

**Note for the Bills Committee on
District Court (Amendment) Bill 1999**

Rules of the District Court

The Issue

The latest draft Rules of the District Court (RDC) is attached for Members' information.

Background

2. In early 1990s, the then Chief Justice appointed a Working Party under the chairmanship of the then Honourable Mr Justice Kempster, with representatives from the Bar Association and the Law Society, to consider and recommend amendments to the District Court Ordinance. One of the key recommendations of the Working Party was to encourage a greater flow of civil work directly into the District Court by raising its financial jurisdictional limits. The Working Party also recommended that the District Court Civil Procedure (General) Rules and the District Court Civil Procedure (Forms) should be replaced by a new set of Rules modelled on the then Rules of the Supreme Court.

3. In October 1999, the Administration introduced to the Legislative Council the District Court (Amendment) Bill 1999 to implement the recommendations of the Kempster Working Party. To tie in with the commencement of the District Court (Amendment) Bill, a new set of RDC are being drafted to provide a comprehensive procedural framework for actions involving both substantial and modest sum. It is our intention to bring into effect the proposed increase in jurisdictional limits and the new RDC at the same time.

The New Rules of the District Court

4. The following principles are adopted in drafting the new RDC:

- (a) As a matter of general principle, the new Rules are drafted in accordance with the recommendations of the Working Party, i.e. they are largely modelled on the Rules of the High Court (RHC) where applicable;

- (b) Where further changes (including additions and amendments) have been made to the RHC since the adoption of the Kempster Report and where further changes to the RHC are being anticipated, such further changes should also be taken into account in drafting the new RDC; and
- (c) Certain modifications to the RHC would be introduced in selected areas to save costs and to maintain the flexibility for the District Court to deal with modest claims where parties are unrepresented. Most of such revisions were recommended by Kempster, but a few further revisions have been proposed since then to suit changing circumstances.

5. To facilitate Members' reading of the draft RDC, a concordance table (with detailed explanatory notes) setting out the similarities and differences between the RHC and the draft RDC is attached.

6. It is noted from the concordance table that an overwhelming majority of the draft RDC are either identical to or substantially the same with the RHC.

7. The few differences between RHC and draft RDC are summarized as follows:-

- (a) Streamlining of the originating process by omitting originating motion and petition [O.5, r.5];
- (b) Retention of the right for body corporate to act in person in the present District Court Ordinance [O.5A];
- (c) Retention of the current power of the court to order trial without pleadings on its own motion [O.18, r.21];
- (d) Retention of the current power of the court to frame issues for parties in lieu of pleadings [O.18, r.22];
- (e) Agreed or automatic directions, application for pre-trial review before setting down and automatic exchange of witness statement [O.23A];
- (f) Interrogatories only with leave of the court [O.26, r.1];

(g) Retention of the current requirement for application to a District Judge for leave to appeal to the Court of Appeal [O.58]; and

(h) Retention of the current requirement of certificate of counsel subject to dispensation in case of recovery over \$150,000 (1st Schedule to O.62).

8. Those rules in RHC relating to matters over which the District Court has no jurisdiction are omitted from the draft RDC. These include O.53 judicial review; O.54 habeas corpus; O.55 appeals from tribunals; O.60A appeals from tribunals to Court of Appeal on point of law; O.61 cases stated from tribunals to Court of Appeal; O.69 service of foreign process; O.70 obtaining evidence for foreign court; O.71 reciprocal enforcement of judgments; O.73 arbitration proceedings; O.75 admiralty proceedings; O.76 contentious probate proceedings; and O.87 debenture holder's action.

Way Forward

9. The attached draft RDC have been considered and given general endorsement by the District Court Rules Committee (chaired by the Chief Justice and with members nominated by the Bar Association and the Law Society) on 27.3.2000. Further refinements to the drafting are being made and would be considered by the District Court Rules Committee at its next meeting in April. It is our intention that the District Court Rules Committee will make the Rules and that the new Rules will be gazetted by mid May 2000 for negative vetting by the Legislative Council.