

**Civil Justice Reform**  
**Recommendations Requiring Amendments to Primary Legislation**

The Steering Committee has identified that 21 recommendations in the Final Report on CJR require amendments to primary legislation. These 21 recommendations, the statutory provisions affected and the relevant clauses in the Draft Bill at **Annex A** are tabulated below.

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
<b>Section 5: Pre-action protocols Recommendation 9</b>			
1.	<b>Recommendation 9</b> 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.	<u>High Court Ordinance</u> ("HCO") (Cap. 4) : <ul style="list-style-type: none"> <li>Sections 52A and 52B</li> </ul> <u>District Court Ordinance</u> ("DCO") (Cap. 336) : <ul style="list-style-type: none"> <li>Section 53</li> </ul> <u>Small Claims Tribunal Ordinance</u> (Cap. 338) : <ul style="list-style-type: none"> <li>Schedule</li> </ul> <u>Lands Tribunal Ordinance</u> ("LTO") (Cap. 17) : <ul style="list-style-type: none"> <li>Section 8</li> </ul> <u>N.B.</u> Rules of the High Court ("RHC") (Cap. 4A) also affected. See Item No. 8 of <b>Annex H</b> .	Clauses 2-3   Clauses 4-5   Clause 23   Amendments to be made to make it clear that the Lands Tribunal shall not have jurisdiction to hear costs-only proceedings.

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
<b>Section 9: Pleadings Recommendation 25</b>			
2.	<b>Recommendation 25</b> The defence of tender before action should be extended to apply to claims for unliquidated damages.	<u>Law Amendment and Reform (Consolidation) Ordinance</u> (“LARCO”) (Cap. 23) : <ul style="list-style-type: none"> <li>• Long title</li> <li>• New section 30 added</li> </ul>	Clauses 6-7
<b>Section 12: Interim Remedies and Mareva Injunctions in Aid of Foreign Proceedings Recommendations 45 - 48</b>			
3.	<b>Recommendation 45</b> 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.	<u>HCO</u> : <ul style="list-style-type: none"> <li>• Section 21L</li> <li>• New sections 21M and 21N added.</li> </ul>	Clauses 8-9
4.	<b>Recommendation 46</b> 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.	<u>Arbitration Ordinance</u> (“AO”) (Cap. 341) : <ul style="list-style-type: none"> <li>• section 2GC</li> <li>• New section 49 added</li> </ul>	Clauses 10-11
5.	<b>Recommendation 47</b> 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.	<u>N.B.</u> RHC Orders 29, 30 and 73 also affected. See Item Nos. 39-41 of <b>Annex H</b> .	

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6.	<b>Recommendation 48</b> 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.		
<b>Section 14: Docket System, Specialist Lists and Vexatious Litigants</b> <b>Recommendations 67 - 68</b>			
7.	<b>Recommendation 67</b> 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.	<u>HCO</u> : <ul style="list-style-type: none"> <li>Section 27</li> </ul> <u>N.B.</u> RHC Orders 32 and 32A also affected. See Item No. 52 of <b>Annex H</b> .	Clause 12
8.	<b>Recommendation 68</b> 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.		

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<b>Section 18: Wasted Costs Recommendations 94 - 97</b>			
12.	<b>Recommendation 94</b> 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.	<u>HCO</u> : • Section 52A  <u>DCO</u> : • Section 53  <u>LTO</u> : • Section 12	Clause 21  Clause 22  Amendments along similar lines as those to HCO to be incorporated
13.	<b>Recommendation 95</b> Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.		
14.	<b>Recommendation 96</b> 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.	<u>Employees' Compensation Ordinance ("ECO")</u> (Cap. 282): • Section 21  <u>N.B.</u> RHC Order 62 also affected. See Item No. 62-65 of <b>Annex H.</b>	Amendments along similar lines as those to HCO to be incorporated
15.	<b>Recommendation 97</b> Barristers should be made subject to liability for wasted costs under O 62 r 8.		

<b>Item No.</b>	<b>Recommendations</b>	<b>Statutory Provisions Affected</b>	<b>Relevant Clauses</b>
<b>Section 22: Leave to Appeal Recommendations 110 – 113 and 115</b>			
16.	<b>Recommendation 110</b> 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.	<u>HCO</u> : • Section 14 • Section 34B • New section 14AA added  <u>DCO</u> : • Section 63  <u>LTO</u> : • Section 11	Clauses 24-26       Clause 27   Amendments along similar lines as those to HCO to be incorporated
17.	<b>Recommendation 111</b> 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.	<u>ECO</u> • Section 23	Amendments along similar lines as those to HCO to be incorporated
18.	<b>Recommendation 112</b> 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.	<u>N.B.</u> RHC Order 59 also affected. See Item Nos. 72 and 73 of <b>Annex H.</b>	Amendments along similar lines as those to HCO to be incorporated

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19.	<b>Recommendation 113</b> 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.		
20.	<b>Recommendation 115</b> 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.		
<b>Section 23: Appeals</b> <b>Recommendation 120</b>			
21.	<b>Recommendation 120</b> 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.	<u>HCO</u> : <ul style="list-style-type: none"> <li>Section 34B</li> </ul> <u>N.B.</u> RHC Order 59 also affected. See Item No. 74 of <b>Annex H</b>	Clause 28