

LETTERHEAD OF JUDICIARY ADMINISTRATOR'S OFFICE

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Your Ref.: LS/S/35/99-00

Our Ref. : SC 101/17/23 XVI

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Legislative Council Secretariat
8 Jackson Road, Central
Hong Kong

7 June 2000

Dear Mr Lee,

The Rules of the District Court (RDC)

Thank you for your letter of 5 June 2000 on the above subject. Our responses to the points set out in your letter are as follows -

Order 6, rule 5

I understand that you have discussed with the law draftsman on this point and has no further question.

Order 11, rule 1

Paragraph (1)(k) is related to a claim made for "the administration of the estate of a person" which is different from a writ in the probate action. Section 37(1)(a) of the District Court Ordinance provides for the District Court to hear and determine such actions.

Order 11, rule 5

We confirm that "consular authority in that country" in para. 5(a) and rule 6 include consular authority other than that of the PRC. The existing arrangement for service of writs from Hong Kong to other countries is provided under the 1965 Hague Convention on the service abroad of judicial or extra-judicial documents in civil or commercial matters.

Order 11, rule 6

The law draftsman agrees that the word "以" is more appropriate. We shall seek the view of the District Court rules Committee (the Rules Committee) on this.

Order 13, rule 7A

We have referred this question to Department of Justice for consideration. The Department of Justice has advised that the word "foreign state" in paragraph (1) should be the same as "foreign state" as defined in section 2 of Cap.1.

Order 18, rule 2

Having considered your comment, we shall seek the view of the Rules Committee as to whether O.18, r.2(1) of the RDC should be amended along the line of O.18, r.2(1) of the Rules of the High Court (RHC) (i.e. whether the words "serve a defence on the plaintiff" should be replaced by "serve a defence on every other party to the action who may be affected thereby".)

Order 18, rule 22

Having considered your comments, we shall seek the view of the Rules Committee as to whether the words "On making an order under rule 21 or" in O.18, r.22 of the RDC should be deleted. As regards the omission of the restriction (i.e. "no party shall be at liberty to depart from issues so framed and recorded except with the leave of the Court ..."), we consider it no longer necessary given that the civil procedural framework of the District Court will be formalized along the line of the RHC.

Order 22, rule 12

The rule on payment of hospital expenses is no longer necessary given that section 8 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) was repealed.

Order 24, rule 7A

Having considered your comments, we shall seek the view of the

Rules Committee as to whether the definition of "a claim for personal injuries" along the line of paragraph 7 of O.24, rule 7A of the RHC should be added (i.e. In this rule "a claim for personal injuries" means a claim in respect of personal injuries to a person or in respect of a person's death).

Order 33, rule 4(2)

We confirm that the English version is in order. Having considered your comments, we shall seek the view of the Rules Committee as to whether the word "或以不同的方式" in the Chinese version should be deleted.

Order 37, rule 10(5)

We confirm that the English version "On the directions hearing" is correct. Having considered your comments, we shall seek the view of the Rules Committee as to whether the Chinese version should be amended.

Order 42, rule 5B(1)

The law draftsman has confirmed that the meaning of the Chinese version is the same as the English version.

Order 50, rule 16

The reason for including the new provision is to clarify that O.81, r.10(1) is unaffected by O.50, r.16.

Order 52, rule 3(4)

Having considered your comments, we shall seek the approval of the Rules Committee for making the necessary amendments.

Order 52, rule 6(1)(a)

The reference to "wardship proceedings" is omitted as the District Court has no jurisdiction on such proceedings.

Order 62, rule 9

Having considered your comments, we shall seek the view of the Rules Committee on the need for the addition of a provision along the line of Order 62, rule 9(4) of the RHC.

Order 62, rule 9A(2)(c)(i)

The situation as described in your letter is a matter of enforcement of court orders, which may happen under a number of rules pertaining to the making of court orders.

Order 62, rule 32A

The rule (Costs for witness) is the same as rule 9 of the current District Court Civil Procedure (Costs) Rules.

Order 62, rule 35(1)

The reference to rule 33 (Application to taxing master for a review) is not necessary given that the reference to rule 34 (Review by taxing master) in Rule 35(1) has already served the purpose.

Order 62, rule 35(6)

The rule is the same as O.62, rule 35(6) of the RHC.

Schedule 1 Part II, para. 1(1)

Under O.62, Sch. 1 Part II, para. 1(1) of the RHC, "Where in the foregoing provisions of this Schedule [i.e. Part I, items 1 to 5] there is entered in the 3rd column against any item specified in the 2nd column an upper and lower sum of money, the amount of costs to be allowed in respect of that item shall (subject to any order of the Court fixing the costs to be allowed) be in the discretion of the taxing master, within the limits of the sums so entered." For items 1 and 2, fixed sums instead of a range of upper and lower sum have been entered. Hence, para. 1(1) has no relevance. For items 3, 4 and 5, no upper and lower sum has been entered. Hence para. 1(1) is redundant and so is deleted for the time being. The need for the insertion of para. 1(1) will be considered in the context of a comprehensive review of the scale of costs.

Schedule 1 Part II, para. 2(3A)

The new provision provides for the scenario under which no counsel fee is allowed. Under this circumstance, it is necessary to provide for the cost of solicitor acting as advocate for the purpose of taxation.

Schedule 1 Part II

Schedule 1 Part II, para. 7 of the RHC has already been covered by Item 1(b) of Part I to Schedule 1 (i.e. preparation of documents for additional copies, either by photographic means, printing, carbon or any other method

Schedule 2

The provisions in Schedule 2 to the RDC are the same as the fixed costs set out in the current Second Schedule to the District Court Civil Procedure (Costs) Rules. This retains the differences in fixed costs between the High Court and the District Court.

Order 63

O.63, r.8 and r.10 of the RHC provides for the inspection of powers of attorney and the enrolments of instrument in the High Court Registry. For the convenience of the public and the legal profession, it is desirable to continue to conduct such business in the High Court Registry only. In any event, the business described above has nothing to do with the increase in the jurisdictional limits of the District Court.

Order 82, Rule 1

We consider that the use of "These Rules" is appropriate as it refers to the entire RDC. You may wish to see examples of similar use under Order 1, Rule 1. We shall nevertheless seek the view of the Rules Committee on your comment.

Order 83A

Order 83A, rule 5 of the RHC will be deleted, subject to the completion of the negative vetting process for the Rules of the High Court (Amendment) Rules 2000. The deletion is to remove an apparent inconsistency between O.83A rule 2(1) and rule 5 regarding the mode of commencement.

Order 87

Order 87 of the RHC deals with debenture holders' actions. The order is omitted from the RDC as the High Court will continue to have exclusive jurisdiction on this type of actions.

In short, we shall invite the law draftsman to prepare the revised Chinese versions of Order 11, rule 6, Order 33, rule 4(2) and Order 37, rule 10(5) of the RDC and seek the approval of the Rules Committee. In addition, we shall seek the views of the District Court Rules Committee on whether changes need to be made to the following provisions, having regard to your comments -

- (a) Order 18, rule 2;
- (b) Order 18, rule 22;
- (c) Order 24, rule 7A;
- (d) Order 52, rule 3(4)
- (e) Order 62, rule 9; and
- (f) Order 82, rule 1.

Yours sincerely,

(David Leung)
for Judiciary Administrator

c.c. Director of Administration (Attn: Mr James Chan)
Department of Justice (Attn: Mr J D Scott and Ms Carmen Chu)