

立法會
Legislative Council

LC Paper No. CB(2)2333/99-00

Ref : CB2/SS/6/99

Report to the House Committee on 16 June 2000

**Subcommittee on Rules of the District Court and
District Court Civil Procedure (Fees) (Amendment) Rules 2000**

Purpose

This paper reports on the deliberations of the Subcommittee on The Rules of the District Court and District Court Civil Procedure (Fees) (Amendment) Rules 2000.

The Subcommittee

2. At the House Committee on 26 May 2000, members agreed to form a Subcommittee to study both sets of the Rules. The membership list of the Subcommittee is in **Appendix I**.

3. Under the chairmanship of the Hon Margaret NG, the Subcommittee has held two meetings with the Administration. The Subcommittee has also considered the written views of the Hong Kong Bar Association and the Law Society of Hong Kong.

Deliberations of the Subcommittee

The Rules of the District Court (RDC)

4. In early 1990s, the 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 Kempster Report was to encourage a greater flow of civil work into the District Court by raising its financial jurisdictional limits. The Kempster Report also recommended that the District Court Civil Procedure (General) Rules and the District Court Procedure (Forms) Rules should be replaced by a new set of Rules modelled on then Rules of the Supreme Court.

5. The District Court (Amendment) Bill 1999 which sought to implement the recommendations of the Kempster Report was passed by LegCo on 17 May 2000. To tie in with the commencement of the District Court (Amendment) Ordinance, the RDC were made to provide a comprehensive procedural framework for actions involving both substantial and modest sums. The Administration intends to bring the District Court (Amendment) Ordinance and the new RDC into operation at the same time in early September 2000.

6. The Subcommittee's deliberations on the RDC are summarized below.

Principles in drafting the new RDC

7. According to the Administration, the following principles are adopted in drafting the new RDC -

- (a) the new rules are largely modelled on The Rules of the High Court (RHC) where applicable;
- (b) where further changes 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 were also taken into account in drafting the new RDC; and
- (c) certain modifications to the RHC were 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 the Kempster Report, but a few further revisions have been proposed since then to suit changing circumstances.

8. Members further note that the current version of the RDC is substantially the same as the draft Rules submitted in March 2000 to the Bills Committee on the District Court (Amendment) Bill, the membership of which is the same as this Subcommittee. Almost all of the changes in the current version are textual and minor in nature. The major addition to the RDC is Order 90A (Proceedings concerning judgment summons). The Order is the same as Rules 61A, 61B and 61C of the District Court Civil Procedure (General) Rules. The purpose of retaining the relevant Rules is to enable the Family Court to continue to deal with the applications for judgment summons arising from matrimonial proceedings.

Differences between the RHC and the RDC

9. The Subcommittee has noted a concordance table prepared by the Administration setting out the similarities and differences between the RHC and the RDC. In response to members' request, the Administration has highlighted the few differences between the two sets of Rules as follows -

- (a) streamlining of the originating process by omitting originating motion and petition (Order 5, rule 5 of the RHC);
- (b) retention of the right for body corporate to act in person in the present District Court Ordinance (Order 5A of the RDC);
- (c) retention of the current power of the court to order trial without pleadings on its own motion (Order 18, rule 21 of the RDC);
- (d) retention of the current power of the court to frame issues for parties in lieu of pleadings (Order 18, rule 22 of the RDC);
- (e) introducing the mechanism of agreed or automatic directions, application for pre-trial review before setting down and automatic exchange of witness statement (Order 23A of the RDC);
- (f) providing for interrogatories only with leave of the court (Order 26, rule 1 of the RDC);
- (g) retention of the current requirement for application to a District Judge for leave to appeal to the Court of Appeal (Order 58 of the RDC);
- (h) retention of the current requirement of certificate of counsel subject to dispensation in case of recovery over \$150,000 (Schedule I to Order 62 of the RDC); and
- (i) retention of the procedure for dealing with judgment summons (Order 90A of the RDC).

Interim payment of costs (Order 62, rule 9A)

10. It is proposed that the District Court will have the power to order interim payment of costs forthwith without taxation in interlocutory proceedings. This is one of the proposals deliberated at length by the Bills Committee on District Court (Amendment) Bill.

11. The Administration has advised members that the policy intention behind the current version is the same as that of the previous draft submitted to the Bills Committee in March 2000. However, the following textual improvements have been made -

- (a) to state clearly the policy intention that the rule applies to a party which makes "or resists" an application at any stage of proceedings before the court;
- (b) to delete the reference to "a reasonable proportion of the costs" in rule

9A(1) after further deliberation by the High Court Rules Committee, as the phrase does not serve any useful purpose and may cause unnecessary disputes; and

- (c) to recast rule 9A(2) and (3) to clearly set out the three possible scenarios under the proposed arrangement whereby the receiving party has to give credits for the sum paid up on final taxation and to explicitly provide for the power of the taxing master under those scenarios.

12. A member remains concerned about the implications of the proposal on a less resourceful party to the proceedings. The Administration has reiterated that it is the existing power of the High Court and the District Court to order interim payment of costs. The proposal is designed to achieve the benefits of discouraging frivolous interlocutory applications, reducing unnecessary costs and expediting the litigation process, without the risk of conducting a mini-taxation. The High Court (Amendment) Rules which were published in the Gazette on 5 May 2000 and tabled in LegCo on 10 May 2000 contain the same provision on interim payment of costs.

Requirement of certificate of counsel (Part II, Schedule 1 to Order 62)

13. The Administration has advised that under the existing District Court Civil Procedure (Costs) Rules, counsel's fee will not be allowed on taxation unless the judge has certified the matter to be fit for counsel. The Kempster Report recommended that the certificate requirement should be retained where the amount recovered is less than \$150,000, having regard to the fact that the District Court, even after the increase in its jurisdictional limits, would still deal with certain smaller claims at less expense.

14. The Judiciary has considered whether the threshold of \$150,000 should be revised in this exercise, and has come to the view that no revision should be made for the time being for two reasons. First, the recovered amount of \$150,000 or above is considered an amount substantive enough to justify the dispensation of the certificate requirement, despite the further increase in jurisdictional limits of the District Court. Secondly, the First and Second Schedules of Order 62 of the RDC prescribe the amounts of costs for a large number of items one of which is the threshold for the dispensation of the certificate requirement. The Judiciary considers that the level of the threshold should not be singled out for a revision, without the benefit of an overall review of all the items of costs in the Schedules.

15. The Subcommittee has sought the views of the two legal professional bodies on the proposal that the certificate requirement should be retained where the amount recovered is less than \$150,000.

16. The Law Society has replied that it supports the proposal. Some members of the Bar Association consider that both the proposal and the existing equivalent

rule (Rule 8(1) of the District Court Civil Procedure (Costs) Rules) are discriminatory and based on certain assumptions which do not reflect the reality of how litigation is conducted in practice. They question why the rules should be biased in favour of representation by solicitor (where no certificate is required) and against representation by counsel (where a certificate is required). They also point out that it is a common misconception that instructing counsel is more expensive than instructing solicitors. In fact, the costs may be higher than they would otherwise need to be with imposition of the proposed rule. They propose that the provision that "[no] costs shall be allowed in respect of counsel appearing before the Court unless (a) the Court has certified the attendance as being proper in the circumstances of the case; or (b) the amount recovered exceeds \$150,000" should be deleted (para 2(3) of Part II, Schedule 1 to Order 62). Alternatively, limb (b) of the rule should be reworded to read "the amount claimed exceeds \$150,000".

17. The Administration has reservation about the Bar's proposal and points out that the requirement of certificate of counsel has been in existence for a long time. The present proposal merely seeks to retain the certificate requirement where the amount recovered is less than \$150,000.

18. Some members consider that the Bar's concern relating to the merit of the existing and proposed rules should be dealt with as a separate exercise. Other members consider that the threshold of \$150,000 is on the low side. However, in view of the support expressed by the Law Society, they agree to support the proposal subject to a review in due course. The Administration has agreed that the rule should be reviewed in the context of the review of the jurisdictional limits of the District Court to be conducted in two years' time.

Other issues

19. In response to the Subcommittee, the Administration has provided clarifications on a number of legal, drafting and technical issues. After seeking the approval of the District Court Rules Committee, the Administration will propose technical amendments to the following provisions -

- (a) Order 11, rule 6(6);
- (b) Order 13, rule 7A(1);
- (c) Order 18, rules 2(1) and 22;
- (d) Order 24, rule 7A;
- (e) Order 33, rule 4(2);
- (f) Order 37, rule 10(5);
- (g) Order 52, rule 3(4); and
- (h) Order 62, rule 9.

The proposed amendments are attached in **Appendix II**.

District Court Civil Procedure (Fees) (Amendment) Rules

20. The Subcommittee notes that the Amendment Rules incorporate the necessary changes to the fee items arising from changes to the civil procedure of the District Court. These are consequential amendments and technical in nature. There is no proposed increase in the level of fees for this exercise. The major changes are highlighted as follows -

- (a) item 1 of the Schedule is amended as commencement of proceedings by originating notice of motion or originating petition is no longer allowed under Order 5, rule 1 of the RDC;
- (b) the description of the fee for "setting down a cause or issue for hearing" in item 2(a) of the Schedule is replaced by "Applying for pre-trial review" to tie in with the introduction of the procedure for pre-trial review in Order 34 of the RDC. Under the new procedure, a date for trial may be fixed in the pre-trial review without the requirement for an action to be set down first;
- (c) item 2(c) of the Schedule is amended to reflect the fact that damages may also be assessed by a judge.

21. The Amendment Rules also incorporate the following amendments adapted from the corresponding provisions in the High Court Fees Rules (HC Fees Rules) -

- (a) item 20a is added pursuant to Order 62, rule 21(6) of the RDC relating to the procedure on taxation which is the same as the relevant rule in the Rules of the High Court (RHC) (i.e. Item 19a of the HC Fees Rules is relevant);
- (b) item 22 is added pursuant to Order 50, rule 11 and Form 80 of the RDC relating to stop notice concerning securities not in Court which is the same as the relevant rule/form in the RHC. The fee of \$630 is in line with other fee items in the District Court Fees Rules (i.e. Item 22 of the HC Fees Rules which is \$1,045);
- (c) item 23 is added as the District Court will have the same power as the Court of First Instance to make an injunction order before commencement of a cause. The fee of \$630 is in line with other fee items in the District Court Fees Rules (i.e. Item 23 of the HC Fees Rules which is \$1,045).

Recommendation

22. The Subcommittee recommends that the two sets of Rules be supported, subject to the amendments to be made by the Administration to the RDC.

Advice sought

23. Members are invited to note the recommendation of the Subcommittee.

Legislative Council Secretariat

15 June 2000

c:\bc\99-00\ss6\report\hc\b2333e-1606

**Subcommittee on Rules of the District Court and
District Court Civil Procedure (Fees) (Amendment) Rules 2000**

Membership List

Hon Margaret NG (Chairman)

Hon Albert HO Chun-yan

Hon Ronald ARCULLI, JP

Hon Jasper TSANG Yok-sing, JP

Hon Mrs Miriam LAU Kin-yee, JP

Hon Ambrose LAU Hon-chuen, JP

Total : 6 Members

Legislative Council Secretariat

1 June 2000

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and
General Clauses Ordinance (Cap. 1))

RULES OF THE DISTRICT COURT

RESOLVED that the Rules of the District Court, published as Legal Notice No. 186 of
2000 and laid on the table of the Legislative Council on 24 May 2000, be amended -

- (a) in Order 11, rule 6(6), by repealing “具備” and substituting “以” ;
- (b) in Order 13, rule 7A(1), by repealing “State” and substituting “state”;
- (c) in Order 18 -
 - (i) in rule 2(1), by repealing “the plaintiff” and substituting “every other party to the action who may be affected thereby”;
 - (ii) in rule 22, by repealing “On making an order under rule 21 or at” and substituting “At”;

(d) in Order 24, rule 7A, by adding -

“(7) In this rule, “a claim for personal injuries” (就人身傷害提出申索) means a claim for personal injuries or arising out of the death of a person.”;

(e) in Order 33, rule 4(2), by repealing “或以不同的方式” ;

(f) in Order 37, rule 10(5), by repealing “聆訊要求作指示的傳票” and substituting “進行指示聆訊” ;

(g) in Order 52, rule 3(4), by repealing “it thinks he” and substituting “he thinks it”;

(h) in Order 62, rule 9, by adding -

“(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled -

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

(b) to a gross sum so specified in lieu of taxed costs, but where the person entitled to such a gross sum is a litigant in person, rule 28A shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.”.