

## **LEGISLATIVE COUNCIL BRIEF**

### **SUBSIDIARY LEGISLATION RELATING TO THE CIVIL JUSTICE REFORM**

#### **Hong Kong Court of Final Appeal Ordinance (Cap. 484)**

#### **HONG KONG COURT OF FINAL APPEAL FEES (AMENDMENT) RULES 2009**

### **INTRODUCTION**

On 21 January 2009, the Court of Final Appeal Rules Committee made the Hong Kong Court of Final Appeal (“CFA”) Fees (Amendment) Rules 2009.

### **BACKGROUND AND JUSTIFICATIONS**

2. The CFA Fees (Amendment) Rules 2009 are consequential legislative amendments. They are technical in nature and seek to follow the taxation procedures under Order 62 of the Rules of High Court (“RHC”) (Cap. 4A) as revised by the RHC (Amendment) Rules 2008.

3. The RHC (Amendment) Rules 2008 were enacted in 2008 under the Civil Justice Reform (“CJR”). They made certain amendments to the provisions governing taxation procedures in Order 62 of the RHC (Cap. 4A), including:

- (a) The requirement for a party to pay to the Court a prescribed taxing fee when filing a notice of commencement of taxation (Order 62 rule 21(5)).
- (b) The provision that the party is not entitled to any refund of such fee except (i) if the bill is withdrawn within 7 days after application to set down under rule 21A(1) or (ii) where the court otherwise directs (Order 62 rule 21D(3)).

Under rule 57 of the CFA Rules (Cap. 484A), the CFA should in general follow the taxation procedures under Order 62 of the RHC.

## **THE AMENDMENT RULES**

4. Consequential to the above amendments to Order 62 of the RHC, which will generally be applied to the CFA pursuant to rule 57 of the CFA Rules, and in line with the objective to facilitate early settlement and to deter the inflation of the amount claimed under the bill of costs, amendments are proposed in the CFA Fees (Amendment) Rules 2009 at **Annex A** to mirror the amendments to RHC as set out in paragraph 3 above:

- (a) The prescribed taxing fee mentioned in paragraph 3(a) above will be levied on the amount claimed in the bill of costs, instead of the amount allowed as at present.
- (b) Regarding the refund mentioned in paragraph 3(b)(i) above, 10% of the taxing fee is payable if a bill of costs is withdrawn within 7 days after the application for setting down the taxation.

## **LEGISLATIVE TIMETABLE**

5. The legislative timetable is as follows –

Publication in the Gazette	30 January 2009
Tabling at Legislative Council	4 February 2009

6. The CFA Fees (Amendment) Rules 2009 shall come into operation on the day appointed for the commencement of the Civil Justice (Miscellaneous) (Amendments) Ordinance 2008. Section 2 of that Ordinance provides that it shall come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette. It is the intention to bring all CJR-related legislation, including the CFA Fees (Amendment) Rules 2009, into operation on 2 April 2009.

## **IMPLICATIONS OF THE SUBSIDIARY LEGISLATION**

7. The CFA Fees (Amendment) Rules 2009, together with the other seven sets of CJR-related subsidiary legislation<sup>1</sup> (which were enacted by the

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<sup>1</sup> The subsidiary legislation includes:

- Rules of the High Court (Amendment) Rules 2008
- High Court Suitors' Funds (Amendment) Rules 2008
- High Court Fees (Amendment) Rules 2008
- Rules of the District Court (Amendment) Rules 2008
- District Court Civil Procedure (Fees) (Amendment) Rules 2008
- District Court Suitors' Funds (Amendment) Rules 2008
- Lands Tribunal (Amendment) Rules 2008

Legislative Council in July 2008), have financial, manpower, economic and sustainability implications as set out at **Annex B** (c.f. paragraphs 102 to 105 of the former Legislative Council Brief (File Ref: JUD ADM 1-55/2/9)).

## **PUBLIC CONSULTATION**

8. The Hong Kong Bar Association and the Law Society of Hong Kong have been consulted on the CFA Fees (Amendment) Rules 2009. The Law Society of Hong Kong has no comment on the Rules. The Hong Kong Bar Association suggested that the words “as applied by rule 57 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A)” in paragraphs 5 and 6 of the Schedule should be enclosed by parentheses. We have incorporated the Hong Kong Bar Association’s suggestion into the Rules.

9. The Legislative Council Panel on Administration of Justice and Legal Services was consulted on the CFA Fees (Amendment) Rules 2009 on 13 January 2009, and raised no objection.

## **PUBLICITY**

10. A press release will be issued on 30 January 2009. A spokesman will be available to answer media and public enquiries.

## **ENQUIRY**

11. An enquiry of this brief should be addressed to Miss Clara Tang, Assistant Judiciary Administrator (Development), at telephone number 2825 4244.

Judiciary Administration  
January 2009

**HONG KONG COURT OF FINAL APPEAL FEES  
(AMENDMENT) RULES 2009**

(Made by the Court of Final Appeal Rules Committee under section 39 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484))

**1. Commencement**

These Rules come into operation on the day appointed for the commencement of the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (3 of 2008).

**2. Rule added**

The Hong Kong Court of Final Appeal Fees Rules (Cap. 484 sub. leg. B) are amended by adding –

**“4. Transitional provision relating to the  
Hong Kong Court of Final Appeal Fees  
(Amendment) Rules 2009**

Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of rule 3(b) and (c) (“the amending rule”) of the Hong Kong Court of Final Appeal Fees (Amendment) Rules 2009 (L.N. of 2009) –

- (a) nothing in the amending rule applies in relation to the taxation; and
- (b) Fee Nos. 5 and 6 in the Schedule as in force immediately before the commencement of the amending rule continue to apply in relation to the taxation as if they had not been amended by the amending rule.”.

**3. Schedule amended**

The Schedule is amended –

- (a) by repealing “[r. 1(1)]” and substituting “[rr. 1(1) & 4]”;

- (b) in Fee No. 5, by repealing everything from “On” to “allowed –” and substituting –  
“On filing a notice of commencement of taxation under Order 62, rule 21(1) of the Rules of the High Court (Cap. 4 sub. leg. A) (as applied by rule 57 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A)), for every \$100 or fraction of \$100 of the amount claimed –”;
- (c) in Fee No. 6, by repealing everything from “Processing” to “taxation” and substituting –  
“Withdrawal of a bill of costs within 7 days after the application for setting down the taxation under Order 62, rule 21A(1) of the Rules of the High Court (Cap. 4 sub. leg. A) (as applied by rule 57 of the Hong Kong Court of Final Appeal Rules (Cap. 484 sub. leg. A)) is made”.

Made this 21st day of January 2009.

The Hon Chief Justice LI

The Hon Mr. Justice BOKHARY PJ

The Hon Mr. Justice CHAN PJ

Mr. Anthony CHAN, SC

Mr. Joseph FOK, SC

Mr. Michael LINTERN-SMITH

Mr. Alex LAI

Mr. Wesley Wai-chung WONG

Mr. Simon KWANG

### **Explanatory Note**

These Rules amend the Hong Kong Court of Final Appeal Fees Rules (Cap. 484 sub. leg. B) (“the principal Rules”).

2. Rule 2 adds a new rule to the principal Rules to provide for the transitional arrangement relating to the amendments to the Schedule to the principal Rules, effected by rule 3 of these Rules.

3. Rule 3(a) consequentially amends the Schedule to the principal Rules upon the addition of new rule 4.

4. Rule 3(b) amends Fee No. 5 in the Schedule to the principal Rules to provide that the fee specified in that Fee No. is payable on filing a notice of commencement of taxation instead of on the taxation of a bill of costs.

5. Rule 3(c) amends Fee No. 6 in the Schedule to the principal Rules to provide that the fee specified in that Fee No. is payable where a bill of costs is withdrawn within 7 days after the application for setting down the taxation is made. At present, the specified fee is payable where a bill of costs is withdrawn less than 7 days before the appointment for taxation.

**Extract of**  
**Legislative Council Brief**  
**Subsidiary Legislation Relating to the**  
**Civil Justice Reform**

**(File Ref: JUD ADM 1-55/2/9)**

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**“IMPLICATIONS OF THE PROPOSAL**

102. The proposal aims to improve the civil procedures and avoid undue delay and expenses.

Financial and Manpower Implications

103. The proposed legislative amendments would streamline civil proceedings and eliminate unnecessary steps, thereby tending to lessen the strain on judicial resources. However, some of the proposed legislative amendments may increase the workload of the courts. It is difficult to estimate with any degree of precision at this stage as to the financial implication for the Judiciary. The Judiciary will continue to assess the possible resource implications of the implementation of the reform. Any additional resource requirements will be acquired in accordance with normal procedures of resource allocation.

Economic Implications

104. Through improving our civil justice system, the proposal would ensure that our judicial system, one of the most important cornerstones for Hong Kong's long-term prosperity, would develop in line with the increasingly complex global socio-economic progression. Upon effective implementation, the proposal would strengthen Hong Kong's competitiveness as a dispute resolution centre and its position as an international business centre.

Sustainability Implications

105. In line with the sustainability principle of fostering an equitable and progressive society, the proposal would improve the civil procedures and enable

a fairer distribution of the judicial resources, thereby enhancing the public's access to justice.”