

**立法會**  
**Legislative Council**

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**Paper for the House Committee meeting on 31 October 2014**

**Report of the Subcommittee on  
Rules of the High Court (Amendment) (No. 2) Rules 2014 and  
Rules of the District Court (Amendment) Rules 2014**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Rules of the High Court (Amendment) (No. 2) Rules 2014 and Rules of the District Court (Amendment) Rules 2014 ("the two Amendment Rules").

**Background**

2. Under Order 17 of the Rules of the High Court (Cap. 4A) and the Rules of the District Court (Cap. 336H), a person who is under a liability in respect of a debt or in respect of any money, goods or chattels and he/she is, or expects to be, sued for that debt by two or more persons making adverse claims, the person may apply to the court for an order requiring the claimants to litigate their differences and to abide by the court's final order in respect of the property concerned ("interpleader proceedings").

3. In both the Court of First Instance ("CFI") and the District Court, an interpleader issue may be determined by a judge or a master and by a summary determination or after a trial. In the case of a determination of an interpleader issue by a master, the right of appeal lies to either CFI or the Court of Appeal depending on whether the issue is determined by summary determination or after trial and, in case of a determination by trial, whether the trial is conducted with or without the consent of the parties. The procedures in the CFI and the District Court are substantially the same<sup>1</sup>.

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<sup>1</sup> The only difference is that in the District Court, for an interpleader issue tried before a master with the consent of the parties, leave is required for an appeal to the Court of Appeal.

4. In 2011, the Court of Appeal in *Chun Sang Plastics Company Limited v. The Commissioner of Police and Ors* (CACV 37 of 2011), identified the unsatisfactory position under the existing Cap. 4A that an appeal against a master's decision of an interpleader issue tried without the parties' consent lies to a judge of CFI where the appeal would be heard *de novo*, i.e. entirely a fresh hearing where witnesses would have to be called and cross-examined again. The Court expressed concern that such an appeal procedure would cause an unnecessary duplication of efforts and costs. According to the LegCo Brief (File Ref: SC 261/1/2/2) issued by the Judiciary Administration ("JA") in June 2014, the Judiciary agreed with the Court's views and proposed to amend Cap. 4A and Cap. 336H as well to allow the parties to interpleader proceedings to appeal to the Court of Appeal direct against a master's decision after a full trial of an interpleader issue conducted without the parties' consent. The amendments will make uniform the appeal mechanism after trials of interpleader issues whether they have taken place before a judge or a master, with or without consent of parties.

### **The two Amendment Rules**

5. The Rules of the High Court (Amendment) (No. 2) Rules 2014 are made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4) to amend Order 58, rule 2 of Cap. 4A so that an appeal from a judgment or order of a master of the High Court on the trial of an interpleader issue lies to the Court of Appeal.

6. The Rules of the District Court (Amendment) Rules 2014 are made by the District Court Rules Committee under section 72 of the District Court Ordinance (Cap. 336) to amend Order 58, rule 2 of Cap. 336H so that an appeal from a judgment or order of a master of the District Court on the trial of an interpleader issue lies to the Court of Appeal.

7. The two Amendment Rules come into operation on 1 December 2014.

### **The Subcommittee**

8. At the House Committee meeting held on 4 July 2014, Members agreed that a subcommittee should be formed to study the two Amendment Rules in detail. The membership list of the Subcommittee is in **Appendix I**.

9. Under the chairmanship of Hon Dennis KWOK, the Subcommittee has held one meeting with JA and the Department of Justice ("DoJ").

10. To allow more time for the Subcommittee to gauge public views and prepare its report for the House Committee, it was scheduled for Hon Dennis KWOK to move a motion at the Council sitting of 22 October 2014 to extend the scrutiny period of the two Amendment Rules from the Council sitting of 22 October 2014 to that of 12 November 2014. However, the Council sitting of 22 October 2014 was unable to deal with the motion to extend the scrutiny period, the 28-day period<sup>2</sup> for amending the two Amendment Rules under the negative vetting procedure as specified in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) expired at the Council sitting of 22 October 2014.

## **Deliberations of the Subcommittee**

### Rights of Appeal

11. The Subcommittee notes that under the existing Rules of the High Court and Rules of the District Court, the rights of appeal are different, depending on by whom and how an interpleader issue is determined, as follows:

	Appeal lies to
(a) Summary determination or after trial by a judge	Court of Appeal
(b) Summary determination by a master	a CFI judge in chambers
(c) After trial before a master with parties' consent	Court of Appeal
(d) After trial before a master without parties consent	a CFI judge in chambers

12. According to the Administration, in the United Kingdom, the interpleader proceedings are being governed by the Interpleader Act (1831) of the United Kingdom, which was later on superseded by the Rules of Supreme Court (1883). In Hong Kong, under section 38(1)(a) of Cap. 4, the Registrar shall have and may exercise and perform "the same jurisdiction, powers and duties as the Master, Registrars and like officers of the Supreme Court of England and Wales". The Administration has considered that a master can determine an interpleader issue with or without consent of the parties. As such, it was a waste of time and legal costs for an appeal going through a fresh

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<sup>2</sup> Under section 34(3), if the period referred to would but expire -  
(a) after the last sitting before the end of a session or dissolution of LegCo; but  
(b) on or before the day of the second sitting of LegCo in the next session,  
that period shall be deemed to extend to and expire on the day after that second sitting.

hearing in CFI again after a full trial had been conducted by a master without consent of the parties.

13. Further to the Administration's response on the background for the existing arrangements, some Subcommittee members consider that there might be a gap in the past between the quality of trials conducted by a judge and a master. As such, the decision of a master should be backed by a judge at the same court level of CFI through the appeal mechanism. However, with professional advancement over time, a master is practically equivalent to a judge under the present judicial structure. The Subcommittee has also noted the comments made by the Court of Appeal in *Chun Sang Plastics Company Limited* case. Members further note that an appeal against a master's decision in assessment of damages cases under Order 37, rule 1 of Cap. 4A and Cap. 336H could be made to the Court of Appeal regardless of the consent of the parties.

14. The Subcommittee supports the two Amendment Rules.

#### **Advice sought**

15. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4  
Legislative Council Secretariat  
29 October 2014

**Subcommittee on Rules of the High Court (Amendment) (No. 2) Rules 2014 and  
Rules of the District Court (Amendment) Rules 2014**

**Membership list**

**Chairman** Hon Dennis KWOK

**Members** Hon Albert HO Chun-yan  
Hon Cyd HO Sau-lan, JP  
Hon Paul TSE Wai-chun, JP

(Total : 4 members)

**Clerk** Ms Debbie YAU

**Legal Adviser** Ms Clara TAM