

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

Purpose

The purpose of this note is to highlight the main issues pertaining to the Rules of the District Court (RDC) and the District Court Civil Procedure (Fees) (Amendment) Rules.

Rules of the District Court

General

2. The current version of the RDC is substantially the same as the draft Rules submitted to the Bills Committee on the District Court (Amendment) Bill (the Bills Committee) in March 2000. Almost all the changes are textual and minor in nature.

3. The major addition to the Rules 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.

Specific Issues Raised by the Bills Committee

(A) Interim payment of costs (O.62, r.9A)

4 We intend to implement the proposal of interim payment of costs through O.62, r.9A of the RDC. As we have mentioned in our earlier papers to the Bills Committee, the proposal is designed to achieve the benefits of discouraging frivolous interlocutory applications without the risk of conducting a mini-taxation and the associated problems (i.e. further expense and delay).

5. The relevant draft rule to implement the proposal was submitted to the Bills Committee in March 2000. The policy intention behind the current version (i.e. O.62, r.9A) is the same as that of the previous draft, but a number of textual improvements are made

- (a) To reflect our policy intention fully, it should be stated clearly that the rule applies to a party makes “or resist” an application at any stage of proceedings before the court;
- (b) The reference to “a reasonable proportion of the costs” in r.9A(1) of the earlier draft was deleted after further deliberation by the High Court Rules Committee, as the Committee considered that the phrase does not serve any useful purpose and may cause unnecessary disputes; and
- (c) R.9A(2) and (3) of the draft were recast to clearly set out the 3 possible scenarios under the proposed arrangement whereby the receiving party has to give credits for the sum paid up on final

taxation (i.e. r.9A(2)(a), (b) and (c) of the current version) and to explicitly provide for the power of the taxing master under those scenarios.

6. As we informed the Bills Committee in our earlier paper on the subject, the High Court Rules Committee made the Rules of the High Court (Amendment) Rules 2000 which contain the same provision on interim payment of costs as O.62, r.9A of the RDC. The High Court Amendment Rules were published in the gazette on 5 May 2000 and tabled in the Legislative Council on 10 May 2000 for negative vetting.

(B) Requirement of certificate of counsel

7. 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 Working Party chaired by Mr Justice Kempster (with members from the 2 legal professional bodies) 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.

8. Since the completion of the Kempster Report in mid 1990's, the jurisdictional limits of the District Court have been further increased to take into account the latest circumstances. The Judiciary has considered whether the threshold of \$150,000 should be revised in this exercise, and come to the view that no revision should be made for the time being for the following reasons -

(a) 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; and

- (b) The First and Second Schedules of O.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 to O.62.

9. The Administration has undertaken to review the jurisdictional limits of the District Court in 2 years' time. We consider that the level of the threshold should be reviewed in that context.

District Court Civil Procedure (Fees) (Amendment) Rules

10. 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 are technical in nature. There is no proposed increase in the level of fees for this exercise.

11. 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 O.5, r.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 O.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.

12. 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 O.62, r.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) (cf Item 19a of the HC Fees Rules);
- (b) Item 22 is added pursuant to O.50, r.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 (cf 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 (cf Item 23 of the HC Fees Rules which is \$1,045).