

For information

Legislative Council
Panel on Administration of Justice and Legal Services

**Judiciary's Information Technology Strategy Plan:
Legislative Proposals for Electronic Fees**

PURPOSE

This paper informs Members of the Judiciary's legislative proposals in relation to fees payable in respect of court-related matters that are carried out by an electronic mode ("e-fees") under the Information Technology Strategy Plan ("ITSP").

BACKGROUND

2. At the AJLS Panel meeting on 29 April 2019, the Judiciary briefed Members that an integrated court case management system ("iCMS") was being developed under the ITSP in phases to streamline and standardise electronic court processes across different levels of courts as appropriate. To enhance access to justice, electronic services and facilities of various types will be introduced, where appropriate, as an additional option to the existing channels, which are to be used on a voluntary basis. The ITSP is being implemented in two phases. The first phase will consist of two stages for better management. In Stage 1 of Phase I, the iCMS will be implemented in the District Court ("DC") and the Summons Courts of the Magistrates' Courts ("MCs"). In Stage 2 of Phase I, the iCMS is expected to be extended to the Court of Final Appeal, the High Court, the remaining part of the MCs and the Small Claims Tribunal. For the remaining courts and tribunals, the iCMS is planned to be implemented under Phase II.

3. As set out in the Judiciary's paper for the Panel meeting in April 2019, we outlined the legislative proposals for implementing the ITSP. The key legislative proposals include the Court Proceedings (Electronic Technology) Bill ("the Bill"), as well as court procedural

rules¹ (“e-Rules”) to regulate or prescribe the practice and procedure for using electronic technology in courts. E-Rules are subsidiary legislation. In addition, detailed operational procedures and practices of using the iCMS will be included in Practice Directions (“e-PDs”) issued by the Chief Justice (“CJ”). At the meeting, the Panel indicated general support for the legislative proposals. The Judiciary also provided Members with subsequent updates on the Bill and e-Rules in August 2019.

LATEST DEVELOPMENTS

4. The Court Proceedings (Electronic Technology) Ordinance (“the Ordinance”) was enacted on 17 July 2020. A copy is at **Annex I**. The Judiciary is finalising all draft e-Rules and e-PDs having regard to the comments received from stakeholders and other latest developments. It is the Judiciary’s plan to take forward the legislative process for all Stage 1, Phase I ITSP e-Rules as soon as possible. Subject to the outcome of pilot runs and readiness of the key stakeholders, it is the Judiciary’s intention to implement Stage 1, Phase I ITSP e-Rules and e-PDs starting with selected types of civil proceedings for the DC from Q4, 2021.

ELECTRONIC FEES

5. Currently under the manual mode, court users who utilize the Judiciary’s services (such as filing of documents to initiate a court case, search of court documents) need to pay statutory fees in accordance with the relevant fees rules (referred below as “manual fees”). The Judiciary also charges administrative fees for some court services, such as the fees/charges for furnishing transcripts of proceedings. When the ITSP is implemented, e-fees will be charged for electronic services provided to iCMS court users. As a part of the ITSP stage 1 e-Rules, the electronic fee rules (“e-fee Rules”) are required to enable the charging of such e-fees. Section 29 of the Ordinance provides CJ with the power to provide

¹ The e-Rules for the implementation of Stage 1, Phase I of the ITSP, which were reported to the Panel, include: the Court Proceedings (Electronic Technology) (Specification of e-Courts and Tribunals) Rules, the Court Proceedings (Electronic Technology) (District Court Civil Proceedings) Rules, the Court Proceedings (Electronic Technology) (District Court Criminal Proceedings) Rules, and the Court Proceedings (Electronic Technology) (Magistrates’ Court) Rules for the Summons Courts.

for fees for the use of electronic mode in court-related matters. Section 31 of the Ordinance also specifies that the payment of e-fees under the e-fee Rules would have the same effect as that of payment of the corresponding manual fees in the existing fees legislation.

Proposed time-limited concessionary fees for electronic services

6. To encourage users to migrate to the electronic mode at the initial stage of ITSP implementation, the Judiciary intends to provide a financial incentive for electronic mode users by offering concessionary fees for those who opt to use the iCMS. The discounted e-fees may encourage a higher take-up rate of the electronic mode, which may in turn increase the efficiency of the litigation process. The Judiciary envisages that this proposal will bring both tangible and intangible benefits to the administration of justice in the longer run.

7. The concession is proposed to be granted to all iCMS users (both registered and non-registered users). Since the objective of granting a concession is to promote the greater use of iCMS, transactions made via other non-physical means, such as email or e-fax, will not be eligible. For Phase I, Stage 1 of ITSP implementation, the Judiciary proposes that a **20% concession** on the existing fee levels be offered to iCMS users for a period of **five years** for fee items related to DC and MCs (Summons Courts) proceedings².

8. In determining the rate of concession, the Judiciary has struck a careful balance between encouraging court users' migration to electronic mode and avoiding penalizing those who continue to transact court business using the conventional mode. A moderate concession rate at 20% is considered appropriate. As for the period of concession, a period of five years is considered to be a reasonable duration to promote the electronic mode to various court users, including unrepresented litigants. Further extension may be considered as appropriate after reviewing the actual migration rate and other relevant factors. We may also consider providing similar concession when the ITSP is implemented in other courts at subsequent stages. To better encourage migration to the electronic mode as early as possible, we intend to apply the concessionary fees upon the commencement of the e-fee Rules, regardless of whether the court case concerned is a new or on-going one.

² While the civil proceedings for the DC are planned to be rolled out in phases starting from Q4, 2021, the five-year concession period will start to be counted for all civil proceedings, including those which may implement the iCMS at a slightly later stage.

Fee items that will be granted concession for Stage 1, Phase I of ITSP

9. We propose that the guiding principle for granting concession is that the fee item concerned is primarily or directly related to the use of iCMS. In other words, these items should be explicitly related to the handling of court documents. For statutory fees, making reference to the existing manual fees, some examples include getting a copy of a document, and searching a document in the registry as specified in the District Court Civil Procedure (Fees) Rules (Cap. 336C). A list of e-fee items that are proposed to be given concession is at **Annex II**.

10. For fee items the mode of delivery of which is not affected by the introduction of the iCMS, no concession is proposed. Making reference to the existing manual fees, some examples include examination of witnesses by the Judge or Registrar (item 3 of the Schedule to Cap. 336C) and attendance of a public officer to give evidence as an expert witness (item 5 of the Schedule to Cap. 336C).

11. Besides the above principle, there are a few policy considerations in determining whether concession should be granted to a fee item. We do not propose to allow concession for fee items falling under the following categories:

- (a) fees which are reimbursements in nature. An example is caretaker's fee (item 18 of Schedule to Cap. 336C);
- (b) payments/deposits to which the Court acts as a trustee. The court will need to return the money to the parties concerned. Examples are payments related to suitors' funds (such as sanctioned payments and security for costs for civil proceedings), and witness deposit under Order 38, rule 14(5) of the Rules of the District Court (Cap. 336H) before the issuance of a writ of subpoena; and
- (c) non-fee items such as:
 - (i) penalties/fine/costs imposed by the Court;
 - (ii) payments related to criminal proceedings (such as bail and surety money, compensation and restitution money).

Charging of zero e-fee

12. The Judiciary also proposes to charge zero fees for certain e-fee items. For example, while a fee is charged for making a photostatic copy of a document in manual mode (the respective manual fee items are item 9(a) of the Schedule to Cap. 336C and item 3(a) of Regulation 2 of Cap. 227B) because of the material and staff cost involved, we do not propose to charge a fee for a similar service in electronic mode. This is because in getting an electronic copy of a document, the court user will be downloading it from the iCMS instead and no additional manpower of the Judiciary is incurred. Hence, the Judiciary proposes to prescribe a zero fee for this item. However, if a court user seeks the Judiciary's assistance in printing hard copies of the electronic documents, the usual manual fees will be charged.

FINANCIAL IMPLICATIONS

13. On the assumption that the migration rate to the electronic mode is 20%, the estimated revenue foregone of the proposed concession arrangement is \$5.9 million per annum. The Government has no objection to the proposal.

OTHER FEE-RELATED ISSUES

14. Currently, fees related to DC criminal proceedings are charged on an administrative basis, i.e. without any statutory provisions. For clarity and consistency purpose, we would like to take the opportunity of this exercise to include these fee items in Cap. 336C as well. In other words, manual mode users will be charged fees related to DC criminal proceedings based on the amended Cap. 336C. As for electronic mode users, the relevant e-fees for DC criminal proceedings will also be provided in the e-fee Rules.

LEGISLATIVE PROPOSAL

15. The Judiciary is finalizing the e-fee Rules for Stage 1, Phase I of ITSP implementation. The e-fee Rules will feature:

- (a) e-fee items which will be given concession;
- (b) e-fee items which will be prescribed a zero fee;
- (c) e-fee items that make reference to the relevant manual fees, with descriptions suitably amended in order to suit an electronic mode (corresponding to section 29(3)(a)(ii) of the Ordinance); and
- (d) e-fee items that are only applicable to an electronic mode³.

16. Amendments will also be made to Cap. 336C in order to give effect to the fees policy as stated in paragraph 14 above.

17. The Judiciary intends to table the e-fee Rules, together with all other ITSP e-Rules, at the Legislative Council in the first half of 2021.

STAKEHOLDERS CONSULTATION

18. The Judiciary has consulted the relevant stakeholders, including the Hong Kong Bar Association and the Law Society of Hong Kong, on the proposed policy on e-fees. They generally support the legislative proposals.

WAY FORWARD

19. Members are invited to note the contents of the information note.

Judiciary Administration January 2021

³ A possible example may be the provision of data storage device such as USB for holding audio record of proceedings. At the current stage, there are no such fee items yet. The Judiciary will monitor the implementation of ITSP and make subsequent amendments to the e-fee Rules at a later stage as appropriate.

Court Proceedings (Electronic Technology) Ordinance

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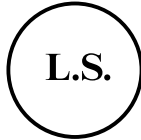
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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 20 OF 2020



Carrie LAM
Chief Executive
23 July 2020

An Ordinance to provide for the use of electronic technology in relation to proceedings in a court (which includes specified tribunals) and other court-related purposes; to enable the phased implementation of the use of electronic technology in relation to court proceedings; to enable fees to be provided for in respect of the use of electronic technology in court-related matters; and to provide for related matters.

[]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Court Proceedings (Electronic Technology) Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

2. Interpretation

In this Ordinance—

court (法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal;
- (c) the Court of First Instance;
- (d) the District Court;
- (e) a Magistrates' Court;
- (f) the Coroner's Court; or
- (g) a tribunal specified by rules made under section 6(b);

court office (法院辦事處), in relation to a court, means a registry of the court or an office of the court;

document (文件) means anything in which information of any description is recorded;

e-Court (電子法院) means a court specified by rules made under section 6(a);

electronic form (電子形式) means in the form of an electronic record;

electronic record (電子紀錄) means a record that—

- (a) is generated in a digital form by an information system;
- (b) can be transmitted—
 - (i) within an information system; or
 - (ii) from one information system to another; and
- (c) can be stored in an information system or other medium;

e-proceeding (電子程序)—see section 11(2);

e-system (電子系統) means the information system designated under section 7;

implementation notice (實施公告) means a notice published under section 32(1);

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

3. References to judge or judicial officer

In this Ordinance, a reference to a judge or a judicial officer—

- (a) is a reference to a judicial officer as defined by section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92); and
 - (b) includes a person appointed as a deputy or temporary judicial officer to perform the duties of, or to act otherwise in the office of, a judicial office as defined by that section.
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Part 2

Application and Effect of Ordinance

4. Application to Government

This Ordinance applies to the Government.

5. Section 9 of Electronic Transactions Ordinance not affected

Nothing in this Ordinance affects the application of section 9 of the Electronic Transactions Ordinance (Cap. 553) in relation to a legal proceeding.

Part 3

Specification of e-Courts

6. Chief Justice may by rules specify e-Courts

The Chief Justice may make rules—

- (a) to specify the courts by or in relation to which electronic technology may be used under Part 5;
 - (b) to specify the tribunals for the purposes of paragraph (g) of the definition of *court* in section 2; and
 - (c) to provide for incidental or supplemental matters (including transitional matters) relating to a specification under paragraph (a) or (b).
-

Part 4

Information System to Facilitate Use of Electronic Technology

7. Chief Justice may designate e-system

The Chief Justice may designate an information system to facilitate the use of electronic technology—

- (a) in relation to proceedings;
- (b) for other court-related purposes; and
- (c) without limiting paragraph (a) or (b), for the particular purposes set out in section 8.

8. Particular purposes for which e-system may be used

- (1) An e-system may be used by a court—
 - (a) to create, issue, send or receive documents in electronic form in relation to a proceeding;
 - (b) to compile, record, store or otherwise process information or documents in electronic form relating to a proceeding; or
 - (c) to allow access to information or documents relating to a proceeding.
- (2) An e-system may be used by a person—
 - (a) to send documents in electronic form to a court in relation to a proceeding; or
 - (b) to otherwise communicate in electronic form with a court before which a proceeding is being taken.
- (3) An e-system may be used to make electronic payments.

- (4) An e-system may be used for any other purpose specified by rules made under section 26(2)(c).
- (5) In this section—
- court* (法院) includes—
- (a) a judge and a judicial officer; and
 - (b) a court office;
- send* (送交), in relation to a document, means file, lodge, give, notify, serve, deliver, submit, furnish or any other expression that signifies or suggests conveying the document.
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Part 5

Use of Electronic Technology in Courts

Division 1—Interpretation and Application of Part 5

Subdivision 1—Interpretation

9. Interpretation of Part 5

In this Part—

at the relevant time (在有關時間), in relation to an act done in electronic form or electronically for the purposes of this Part, means at the time of doing the act;

direction of a court (法院指示) means a direction given by a court, a judge or a judicial officer;

e-practice direction (電子實務指示) means a direction that—

- (a) is issued by the Chief Justice as to the practice and procedure of a court; and
- (b) relates to the use of electronic technology under this Ordinance;

e-rules (電子規則) means rules made under section 26 or 27;

written law (成文法律) means an Ordinance or subsidiary legislation and includes any practice direction, except an e-practice direction, that provides for the practice and procedure of a court.

10. References to courts or e-Courts in relation to documents

In this Part, a reference to—

- (a) a document created, issued or sent by a court or an e-Court includes a document created, issued or sent by a judge or a judicial officer or a court office;
- (b) a document sent to a court or an e-Court includes a document sent to a judge or a judicial officer or a court office; and
- (c) a document, file or record kept or maintained by a court or an e-Court includes a document, file or record kept or maintained by a court office.

Subdivision 2—Application

11. Application of Part 5

- (1) This Part applies only in relation to an e-proceeding.
- (2) A proceeding is an e-proceeding—
 - (a) if—
 - (i) an implementation notice is published stating that the use of electronic technology has been implemented for all proceedings in an e-Court; and
 - (ii) the proceeding is in that e-Court;
 - (b) if—
 - (i) an implementation notice is published stating that the use of electronic technology has been implemented for a type or description of proceeding in an e-Court; and
 - (ii) the proceeding is in that e-Court and is of that type or description; or

- (c) if—
 - (i) an implementation notice is published stating that the use of electronic technology has been implemented for a type or description of proceeding in an e-Court at a venue; and
 - (ii) the proceeding is in that e-Court at the venue and is of that type or description.

12. Application of provisions and directions for sending or serving documents in writing

- (1) A provision in this Part that applies in relation to a provision of written law or a direction of a court that requires or permits a document sent by a court to be in writing applies whether the provision of written law or direction—
 - (a) uses “send”, “give”, “notify”, “serve”, “deliver” (including grammatical variations and cognate expressions) or any other expression that signifies conveying a document; or
 - (b) otherwise suggests the conveying of a document by a court.
- (2) A provision in this Part that applies in relation to a provision of written law or a direction of a court that requires or permits a document sent to a court to be in writing applies whether the provision of written law or direction—
 - (a) uses “file”, “lodge”, “send”, “give”, “notify”, “serve”, “deliver”, “submit”, “furnish” (including grammatical variations and cognate expressions) or any other expression that signifies conveying a document; or
 - (b) otherwise suggests the conveying of a document to a court.

- (3) A provision in this Part that applies in relation to a provision of written law or a direction of a court that requires or permits a document served by a person on another person to be in writing applies whether the provision of written law or direction—
- (a) uses “serve”, “send”, “give”, “deliver”, “furnish” (including grammatical variations and cognate expressions) or any other expression that signifies service; or
 - (b) otherwise suggests the service of a document by a person on another person.

Division 2—Documents in Electronic Form

Subdivision 1—Documents Created, Issued or Sent by Means of e-system

13. Documents created, issued or sent by courts

- (1) This section applies in relation to a provision of written law or a direction of a court that—
- (a) requires a document created, issued or sent by a court to be in writing; or
 - (b) permits a document created, issued or sent by a court to be in writing.
- (2) In relation to an e-proceeding—
- (a) for subsection (1)(a)—the requirement is met if—
 - (i) the document is created, issued or sent by an e-Court in electronic form by means of an e-system; and

- (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference; and
- (b) for subsection (1)(b)—the document may be created, issued or sent by an e-Court in electronic form if—
 - (i) it is created, issued or sent by means of an e-system; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference.

14. Documents sent to courts

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires a document sent to a court to be in writing; or
 - (b) permits a document sent to a court to be in writing.
- (2) In relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) the document is sent to an e-Court in electronic form by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—the document may be sent to an e-Court in electronic form if—

- (i) it is sent by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
- (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference.

Subdivision 2—Documents with Endorsements etc.

15. Endorsements, attachments, etc. in electronic form

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires information to be endorsed or recorded on, or attached or annexed to, a document; or
 - (b) permits information to be endorsed or recorded on, or attached or annexed to, a document.
- (2) If the document is used in an e-proceeding and is in electronic form—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) the information is incorporated in electronic form into the document or associated electronically with it in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information so incorporated or associated would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—the information may be incorporated in electronic form into the document or associated electronically with it if—

- (i) it is so incorporated or associated in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information so incorporated or associated would be accessible so as to be usable for subsequent reference.
- (3) In this section—
information (資料), in relation to a document, includes a note, certificate, statement, acknowledgment, record, matter and another document.

Division 3—Electronic Service of Documents

16. Service between parties

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires a document served by a person on another person to be in writing; or
 - (b) permits a document served by a person on another person to be in writing.
- (2) In relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) the document is served in electronic form in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference; and

- (b) for subsection (1)(b)—the document may be served in electronic form if—
 - (i) it is served in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the document in electronic form would be accessible so as to be usable for subsequent reference.
- (3) To avoid doubt, this section does not apply in relation to a provision of written law or a direction of a court that requires or permits a document served by or on a court to be in writing.

Division 4—Electronic Authentication of Documents

Subdivision 1—Authentication of Documents Originating from Courts

17. Authentication of documents created, issued or sent by courts

- (1) This section applies in relation to a document created, issued or sent by a court that a provision of written law or a direction of a court—
 - (a) requires to be signed, sealed or certified; or
 - (b) permits to be signed, sealed or certified.
- (2) If the document is created, issued or sent by an e-Court in electronic form by means of an e-system in relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if the document is authenticated in accordance with any applicable e-rules and e-practice directions; and

- (b) for subsection (1)(b)—the document may be authenticated in accordance with any applicable e-rules and e-practice directions.

Subdivision 2—Authentication of Documents Sent to Courts

18. Authentication of documents sent to courts

- (1) This section applies in relation to a document sent to a court that a provision of written law or a direction of a court—
 - (a) requires to be signed; or
 - (b) permits to be signed.
- (2) If the document is sent to an e-Court in electronic form by means of an e-system in relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if the document is authenticated in accordance with any applicable e-rules and e-practice directions; and
 - (b) for subsection (1)(b)—the document may be authenticated in accordance with any applicable e-rules and e-practice directions.

Subdivision 3—Authentication of Documents Served by or on Parties

19. Authentication of documents served by or on parties

- (1) This section applies in relation to a document served by a person on another person that a provision of written law or a direction of a court—
 - (a) requires to be signed; or
 - (b) permits to be signed.

-
- (2) If the document is served in electronic form in relation to an e-proceeding—
- (a) for subsection (1)(a)—the requirement is met if the document is authenticated in accordance with any applicable e-rules and e-practice directions; and
 - (b) for subsection (1)(b)—the document may be authenticated in accordance with any applicable e-rules and e-practice directions.

Division 5—Electronic Copies of Original Documents etc. and Electronic Production of Documents

20. Electronic copies of original or certified documents

- (1) This section applies in relation to a provision of written law or a direction of a court that—
- (a) requires an original or a certified document to be sent to a court; or
 - (b) permits an original or a certified document to be sent to a court.
- (2) In relation to an e-proceeding—
- (a) for subsection (1)(a)—the requirement is met if—
 - (i) a copy of the document is sent to an e-Court in electronic form by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—a copy of the document may be sent to an e-Court in electronic form if—

- (i) it is sent by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
- (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference.

21. Electronic production of documents

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires a document to be conveyed by producing it as a paper document; or
 - (b) permits a document to be conveyed by producing it as a paper document.
- (2) In relation to an e-proceeding—
 - (a) for subsection (1)(a)—the requirement is met if—
 - (i) a copy of the document is sent to an e-Court in electronic form by means of an e-system in accordance with any applicable e-rules and e-practice directions; and
 - (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference; and
 - (b) for subsection (1)(b)—a copy of the document may be sent to an e-Court in electronic form if—
 - (i) it is sent by means of an e-system in accordance with any applicable e-rules and e-practice directions; and

- (ii) at the relevant time it was reasonable to expect that the information in the copy in electronic form would be accessible so as to be usable for subsequent reference.

Division 6—Printouts of Documents

22. Use of printouts of documents issued or sent by courts in electronic form

- (1) This section applies if—
 - (a) a provision of written law or a direction of a court requires or permits a document issued or sent by a court to be in writing; and
 - (b) an e-Court, in reliance on this Part, issues or sends the document in electronic form by means of an e-system (*electronic version*).
- (2) In relation to an e-proceeding, a printout produced from the electronic version in accordance with any applicable e-rules and e-practice directions—
 - (a) may be used for any purpose for which the document or a copy of it is required or permitted to be used under a provision of written law or a direction of a court; and
 - (b) has the same legal effect as the original of the document or a copy of it (as the case requires).

- (3) In this section—

printout (打印本) includes a copy of a printout.

Division 7—Records etc. of Courts in Electronic Form

23. Keeping or maintaining records etc.

- (1) This section applies in relation to a provision of written law or a direction of a court that—
 - (a) requires—
 - (i) a document, file or record kept or maintained by a court to be in writing; or
 - (ii) a record made by a court to be in writing; or
 - (b) permits—
 - (i) a document, file or record kept or maintained by a court to be in writing; or
 - (ii) a record made by a court to be in writing.
 - (2) In relation to an e-Court—
 - (a) for subsection (1)(a)—the requirement is met if the document, file or record is kept or maintained, or the record is made, in electronic form; and
 - (b) for subsection (1)(b)—the document, file or record may be kept or maintained, or the record may be made, in electronic form.
-

Part 6

Disallowing Use of e-system

24. Court may disallow use of e-system for sending documents

- (1) In an e-proceeding, the court may—
 - (a) give a direction disallowing the use of an e-system by a person for sending any document to the court (except for documents already sent), in relation to—
 - (i) the whole proceeding; or
 - (ii) a particular procedure; and
 - (b) give any other direction that the court considers necessary because of a direction under paragraph (a).
 - (2) In exercising a power under subsection (1), the court may have regard to—
 - (a) the nature of the proceeding or procedure;
 - (b) the conduct of a party; or
 - (c) any other factor that the court considers relevant.
-

Part 7

Effect of Things Done Electronically

25. Effect of things done electronically

- (1) If, in reliance on Part 5, an act is done in electronic form or electronically, when it would otherwise be required or permitted to have been done using or with respect to a paper document, the doing of that act in electronic form or electronically has the same effect as if that act had been done using or with respect to a paper document.
 - (2) If, in reliance on Part 5, something takes an electronic form, when it would otherwise be required or permitted to be in the form of a paper document, that thing has the same effect as if it were a paper document.
 - (3) A document that is authenticated in accordance with section 17 has the same effect as a document duly signed, sealed or certified.
 - (4) A document that is authenticated in accordance with section 18 or 19 has the same effect as a document duly signed.
-

Part 8

Rules, Implementation Notices and Administrative Instructions, for Use of Electronic Technology

Division 1—Rules

Subdivision 1—Rules for Practice and Procedure for Use of Electronic Technology

- 26. Rules for use of electronic technology**
- (1) The Chief Justice may make rules—
 - (a) to regulate or prescribe the practice and procedure to be followed in the use of electronic technology under Part 5; and
 - (b) without limiting paragraph (a), for the particular matters set out in this section.
 - (2) Rules made under this section may, in relation to an e-system—
 - (a) authorize its use by or in relation to an e-Court;
 - (b) authorize its use for a type or description of proceeding that—
 - (i) is within the jurisdiction of an e-Court; and
 - (ii) is specified in the rules;
 - (c) specify purposes other than those set out in section 8 for which it may be used;
 - (d) specify the class or description of persons who may use it; and

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- (e) provide for registration as a user or any other arrangement to use it for certain purposes relating to a proceeding.
- (3) Rules made under this section may also—
- (a) specify a type or description of proceeding, or matters of a confidential nature, in relation to which electronic technology may not be used for a purpose under Part 5;
 - (b) specify a type or description of document that is required to be in the form of a paper document, whether or not it is used in electronic form in a proceeding;
 - (c) provide for the conversion of documents in electronic form into paper documents or paper documents into electronic form for any purpose relating to a proceeding;
 - (d) provide for anything that by this Ordinance is required to or may be done in accordance with the rules;
 - (e) provide for any matter relating to the carrying out of an act by an e-Court under Part 5;
 - (f) provide for any matter relating to electronic payments;
 - (g) provide for transitional matters relating to an authorization under subsection (2)(a) or (b); and
 - (h) contain incidental or supplemental provisions for the better carrying out of the provisions of this Ordinance.

27. Additional rules for use of electronic technology

- (1) A power to make rules of court under an Ordinance to provide for the practice and procedure of a court includes, in relation to an e-Court, a power to make rules—
 - (a) to provide for the use of electronic technology in proceedings governed by those rules (*Ordinance-specific rules*); and
 - (b) without limiting paragraph (a), to provide for anything that may be done in accordance with rules made under section 26.
- (2) Rules made under subsection (1) may supplement or depart from rules made under section 26 to suit the nature or type of proceedings governed by the Ordinance-specific rules.

Subdivision 2—Rules to Provide for Fees for Use of Electronic Mode

28. Interpretation of Subdivision 2

In this Subdivision—

court-related matter (法院相關事宜) means—

- (a) an act or matter that relates to a proceeding in a court; or
- (b) a service, or other matter, made available or provided by a court or court office;

e-fee (電子費用) means a fee that is payable under the e-fee rules in respect of a court-related matter that is carried out by an electronic mode;

e-fee rules (電子費用規則) means rules made under section 29;

electronic mode (電子模式) means—

- (a) an e-system; or
- (b) another electronic means;

external enactment (外在成文法則) means an enactment other than this Ordinance;

external fee (外在費用) means a fee that is payable under an external enactment in respect of a court-related matter;

external fee item (外在費用項目), in relation to an external fee, means the description of the court-related matter in respect of which the external fee is payable.

29. Power to provide for fees for use of electronic mode in court-related matters

- (1) The Chief Justice may make rules to provide for fees payable in respect of court-related matters that—
 - (a) are carried out by an electronic mode; and
 - (b) are specified in the rules.
- (2) Rules made under subsection (1) may provide for fee concessions in respect of particular court-related matters.
- (3) Rules made under subsection (1) may, in respect of—
 - (a) a court-related matter for which an external fee is payable—provide for an e-fee—
 - (i) by reference to the external fee or the relevant external fee item; or
 - (ii) by reference to the external fee and by adapting the relevant external fee item to suit an electronic mode;

- (b) a court-related matter for which no external fee is payable—specify an e-fee; or
 - (c) a court-related matter—provide that the fee payable is zero.
- (4) Rules made under this section that provide for fee concessions may—
- (a) provide that the fee concessions apply only during a period specified in the rules; and
 - (b) specify different periods for different court-related matters.
- (5) Rules made under this section may provide for transitional matters relating to the application of e-fees to court-related matters.

30. Restrictions on application of e-fees to court-related matters

The e-fee rules may restrict the application of the e-fees (generally or specifically) to a court-related matter by reference to one or more of the following conditions or matters—

- (a) the use of an e-system for carrying out the court-related matter;
- (b) the availability of facilities at, or the capacity of, the relevant court or court office to carry out the court-related matter by an electronic mode;
- (c) any other factor specified in the e-fee rules that may affect the carrying out of the court-related matter by an electronic mode.

31. Effect of payment of e-fees and of power to provide for e-fees

- (1) If an e-fee is provided for in respect of a court-related matter by reference to an external fee or an external fee item (adapted or otherwise), the payment of the e-fee for

the court-related matter has the same effect as the payment of the external fee for that court-related matter.

- (2) To avoid doubt, nothing in this Subdivision affects—
 - (a) any power or authority in or under an external enactment to provide for fees payable in respect of a court-related matter; or
 - (b) the application of an external fee to a court-related matter—
 - (i) that is not specified under section 29 (whether or not carried out by an electronic mode); or
 - (ii) to which the application of an e-fee is restricted under section 30.

Division 2—Implementation Notices

32. Implementation notices

- (1) The Chief Justice may provide for the phased implementation of the use of electronic technology in e-Courts and court offices—
 - (a) by notice published in the Gazette; and
 - (b) in accordance with this section.
- (2) The Chief Justice may, in an implementation notice, specify the date with effect from which electronic technology may be used for a purpose under Part 5 in relation to—
 - (a) a particular e-Court (whether or not at a particular venue); or
 - (b) a type or description of proceeding in an e-Court (whether or not at a particular venue) for which the use of an e-system has been authorized by rules made under section 26(2)(b).

- (3) The Chief Justice may specify different dates under subsection (2)(b) for proceedings of different types or descriptions or for different venues.
- (4) If the Chief Justice has, in an implementation notice, specified a date—
 - (a) for a type or description of proceeding and the venue for it, with effect from that date, the use of electronic technology is implemented for—
 - (i) that type or description of proceeding;
 - (ii) the venue for the proceeding; and
 - (iii) subject to subsection (5), the relevant court office; or
 - (b) for a type or description of proceeding (without a reference to a venue), with effect from that date, the use of electronic technology is implemented for—
 - (i) that type or description of proceeding; and
 - (ii) subject to subsection (5), the relevant court office.
- (5) Without limiting subsection (4)(a) or (b), the Chief Justice may, in an implementation notice, specify a date—
 - (a) with effect from which the use of electronic technology is implemented for a court office; and
 - (b) which is different from the date specified for the e-Court concerned.
- (6) An implementation notice is not subsidiary legislation.

Division 3—Administrative Instructions

33. Administrative instructions by Judiciary Administrator

- (1) The Judiciary Administrator may issue instructions of an administrative nature relating to the use of an e-system.
 - (2) Without limiting subsection (1), administrative instructions may specify—
 - (a) for certain purposes relating to a proceeding, matters relating to registration as a user or any other arrangement referred to in section 26(2)(e), including—
 - (i) persons who are eligible to register;
 - (ii) how to register; and
 - (iii) administrative and organizational details relating to the arrangements;
 - (b) technical matters relating to the use of an e-system, including—
 - (i) the computer hardware, software and other technical requirements for using an e-system;
 - (ii) the format and way in which documents are to be sent to the court under section 14; and
 - (iii) other technical requirements to which those documents must conform; and
 - (c) matters relating to electronic payments.
 - (3) The Judiciary Administrator—
 - (a) must publish any administrative instructions; and
 - (b) may decide how and where to publish them.
-

Part 9

Savings and Transitional Arrangements

34. Interpretation of Part 9

In this Part—

commencement date (實施日期) means the date on which Part 5 comes into operation;

existing system (現行系統) means any electronic means other than an e-system;

relevant date (有關日期), in relation to a particular section 8 purpose, means the date specified under section 35(3) for that purpose;

section 8 purpose (第8條用途) means a purpose for which an e-system may be used under section 8;

transitional period (過渡期), in relation to a particular section 8 purpose, means the period beginning on the commencement date and ending on the relevant date.

35. Continued use of existing systems during transitional period

- (1) If, immediately before the commencement date, an existing system was used for a section 8 purpose, despite anything in this Ordinance, during the transitional period, the existing system may continue to be used for that purpose.
- (2) Anything that is done by means of an existing system during the transitional period pursuant to subsection (1) has the same effect as if it were done by means of an e-system.
- (3) In relation to a section 8 purpose, the Chief Justice may, by notice published in the Gazette—

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- (a) specify a date after which an existing system is not to be used for that purpose; and
 - (b) under paragraph (a), specify different dates for different purposes.
- (4) A notice under subsection (3)—
 - (a) may include details that relate to discontinuing the use of an existing system for the purpose concerned; and
 - (b) is not subsidiary legislation.

Proposed e-fee items with concession to be granted

1. District Court civil proceedings (with manual fees specified in manual fee rules)

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee¹
District Court Civil Procedure (Fees) Rules (Cap. 336C)	Schedule	1(a)	On sealing a writ of summons (except a concurrent, renewed or amended writ)	630	20% discount
		1(b)	On sealing an originating summons	630	20% discount
		1(c)	On sealing an originating ex parte application	630	20% discount
		1(d)	On sealing any other originating document	630	20% discount
		2(a)	Setting down a cause or issue for hearing	630	20% discount
		2(b)	Setting down a civil appeal, motion or summons for hearing	630	20% discount

¹ The actual e-fee will be subject to rounding rule after a 20% discount is granted during the concessionary period. The rounding rule is listed at Appendix of this Annex.

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ¹
District Court Civil Procedure (Fees) Rules (Cap. 336C)		2(c)	Entering a reference for hearing of an assessment of damages by a judge or the Registrar	630	20% discount
		8(a)	Copy of documents typed in the Registry and certifying same, per page	36	20% discount
		9(a)	Photostatic copy of a document made in the Registry, per page	4	Zero Charge
		9(b)	Photostatic copy and certification, per page	5.5	20% discount
		10(a)	Translation made in the Registry of a document from Chinese into English, or vice versa including certificate, per page	72	20% discount
		10(b)	Transcription and translation made in the Registry, from Chinese into English, or vice versa, of a tape or recording	132	20% discount

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ¹
District Court Civil Procedure (Fees) Rules (Cap. 336C)			including certificate, per page		
		11(a)	Certifying translations made outside the Registry, from Chinese into English, or vice versa, per page	36	20% discount
		11(b)	Certifying transcription made outside the Registry, from Chinese into English, or vice versa, of a tape or recording, per page	36	20% discount
		12	Search in the Registry, for each document or file referred to or required	18	20% discount
		16(a)	On sealing a warrant for arrest of a defendant or for the attachment of property before judgment	630	20% discount
		16(b)	On sealing a writ of execution or writ of possession	630	20% discount

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ¹
District Court Civil Procedure (Fees) Rules (Cap. 336C)		16(c)	On sealing a prohibitory order	630	20% discount
		16(d)	On sealing an order for the examination of a judgement debtor (or an officer thereof)	630	20% discount
		16(e)	On sealing a prohibition order	630	20% discount
		20	On the filing of a notice of commencement of taxation under Order 62, rule 21(1) of the Rules of the District Court (Cap 336 sub. leg. H) or on any assessment or determination of costs pursuant to any court order or Ordinance (except assessment under Order 62, rule 9 or 9A of the Rules of the District Court (Cap 336 sub. leg. H)), for every \$100 or fraction of \$100 of the amount claimed	5	20% discount

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ¹
District Court Civil Procedure (Fees) Rules (Cap. 336C)		20a.	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 District Court (Cap 336 sub. leg. H) is made	10% of the taxing fee which would be payable if the bill was to be allowed in full or \$1000 whichever is the less	20% discount ²
		21	Authentication of document by the Registrar	125	20% discount

² The discounted fees will be either [10% of the taxing fee if the bill is to be allowed in full x 80%] or [\$1000 x 80%], whichever is less.

It should be noted that reference must be made to the actual taxing fee paid by the court user (i.e. item 20 of Cap. 336C) when determining the e-fee payable for this item (i.e. withdrawal of bill of costs). If the notice of commencement of taxation is filed through the iCMS, the actual taxing fee will be the discounted amount, and the fee payable (with concession) for this item would be [discounted taxing fee x 10% x 80%], or [\$1000 x 80%], whichever is less.

If the notice of commencement of taxation is filed through manual mode, the taxing fee payable equals the manual fee. The fee payable (with concession) for this item would be [taxing fee x 10% x 80%] or [\$1000 x 80%], whichever is less.

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ¹
District Court Civil Procedure (Fees) Rules (Cap. 336C)		22	On sealing of a notice in Form No. 80 under Order 50, rule 11(2)	630	20% discount
		23	On sealing of an injunction order undertaken before commencement of a cause	630	20% discount
Labour Tribunal (Fees) Rules (Cap. 25B)	Schedule	6	Registration of an award or order with the District Court	20	20% discount
Estate Agents (Registration of Determination and Appeal) Regulation (Cap. 511E)	Schedule 2	2	Registration of a determination with the Court	20	20% discount
		3	Filing of notice of appeal in the Court	630	20% discount
		4	Copy of document in the register and certification for each page or portion of a page	5	20% discount
Landlord and Tenant (Consolidation)	Schedule 4	-	Fee for every affidavit, warrant to distrain, notice or other document - Sum sued for	60	20% discount

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ¹
Ordinance (Cap. 7)			Under \$5000.00		
		-	Fee for every affidavit, warrant to distrain, notice or other document - Sum sued for \$5000.00 or above but under \$20000.00	120	20% discount
		-	Fee for every affidavit, warrant to distrain, notice or other document - Sum sued for \$20000.00 or above	250	20% discount

2. District Court criminal proceedings (with manual fees specified in manual fee rules)

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ³
District Court Civil Procedure (Fees) Rules ⁴ (Cap. 336C)	Schedule	Items 8(a)	Copy of documents typed in the Registry and certifying same, per page	36	20% discount
		9(a)	Photostatic copy of a document made in the Registry, per page	4	Zero charge
		9(b)	Photostatic copy and certification, per page.	5.5	20% discount
		Item 12	Search in the Registry, for each document or file referred to or required	18	20% discount
		Item 21	Authentication of document by the Registrar	125	20% discount
Criminal Appeal	Rule 63	(1)(b)	When notice of appeal, or	\$17 per page or	20% discount

³ The actual e-fee will be subject to rounding rule after a 20% discount is granted during the concessionary period. The rounding rule is listed at Appendix of this Annex.

⁴ As stated in paragraph 14 of the information paper, we propose to expand the scope of Cap. 336C to cover fee items relating to criminal proceedings as well.

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ³
Rules (Cap. 221A)			notice of application for leave to appeal, has been given, the Registrar shall, subject to the direction of a judge, furnish a transcript of the whole or such part as he thinks necessary of the shorthand note of the trial or other proceedings in relation to which such notice was given, and copies of any documents or exhibits in his possession for the purpose of such appeal, to an appellant or his solicitor, on payment of a fee of \$17 per page or such other fee as the Registrar may determine for such transcript and copies.	such other fee as the Registrar may determine for such transcript and copies	

3. Magistrates' Courts (Summons Courts) proceedings (with manual fees specified in manual fee rules)

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ⁵
Magistrates (Fees) Regulations (Cap. 227B)	Regulation 2	1	For affixing the signature of a magistrate, with or without the magistrate's seal, to any statutory declaration or other document made or required for a purpose other than in or for a magisterial proceeding or matter exclusively within the duties of the office of a magistrate	125	20% discount
		2(a)	Typed copy of depositions, charges or documentary exhibits in summary cases, per page	36	20% discount
		3(a)	Photostatic copy of a document made in the magistracy, per	4	Zero charge

⁵ The actual e-fee will be subject to rounding rule after a 20% discount is granted during the concessionary period. The rounding rule is listed at Appendix of this Annex.

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ⁵
Magistrates (Fees) Regulations (Cap. 227B)			page		
		3(b)	Photostatic copy and certification, per page	5.5	20% discount
		4(a)	Translation made in the magistracy of a document from Chinese into English or vice versa, including certificate, per page	72	20% discount
		4(b)	Transcription and translation made in the magistracy, from Chinese into English, or vice versa, of a tape or recording including certificate, per page	132	20% discount
		5(a)	Certifying translations made outside the magistracy, from Chinese into English, and vice versa, per page	36	20% discount
		5(b)	Certifying transcription made outside the magistracy, from Chinese into English and vice	36	20% discount

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ⁵
Magistrates (Fees) Regulations (Cap. 227B)			versa, of a tape or recording, per page		
		6	Search in the magistracy, for each document or file referred to or required	18	20% discount
Magistrates Ordinance (Cap. 227)	110(4)	--	The appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the magistrates' clerk or other proper officer, in respect of the said case and recognizance, the fees following –		
		1	For the recognizance	5	20% discount
		2	For drawing the case and copy thereof for appellant, if not exceeding 5 folios of 72 words each	5	20% discount
		3	Or if the case exceeds 5 folios,	1	20% discount

Title	Section/ Regulation/ Schedule	Item/ Fee No.	Manual Fee Item Description	Existing Manual Fee (\$)	Proposed e-fee ⁵
Magistrates Ordinance (Cap. 227)			for every additional folio		
	111	--	If the magistrate is of opinion that the application to state a case is merely frivolous, but not otherwise, he may refuse to state a case and shall, on the request of the party or person applying therefor, sign and deliver to him a certificate of such refusal, on payment of the sum of \$2	2	20% discount

4. Items with fee amount specified through the use of administrative notice

Title	Section / Regulation/ Schedule	Manual fee item Description	Existing Manual Fee (\$)	Proposed e-fee ⁶
Criminal Appeal Rules (Cap. 221A)	Rule 12(1)	<u>Directed Fee</u> The Registrar may, and on the direction of a judge shall, furnish to a party interested in a trial or other proceedings a transcript of the whole or of any part of the shorthand note of any such trial or other proceedings, on payment by such party interested of such fee per page as the Registrar may direct	0.14 per English word and 0.10 per Chinese character (per JA notice dated 10.9.2018)	20% discount
	Rule 15	<u>Directed Fee</u> If, in accordance with the provisions of section 79 of the Ordinance, a record, other than a shorthand note, has been taken of the proceedings or of any part	0.14 per English word and 0.10 per Chinese character (per JA notice dated 10.9.2018)	20% discount

⁶ The actual e-fee will be subject to rounding rule after a 20% discount is granted during the concessionary period. The rounding rule is listed at Appendix of this Annex.

Title	Section / Regulation/ Schedule	Manual fee item Description	Existing Manual Fee (\$)	Proposed e-fee ⁶
Criminal Appeal Rules (Cap. 221A)		<p>thereof, the Registrar may order that copies of a transcript of such record, certified in such manner as he may direct, or in default of such direction certified as nearly as is practicable in the same manner as a transcript of a shorthand note, shall be furnished—</p> <p>(a) for the use of the Court of Appeal;</p> <p>(b) to a party interested in such manner,</p> <p>on payment by such party of such fee per page as the Registrar may direct.</p>		
The Rules of the District Court (Cap. 336H)	Order 68, rule 1(1)	<p><u>Authorized Fee</u></p> <p>(1) In every action or other proceedings in the Court which is tried or heard with witnesses, an official shorthand note shall,</p>	0.14 per English word and 0.10 per Chinese character (per JA notice dated 10.9.2018)	20% discount

Title	Section / Regulation/ Schedule	Manual fee item Description	Existing Manual Fee (\$)	Proposed e-fee ⁶
The Rules of the District Court (Cap. 336H)		unless the judge otherwise directs, be taken of any evidence given orally in court and of any judgment delivered by the judge, and, if any party so requires the note so taken shall be transcribed and such number of transcripts as any party may demand shall be supplied to him at the charges authorized by any scheme in force providing for the taking of official shorthand notes of proceedings in the Court.		

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The e-fees are subject to the following rounding rule:

Fee level (\$)	Round to Nearest (\$)
<5	0.1
≥5 to <10	0.5
≥10 to <100	1
≥100 to <1,000	5
≥1,000 to <10,000	10
≥10,000 to <100,000	50
≥100,000	100