

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2582/99-00  
(These minutes have been seen  
by the Administration and  
cleared with the Chairman)

Ref : CB2/SS/6/99

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

**Minutes of second meeting**  
**held on Wednesday, 7 June 2000 at 10:45 am**  
**in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan  
Hon Jasper TSANG Yok-sing, JP  
Hon Ambrose LAU Hon-chuen, JP
- Members Absent** : Hon Ronald ARCULLI, JP  
Hon Mrs Miriam LAU Kin-ye, JP
- Public Officers Attending** : Miss Emma LAU  
Deputy Judiciary Administrator
- Mr David LEUNG  
Assistant Judiciary Administrator
- Ms Rebecca PUN  
Assistant Judiciary Administrator
- Mr CHU Wai-yim  
Acting Registrar, District Court
- Mr James CHAN  
Assistant Director of Administration

**Clerk in Attendance** : Mrs Percy MA  
Chief Assistant Secretary (2)3

**Staff in Attendance** : Mr LEE Yu-sung  
Senior Assistant Legal Adviser

Ms Bernice WONG  
Assistant Legal Adviser 1

Miss Anita HO  
Assistant Legal Adviser 2

Mr Stephen LAM  
Assistant Legal Adviser 4

Mr Arthur CHEUNG  
Assistant Legal Adviser 5

Mrs Eleanor CHOW  
Senior Assistant Secretary (2)7

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**I. District Court Civil Procedure (Fees) (Amendment) Rules 2000**  
(LC Paper Nos. CB(2)2165/99-00(02) and 2229/99-00(02))

Assistant Judiciary Administrator (AJA) explained that the Amendment Rules sought to incorporate the necessary changes to the fee items arising from changes to the civil procedure of the District Court (DC). They were consequential amendments and were technical in nature. There was no proposed increase in the level of fees for this exercise. Members agreed to support the Amendment Rules.

**II. The Rules of the District Court (RDC)**  
(LC Paper Nos. CB(2)2165/99-00(03)-(04), 2229/99-00(01)-(02) and 2252/99-00(01) - (03))

Difference between the RDC and the previous draft

2. At the last meeting, members requested the Administration to highlight the major changes made to the RDC since the previous draft was presented to the Bills Committee on the DC (Amendment) Bill 1999 in March 2000. Deputy Judiciary Administrator (DJA) advised members that almost all the

changes were textual and minor in nature. She added that the major addition to the RDC was Order 90A (Proceedings concerning judgment summons). The Order was the same as Rules 61A, 61B and 61C of the District Court Civil Procedure (General) Rules. The purpose of retaining the relevant rule was to enable the Family Court to continue to deal with the applications for judgment summons arising from matrimonial proceedings.

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

3. DJA said that the provision on interim payment of costs had already been incorporated into the Rules of the High Court (RHC) and would similarly be introduced to the DC. The policy intention behind the RDC was the same as that of the previous draft submitted to the Bills Committee in March 2000. However, certain textual improvements had been made and the details were set out in paragraph 5 of LC Paper No. CB(2) 2229/99-00(02).

4. Mr Albert HO said that he felt uncomfortable about rule 9A(1) which empowered the court with extensive power to order a party to pay costs forthwith to any other party for any other reason that the court in the circumstances of the case considered just. DJA responded that it was the existing power of the HC and the DC to order interim payment of costs. The proposal was not designed to restrain the power of the court but to achieve the benefits of discouraging frivolous interlocutory applications without the risk of conducting a mini-taxation and the associated problems.

Requirement of certificate of counsel

5. At the invitation of the Chairman, DJA briefed members on the background of the requirement of certificate of counsel. She said that under the existing District Council Civil Procedure (Costs) Rules, counsel's fee would not be allowed on taxation unless the judge had certified the matter to be fit for counsel. The Kemspter Report had recommended that the certificate requirement should be retained where the amount recovered was less than \$150,000, having regard to the fact that the DC, even after the increase in its jurisdictional limits, would still deal with certain smaller claims at less expense.

6. DJA further said that the Judiciary had considered whether the threshold of \$150,000 should be revised in this exercise, and had 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 was considered an amount substantive enough to justify the dispensation of the certificate requirement, despite the further increase in jurisdictional limits of the DC. Secondly, the First and Second Schedules of Order 62 of the RDC prescribed the amount of costs for a large number of items one of which was the threshold for the dispensation of

the certificate requirement. The Judiciary considered 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.

7. The Chairman said that the Subcommittee had sought the views of the two legal professional bodies on the proposed threshold of \$150,000. The Law Society of Hong Kong had indicated support to the proposal in its reply (LC Paper No. CB(2)2229/99-00(01)). The Hong Kong Bar Association's reply was tabled at the meeting (issued to members vide LC Paper No. CB(2)2252/99-00(01)).

8. The Chairman informed members that some members of the Bar Association considered that the proposal and the existing equivalent rule (Rule 8(1) of the District court Civil Procedure (Costs) Rules) were discriminatory and based on certain assumptions which did not reflect the reality of how litigation was conducted in practice. They questioned why the rules should be biased in favour of representation by solicitor (where no certificate was required) and against representation by counsel (where a certificate was required). They also pointed out that it was a common misconception that instructing counsel was more expensive than instructing solicitors. In fact, the costs might be higher than they would otherwise need to be with imposition of the proposed rule. They proposed that paragraph 2(3) of Part II, Schedule 1 to Order 62 should be deleted. The Chairman invited views from members.

9. Mr Albert HO and Mr Ambrose LAU held the view that the threshold of \$150,000 was on the low side. However, in view of the support expressed by the Law Society, they agreed that the proposal should be implemented first and subject to a review in due course. They disagreed with the Bar Association that the threshold should be dispensed with. They pointed out that although counsel's fees were not necessarily higher than solicitor's fees in certain cases, in most cases they were. Mr Albert HO said that instructing counsel involving two sets of fees would increase litigation cost, i.e. fees for solicitor and counsel respectively. Mr Ambrose LAU pointed out that there were limits on the amount of solicitor's fees to be awarded by a taxing master but there were no limits imposed on counsels' fees.

10. The Chairman disagreed with their views. She pointed out that the fees of many junior members of the Bar were substantially cheaper than those of solicitors of equivalent seniority. In suitable cases, instructing barristers might in fact be the best way to achieve cost-effective results and maintain quality. She opined that maximum flexibility should be allowed for litigants to choose to be represented by solicitor or counsel. The fact remained that the new rule was discriminatory against barristers. She suggested that the Administration should gather necessary data in preparation for a review in due course. The rule requiring certificate for counsel and the threshold of

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\$150,000 for the certificate to be dispensed with should be part of the review.

Adm

11. DJA said that the Administration had reservations about the Bar Association's proposal. She pointed out that the requirement of certificate of counsel had been in existence for a long time. The present proposal merely sought to retain the certificate requirement where the amount recovered was less than \$150,000. She agreed that the rule and the threshold should be reviewed in the context of the review of the jurisdictional limits of the DC to be conducted in two years' time.

12. In response to Mr TSANG Yok-sing, Mr Ambrose LAU explained how counsel fees were awarded in situations where certificate of counsel was required or not required and where the amount recovered exceeded or not exceeded \$150,000. He said that in the case where the costs of instructing counsel were not allowed, the amount to be awarded to a party who had instructed a counsel was at the discretion of the taxing master. The costs to be awarded could be based on the amount reasonably incurred by that of a solicitor, as specified in paragraph 2(3A) of Part II, Schedule 1 to Order 62.

13. The Chairman said that the Bar Association also considered that the word "recovered" in paragraph 2(3)(b) of Part II, Schedule 1 to Order 62 was ambiguous and suggested that it should be reworded to read "the amount claimed exceeds \$150,000". The Chairman recalled that the Administration had clarified at a meeting of the Bills Committee on DC(Amendment) Bill that "recovered" referred to the sum awarded, since the certificate of counsel was applied for and dealt with at or about the giving of the judgment. The Bills Committee agreed that "recovered" was the more appropriate word.

Adm

14. DJA said that the Administration's position had not changed. She undertook to provide a written response to the Subcommittee.

Adm

15. The Chairman further said that the Bar Association had also advised her verbally that there was a word missing after the words "after the first" in line 2 of paragraph 2(4) of Part II, Schedule 1 to Order 62. DJA undertook to review the drafting of the provision.

#### Drafting of RDC

16. The letter from the Senior Assistant Legal Adviser to the Judiciary (LC Paper No. CB(2)2252/99-00(02) and the Judiciary's reply (LC Paper No. CB(2)2252/99-00(03) were tabled at the meeting. On the points raised by the Legal Service Division (LSD) in LC Paper No. CB(2)2252/99-00(02), DJA advised that the Judiciary was not in a position to amend the RDC without the consent of the District Court Rules Committee (DCRC). She would meet

with DCRC sometime this week to discuss the outstanding issues. She said that the points raised by the LSD could be classified into three categories -

(a) Points relating to drafting and Chinese translation

Members agreed that LSD and the Judiciary should resolve among themselves points relating to drafting and technical issues. In the event that consensus could not be reached, the matter should be referred to the Subcommittee for follow-up action;

(b) Inconsistencies between the RDC and the RHC

Given that the Subcommittee and the Administration both agreed to the principle that the RDC should be consistent with the RHC, DJA said that the Judiciary would rectify anomalies raised by the LSD; and

(c) Points seeking clarification and explanation

DJA said that some of the points raised by the LSD were in the nature of seeking clarification and explanation. The Administration had addressed LSD's concerns in its reply. SALA responded that the LSD had yet to go through the Administration's reply which was tabled at the meeting. He would liaise with the Judiciary after the meeting and report difficulties to members, if necessary.

17. To sum up, the Chairman said that although members were of different views as to the requirement of certificate of counsel and the threshold for dispensation, they agreed to support the proposed RDC in view of the Administration's agreement to review the rule and the threshold in two years' time.

### III. The way forward

18. The Chairman advised members that the scrutiny period would expire on 21 June 2000 unless a motion was moved to extend it to 26 June 2000. In response to the Chairman, DJA said that she should be able to provide a response to the Subcommittee on the outstanding issues before 14 June 2000 after its meeting with the DCRC. She considered it not necessary to extend the scrutiny period. SALA said he would liaise with the Judiciary on the outstanding points and would advise the Subcommittee if a further meeting was needed. The Chairman suggested and members agreed that a further meeting was not necessary at this stage.

19. The meeting ended at 12:10 pm.

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*(Post-meeting note : The amendments proposed to the RDC were circulated to members' for agreement vide LC Paper No. CB(2)2332/99-00 on 14 June 2000. The Subcommittee made a report to the House Committee on 16 June 2000.)*

Legislative Council Secretariat  
8 September 2000