

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

New Procedural Framework for the District Court

Background

The District Court was set up at a time before the Small Claims Tribunal or the Labour Tribunal were established in Hong Kong. It was intended as a court for smaller claims and for unrepresented litigants. The District Court Civil Procedure (General) Rules (DCCP(G)R), which was enacted in 1963, were accordingly drafted to deal with a simple procedure of trial without pleadings and interlocutory applications. On the other hand, the District Court has the power to apply most of the Rules of the High Court (RHC), with the necessary modifications, for represented cases.

2. With the increase in jurisdiction over the years and extension of legal representation, civil procedures adopted by the District Court have approximated those of the High Court by combining the provisions of the DCCP(G)R and RHC. Most actions in District Court now begin with formal pleadings without order, and interlocutory

applications are often made.

3. It should also be pointed out that at present, the District Court civil jurisdiction is not exclusive, and parties are at liberty to litigate over claims within its jurisdiction in the High Court, where the RHC will apply, subject only to the sanction of costs.

Existing Civil Procedure Framework in the District Court

4. Under R.9(1) of the DCCP(G)R, the RHC are applicable to the District Court, subject to the provisions of the District Court Ordinance and the DCCP(G)R. Under R.9(2) of DCCP(G)R, those parts of the RHC set out in the Schedule to the DCCP(G)R are not applicable (Appendix A).

5. The major differences between the existing procedures in the District Court and High Court are as follows:-

- (a) After the defendant is served with a writ, there is no requirement for the filing of an Acknowledge of Service in the District Court. If liability is disputed, the defendant is required to file the Defence and/or Counterclaim;

- (b) In the District Court, litigants may apply to set down a case for hearing after filing of Defence or Counterclaim, without summons for directions;
- (c) The Registrar of the District Court shall strike out the action if no application to fix date within 3 months of filing of Defence or Counterclaim;
- (d) Formal pleadings are not required as of course but are only necessary when ordered by the District Court. If so ordered, the practice in the High Court will be followed. (In practice, most actions in the District Court now begin with formal pleadings as of course without order);
- (e) Discovery and inspection of documents may be informal in the District Court, although the relevant rules do not prevent the adoption by any party of the formal procedure prescribed by the RHC;
- (f) Interlocutory applications or opposition may be made orally in the District Court without preliminary formality or supporting affidavit;
- (g) The District Judge may frame the issues in dispute for the parties where there is no or insufficient pleadings, and order the

production of the necessary documents;

- (h) Summary judgment may be pronounced by the District Judge if no defence is disclosed upon the framing of issues. (There is no explicit rule for parties to apply for a summary judgment under the DCCP(G)R, although, in practice, it is not uncommon for represented litigants to make such applications); and
- (i) More relaxed rules on the admissibility of evidence are adopted (e.g. shop books and bank accounts may be admitted as prima facie evidence).

New Civil Procedural Framework for the District Court

6. In line with the recommendation of the Kempster Report, it is proposed under the District Court (Amendment) Bill that cases within the District Court jurisdiction are required to be transferred to the District Court, subject to the power of the judge of the High Court to retain the matter in the High Court for good cause. In addition, the new District Court Rules is being drafted largely along the line of the RHC, so that there is a comprehensive procedure for actions involving both substantial and modest sums. Section 72(6) of the District Court (Amendment) Bill also provides that a judge may, in the exercise of his

discretion, excuse a party from compliance with any rule. This provision serves to retain the necessary flexibility for the court to deal with modest claims where parties are unrepresented.

7. The major changes to be introduced under the new District Court Rules, which follow the relevant provisions in the RHC, are as follows:-

- (a) Acknowledgement of Service will be filed so that the summary judgment procedure can be invoked before filing of Defence by the defendant;
- (b) Litigants need to take out summons for directions before they can apply for setting down of a case for hearing;
- (c) There will be an explicit rule, along the line of Order 14 of the RHC, for parties to apply for summary judgments; and
- (d) Procedures for pleadings, discovery and inspection of documents and interlocutory applications will largely follow those in the RHC.

8. At the same time, a number of reforms, which go further than the existing provisions in the RHC, aiming at cost saving will be introduced under the new District Court procedural framework as a testing ground. The major proposals are:-

- (a) Automatic standard directions in default of agreed directions where parties are represented will apply to all cases. (At present automatic directions only apply in personal injuries cases in the HC). Moreover, where at least one party is unrepresented, a directions hearing will be conducted so that the parties are advised of the future conduct of the case; and
- (b) Discovery is restricted to standard discovery of:-
 - (i) documents on which a party relies; and
 - (ii) documents which are either supportive of or adversely affect his own and another party's case,subject to the right for the parties to show cause to extend discovery to all relevant documents which may lead to a train of enquiries in respect of documents in (i) & (ii) above; and
- (c) Interim payment of costs forthwith without going through interim taxation will be introduced. (Following similar amendments which are to be introduced to RHC).

9. Notwithstanding the above changes, certain flexibility is retained in the new rules:-

- (a) Corporation may still be represented by its director instead of by solicitor; and
- (b) The Judge's power to frame issues and to order trial without pleadings on his own motion is retained to deal with unrepresented cases.

10. The Court of First Instance of the High Court will continue to exercise exclusive jurisdiction on a number of areas and accordingly, the orders set out in Annex B will remain to be excluded from the new Rules of the District Court.

The District Court Registry

11. With the exclusivity of the jurisdiction and a set of rules similar to the RHC, the DC Registry will also be strengthened. The Registrar and Deputy Registrars of the District Court (to be called Masters) will be filled by legally qualified judicial officers to deal with non-contentious matters in chambers, e.g. call over in preparation of the substantive hearings, extension of time, charging orders, etc. Contentious matters will be referred to a judge. In addition, Masters may conduct examination of judgment debtors in open court.

12. At present, bills of District Court cases exceeding \$50,000 are transferred to the High Court for taxation. In future, Masters of the District Court will deal with taxation of the bills of District Court cases and may conduct taxation hearings if required. The Chief Judicial Clerk in the District Court will deal with draft bills not exceeding \$100,000 under the provisional taxation procedure.

13. It is also intended that the decision of the Master whether to refer to a judge is non-appealable for cost savings as the decision of the judge on the merits will be appealable. The decision of the Master on the merits is appealable with leave of the judge or that of the Court of Appeal.

Rules of the High Court Inapplicable
to the District Court

<u>High Court Order</u>	<u>Subject</u>
Order 12	Entry of appearance to writ or originating summons.
Order 18 rule 2	Service of defence.
Order 33	Place and mode of trial.
Order 34	Setting down for trial action begun by writ.
Order 69	Service of foreign process.
Order 70	Obtaining evidence for foreign courts, etc.
Order 80 rule 8	Admission not to be implied from pleading of person under disability.
Order 88A rule 2	Proceedings in ejectment by landlord against tenant for non-payment of rent.
Order 88A rule 3	Limitation of right of lessee to relief on equitable grounds.
Order 88A rule 4	Discontinuance of proceedings in ejectment on payment of rent and costs.
Order 88A rule 5	Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.
Order 120	Charitable trusts.

Annex B

Orders in the Rules of the High Court
not to be included in the New Rules of the District Court

<u>High Court Order</u>	<u>Subject</u>
Order 53	Judicial review
Order 54	Habeas corpus
Order 73	Arbitration
Order 75	Admiralty
Order 76	Contentious probate proceedings
Order 95	Bankruptcy
Order 100	Trade Marks
Order 102	Companies
Order 103	Patents
Order 69-71	Mutual legal assistance in civil matters
Order 115A	Mutual judicial assistance in criminal matters
Order 116-117	Organised and Serious Crimes Ordinance
Order 119	Prevention of Bribery Ordinance
Order 121	Child Abduction and Custody Ordinance