

**Civil Justice (Miscellaneous Amendments) Bill**

**A BILL**  
**To**

**Amend several Ordinances to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform.**

**Enacted by the Legislative Council.**

**Remarks**

**PART 1**  
**PRELIMINARY**

**1. Short title and commencement**

Clause 1

**(1) This Ordinance may be cited as the Civil Justice (Miscellaneous Amendments) Ordinance 2007.**

**(2) This Ordinance shall come into operation on a day to be appointed by [ ] by notice published in the Gazette.**

## Civil Justice (Miscellaneous Amendments) Bill

### High Court Ordinance (Cap 4)

#### Remarks

#### 14AA. Leave to appeal required for interlocutory appeals

Clause 25,  
Rec 110, 111, 112  
113 and 115

(1) Except as provided by rules of court made under section 54, no appeal shall lie to the Court of Appeal from an interlocutory judgment or order of the Court of First Instance unless leave to appeal has been granted by the Court of First Instance or the Court of Appeal.

(2) Rules of court made under section 54 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 granted under 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 under 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 compelling reason why the appeal should be heard.

(5) No appeal shall lie from a decision of the Court of Appeal as to whether or not leave to appeal should be granted under subsection (1).

#### 14. Appeals in civil matters

(1) Subject to subsection (3) and section 14AA, an appeal shall lie as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil cause or matter. (Amended 25 of 1998 s. 2)

Clause 24,  
Rec 110, 111, 112,  
113 and 115

(2) (Repealed 52 of 1987 s. 10)

(3) No appeal shall lie-

(a) from an order of the Court of First Instance allowing an extension of time for appealing from a judgment or order; (Amended 25 of 1998 s. 2) [cf. 1925 c. 49 s. 31 U.K.]

(b) (Repealed 52 of 1987 s. 10)

Remarks

- (c) from a judgment or order of the Court of First Instance, where it is provided by any Ordinance or by rules of court that the same is to be final; (Amended 25 of 1998 s. 2)
- (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;
- (e) without the leave of the court or tribunal in question or of the Court of Appeal, from an order of the Court of First Instance or any other court or tribunal made with the consent of the parties or relating only to costs which are by law left to the discretion of the court or tribunal; (Replaced 52 of 1987 s. 10. Amended 25 of 1998 s. 2) [cf. 1981 c. 54 s. 18 U.K.]

- (ea) except as provided by the Arbitration Ordinance (Cap 341), from any decision of the Court of First Instance- (Amended 25 of 1998 s. 2)
  - (i) on an appeal under section 23 of that Ordinance on a question of law arising out of an arbitration award; or
  - (ii) under section 23A of that Ordinance on a question of law arising in the course of a reference; (Added 52 of 1987 s. 10)
- (eb) from a decision of the Court of First Instance in respect of which a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap 484) and leave to appeal is granted under section 27D of that Ordinance in any proceedings; (Added 11 of 2002 s. 6)
- (f) without the leave of the Court of First Instance or the Court of Appeal, from a judgment or order of the Court of First Instance given or made in summarily determining under rules of court any question at issue in interpleader proceedings: (Amended 25 of 1998 s. 2)

Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury; (Amended 21 of 2001 s. 48)

- (g) from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap 484). (Added 21 of 2001 s. 48)

(4) Rules of court made under section 54 may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interlocutory. (Added 52 of 1987 s. 10) [cf. 1981 c. 54 s. 60 U.K.]

(5) No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that court, final or interlocutory. (Added 52 of 1987 s. 10)

## 21L. Injunction and receiver

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

### Remarks

(1) The Court of First Instance may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court of First Instance to be just or convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.

(3) The power of the Court of First Instance under subsection (1) **or section 21M** to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the Court of First Instance, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled or resident or present within that jurisdiction.

Clause 8,  
Rec 45 to 48

(4) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court of First Instance thinks fit, whether-

- (a) the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and
- (b) the estates claimed by both or by either of the parties are legal or equitable.

(5) The power of the Court of First Instance to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power-

- (a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 20 for the purpose of enforcing the judgment, order, decree or award in question; and
- (b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.

Remarks

(6) Where an order under section 20 imposing a charge for the purpose of enforcing a judgment, order, decree or award has been registered under section 2 of the Land Registration Ordinance (Cap 128), section 3(2) of that Ordinance shall not apply to an order appointing a receiver made either-

- (a) in proceedings for enforcing the charge; or
- (b) by way of equitable execution of the judgment, order, decree or award or, as the case may be, of so much of it as required payment of moneys secured by the charge.

(Added 52 of 1987 s. 18. Amended 25 of 1998 s. 2)  
[cf. 1981 c. 54 s. 37 U.K.]

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

Clause 9,  
Rec 45 to 48

**(1) Without prejudice to section 21L(1), the Court of First Instance may by order grant interim relief or appoint a receiver 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 is capable of being 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 interim relief sought or the appointment of the receiver is not ancillary or incidental to any proceedings in Hong Kong.**

**(4) The Court of First Instance may refuse an application for interim relief or appointment of a receiver 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 interim relief or appointment of a receiver under subsection (1); and**
- (b) the service out of the jurisdiction of an application or order for such interim relief or appointment of a receiver.**

Remarks

(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” ( ) includes an interlocutory injunction referred to in section 21L(3).

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

Clause 9,  
Rec 45 to 48

(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 the relevant 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 or arbitral tribunal outside Hong Kong which 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.

27. ~~Vexatious litigants~~ Restriction of vexatious legal proceedings

Clause 12,  
Rec 67 and 68

Remarks:

Adaptation amendments retroactively made—see 25 of 1998 s. 2

(1) If, on an application made by the Secretary for Justice under this section, the Court of First Instance is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Court of First Instance or in any inferior court, and whether against the same person or against different persons, the Court of First Instance may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall without the leave of the Court of First Instance be instituted by him in any court and that any proceedings instituted by him in any court before the making of the order shall not be continued by him without such leave and such leave shall not be given unless the Court of First Instance is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground for the proceedings. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)

(2) A copy of any order made under subsection (1) shall be published in the Gazette. (Added 52 of 1987 s. 21)

[cf. 1925 c. 49 s. 51 U.K.]

Remarks

(1) If, on an application made under this section by the Secretary for Justice or an affected person, the Court of First Instance is satisfied that any person 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, the Court of First Instance may, after hearing that person or giving him an opportunity of being heard, make an order specified in subsection (2).

(2) The order referred to in subsection (1) is 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.

(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) 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 subsection (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.

(5) No appeal shall lie from a decision of the Court of First Instance refusing leave required under this section.

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

(7) In subsection (1), “affected person” ( ) 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.

**34B. Composition of Court of Appeal in Its Civil Jurisdiction**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

**Remarks**

- (1) This section relates to the Court of Appeal in the exercise of its civil jurisdiction; and in this section “Court” (法庭) means the Court of Appeal exercising such jurisdiction.
- (2) The Court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of Justices of Appeal not less than 3.
- (3) Where-
- (a) part of any proceedings before the Court has been heard by an uneven number of Justices of Appeal greater than 3; and
- (b) one or more members of the Court is or are unable to continue, the Court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than 3.
- (4) The Court shall, if it consists of 2 Justices of Appeal, be duly constituted for the purpose of-
- (a) ~~hearing and determining~~ **hearing or determining** any appeal against an interlocutory order or interlocutory judgment;
- (aa) hearing or determining any application for leave to appeal (except an application for leave to appeal to the Court of Final Appeal);**
- (ab) hearing or determining any interlocutory application in relation to a cause or matter pending before it;**
- (b) ~~hearing and determining~~ **hearing or determining** any appeal against a decision of single Justice of Appeal acting by virtue of section 35(1);
- (c) ~~hearing and determining~~ **hearing or determining** any appeal where all the parties have before the hearing filed a consent to the appeal being heard and determined by 2 Justices of Appeal;
- (d) hearing the remainder of, and determining, any appeal where part of it has been heard by 3 or more Justices of Appeal of whom one or more are unable to continue and all the parties have consented to the remainder of the appeal being heard, and the appeal being determined, by 2 remaining Justices of Appeal; or
- (e) ~~hearing and determining~~ **hearing or determining** an appeal of any such description or in any such circumstances not covered by paragraphs (a) to (d) as may be prescribed for the purposes of this

Clause 26,  
Rec 110, 111, 112,  
113 and 115

Clause 28,  
Rec 120

Clause 26,  
Rec 110, 111, 112,  
113 and 115



subsection by an order made by the Chief Justice.

- (5) Where-
- (a) an appeal has been heard by the Court consisting of an even number of Justices of Appeal; and
  - (b) the members of the Court are equally divided,
- the case shall, on the application of any party to the appeal, be re-argued before and determined by an uneven number of Justices of Appeal not less than 3, before any appeal to the Court of Final Appeal. (Amended 79 of 1995 s. 50)
- (6) In any cause or matter pending before the Court a single Justice of Appeal may at any time during any vacation make an interim order to prevent prejudice to the claims of any parties pending an appeal.
- (7) Section 53 shall apply in relation to causes and matters before the Court as it applies in relation to causes and matters before the Court of First Instance.

(Added 52 of 1987 s. 27. Amended 25 of 1998 s. 2)  
[cf. 1981 c. 54 s. 54 U.K.]

**41A. Extension of powers of Court of First Instance to order disclosure, etc. of documents before commencement of proceedings**

Clause 13,  
Rec 75 and 77

**(1) On the application of a person who appears to the Court of First Instance to be likely to be a party to subsequent proceedings in that Court in which a claim (being a claim that is neither in respect of personal injuries nor in respect of a person's death) is likely to be made, the Court of First Instance may make an order specified in subsection (3) against a person who appears to the Court to be likely –**

- (a) to be a party to the proceedings; and**
- (b) to have or to have had in his possession, custody or power any documents which are directly relevant to an issue arising or likely to arise out of that claim.**

**(2) The application shall be made in accordance with rules of court, and the order shall only be made in such circumstances as may be specified in those rules.**

**(3) The order specified for the purposes of subsection (1) is an order which requires the person against whom the order is sought to –**

- (a) disclose whether those documents are in his possession, custody or power; and**
- (b) produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order –**
  - (i) to the applicant's legal advisers;**

Remarks

- (ii) to the applicant's legal advisers and any other professional adviser of the applicant; or
- (iii) if the applicant has no legal adviser, to any professional adviser of the applicant.

(4) 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 by any party in the proceedings; or
- (b) the document supports or adversely affects any party's case.

#### **42. Extension of powers of Court of First Instance to order disclosure of documents, inspection of property, etc.**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) On the application, in accordance with rules of court, of a party to any proceedings in which a claim ~~in respect of personal injuries to a person or in respect of a person's death~~ is made, the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the Court of First Instance to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising out of that claim-

Clause 19,  
Rec 78

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order-
  - (i) to the applicant's legal advisers;
  - (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
  - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant. (Replaced 52 of 1987 s. 34) [cf. 1981 c. 54 s. 34 U.K.]

(2) On the application, in accordance with rules of court, of a party to any such proceedings as are referred to in subsection (1), the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters-

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject matter of the proceedings or as to which any question arises in the proceedings;
- (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

Remarks

(3) Subsections (1) and (2) are without prejudice to the exercise by the Court of First Instance of any power to make orders which is exercisable apart from those provisions.

(4) In this section-  
“property” (財產) includes any land, chattel or other corporeal property of any description.

(Amended 25 of 1998 s. 2)  
[cf. 1970 c. 31 s. 32 U.K.]

**43. Provisions supplementary to sections 41 and ~~42~~, 41A and 42**

Clause 14,  
Rec 75 and 77

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) The power to make rules of court under section 54 shall include power to make rules of court as to the circumstances in which an order under section 41 ~~or 42~~, 41A or 42 can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(2) Without prejudice to the generality of subsection (1), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under ~~sections 41 and 42~~ section 41, 41A or 42 incurred by the person against whom the order is sought shall be awarded to that person unless the Court of First Instance otherwise directs. (Amended 25 of 1998 s. 2)

(3) In sections 41, ~~42~~ 41A and 45-  
“personal injuries” (人身傷害) includes any disease and any impairment of a person's physical or mental condition.

[cf. 1970 c. 31 s. 33 U.K.]

**45. Application to Government of sections 41 to 44**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 29 of 1998 s. 105

**Remarks**

(1) Section 44 shall bind the Government so far as it relates to property (within the meaning of that section) as to which it appears to the Court of First Instance that it may become the subject matters of subsequent proceedings involving a claim in respect of personal injuries to a person or in respect of a person's death.

(2) Sections 41, 41A, 42 and 43 shall bind the Government.

Clause 15,  
Rec 75 and 77

(3) The Court of First Instance shall not make an order under section 41, 41A, 42 or 44 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.

(Amended 25 of 1998 s. 2; 29 of 1998 s. 105)  
[cf. 1970 c. 31 s. 35 U.K.]

**52A. Costs in Court of First Instance and Court of Appeal in its civil jurisdiction**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Subject to the provisions of rules of court, the costs of and incidental to all proceedings in the Court of Appeal in its civil jurisdiction and in the Court of First Instance, including the administration of estates and trusts, shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid. (Amended 25 of 1998 s. 2)

~~(2) Subject to specific provision made in this or any other Ordinance (other than subsidiary legislation) nothing in subsection (1) shall authorize an award of costs against a person who is not a party to the relevant proceedings.~~

Clause 2

(3) Nothing in subsection (1) shall alter the practice in any criminal cause or matter, or in bankruptcy.

(Added 52 of 1987 s. 39)  
[cf. 1981 c. 54 s. 51 U.K.]

Remarks

**(4) In any proceedings mentioned in subsection (1), the Court of First Instance may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs in accordance with rules of court.**

Clause 21,  
Rec 94 to 97

**(5) In subsection (4), “wasted costs” ( ) 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.**

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

**52B. Costs-only proceedings**

Clause 3,  
Rec 9

**(1) This section applies where –**

**(a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs of and incidental to the dispute) which is made or confirmed in writing, but they have failed to agree the amount of those costs; and**

**(b) no proceedings relating to the dispute have been commenced.**

**(2) 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), the Court of First Instance may make an order for the costs of and incidental to the dispute.**

**(4) In subsection (3), “Court of First Instance” ( ) includes the Registrar and a Master.**

## Civil Justice (Miscellaneous Amendments) Bill

### Law Amendment and Reform (Consolidation) Ordinance (Cap 23)

#### Long Title

To consolidate Ordinances relating to interests in land, assignments, contract, tort, breach of promise and foreign corporations-, **and to amend the law relating to the defence of tender before action.**

[1 July 1901]

(Originally 4 of 1901; 13 of 1864; 7 of 1886; 6 of 1901; 31 of 1911; 1 of 1920; 27 of 1935(Cap 23, 1964); 11 of 1936(Cap 28, 1970); 26 of 1948 (Cap 25, 1964); 36 of 1951(Cap 271, 1964))

#### Remarks

Clause 6,  
Rec 25

#### **30. Defence of tender before action**

Clause 7,  
Rec 25

**(1) Notwithstanding any rule of law, 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) This section does not apply in relation to proceedings commenced before the commencement of this section.**

## Civil Justice (Miscellaneous Amendments) Bill

### District Court ordinance (Cap. 336)

#### Remarks

**47AA. Extension of powers of the Court to order disclosure, etc. of documents before commencement of proceedings**

Clause 16,  
Rec 75 and 77

**(1) A person who appears to the Court to be likely to be a party to subsequent proceedings (other than proceedings for personal injuries or arising out of the death of a person) may apply to the Court for an order for discovery of documents against a person who is likely to be a party to the proceedings and who has in his possession, custody or power documents directly relevant to an issue arising out of the claim.**

**(2) The application is to be made in accordance with rules of court.**

**(3) The Court may order the person, if it appears to it that the person is likely to have or to have had in his possession, custody or power any directly relevant documents –**

- (a) to disclose whether those documents are in his possession, custody or power; and**
- (b) to produce the documents in his possession, custody or power to the applicant or, on the conditions specified in the order –**
  - (i) to the applicant’s legal advisers;**
  - (ii) to the applicant’s legal advisers and any other professional adviser of the applicant; or**
  - (iii) if the applicant has no legal adviser, to any professional adviser of the applicant.**

**(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 by any party in the proceedings; or**
- (b) the document supports or adversely affects any party’s case.**

**47B. Extension of powers of the Court to order disclosure of documents, inspection of property, etc.**

Clause 20,  
Rec 78

(1) A party to proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, may apply to the Court in accordance with rules of court for an order for discovery of documents against a person who is not a party to the proceedings and who is likely to have or to have had in his possession, custody or power documents relevant to an issue arising out of the claim.

Remarks

(2) The Court may order the person, if it appears to it that the person is likely to have or to have had in his possession, custody or power any relevant documents-

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce the documents in his possession, custody or power to the applicant or, on the conditions specified in the order-
  - (i) to the applicant's legal advisers;
  - (ii) to the applicant's legal advisers and a medical or other professional adviser of the applicant; or
  - (iii) if the applicant has no legal adviser, to a medical or other professional adviser of the applicant.

(3) A party to proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, may apply to the Court for an order against a person who is not a party to the proceedings for, and the Court may order-

Clause 20,  
Rec 78

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, a party to the proceedings but which is the subject-matter of the proceedings or as to which any question arises in the proceedings;
- (b) the taking of samples of the property mentioned in paragraph (a) and the carrying out of any experiment on or with the property.

(4) An application under this section is to be made in accordance with rules of court.

(5) The powers in this section are in addition to the power of the Court to make orders which is exercisable apart from this section.

(6) In this section, “property” (財產) includes any land, chattel or other physical property of any description.

(Added 28 of 2000 s. 24)

**47C. Provisions supplementary to sections ~~47A and 47B~~ 47AA and 47B**

Clause 17,  
Rec 75 and 77

(1) The power to make rules of court includes power to make rules of court as to the circumstances in which an order under section 47A ~~or 47B~~, 47AA or 47B can be made.

(2) Rules may include the incidental, supplementary and consequential provisions which the Rules Committee may consider necessary or expedient.

(3) The Court shall award costs of and incidental to the proceedings to the person against whom an order is sought under ~~sections 47A and 47B~~ section 47A, 47AA or 47 unless the Court otherwise directs.

(Added 28 of 2000 s. 24)



Remarks**47E. Application to Government of sections 47A to 47D**

(1) Section 47D binds the Government so far as it relates to property (within the meaning of that section) which appears to the Court to be likely to become the subject-matter of subsequent proceedings for personal injuries or arising out of the death of a person.

(2) Sections 47A, **47AA**, 47B and 47C bind the Government.

Clause 18,  
Rec 75 and 77

(3) The Court shall not make an order under section 47A, **47AA**, 47B or 47D if it considers that compliance with an order would be likely to be injurious to the public interest.

(Added 28 of 2000 s. 24)

**53. Costs**

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

~~(2) Subject to specific provision made in this or any other Ordinance (other than subsidiary legislation made under this or any other Ordinance), subsection (1) does not authorize an award of costs against a person who is not a party to the relevant proceedings.~~

Clause 4,  
Rec 9

~~(Added 28 of 2000 s. 28)~~

**(3) In any proceedings mentioned in subsection (1), the Court may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs in accordance with rules of court.**

Clause 22,  
Rec 94 to 97

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

**“wasted costs” ( ) 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.**

**Remarks**

**53A. Costs-only proceedings**

Clause 5,  
Rec 9

- (1) **This section applies where –**
- (a) **the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs of and incidental to the dispute) which is made or confirmed in writing, but they have failed to agree the amount of those costs; and**
  - (b) **no proceedings relating to the dispute have been commenced.**
- (2) **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), the Court may make an order for the costs of and incidental to the dispute.**
- (4) **In subsection (3), “Court” ( ) includes the Registrar and a master of the Court.”.**

**63. Appeal to Court of Appeal**

Appeals

- (1) Subject to subsection (3), an appeal can, with leave, be made to the Court of Appeal from every judgment, order or decision of a judge in any civil cause or matter.
- (2) An appeal is subject to rules of court.
- (3) A person against whom an order is made pursuant to section 20, 29, 48B or ~~52D~~, **52D or 52E** is entitled to appeal to the Court of Appeal without leave.

Clause 27,  
Rec 110, 111, 112,  
113 and 115

(Replaced 28 of 2000 s. 33)

## Civil Justice (Miscellaneous Amendments) Bill

### Small Claims Tribunal Ordinance (Cap 338)

#### Remarks

#### Schedule

#### JURISDICTION OF TRIBUNAL

1. Any monetary claim founded in contract, quasi-contract or tort where the amount claimed is not more than \$50000, whether on balance of account or otherwise: (Amended L.N. 81 of 1982; 14 of 1986 s. 11; 49 of 1988 s. 2; 28 of 1999 s. 17)

Provided that the tribunal shall not have jurisdiction to hear and determine-

- (a) any action in respect of-
  - (i) defamation;
  - (ii)-(iii) (Repealed 40 of 1986 s. 6)
- (b) any action or proceeding in respect of a maintenance agreement within the meaning of section 14 of the Matrimonial Proceedings and Property Ordinance (Cap 192);
- (c) any action by a money lender licensed under the Money Lenders Ordinance (Cap 163) for the recovery of any money lent, or the enforcement of any agreement or security made or taken in respect of money lent;
- (ca) any action that lies within the jurisdiction of the Minor Employment Claims Adjudication Board established by section 3 of the Minor Employment Claims Adjudication Board Ordinance (Cap 453); (Added 61 of 1994 s. 56)
- (d) any action that lies within the jurisdiction of the Labour Tribunal established under the Labour Tribunal Ordinance (Cap 25);
- (e) any action which is submitted to the jurisdiction of the Estate Agents Authority established by section 4 of the Estate Agents Ordinance (Cap 511) and in respect of which the Estate Agents Authority has not declined jurisdiction, under or pursuant to section 49 of that Ordinance; (Added 48 of 1997 s. 58)

Clause 23,  
Rec 94 to 97<sup>1</sup>

**(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.**

1A. Notwithstanding subparagraph (d) of the proviso to paragraph 1, the tribunal shall have jurisdiction to hear and determine a claim transferred to the tribunal under section 10(2) of the Labour Tribunal Ordinance (Cap 25). (Added 25 of 1999 s. 19)

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<sup>1</sup> Clause 23 in Part 7 will be moved to Part 2.

**Remarks**

2. Any claim for the recovery of any penalty, expenses, contribution or other amount which is recoverable by virtue of any enactment and for the recovery of any amount which is declared by any enactment to be recoverable as a civil debt if-

- (a) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other court; and
- (b) the amount claimed does not exceed \$50000. (Amended L.N. 81 of 1982; 14 of 1986 s. 11; 49 of 1988 s. 2; 28 of 1999 s. 17)

For the purposes of this paragraph, “penalty” (罰金) shall not include a fine imposed on the conviction of any person for an offence.

## Civil Justice (Miscellaneous Amendments) Bill

### Arbitration Ordinance (Cap 341)

#### Remarks

#### 2GC. Special powers of Court in relation to arbitration proceedings

(1) ~~The Court or a judge of the Court may, in relation to a particular arbitration proceeding~~ **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,** do any of the following-

Clause 10,  
Rec 45 to 48

- (a) make an order directing an amount in dispute to be secured;
- (b) in relation to relevant property-
  - (i) make an order directing the inspection, photographing, preservation, custody, detention or sale of the property by the tribunal, a party to the proceedings or an expert; or
  - (ii) make an order directing samples to be taken from, observations to be made of, or experiments to be conducted on the property;
- (c) grant an interim injunction or direct any other interim measure to be taken.

**(1A) In relation to arbitration proceedings which 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) or 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 is capable of being enforced in Hong Kong under this Ordinance or any other Ordinance.**

Clause 10,  
Rec 45 to 48

**(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 or the interim injunction or interim measure is not ancillary or incidental to any arbitration proceeding 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 the arbitration proceedings outside Hong Kong; and**
- (b) **for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong which 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 an 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”( ) 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.**

(2) Property is relevant property for the purposes of subsection (1)(b) if-

- (a) the property is owned by or is in the possession of a party to the arbitration proceedings concerned; and
- (b) the property is subject to the proceedings, or any question relating to the property has arisen in those proceedings.

(3) The Court or a judge of the Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other material evidence.

(4) The Court or a judge of the Court may also order a writ of habeas corpus ad testificandum to be issued requiring a prisoner to be taken for examination before an arbitral tribunal.

(5) The powers conferred by this section can be exercised irrespective of whether or not similar powers may be exercised under section 2GB in relation to the same dispute.

(6) The Court or a judge of the Court may decline to make an order under this section in relation to a matter referred to in subsection (1) on the ground that-

- (a) the matter is currently the subject of arbitration proceedings; and
- (b) the Court or the judge considers it more appropriate for the matter to be dealt with by the relevant arbitral tribunal.

(Added 75 of 1996 s. 7)

**49. Rules of court**Clause 11,  
Rec 45 to 48**(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 or order 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 may consider necessary or expedient.**

## Civil Justice (Miscellaneous Amendments) Bill

### Explanatory Memorandum

The purpose of this Bill is to amend certain Ordinances to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform ("the Report"). The recommendations implemented by the Bill are set out in the attached Table.

#### Part 2 of the Bill – Pre-action Protocols

2. Clauses 2 and 3 relate to Recommendation 9 in section 5 of the Report. Clause 2 amends section 52A of the High Court Ordinance (Cap. 4) and clause 3 adds a new section 52B to that Ordinance to make it clear that the Court of First Instance has jurisdiction to make a costs order in costs-only proceedings. The new section 52B also sets out the circumstances in which a party may bring such proceedings. Clauses 4 and 5 make similar amendments to the District Court Ordinance (Cap. 336).

#### Part 3 - Pleadings

3. Clause 7 implements Recommendation 25 in section 9 of the Report. At present, the case law has established that the common law defence of tender before action only applies to a liquidated claim but not to a claim for unliquidated damages. Clause 7 adds a new section to the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) to extend the defence of tender before action to a claim for unliquidated damages.

4. Clause 6 consequentially amends the long title of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) upon the addition of the new section 30 contained in clause 7.

#### Part 4 – Interim Remedies and Mareva Injunctions in aid of Foreign Proceedings

5. Clause 8 amends section 21L(3) of the High Court Ordinance (Cap. 4) so that the power of the Court of First Instance to grant a Mareva injunction under the new section 21M is also exercisable irrespective of whether the party against whom the Mareva injunction is made is domiciled, resident or present in Hong Kong.

6. Clause 9 adds 2 new sections to the High Court Ordinance (Cap. 4) to implement Recommendations 45 to 48 in section 12 of the Report. The new section 21M empowers the Court of First Instance to grant interim relief or appoint a receiver in aid of foreign proceedings which are capable of giving rise to a judgment that is capable of being enforced in Hong Kong. Under the new section, the interim relief or the appointment of a receiver may be sought as an independent, free-standing form of relief without being ancillary or incidental to substantive proceedings in Hong Kong.

7. Recommendations 45 to 48 in section 12 of the Report relate to foreign proceedings and foreign arbitrations. Amendments to the Arbitration Ordinance (Cap. 341) are thus also necessary. Clause 10 amends section 2GC of that Ordinance to clarify that the power of the Court of First Instance to grant interim relief under that section applies in relation to arbitration proceedings in or outside Hong Kong. But the power may only be exercised in relation to arbitration proceedings outside Hong Kong if those proceedings are capable of being enforced in Hong Kong (new section 2GC(1A)). Clause 11 adds a new section to the Arbitration Ordinance (Cap. 341) to empower the Rules Committee to make rules of court relating to the making of applications for interim relief under that section 2GC and the service out of the jurisdiction of such applications and orders for interim relief.

#### Part 5 – Vexatious Litigants

8. Clause 12 implements Recommendations 67 and 68 in section 14 of the Report. The existing section 27 of the High Court Ordinance (Cap. 4) is replaced by a new section 27 which introduces the following changes –

- (a) it allows a vexatious litigant order to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been a party to the vexatious proceedings instituted by the respondent or who has directly suffered adverse consequences resulting from such proceedings;
- (b) it raises the threshold for granting leave to a vexatious litigant to issue fresh proceedings, requiring the Court of First Instance to be satisfied that the proceedings are not an abuse of the process and that there are reasonable, not just prima facie, grounds for the proceedings;
- (c) it makes it clear that a vexatious litigant order may be made for a specific period or remain in force indefinitely; and
- (d) it also makes it clear that there is no appeal against a refusal of leave.



Part 6 - Discovery

9. Clause 13 implements Recommendations 75 and 77 in section 16 of the Report. Section 41 of the High Court Ordinance (Cap. 4) presently provides for pre-action disclosure in cases where the plaintiff is suing for personal injury or in respect of someone's death. Clause 13 adds a new section 41A to the Ordinance to widen the jurisdiction of the Court of First Instance to order disclosure before commencement of proceedings to cover cases other than those in relation to personal injury and death claims. It should be noted that an order granted under the new section 41A only relates to disclosure and inspection of documents which are directly relevant to an issue in the anticipated proceedings, i.e. documents which would likely be relied on by the parties themselves and documents which affect adversely or support any party's case in the anticipated proceedings.

10. Clauses 14 and 15 consequentially amend sections 43 and 45 of the Ordinance upon the addition of the new section 41A.

11. Clauses 16, 17 and 18 make similar amendments to the District Court Ordinance (Cap. 336).

12. Clause 19 implements Recommendation 78 in section 16 of the Report. It amends section 42(1) of the High Court Ordinance (Cap. 4) so that the jurisdiction of the Court of First Instance to order post-commencement, pre-trial disclosure applies to all types of cases (and not merely to personal injury and death claims). Clause 20 makes similar amendments to the District Court Ordinance (Cap. 336).

Part 7 – Wasted Costs

13. Clause 21 relates to Recommendations 94 to 97 in section 18 of the Report. As these Recommendations concern wasted costs orders against counsel and solicitors, clause 21 empowers the Court of First Instance to make such an order against them. Clause 22 makes similar amendments to the District Court Ordinance (Cap. 336).

14. Clause 23 amends the Schedule to the Small Claims Tribunal Ordinance (Cap. 338) to make it clear that the Small Claims Tribunal does not have jurisdiction to hear and determine costs-only proceedings.

Part 8 – Leave to Appeal

15. Clause 24 amends section 14 of the High Court Ordinance (Cap. 4) and clause 25 adds a new section 14AA to that Ordinance to implement Recommendations 110,

111, 112, 113 and 115 in section 22 of the Report. Under section 14(1) of the Ordinance, an appeal lies as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil matter. The new section 14AA introduces a requirement that an interlocutory appeal to the Court of Appeal be brought only with leave of the Court of First Instance or the Court of Appeal. Under the new section, rules of court to be made under section 54 of the Ordinance may however specify judgments or orders of the Court of First Instance to which the requirement does not apply.

16. Clause 26 relates to Recommendation 112 in section 22 of the Report. It adds a new paragraph (aa) to section 34B(4) of the Ordinance to provide that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine an application for leave to appeal.

17. Clause 27 amends section 63(3) of the District Court Ordinance (Cap. 336) so that a person against whom an order prohibiting him from leaving Hong Kong is also entitled to appeal to the Court of Appeal without leave.

#### Part 9 - Appeals

18. Clause 28 relates to Recommendation 120 in section 22 of the Report. It adds a new paragraph (ab) to section 34B(4) of the High Court Ordinance (Cap. 4) to clarify that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine an application that is interlocutory to an appeal pending before it.

### TABLE

#### **Recommendation 9**

A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.

#### **Recommendation 25**

The defence of tender before action should be extended to apply to claims for unliquidated damages.

#### **Recommendation 45**

Proposal 17 (for introducing Mareva injunctions and incidental relief in aid of foreign proceedings) should be adopted as modified and supplemented by Recommendations 46 to 51.

#### **Recommendation 46**

The jurisdiction to grant a Mareva injunction in aid of foreign proceedings or

arbitrations should be confined to proceedings and arbitrations capable of leading, in the ordinary course, to a judgment or arbitral award which can be enforced in Hong Kong.

**Recommendation 47**

Section 21L of the HCO should be amended to make it clear that a Mareva injunction can be sought in aid of foreign proceedings and arbitrations as an independent, free-standing form of relief, without being ancillary or incidental to substantive proceedings commenced in Hong Kong, followed by relevant amendments to O 29.

**Recommendation 48**

Section 21L or some other appropriate provision of the HCO should be amended to give the Rules Committee clear authority to amend O 11 with a view to making applications for free-standing Mareva injunctions an eligible category for the grant of leave to effect service of process abroad, followed by relevant amendments to O 11.

**Recommendation 67**

Section 27 of the HCO should be amended to introduce enhancements equivalent to those introduced by section 42 of the Supreme Court Act 1981 in England and Wales.

**Recommendation 68**

The HCO should furthermore make provision for vexatious litigant orders to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been party to vexatious proceedings presently instituted by or with the participation of the respondent or who has directly suffered adverse consequences resulting from such proceedings or from vexatious applications made by the respondent in such proceedings.

**Recommendation 75**

The HCO should be amended to broaden the jurisdiction of the court under section 41 to order disclosure before commencement of proceedings to encompass all types of cases (and not merely cases involving personal injury and death claims).

**Recommendation 77**

Orders for pre-action disclosure should relate to disclosure and inspection of specific documents or classes of documents which are "directly relevant" to the issues in the anticipated proceedings, being documents which would be likely to be relied on by the parties themselves or documents directly affecting adversely or directly supporting any party's case in the anticipated proceedings, the procedure for such applications being that prescribed by O 24 r 7A, subject to any necessary modifications.

**Recommendation 78**

Section 42(1) of the HCO should be amended so that the court's jurisdiction to order post-commencement, pre-trial disclosure from persons who are not parties to the

proceedings applies to all types of cases (and not merely to personal injury and death claims).

**Recommendation 94**

Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the exercise of the court's discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.

**Recommendation 95**

Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.

**Recommendation 96**

Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side's lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.

**Recommendation 97**

Barristers should be made subject to liability for wasted costs under O 62 r 8.

**Recommendation 110**

Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.

**Recommendation 111**

Where leave to appeal is required, the court should have power to limit the grant of such leave to particular issues and to grant leave subject to conditions designed to ensure the fair and efficient disposal of the appeal.

**Recommendation 112**

A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered

necessary, the Court of Appeal should be able to direct that there be an oral hearing before the original two judges or before a panel of three judges.

**Recommendation 113**

A refusal of leave to appeal by the Court of Appeal in relation to such purely interlocutory questions should be final. Where, however, the Court of Appeal hears the appeal, it should be open to the parties to apply for leave to appeal to the Court of Final Appeal in accordance with section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance.

**Recommendation 115**

Leave to appeal from the CFI judge to the Court of Appeal should only be granted where the court considers that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

**Recommendation 120**

Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges (the last option being dictated where the two judges are unable to agree).