10) The Court or the Court of Appeal may, at any time, and notwithstanding that the time for an appeal or an application for leave to appeal may have already expired, extend the time for the appeal or for applying for leave to appeal.