

LEGISLATIVE COUNCIL BRIEF

SUBSIDIARY LEGISLATION RELATING TO THE CIVIL JUSTICE REFORM

District Court Ordinance (Cap. 336)

DISTRICT COURT CIVIL PROCEDURE (FEES) (AMENDMENT) RULES 2009

INTRODUCTION

On 21 January 2009, the District Court (“DC”) Rules Committee made the DC Civil Procedure (Fees) (Amendment) Rules 2009.

BACKGROUND AND JUSTIFICATIONS

2. The DC Civil Procedure (Fees) (Amendment) Rules 2009 are consequential legislative amendments. They are technical in nature and seek to follow the amendments of Order 34 of the Rules of DC (“RDC”) (Cap. 336H) as revised by the RDC (Amendment) Rules 2008.

3. The RDC (Amendment) Rules 2008 were enacted in 2008 under the Civil Justice Reform (“CJR”). Under the Rules, Order 23A of the RDC on “directions for actions begun by writ” was repealed and Order 34 of the RDC on “pre-trial review and fixing date for trial of actions begun by writ” was repealed and replaced by a new Order 34 on “setting down for trial action begun by writ”. The amendments were made to maintain consistency with the RHC.

THE AMENDMENT RULES

4. Corresponding to the revised procedure under the new Order 34 of the RDC, the relevant fee items in the DC Civil Procedure (Fees) Rules should also be amended as at **Annex A**:

- (a) There will no longer be any mandatory pre-trial reviews as required under the previous Order 23A and Order 34 and parties will directly set the case down for trial without first applying for a pre-trial review. Item 2(a) of the Schedule to the DC Civil Procedure (Fees) Rules, which sets out the fee for “Applying for pre-trial review” at \$630, will become obsolete and should be deleted.

- (b) To mirror the High Court Fees Rules (Cap. 4D), a new fee item of “Setting down a cause or issue for hearing” at \$630 should be introduced to provide the legal basis for the DC to levy the fees.

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 DC Civil Procedure (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 DC Civil Procedure (Fees) (Amendment) Rules 2009, into operation on 2 April 2009.

IMPLICATIONS OF THE SUBSIDIARY LEGISLATION

7. The DC Civil Procedure (Fees) (Amendment) Rules 2009, together with the other seven sets of CJR-related subsidiary legislation¹ (which were enacted by the 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 and have agreed on the DC Civil Procedure (Fees) (Amendment) Rules 2009.

¹ 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

9. The Legislative Council Panel on Administration of Justice and Legal Services was consulted on the DC Civil Procedure (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

**DISTRICT COURT CIVIL PROCEDURE (FEES)
(AMENDMENT) RULES 2009**

(Made by the District Court Rules Committee under section 72 of the
District Court Ordinance (Cap. 336))

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 District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg. C) are amended by adding –

**“9. Transitional provision relating to the
District Court Civil Procedure (Fees)
(Amendment) Rules 2009**

Item 2(a) of the Schedule does not apply to a cause or issue if, before the commencement of rule 3(b) of the District Court Civil Procedure (Fees) (Amendment) Rules 2009 (L.N. of 2009), an application has been made for a pre-trial review in respect of the cause or issue.”

3. Schedule amended

The Schedule is amended –

- (a) by repealing “[rule 2]” and substituting “[rules 2, 8 & 9]”;
- (b) in item 2(a), by repealing “Applying for pre-trial review” and substituting “Setting down a cause or issue for hearing”;
- (c) in item 2(b), by adding “, motion” after “appeal”.

Made this 21st day of January 2009.

The Hon Mr. Justice MA
Chief Judge of the High Court

H H Judge LOK

H H Judge CARLSON

H H Judge AU

Mr. P Y LO

Mr. Thomas SO

Mr. Siu-tung POON

Explanatory Note

These Rules amend the District Court Civil Procedure (Fees) Rules (Cap. 336 sub. leg. C) (“the principal Rules”).

2. Rule 2 adds a new rule to the principal Rules to provide for the transitional arrangement relating to the amendment to item 2(a) in 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 rules 8 and 9.
4. Rule 3(b) amends item 2(a) of the Schedule to the principal Rules to provide that the fee specified in that item is payable for setting down a cause or issue for hearing instead of payable for applying for a pre-trial review. It is no longer necessary to specify a fee for applying for a pre-trial review because there will no longer be any pre-trial review under Order 34 of the Rules of the District Court (Cap. 336 sub. leg. H).
5. Rule 3(c) amends item 2(b) of the Schedule to the principal Rules to provide that the fee specified in that item is also payable for setting down a motion for hearing.

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

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

“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.”