

**CIVIL JUSTICE (MISCELLANEOUS AMENDMENTS)
ORDINANCE 2008**

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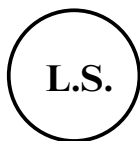
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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 3 OF 2008



Donald TSANG
Chief Executive
5 February 2008

An Ordinance to amend the High Court Ordinance, District Court Ordinance, Lands Tribunal Ordinance, Small Claims Tribunal Ordinance, Law Amendment and Reform (Consolidation) Ordinance and Arbitration Ordinance as proposed by the Steering Committee on Civil Justice Reform, to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform and to implement several recommendations proposed by the Steering Committee.

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Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Civil Justice (Miscellaneous Amendments) Ordinance 2008.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

PART 2

COSTS-ONLY PROCEEDINGS

Recommendation 9

High Court Ordinance

3. Sections added

The High Court Ordinance (Cap. 4) is amended by adding immediately after section 52A—

“52B. Costs-only proceedings

- (1) This section applies where—
 - (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;
 - (b) the agreement has been made or confirmed in writing;
 - (c) no proceedings relating to the dispute have been commenced; and
 - (d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.
- (2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.
- (3) In any proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336), the Court of First Instance may—
 - (a) make an order for the costs of and incidental to the dispute to be taxed or assessed;
 - (b) make an order awarding costs to or against any party to the proceedings; and
 - (c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.
- (4) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court of First Instance under section 53B of the District Court Ordinance (Cap. 336).
- (5) In subsection (3), “Court of First Instance” (原訟法庭) includes the Registrar and a Master.

**52C. Transfer of costs-only proceedings
to District Court**

(1) The Court of First Instance may, either of its own motion or on the application of any party, order the transfer of proceedings commenced under section 52B(2) to the District Court.

(2) An order may be made under this section at any stage of the proceedings.

**52D. Scale of costs on which costs awarded
under section 52A or 52B are taxed**

(1) Where the Court of Appeal or the Court of First Instance has made an award of costs under section 52A(1) or (2) or 52B(3), it may order that those costs be taxed in accordance with—

- (a) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A); or
- (b) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H).

(2) Where an award of costs under section 52B(3) is made by the Registrar or a Master, the power of the Court of First Instance under subsection (1) in relation to those costs may be exercised by the Registrar or that Master (as the case may be).”.

District Court Ordinance

4. Costs in transferred cases, etc.

Section 44A(6) of the District Court Ordinance (Cap. 336) is repealed.

5. Sections added

The following are added immediately after section 53—

“53A. Costs-only proceedings

(1) This section applies where—

- (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;
- (b) the agreement has been made or confirmed in writing;
- (c) no proceedings relating to the dispute have been commenced; and

(d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.

(2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.

(3) In any proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4), the Court may—

- (a) make an order for the costs of and incidental to the dispute to be taxed or assessed;
- (b) make an order awarding costs to or against any party to the proceedings; and
- (c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.

(4) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4).

(5) The Court has jurisdiction to make an order under subsection (3) if the amount of the party's claim for those costs does not exceed \$1,000,000.

(6) In this section, "Court" (區域法院) includes the Registrar and a master of the Court.

53B. Transfer of costs-only proceedings to Court of First Instance

(1) The Court may, either of its own motion or on the application of any party, order the transfer of proceedings commenced under section 53A(2) to the Court of First Instance.

(2) An order may be made under this section at any stage of the proceedings.

53C. Scale of costs on which costs awarded under section 53A are taxed

(1) Where the Court has made an award of costs under section 53A(3), it may order that those costs be taxed in accordance with—

- (a) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H); or
- (b) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A).

(2) Where an award of costs under section 53A(3) is made by the Registrar or a master of the Court, the power of the Court under subsection (1) in relation to those costs may be exercised by the Registrar or that master (as the case may be).”.

Small Claims Tribunal Ordinance

6. Jurisdiction of tribunal

The Schedule to the Small Claims Tribunal Ordinance (Cap. 338) is amended, in paragraph 1, in the proviso—

- (a) in the Chinese text, by adding “或法律程序” after “以下訴訟”;
- (b) in subparagraph (e), by repealing the full stop at the end and substituting a semicolon;
- (c) by adding—
 - “(f) any action or proceeding for an order for the costs of and incidental to a dispute in relation to which no proceedings have been commenced in the tribunal.”.

PART 3

PLEADINGS

Recommendation 25

Law Amendment and Reform (Consolidation) Ordinance

7. Long title amended

The long title to the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) is amended by repealing the full stop and substituting “; and to amend the law relating to the defence of tender before action.”.

8. Section added

The following is added—

“30. Defence of tender before action

(1) Notwithstanding any rule of law to the contrary, in proceedings for a monetary claim, whether liquidated or unliquidated, it is a defence for the defendant to prove that before the claimant commenced the proceedings, the defendant had unconditionally offered to the claimant—

- (a) the amount due where the claim is liquidated; or
- (b) an amount sufficient to satisfy the claim where the claim is unliquidated.

(2) The defendant is not entitled to rely on the defence under subsection (1) unless, before serving his defence on the claimant, he has—

- (a) made a payment into court of the amount offered; and
- (b) notified the claimant of the payment into court.

(3) This section does not apply in relation to proceedings commenced before the commencement of this section.”.

PART 4

**INTERIM REMEDIES AND MAREVA INJUNCTIONS IN AID OF
PROCEEDINGS OUTSIDE HONG KONG**

Recommendations 45 to 48

High Court Ordinance

9. Injunction and receiver

Section 21L(3) of the High Court Ordinance (Cap. 4) is amended by adding “or section 21M” after “subsection (1)”.

10. Sections added

The following are added—

**“21M. Interim relief in the absence
of substantive proceedings**

(1) Without prejudice to section 21L(1), the Court of First Instance may by order appoint a receiver or grant other interim relief in relation to proceedings which—

- (a) have been or are to be commenced in a place outside Hong Kong; and

(b) are capable of giving rise to a judgment which may be enforced in Hong Kong under any Ordinance or at common law.

(2) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court of First Instance thinks just.

(3) Subsection (1) applies notwithstanding that—

(a) the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court of First Instance would have jurisdiction; or

(b) the appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in Hong Kong.

(4) The Court of First Instance may refuse an application for appointment of a receiver or interim relief under subsection (1) if, in the opinion of the Court, the fact that the Court has no jurisdiction apart from this section in relation to the subject matter of the proceedings concerned makes it unjust or inconvenient for the Court to grant the application.

(5) The power to make rules of court under section 54 includes power to make rules of court for—

(a) the making of an application for appointment of a receiver or interim relief under subsection (1); and

(b) the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief.

(6) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee considers necessary or expedient.

(7) In this section, “interim relief” (臨時濟助) includes an interlocutory injunction referred to in section 21L(3).

**21N. Supplementary provisions as to
interim relief in the absence
of substantive proceedings**

(1) In exercising the power under section 21M(1), the Court of First Instance shall have regard to the fact that the power is—

(a) ancillary to proceedings that have been or are to be commenced in a place outside Hong Kong; and

(b) for the purpose of facilitating the process of a court outside Hong Kong that has primary jurisdiction over such proceedings.

(2) The Court of First Instance has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under section 21M as if the order were granted under section 21L in relation to proceedings commenced in Hong Kong.”.

Arbitration Ordinance

11. Special powers of Court in relation to arbitration proceedings

Section 2GC of the Arbitration Ordinance (Cap. 341) is amended—

- (a) in subsection (1), by repealing “The Court or a judge of the Court may, in relation to a particular arbitration proceeding” and substituting “Subject to subsection (1A), the Court or a judge of the Court may, in relation to particular arbitration proceedings which have been or are to be commenced in Hong Kong or in a place outside Hong Kong”;
- (b) by adding—

“(1A) In relation to arbitration proceedings that have been or are to be commenced in a place outside Hong Kong, the Court or a judge of the Court, may make an order under subsection (1), grant an interim injunction or direct any other interim measure to be taken under that subsection, only if the arbitration proceedings are capable of giving rise to an arbitral award (whether interim or final) which may be enforced in Hong Kong under this Ordinance or any other Ordinance.

(1B) Subsection (1A) applies notwithstanding that—

- (a) the subject matter of the arbitration proceedings would not, apart from that subsection, give rise to a cause of action over which the Court or a judge of the Court would have jurisdiction; or
- (b) the order sought, the interim injunction or other interim measure is not ancillary or incidental to any arbitration proceedings in Hong Kong.

(1C) In exercising the power under subsection (1) in relation to arbitration proceedings in a place outside Hong Kong, the Court or a judge of the Court, shall have regard to the fact that the power is—

- (a) ancillary to arbitration proceedings outside Hong Kong; and
- (b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong that has primary jurisdiction over the arbitration proceedings.

(1D) The Court or a judge of the Court, has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of interim relief granted in relation to arbitration proceedings in a place outside Hong Kong as if the interim relief were granted in relation to arbitration proceedings in Hong Kong.

(1E) In subsection (1D), “interim relief” (臨時濟助) means—

- (a) an order made under subsection (1);
- (b) an interim injunction granted under that subsection; or
- (c) any other interim measure directed to be taken under that subsection.”.

12. Section added

The following is added—

“49. Rules of court

(1) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court for—

- (a) the making of an application for an order under section 2GC(1) or for an interim injunction or any other interim measure under that section; and
- (b) the service out of the jurisdiction of an application for such order, interim injunction or other interim measure.

(2) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the authority making the rules considers necessary or expedient.”.

PART 5

VEXATIOUS LITIGANTS

Recommendations 67 and 68

High Court Ordinance

13. Sections substituted

Section 27 of the High Court Ordinance (Cap. 4) is repealed and the following substituted—

“27. Restriction of vexatious legal proceedings

(1) The Court of First Instance may, on the application of the Secretary for Justice or an affected person, make an order that—

- (a) no legal proceedings shall without the leave of the Court of First Instance be instituted by the person against whom the order is made; and
- (b) any legal proceedings instituted by that person in any court before the making of the order shall not be continued by him without the leave of the Court of First Instance.

(2) The Court of First Instance may not make an order under subsection (1) unless—

- (a) it is satisfied that the person against whom the order is to be made has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons; and
- (b) it has heard the person against whom the order is to be made or given him an opportunity of being heard.

(3) An order made under subsection (1)—

- (a) may be made on such terms and conditions as the Court of First Instance thinks just; and
- (b) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(4) A copy of an order made under subsection (1) shall be published in the Gazette.

(5) In subsection (1), “affected person” (受影響的人) means a person who—

- (a) is or has been a party to any of the vexatious legal proceedings; or
- (b) has directly suffered adverse consequences resulting from such proceedings.

27A. Leave to institute or continue proceedings

(1) Leave for the institution or continuance of any legal proceedings by a person who is the subject of an order for the time being in force under section 27(1) shall not be given unless the Court of First Instance is satisfied that—

- (a) the proceedings are not an abuse of the process of the court in question; and
- (b) there are reasonable grounds for the proceedings.

(2) No appeal lies from a decision of the Court of First Instance granting or refusing leave required under this section, unless leave to appeal has been granted by the Court of First Instance.”.

PART 6

DISCOVERY

Division 1—Recommendations 75 and 77

High Court Ordinance

14. Power of Court of First Instance to order disclosure, etc. of documents before commencement of proceedings

Section 41 of the High Court Ordinance (Cap. 4) is amended—

- (a) by renumbering it as section 41(1);
- (b) in subsection (1)—
 - (i) by repealing “in respect of personal injuries to a person or in respect of a person’s death”;
 - (ii) by adding “directly” before “relevant”;

(c) by adding—

“(2) For the purposes of subsection (1), a document is only to be regarded as directly relevant to an issue arising or likely to arise out of a claim in the anticipated proceedings if—

- (a) the document would be likely to be relied on in evidence by any party in the proceedings;
or
- (b) the document supports or adversely affects any party’s case.”.

District Court Ordinance

15. Power of the Court to order disclosure, etc. of documents before commencement of proceedings

Section 47A of the District Court Ordinance (Cap. 336) is amended—

(a) in subsection (1)—

- (i) by repealing “for personal injuries or arising out of the death of a person”;
- (ii) by adding “directly” before “relevant”;

(b) in subsection (3), by adding “directly” before “relevant”;

(c) by adding—

“(4) For the purposes of subsections (1) and (3), a document is only to be regarded as directly relevant to an issue arising out of a claim in the anticipated proceedings if—

- (a) the document would be likely to be relied on in evidence by any party in the proceedings;
or
- (b) the document supports or adversely affects any party’s case.”.

16. Powers of the Court exercisable before commencement of action

Section 47D(1) is amended by repealing “for personal injuries or arising out of the death of a person”.

Division 2—Recommendation 78

High Court Ordinance

17. Extension of powers of Court of First Instance to order disclosure of documents, inspection of property, etc.

Section 42(1) of the High Court Ordinance (Cap. 4) is amended by repealing “in respect of personal injuries to a person or in respect of a person’s death”.

18. Provisions supplementary to sections 41 and 42

Section 43(3) is repealed.

19. Application to Government of sections 41 to 44

Section 45(1) is amended by repealing “involving a claim in respect of personal injuries to a person or in respect of a person’s death”.

District Court Ordinance

20. Extension of powers of the Court to order disclosure of documents, inspection of property, etc.

Section 47B(1) and (3) of the District Court Ordinance (Cap. 336) is amended by repealing “for personal injuries or arising out of the death of a person”.

21. Application to Government of sections 47A to 47D

Section 47E(1) is amended by repealing “for personal injuries or arising out of the death of a person”.

PART 7

WASTED COSTS

Recommendations 94 to 97

High Court Ordinance

**22. Costs in Court of First Instance
and Court of Appeal in its civil
jurisdiction**

Section 52A of the High Court Ordinance (Cap. 4) is amended by adding—

“(4) In any civil proceedings before it, the Court of Appeal or the Court of First Instance may, in accordance with rules of court, by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

(5) When determining whether or not to make an order under subsection (4), the Court of Appeal or the Court of First instance shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(6) In subsection (4), “wasted costs” (虛耗訟費) means any costs incurred by a party as a result of—

(a) an improper or unreasonable act or omission; or

(b) any undue delay or other misconduct or default,
on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

(7) In this section, “legal representative” (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party.”.

District Court Ordinance

23. Costs

Section 53 of the District Court Ordinance (Cap. 336) is amended by adding—

“(3) In any civil proceedings before it, the Court may, in accordance with rules of court, by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

(4) When determining whether or not to make an order under subsection (3), the Court shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(5) In subsection (3), “wasted costs” (虛耗訟費) means any costs incurred by a party as a result of—

(a) an improper or unreasonable act or omission; or

(b) any undue delay or other misconduct or default, on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

(6) In this section, “legal representative” (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party.”.

PART 8

LEAVE TO APPEAL

Recommendations 110, 111, 112, 113 and 115

High Court Ordinance

24. Appeals in civil matters

Section 14(1) of the High Court Ordinance (Cap. 4) is amended by adding “and section 14AA” after “subsection (3)”.

25. Sections added

The following are added before section 14A—

“14AA. Leave to appeal required for interlocutory appeals

(1) Except as provided by rules of court, no appeal lies to the Court of Appeal from an interlocutory judgment or order of the Court of First Instance in any civil cause or matter unless leave to appeal has been granted by the Court of First Instance or the Court of Appeal.

(2) Rules of court may specify a judgment or order of any prescribed description to which subsection (1) does not apply and accordingly an appeal lies as of right from the judgment or order.

(3) Leave to appeal for the purpose of subsection (1) may be granted—

- (a) in respect of a particular issue arising out of the interlocutory judgment or order; and
- (b) subject to such conditions as the court hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal for the purpose of subsection (1) shall not be granted unless the court hearing the application for leave is satisfied that—

- (a) the appeal has a reasonable prospect of success; or
- (b) there is some other reason in the interests of justice why the appeal should be heard.

(5) This section does not apply in relation to an interlocutory judgment or order of the Court of First Instance made before the commencement of this section.

14AB. Decision on leave to appeal final

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.”.

26. Composition of Court of Appeal in its civil jurisdiction

Section 34B(4) is amended—

- (a) in paragraph (a), by repealing “hearing and determining” and substituting “hearing or determining”;
- (b) by adding—
 - “(aa) hearing or determining any application for leave to appeal (except an application for leave to appeal to the Court of Final Appeal);”;
- (c) in paragraphs (b) and (e), by repealing “hearing and determining” and substituting “hearing or determining”;
- (d) in paragraph (c), by repealing “hearing and determining” and substituting “hearing or determining”.

27. Powers of single judge in Court of Appeal

Section 35(1) is amended by repealing “the appeal” and substituting “an appeal to the Court of Appeal (including an order or direction giving leave to appeal to the Court of Appeal)”.

District Court Ordinance

28. Appeal to Court of Appeal

Section 63 of the District Court Ordinance (Cap. 336) is amended—

- (a) by repealing the heading and substituting “**Appeals in civil matters**”;
- (b) in subsection (1), by adding “of a judge or the Court of Appeal” after “with leave”;
- (c) by adding—
 - “(1A) Subject to subsection (1B), an appeal lies as of right to a judge in chambers from a judgment, order or decision of a master in any civil cause or matter.
 - (1B) Where rules of court provide that an appeal from a specified judgment, order or decision of a master lies to the Court of Appeal, the appeal may be made to the Court of Appeal with leave of a master or the Court of Appeal.”;
- (d) in subsection (3), by repealing “or 52D” and substituting “, 52D, 52E or 53(3)”;
- (e) by adding—
 - “(4) In this section, “master” (聆案官) means the Registrar, a deputy registrar or assistant registrar.”.

29. Sections added

The following are added—

“63A. Leave to appeal

- (1) Leave to appeal granted under section 63 may be granted—
 - (a) in respect of a particular issue arising out of the judgment, order or decision; and
 - (b) subject to such conditions as the judge, the master or the Court of Appeal hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(2) Leave to appeal shall not be granted unless the judge, the master or the Court of Appeal hearing the application for leave is satisfied that—

(a) the appeal has a reasonable prospect of success; or

(b) there is some other reason in the interests of justice why the appeal should be heard.

(3) In this section, “master” (聆案官) means the Registrar, a deputy registrar or assistant registrar.

63B. Decision on leave to appeal final

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.”.

PART 9

APPEALS

Recommendation 120

High Court Ordinance

30. Composition of Court of Appeal in its civil jurisdiction

Section 34B(4) of the High Court Ordinance (Cap. 4) is amended by adding—

“(ab) hearing or determining any interlocutory application in relation to a cause or matter pending before it;”.

PART 10

COSTS AGAINST NON-PARTY

High Court Ordinance

31. Costs in Court of First Instance and Court of Appeal in its civil jurisdiction

Section 52A(2) of the High Court Ordinance (Cap. 4) is repealed and the following substituted—

“(2) Without prejudice to the generality of subsection (1), the Court of Appeal or the Court of First Instance may, in accordance with rules of court, make an order awarding costs against a person who is not a party to the relevant proceedings, if the Court of Appeal or the Court of First Instance, as the case may be, is satisfied that it is in the interests of justice to do so.”.

District Court Ordinance

32. Costs

Section 53(2) of the District Court Ordinance (Cap. 336) is repealed and the following substituted—

“(2) Without prejudice to the generality of subsection (1), the Court may, in accordance with rules of court, make an order awarding costs against a person who is not a party to the relevant proceedings, if the Court is satisfied that it is in the interests of justice to do so.”.

PART 11

RULES OF COURT

High Court Ordinance

33. Section added

The High Court Ordinance (Cap. 4) is amended by adding—

“55D. Rules as to costs and interest

(1) Notwithstanding sections 49 and 52A, the power to make rules of court under section 54 includes power to make provision for enabling the Registrar, in such circumstances as may be specified in the rules, to—

- (a) disallow all or part of any costs to be taxed pursuant to a costs order made by the Court of First Instance or the Court of Appeal;
- (b) disallow all or part of any interest otherwise payable under section 49 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 49 at which such interest is payable; and
- (c) increase the rate prescribed in section 49 at which interest on taxed costs or costs of taxation is payable.

(2) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.”.

District Court Ordinance

34. Section added

The District Court Ordinance (Cap. 336) is amended by adding—

“72CA. Rules as to costs and interest

(1) Notwithstanding sections 50 and 53, the Rules Committee may make rules of court for enabling the Registrar, in such circumstances as may be specified in the rules, to—

- (a) disallow all or part of any costs to be taxed pursuant to a costs order made by the Court;
- (b) disallow all or part of any interest otherwise payable under section 50 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 50 at which such interest is payable; and
- (c) increase the rate prescribed in section 50 at which interest on taxed costs or costs of taxation is payable.

(2) Rules made under this section may include incidental, supplementary and consequential provisions that the Rules Committee considers expedient.

(3) In this section, “Registrar” (司法常務官) includes a Master.”.

PART 12

EXECUTION OF INSTRUMENTS

35. Section added

The District Court Ordinance (Cap. 336) is amended by adding—

“38A. Execution of instruments by order of the Court

(1) Subsection (2) applies where—

- (a) the Court has given or made a judgment or order directing a person to—

- (i) execute any conveyance, contract or other document;
or
 - (ii) endorse any negotiable instrument; and
- (b) that person—
 - (i) neglects or refuses to comply with the judgment or order; or
 - (ii) cannot, after reasonable inquiry, be found.
- (2) The Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document is to be executed, or that the negotiable instrument is to be endorsed, by such person as the Court may nominate for that purpose.
- (3) A conveyance, contract, document or instrument executed or endorsed in accordance with subsection (2) has the same effect as if it had been executed or endorsed by the person originally directed to execute or endorse it.
- (4) Nothing in this section abridges the powers of the Court to proceed by attachment against any person neglecting or refusing to execute or endorse any such instrument.”.

PART 13

LANDS TRIBUNAL

Lands Tribunal Ordinance

36. Jurisdiction of the Tribunal

Section 8 of the Lands Tribunal Ordinance (Cap. 17) is amended—

- (a) by repealing subsection (6) and substituting—
 - “(6) The Tribunal shall have jurisdiction to make an order for the recovery of possession of any premises or for the ejectment of a tenant from those premises, whether under the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) or otherwise.”;
- (b) by repealing subsection (7);
- (c) in subsection (8), by repealing everything after “any such application,” and substituting—
 - “to make one or more of the following orders—
 - (a) an order for the payment of rent and mesne profits (including interim payments of rent and mesne profits);

- (b) an order for the payment of any other money which is due under the tenancy or sub-tenancy;
 - (c) an order for the disposal of any property left in the premises concerned by the tenant or sub-tenant; and
 - (d) an order for the payment of damages in respect of any breach of a condition of the tenancy or sub-tenancy.”;
- (d) in subsection (10), by repealing “, (7)”;
- (e) by repealing subsection (11);
- (f) by adding—
 - “(12) Except as provided by any other Ordinance, the Tribunal does not have jurisdiction to make an order for the costs of and incidental to a dispute in relation to which no proceedings have been commenced in the Tribunal.”.

37. Jurisdiction under section 8(7)

Section 8B is repealed.

38. Practice and procedure of Tribunal

Section 10 is amended—

- (a) by repealing subsection (1) and substituting—
 - “(1) The Tribunal may, so far as it thinks fit, follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction, and for this purpose, has the same jurisdiction, powers and duties of the Court of First Instance in respect of such practice and procedure.
 - (1A) Without prejudice to the generality of subsection (1), the Tribunal has the same jurisdiction, powers and duties of the Court of First Instance in respect of the punishment of a person guilty of contempt.”;
- (b) in subsection (3), by adding—
 - “(ba) the practice and procedure to be followed for dealing with any action or proceedings transferred from the Court of First Instance or the District Court;”.

39. Decisions of Tribunal final

Section 11 is amended—

- (a) in subsection (2)—
 - (i) by adding “section 11AA and” after “Subject to”;
 - (ii) by repealing “determination or order” where it twice appears and substituting “judgment, order or decision”;
- (b) in subsection (4), by repealing “of the making of the determination or order appealed against” and substituting “on which leave to appeal is granted under section 11AA”.

40. Sections added

The following are added immediately after section 11—

“11AA. Leave to appeal

(1) Subject to subsection (2), no appeal may be made under section 11(2) unless leave to appeal has been granted by the Tribunal or the Court of Appeal.

(2) Subject to subsection (4), an appeal lies as of right to a presiding officer from a judgment, order or decision of a registrar.

(3) An appeal under subsection (2) is subject to rules made under section 10(3).

(4) Where rules made under section 10(3) provide that an appeal from a specified judgment, order or decision of a registrar lies to the Court of Appeal, the appeal may be made to the Court of Appeal with leave of a registrar or the Court of Appeal.

(5) Leave to appeal may be granted—

- (a) in respect of a particular issue arising out of the judgment, order or decision; and
- (b) subject to such conditions as the Tribunal, the Court of Appeal or the registrar hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(6) Leave to appeal shall not be granted unless the Tribunal, the Court of Appeal or the registrar hearing the application for leave is satisfied that—

- (a) the appeal has a reasonable prospect of success; or
- (b) there is some other reason in the interests of justice why the appeal should be heard.

(7) This section does not apply in relation to a judgment, order or decision of the Tribunal or a registrar of the Tribunal made before the commencement of this section.

(8) In this section, “registrar” (司法常務官) includes a deputy registrar or assistant registrar of the Tribunal.

11AB. Decision on leave to appeal final

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.”.

41. Section substituted

Section 12 is repealed and the following substituted—

“12. Costs

(1) The costs of and incidental to all proceedings in the Tribunal are in the discretion of the Tribunal, and the Tribunal has full power to determine by whom and to what extent the costs are to be paid.

(2) Without prejudice to the generality of subsection (1), the Tribunal may make an order awarding costs against a person who is not a party to the relevant proceedings, if the Tribunal is satisfied that it is in the interests of justice to do so.

(3) In any proceedings before it, the Tribunal may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

(4) When determining whether or not to make an order under subsection (3), the Tribunal shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(5) Where the Tribunal has made an award of costs under subsection (1), (2) or (3), it may order that those costs be taxed in accordance with—

- (a) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A); or
- (b) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H).

(6) The Registrar or a Master of the High Court, or the registrar or a deputy registrar or assistant registrar of the Tribunal may tax the costs ordered to be taxed under subsection (5).

(7) Notwithstanding subsection (1) and section 12C but subject to subsection (5) and any rules made by the Chief Justice under section 10(3), Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies, with the necessary modifications, to the award, taxation and recovery of costs in the Tribunal.

(8) In this section—

“legal representative” (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party;

“Master” (聆案官) has the meaning given to it by sections 37, 37AC, 37A and 37B of the High Court Ordinance (Cap. 4);

“wasted costs” (虛耗訟費) means any costs incurred by a party as a result of—

- (a) any improper or unreasonable act or omission; or
- (b) any undue delay or any other misconduct or default, on the part of any legal representative, whether personally or through an employee or agent of the legal representative.”.

42. Sections added

The following are added—

“12A. Costs in transferred cases, etc.

- (1) This section applies to an action or proceedings transferred—
 - (a) from the Court of First Instance or the District Court to the Tribunal; or
 - (b) from the Tribunal to the Court of First Instance or the District Court.
- (2) The court or the Tribunal that orders the transfer may make an order for costs prior to the transfer and of the transfer.
- (3) The costs of the whole action or proceedings both before and after the transfer are in the discretion of the court or the Tribunal to which the action or proceedings are transferred subject to any order made by the Tribunal or the court which ordered the transfer.
- (4) The court or the Tribunal to which the action or proceedings are transferred may make—
 - (a) an order for costs; and
 - (b) an order as to the scales on which the costs of the action or proceedings are to be taxed,as if the action or proceedings were originally commenced in the court or the Tribunal.
- (5) Subject to section 12(6), the costs of the whole action or proceedings are to be taxed in the court or the Tribunal to which the action or proceedings are transferred.

12B. Interest on claims for debt and damages

- (1) In proceedings (whenever instituted) before the Tribunal for the recovery of a debt or damages there may be included in any sum for which judgment is given simple interest, at such rate as the Tribunal thinks fit or as rules made under section 10(3) may provide, on all or any part of the debt or damages in respect of which—

- (a) judgment is given; or
 - (b) payment is made before judgment.
- (2) Interest under subsection (1) may be awarded for all or any part of the period between the date when the cause of action arose and—
 - (a) in the case of any sum paid before judgment, the date of the payment; and
 - (b) in the case of the sum for which judgment is given, the date of the judgment.
- (3) Where—
 - (a) there are proceedings (whenever instituted) before the Tribunal for the recovery of a debt; and
 - (b) the defendant pays the whole debt to the plaintiff (otherwise than in pursuance of a judgment in the proceedings),the defendant is liable to pay the plaintiff interest, at such rate as the Tribunal thinks fit or as rules made under section 10(3) may provide, on all or any part of the debt for all or any part of the period between the date when the cause of action arose and the date of the payment.
- (4) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.
- (5) Interest under this section may be calculated at different rates in respect of different periods.
- (6) Subsections (1) and (3) are subject to rules made under section 10(3).
- (7) In this section—
 - “defendant” (被告人) means the person from whom the plaintiff seeks the debt or damages;
 - “plaintiff” (原告人) means the person seeking the debt or damages.

12C. Interest on judgments

- (1) Subject to any other Ordinance, judgment debts carry simple interest on the aggregate amount of the debts, or on such part of the debts as for the time being remains unsatisfied, from the date of the judgment until satisfaction.
- (2) Interest under this section is—
 - (a) at such rate as the Tribunal may order; or
 - (b) in the absence of such order, at such rate as may be determined from time to time by the Chief Justice by order.
- (3) Interest under this section may be calculated at different rates in respect of different periods.”.

High Court Ordinance

43. Section added

The High Court Ordinance (Cap. 4) is amended by adding—

“12F. Transfer of proceedings to the Lands Tribunal

The Court of First Instance may, either of its own motion or on the application of any party, order at any stage the transfer to the Lands Tribunal of all or part of any action or proceedings before it which are within the jurisdiction of the Lands Tribunal.”.

44. Rules of court

Section 54(2)(a) is amended by adding “, and between the Court of First Instance and the Lands Tribunal” after “District Court”.

District Court Ordinance

45. Section substituted

Section 42 of the District Court Ordinance (Cap. 336) is repealed and the following substituted—

“42. Transfer of proceedings to the Court of First Instance or the Lands Tribunal

The Court may, either of its own motion or on the application of any party, order at any stage the transfer to the Court of First Instance or the Lands Tribunal of all or part of any action or proceedings before it which are within the jurisdiction of the Court of First Instance or the Lands Tribunal, as the case may be.”.

46. Rules of court

Section 72(2)(a) is amended by adding “, and between the Court and the Lands Tribunal” after “Court of First Instance”.