

Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform ("CJR")

Introduction

- Implementation of recommendations in the CJR Final Report requires legislative amendments
- Consultation Paper invites comments on the proposed legislative amendments

CJR Final Report

- Published on 3 March 2004
- Most of the 150 recommendations involve amendments to the existing rules and practice of the High Court (“HC”)
- Some involve amendments to primary legislation

Steering Committee on the CJR

- Appointed by the Chief Justice in March 2004
- To oversee the implementation of the recommendations of the Final Report on CJR relating to the Judiciary

Steering Committee on the CJR

- Focused mainly on necessary amendments to –
 - primary legislation
 - subsidiary legislation
- Consulted the High Court Rules Committee

District Court (“DC”)

- Practice and procedure in civil proceedings in the DC largely mirror those in the HC
- Appropriate for the two levels of Court to have the same set of procedures consequent on the CJR
- In December 2005, the Chief Justice directed legislative amendment exercise should apply to both the DC and the HC

Lands Tribunal and Employees' Compensation ("EC") Proceedings

Assessment of the impact of legislative amendments for CJR on the –

- Lands Tribunal proceedings
- EC Proceedings

Amendments to Primary Legislation

- 21 out of 150 recommendations in the Final Report require amendments to primary legislation –
 - High Court Ordinance ("HCO") (Cap.4);
 - Law Amendment and Reform (Consolidation) Ordinance ("LARCO") (Cap.23); and
 - Arbitration Ordinance ("AO")(Cap.341)

Amendments to Primary Legislation

- Pre-action protocols with regard to costs-only proceedings
 - New cause of action: need amendments to HCO and DCO
 - in HC and DC only
 - Consequential amendments to Lands Tribunal Ordinance and Small Claims Tribunal Ordinance

Amendments to Primary Legislation

- Pleadings with regard to the defence of tender before action (also applicable to the DC)
- Interim Remedies and Mareva Injunctions in aid of foreign proceedings
- Vexatious litigants
- Discovery (also applicable to the DC)

Amendments to Primary Legislation

- Wasted Costs (also applicable to the DC, LT and EC proceedings)
- Costs Order against Non-parties
- Leave to Appeal (also applicable to the DC, LT and EC proceedings)
- Appeals

Amendments to Subsidiary Legislation

- 84 recommendations in the Final Report require amendments to subsidiary legislation under the HCO –
 - Rules of the High Court (“RHC”) (Cap.4A)
 - High Court Fees Rules (“HCFR”) (Cap.4D)

Amendments to Subsidiary Legislation and Matters Requiring Attention

- Order 15 : Allows costs order ,
against non-parties
- Order 22 : Offers to Settle and
Payments into Court
 - along the lines of CPR Part 36
 - make it clear that the new scheme would
apply to both claims and counterclaims

Amendments to Subsidiary Legislation and Matters Requiring Attention

- Order 62 – Costs
 - In line with the objective of the CJR Final
Report to improve access to justice at
reasonable cost and speed, the Steering
Committee has proposed a number of
amendments to Order 62

Amendments to Subsidiary Legislation and Matters Requiring Attention

- New Order 62A – Costs Offer and Payments into Court
 - present draft does not apply to and in relation to legally aided party
 - proposed that the Director of Legal Aid may consider accepting an offer in certain circumstances

District Court

Provisions in the Rules of the District Court (“RDC”) should follow those in the RHC, unless special considerations justifying differences

District Court

- RDC will differ from the RHC in the following aspects –
 - Director's right to represent a limited company is preserved
 - Leave generally required to appeal against any decision in the DC
 - For taxation proceedings, DC to continue to follow its existing requirements of counsel's certificates and the "two-third cap"

Lands Tribunal

- Has a general power to adopt all practices and procedures of the CFI as it thinks fit
- Changes under the CJR for the CFI can likewise be utilized in the LT, as it thinks fit
- Additional case management powers without prejudice to its general case management powers

EC Proceedings

- By virtue of section 21 of the Employees' Compensation Ordinance, amendments to RDC applicable to EC proceedings

Comments Sought

**End of Consultation Period –
12 July 2006**

