

LEGISLATIVE COUNCIL BRIEF

High Court Ordinance (Cap. 4)
District Court Ordinance (Cap. 336)

RULES OF THE HIGH COURT (AMENDMENT) (NO.2) RULES 2014

RULES OF THE DISTRICT COURT (AMENDMENT) RULES 2014

INTRODUCTION

On 12 June 2014, the High Court Rules Committee made the Rules of the High Court (Amendment) (No. 2) Rules 2014 (“the High Court Amendment Rules”) at **Annex A**. On 12 June 2014, the District Court Rules Committee made the Rules of the District Court (Amendment) Rules 2014 (“the District Court Amendment Rules”) at **Annex B**.

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.

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.

Rights of Appeal

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

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);

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.

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).
- (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.

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.”

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.

PROPOSAL AND JUSTIFICATIONS

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 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.

¹² See paragraph 8(c) above.

¹³ See paragraph 8(d) above.

¹⁴ [2011] 4 HKLRD 74

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.

14. 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.

THE HIGH COURT AMENDMENT RULES AND THE DISTRICT COURT AMENDMENT RULES

15. The purpose of the High Court Amendment Rules is to amend Order 58, rule 2 of the RHC so that an appeal from a judgment or order of a master of the High Court on the trial of an interpleader issue lies to the Court of Appeal.

16. The purpose of the District Court Amendment Rules is to amend Order 58, rule 2 of the RDC so that an appeal from a judgment or order of a master of the District Court on the trial of an interpleader issue lies to the Court of Appeal.

LEGISLATIVE TIMETABLE

17. The legislative timetable for the High Court Amendment Rules and the District Court Amendment Rules is as follows –

Publication in the Gazette	27 June 2014
Tabling at the Legislative Council for negative vetting	2 July 2014
Commencement	1 December 2014

IMPLICATIONS OF THE PROPOSAL

18. The High Court Amendment Rules and the District Court Amendment Rules are in conformity with the Basic Law, including the provisions concerning human rights. They do not affect the current binding effect of the High Court Ordinance or the District Court Ordinance. They have no productivity, environmental or family implications and they have insignificant sustainability implications. Given the small number of related proceedings, the proposal has insignificant financial or manpower implications for the Judiciary.

PUBLIC CONSULTATION

19. We have consulted the High Court Rules Committee, the District Court Rules Committee, the Bar Association and the Law Society. They have no comments on the proposed legislative amendments. We also sent an information note to the Legislative Council Panel on Administration of Justice and Legal Services in April 2014 and the Panel has not raised any comment.

PUBLICITY

20. A press release will be issued when the High Court Amendment Rules and the District Court Amendment Rules are published in the Gazette. A spokesman will be available to handle press enquiries.

ENQUIRIES

21. For enquiries on this brief, please contact Ms Wendy CHEUNG, Assistant Judiciary Administrator (Development), at 2825 4244.

Judiciary Administration
June 2014

Rules of the High Court (Amendment) (No. 2) Rules 2014

(Made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4))

1. Commencement

These Rules come into operation on 1 December 2014.

2. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in rule 3.

3. Order 58, rule 2 amended (appeals from certain decisions of masters to Court of Appeal)

(1) Order 58, rule 2(e)—

Repeal the full stop

Substitute

“; or”.

(2) Order 58, after rule 2(e)—

Add

“(f) on the trial of an issue under Order 17, rule 11(2).”.

Made this 12th day of June 2014.

The Hon. Mr. Justice Andrew CHEUNG
Chief Judge of the High Court

The Hon. Mr. Justice Johnson LAM V.P.

The Hon. Mr. Justice Thomas AU

Stewart WONG, S.C.

Liza Jane CRUDEN

Nigel FRANCIS

Brian GILCHRIST

Herbert LI

LUNG Kim-wan
Registrar, High Court

Explanatory Note

The purpose of these Rules is to amend rule 2 of Order 58 of the Rules of the High Court (Cap. 4 sub. leg. A) so that an appeal from a judgment or order of a master of the High Court on the trial of an interpleader issue lies to the Court of Appeal.

Rules of the District Court (Amendment) Rules 2014

Made this 12th day of June 2014.

(Made by the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336))

1. Commencement

These Rules come into operation on 1 December 2014.

2. Rules of the District Court amended

The Rules of the District Court (Cap. 336 sub. leg. H) are amended as set out in rule 3.

3. Order 58, rule 2 amended (appeals to Court of Appeal)

(1) Order 58, rule 2(2)(a)—

Repeal

“and”.

(2) Order 58, rule 2(2)(b)—

Repeal the full stop

Substitute

“; and”.

(3) Order 58, after rule 2(2)(b)—

Add

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

The Hon. Mr. Justice CHEUNG
Chief Judge of the High Court

H.H. Judge POON

H.H. Judge LEUNG

H.H. Judge KO

Elaine LIU

Denis BROCK

Simon LUI
Temporary Registrar, District Court

Explanatory Note

The purpose of these Rules is to amend rule 2 of Order 58 of the Rules of the District Court (Cap. 336 sub. leg. H) so that an appeal from a judgment or order of a master of the District Court on the trial of an interpleader issue lies to the Court of Appeal.