For information

Legislative Council
Panel on Administration of Justice and Legal Services

The First Two Years' Implementation of the Civil Justice Reform from 2 April 2009 to 31 March 2011

I. Purpose

This paper seeks to set out the findings on the implementation of the Civil Justice Reform ("CJR") for the first two years from 2 April 2009 to 31 March 2011.

II. Background

2. As in many common law jurisdictions, our civil justice system has to keep abreast with the needs and developments of modern times. The procedural system of justice in Hong Kong is adversarial based, meaning that the court leaves it to the parties themselves to bring cases to court and on the whole lets them define the nature and extent of their dispute. However, this has led to the pace and timetabling of litigation often to be more in the hands of the parties than the court. When unchecked, this has at times resulted in excessive costs, delay and complexity, which have been criticized as being the common faults of the civil justice system.

3. It was against this background that CJR was introduced in April 2009. The objectives of CJR are to:

(a) Preserve the best features of the adversarial system but curtailing its excesses. One of the primary ways to achieve this is by promoting the use of greater case management powers by the court. This would prevent tactical manipulation of the rules to delay proceedings and also ensure that court and judicial resources are fairly distributed;

(b) Streamline and improve civil procedures; and

(c) Facilitate early settlement by parties, eliminate unnecessary applications and, where appropriate, penalize such applications.

Monitoring of the Implementation of CJR

4. A CJR Monitoring Committee ("Monitoring Committee") was established in April 2009 to monitor the working of the reformed civil justice system and to make suggestions to the Chief Justice to ensure its effective operation. The Monitoring Committee is chaired by the Chief Judge of the High Court and comprises judges, the Judiciary Administrator, a barrister, a solicitor, a member of the Department of Justice and the Legal Aid Department and an experienced mediator. The existing membership list is at **Annex A**.

5. The Monitoring Committee considered that the collection of relevant statistics would help monitor the implementation of CJR. It endorsed a list of 32 key indicators in six broad areas for assessment of the effectiveness of CJR. The six broad areas are:

(a) Delay;

(b) Settlement;

(c) Mediation;

(d) Costs matters;

(e) Litigants in person; and

(f) How some individual changes (introduced by CJR) work out in practice.

6. Statistics on these 32 key indicators have been collated from available data by the Judiciary. The Panel on Administration of Justice and Legal Services of the Legislative Council considered the position of the "first year of the Post-CJR Period" (from 2 April 2009 to 31 March 2010) at its meeting on 21 December 2010. This paper provides the updated position by including relevant findings of the "second year of the Post-CJR Period" (from

1 April 2010 to 31 March 2011)[1].

III. The Overall Context

7. To provide the overall context for the reading of the statistics, the following information is relevant:

Table 1.1: Number of Civil Cases and CJR Related Cases Filed in the Court of First Instance ("CFI")

CFI	Pre-CJR Period	Post-CJR Period	
	(1.4.08 – 31.3.09)	(1.4.09-31.3.10)	(1.4.10-31.3.11)
Civil cases	24,623	22,926	16,047
CJR related cases[2]	5,431	3,853	3,837

[1] In reading the statistics, it is important to bear the following factors in mind:
(a) Many statistics cover 24 months only; for others, the period is even shorter;
(b) To facilitate comparison with the Pre-CJR situation, statistics for the period from 2 April 2008 to 31 March 2009 are also presented where available. However, some Pre-CJR statistics are not available and for such statistics, no comparison can be made of the Pre-CJR and Post-CJR situation;
(c) The definitions of some of the Pre-CJR statistics are different from the Post-CJR definitions. A simple comparison of these statistics can therefore be misleading. For example, prior to the implementation of CJR, disposal figures were based on party disposal, i.e. a case was treated as disposed of once one party in a case had been disposed of. This definition of disposal was not satisfactory as it did not cater for the situation where multiple parties were involved in a case. Since 2 April 2009, the definition has been refined to the effect that a case is considered as disposed of only when all the parties involved have been disposed of;
(d) There was a bulge in caseload prior to the implementation of CJR. The last minute rush of cases filed before April 2009 should be noted when considering some of the statistics presented in the paper. For example, it substantially increased the number of interlocutory applications in the first year of the Post-CJR Period despite the apparent drop in caseload in the same period;
(e) The CJR initiatives may not have fully applied to those cases which straddle 2 April 2009 and the data for such cases do not represent a comprehensive picture of the impact of CJR; and
(f) The case population for some key indicators may be very small in comparison with the total caseload.

[2] CJR related cases refer to those cases where CJR is applicable. Amongst all civil cases filed in the CFI, CJR is only applicable to six civil case types, i.e. Civil Action (HCA), Miscellaneous Proceedings (HCMP), Personal Injuries Action (HCPI), Commercial Action (HCCL), Construction and Arbitration Proceedings (HCCT) and Admiralty Action (HCAJ).

Table 1.2: Number of Civil Cases and CJR Related Cases Filed in the District Court ("DC")

DC	Pre-CJR Period	Post-CJR Period	
	(1.4.08 – 31.3.09)	**(1.4.09-31.3.10)**	**(1.4.10-31.3.11)**
Civil cases	29,158	25,112	22,731
CJR related cases[3]	19,990	15,765	15,274

8. When compared with the first year of the Post-CJR Period, the overall civil caseload in the second year decreased by 30% (which is mainly due to the sharp decrease in bankruptcy and winding-up cases) and 9% in the CFI and DC respectively, whereas the caseload for the CJR related cases in both the CFI and DC remained more or less at the same level.

IV. Specific Aspects of CJR

(A) A Change of Culture

9. The key to the success of CJR lies in a change in culture in the conduct of court proceedings and of dispute resolution on the part of judges and the legal profession. The change is underlined by the underlying objectives in the Rules of the High Court and of the District Court, i.e., enhancing cost effectiveness, facilitating expeditious processing and disposal of cases, promoting a sense of reasonable proportion and procedural economy, ensuring fairness, facilitating of settlements and ensuring the fair distribution of limited court resources. In order to ensure that disputes are effectively resolved, in and out of court, parties and their legal representatives are expected to be less adversarial and more cooperative.

10. In the second year of CJR, the Judiciary notes that overall, good progress has been made in achieving this change in culture. There has been increasing recognition of the underlying objectives by judges and an increasing number of members of the legal profession.

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[3] CJR related cases refer to those cases where CJR is applicable. Amongst all civil cases filed in the DC, CJR is only applicable to six civil case types, i.e. Civil Action (DCCJ), Miscellaneous Proceedings (DCMP), Personal Injuries Action (DCPI), Employee's Compensation Case (DCEC), Tax Claim (DCTC) and Equal Opportunities Action (DCEO).

11. The Judiciary notes that judges have been practising active case management and facilitating parties to use alternative dispute resolution procedure if the court considers that appropriate.

12. The Judiciary also notes that there are encouraging signs that parties and their legal representatives have begun to adopt a less adversarial and more cooperative approach in litigation, as compared with the Pre-CJR Period. For example:

(a) They become more aware of the need to consider mediation as alternative dispute resolution since the implementation of Practice Direction 31 on "Mediation" on 1 January 2010;

(b) They are becoming more responsive to active case management by the judges;

(c) There has been a sharp rise in the number of single joint expert cases in the DC. Many of these cases are personal injuries claims and the majority of the single joint expert orders are made pursuant to filing of consent summonses out of the parties' own initiative. In addition, although the use of single joint expert is not as prevalent as that in the DC, joint expert reports are commonly used in the CFI; and

(d) Sanctioned payments under Order 22, sanctioned payments on costs under Order 62A and summary assessment of costs continue to be adopted effectively under CJR.

13. Nevertheless, given the scope of CJR, it would take more time before the full impact of the reforms could be realized. The situation should continue to be monitored.

(B) Delay

14. One of the underlying objectives of CJR is to ensure that a case is dealt with as expeditiously as is reasonably practicable. This is achieved by streamlining civil procedures, cutting out unnecessary interlocutory applications, imposing more stringent timetables, a greater use of peremptory orders and a more active approach in dealing with interlocutory applications (particularly where Case Management Conferences ("CMCs") are concerned).

(a) Number of Interlocutory Applications

15. The proliferation of interlocutory applications has been regarded as one of the most serious causes of delay and additional expense in the litigation process. CJR aims to reduce, if not eliminate, the number of interlocutory applications of doubtful or little value.

Table 2.1: Number of interlocutory applications in the CFI

CFI	**Pre-CJR Period**	**Post-CJR Period**	
	(2.4.08 – 31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
Number of interlocutory applications	2,786	3,149	2,914

Table 2.2: Number of interlocutory applications in the DC

DC	**Pre-CJR Period**	**Post-CJR Period**	
	(2.4.08 – 31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
Number of interlocutory applications	Not available	1,171	1,032

16. In the second year of the Post-CJR Period, a total of 2,914 and 1,032 interlocutory applications were listed in the CFI and DC respectively. When compared with those of the first year, the numbers had decreased by 7.5% and 11.9% respectively. Due to the exceptional increase of caseload in the last three months prior to the implementation of CJR on 2 April 2009, the numbers of interlocutory applications in the first year of the Post-CJR Period increased because of this last minute rush of cases filed. It is within expectation that the number of interlocutory applications would come down when this bulging effect subsided in the second year. To evaluate more accurately the effectiveness of CJR in reducing the number of interlocutory applications, a longer period of time will be required.

(b) Number of Paper Disposals

17. Paper disposal is a new feature introduced by CJR. Significant savings in time and costs may be achieved by having interlocutory applications dealt with on paper without a hearing in appropriate cases.

Table 3.1: Number of Paper Disposal of Interlocutory Applications under Order 32, rule 11A in the CFI

CFI	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of interlocutory applications before Master	1,139	931
Number of paper disposal	32	23

Table 3.2: Number of Paper Disposal of Interlocutory Applications under Order 32, rule 16A in the DC

DC	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of interlocutory applications before Master	272	213
Number of paper disposal	4	2

18. Similar to the first year of the Post-CJR Period, only a few interlocutory applications were disposed of by paper disposal during the second year (23 out of 931 applications before Masters in the CFI; and two out of 213 applications before Masters in the DC). Apart from this, some non-interlocutory applications were also disposed of on paper by Masters.

19. However, the above figures do not capture the position concerning the use of paper disposal by civil judges in general. The Judiciary notes that some applications (outside the context of Order 32, rule 11A in the CFI and Order 32, rule 16A in the DC as captured above) have been disposed of on paper by judges.

20. Experience has shown that paper disposal of cases would be adopted as appropriate for suitable cases, but not as a matter of rule. It would be appropriate for more straightforward cases, such as those classes of summonses listed in Practice Direction 5.4 on "Preparation of Interlocutory Summonses and Appeals to Judge in Chambers for Hearing". For the more complicated cases, it would be less time and less cost effective for them to be dealt with on paper. As pointed out in the *Civil Justice Reform: Final Report* (March 2004), "*[i]f, on a cursory examination, the application appears complex or likely to benefit from*

a hearing, the master should fix it for a hearing either before a judge or a master without expending further time on the papers" (paragraph 522 of *Civil Justice Reform: Final Report*).

(c) Number of CMCs

21. CMC is an important tool of active case management under CJR. At a CMC, the court gives directions leading up to the trial of the action, fix a date for a pre-trial review ("PTR"), and / or a trial date or period in which the trial is to take place. It is also the occasion for the court and the parties to discuss in detail the true nature of the issues in the case. In doing so, not only is there more efficient and effective management of the case achieved, this would also facilitate settlements.

Table 4.1: Number of CMC in the CFI

CFI	**Pre-CJR Period**	**Post-CJR Period**	
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
	Number of checklist hearing	Number of checklist hearing / CMC	Number of CMC
CJR related cases (excluding PI cases)	779	839	865

Table 4.2: Number of CMC in the DC

DC	**Pre-CJR Period**	**Post-CJR Period**	
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
	Number of PTR by Master	Number of CMC	Number of CMC
CJR related cases (excluding PI cases)	539	648	788

22. In the second year of the Post-CJR Period, the numbers of CMCs in the CFI (865) and DC (788) were higher than those of the first year of the Post-CJR Period (by 3.1% for the CFI and 21.6% for the DC). No definite conclusions can be drawn by the relatively small margin of increase in the CFI. As for the increase in the DC, it may be attributed to the phenomena that cases were getting more complex and that there were more litigants in person in the second year of the Post-CJR Period.

(d) Number of Milestone Dates Fixed and Then Varied

23. Instead of leaving the progress of actions in the hands of the parties (which was the pre-CJR position), the court now assumes much greater control over the progress of actions. Firm timetables are set at an early stage of proceedings. A court-determined timetable takes into account the needs of the particular case and the reasonable requests of the parties. The timetable sets out milestone dates for the major steps in any proceedings, such as the dates for trial and other important hearings. Only in the most exceptional circumstances will a milestone date be changed. This arrangement will reduce delays.

Table 5.1: Number of Milestone Dates Fixed and Then Varied in the CFI

CFI	**Post-CJR Period (2.4.09-31.3.10)**		
	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)
CMC	865	76	9%
PTR	320	22	7%
Trial	419	27	6%

CFI	**Post-CJR Period (1.4.10-31.3.11)**		
	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)
CMC	916	118	13%
PTR	287	15	5%
Trial	476	33	7%

Table 5.2: Number of Milestone Dates Fixed and Then Varied in the DC

DC	**Post-CJR Period (2.4.09-31.3.10)**		
	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)
CMC	742	30	4%
PTR	138	5	4%
Trial	577	15	3%

DC	**Post-CJR Period (1.4.10-31.3.11)**		
	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)
CMC	820	49	6%
PTR	168	3	2%
Trial	496	21	4%

24. In the second year of the Post-CJR Period, the percentages of dates of hearings at milestone stages which were varied remained at a low level. For the CFI, the percentages of varied hearings at the CMC, PTR and Trial stages were 13%, 5% and 7% respectively. For the DC, the corresponding figures were even lower at 6%, 2% and 4% respectively.

(e) *Average Time Spent*

25. The average periods of time spent on cases from commencement to trial and from the first CMC to end of trial are useful indicators to show how expeditiously cases are being disposed of.

(i) From commencement to trial

Table 6.1: Average Time from Commencement to Trial in the CFI

CFI	**Pre-CJR Period**	**Post-CJR Period**				
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**		**(1.4.10-31.3.11)**		**(2.4.09-31.3.11)**
	Both date of commencement and date of trial on or before 1.4.09 Commencement On or before 1.4.09 Trial 2.4.08-31.3.09 **(Scenario 1)**	Date of commencement on or before 1.4.09 and date of trial on or after 2.4.09 Commencement On or before 1.4.09 Trial 2.4.09-31.3.10 **(Scenario 2)**	Both date of commencement and date of trial on or after 2.4.09 Commencement 2.4.09-31.3.10 Trial 2.4.09-31.3.10 **(Scenario 3)**	Date of commencement on or before 1.4.09 and date of trial on or after 1.4.10 Commencement On or before 1.4.09 Trial 1.4.10-31.3.11 **(Scenario 4)**	Both date of commencement and date of trial on or after 1.4.10 Commencement 1.4.10-31.3.11 Trial 1.4.10-31.3.11 **(Scenario 5)**	Both date of commencement and date of trial on or after 2.4.09 Commencement 2.4.09-31.3.11 Trial 2.4.09-31.3.11 **(Scenario 6)**
Number of Trial Hearings	212	251	16	194	18	70
Average Time from Commencement to Trial (days)	1,013[4]	1,132[5]	167	1,356[6]	155	277

[4] There were three exceptionally long cases for which the duration from commencement to trial was over ten years. The cases were delayed because of reasons beyond control. The average time had been lengthened by such long cases.

[5] There were four exceptionally long cases for which the duration from commencement to trial was over ten years. The cases were delayed because of lack of expedition of preparation in general and the inaction of parties. The average time had been lengthened by such long cases.

[6] There were seven exceptionally long cases for which the duration from commencement to trial was over ten years.

Table 6.2: Average Time from Commencement to Trial in the DC

DC	Pre-CJR Period	Post-CJR Period				
	(2.4.08-31.3.09)	(2.4.09-31.3.10)		(1.4.10-31.3.11)		(2.4.09-31.3.11)
	Both date of commencement and date of trial on or before 1.4.09 Commencement On or before 1.4.09 Trial 2.4.08-31.3.09 **(Scenario 1)**	Date of commencement on or before 1.4.09 and date of trial on or after 2.4.09 Commencement On or before 1.4.09 Trial 2.4.09-31.3.10 **(Scenario 2)**	Both date of commencement and date of trial on or after 2.4.09 Commencement 2.4.09-31.3.10 Trial 2.4.09-31.3.10 **(Scenario 3)**	Date of commencement on or before 1.4.09 and date of trial on or after 1.4.10 Commencement On or before 1.4.09 Trial 1.4.10-31.3.11 **(Scenario 4)**	Both date of commencement and date of trial on or after 1.4.10 Commencement 1.4.10-31.3.11 Trial 1.4.10-31.3.11 **(Scenario 5)**	Both date of commencement and date of trial on or after 2.4.09 Commencement 2.4.09-31.3.11 Trial 2.4.09-31.3.11 **(Scenario 6)**
Number of Trial Hearings	269	299	16	193	20	158
Average Time from Commencement to Trial (days)	704	743	134	942	159	345

26. Six sets of data are set out above on the number of cases with:

(a) Both date of commencement and date of trial on or before 1 April 2009 (scenario 1);

(b) Date of commencement on or before 1 April 2009 and date of trial on or after 2 April 2009 but before 1 April 2010 (scenario 2);

(c) Both date of commencement and date of trial on or after 2 April 2009 but before 1 April 2010 (scenario 3);

(d) Date of commencement on or before 1 April 2009 and date of trial on or after 1 April 2010 but before 1 April 2011 (scenario 4);

(e) Both date of commencement and date of trial on or after 1 April 2010 but before 1 April 2011 (scenario 5); and

(f) Both date of commencement and date of trial on or after 2 April 2009 but before 1 April 2011 (scenario 6).

27. It is worth noting that the CJR effect was not fully reflected by the cases under scenarios 2 and 4 as the date of commencement for these cases was before the implementation of CJR on 2 April 2009.

28. As for scenarios 3 and 5 which cover the cases with commencement and trial within the same year for both the first and the second years of the Post-CJR Period respectively, it should be noted that the number of cases involved are very small. The average time from commencement to trial showed a slight drop from 167 days in the first year of the Post-CJR Period to 155 days in the second year in the case of the CFI. The same indicator was lengthened from 134 days in the first year to 159 days in the second year in the case of the DC. It is expected that these were very simple and straightforward cases which could be disposed of within a few months' time, but they did not reflect a typical CJR case in both the CFI and DC.

29. Corresponding figures are set out in scenario 6 for cases with commencement and trial within the first two years of the Post-CJR Period for reference. In addition to the cases covered by scenarios 3 and 5, cases with commencement in the first year and trial in the second year of the Post-CJR Period are also included under this scenario. It is noted that the overall population of cases under scenario 6 are higher as they also include the more complicated cases. The average time from commencement to trial for this bigger pool of cases was 277 days for the CFI and 345 days for the DC.

30. It is still early to draw any conclusions at this stage. More time is required to monitor the trends.

(ii) From the first CMC to end of trial

Table 7.1: Average Time from First CMC to End of Trial in the CFI

CFI	**Post-CJR Period**		
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**	
	1st CMC 2.4.09-31.3.10 End of Trial 2.4.09-31.3.10	1st CMC 1.4.10-31.3.11 End of Trial 1.4.10-31.3.11	1st CMC 2.4.09-31.3.11 End of Trial 2.4.10-31.3.11
Number of cases disposed of	8	5	67
Average time required (days)	150	148	349

Table 7.2: Average Time from First CMC to End of Trial in the DC

DC	**Post-CJR Period**		
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**	
	1st CMC 2.4.09-31.3.10 End of Trial 2.4.09-31.3.10	1st CMC 1.4.10-31.3.11 End of Trial 1.4.10-31.3.11	1st CMC 2.4.09-31.3.11 End of Trial 2.4.10-31.3.11
Number of cases disposed of	23	21	126
Average time required (days)	181	134	224

31. In the second year of the Post-CJR Period, two sets of data are set out above for comparison.

32. A total of five cases in the CFI and 21 cases in the DC were disposed of by trial with first CMC hearing within the second year of the Post-CJR Period. For these cases, the average time from the first CMC to end of trial was 148 and 134 days in the CFI and the DC respectively. When compared to the first year of the Post-CJR Period, this indicator was reduced. This probably reflects that only very few simple and straightforward cases could have their first CMC and trial taking place within the same year.

33. Similar statistics covering the cases with the first CMC hearing within the first two years of Post-CJR Period are also shown in Tables 7.1 and 7.2. As such scenario captures a larger pool of cases, including the more complicated ones, the average times are captured at 349 and 224 days in the CFI and the DC respectively. Longer periods of observation are required in order to come up with more concrete conclusion.

(iii) Duration of trial

34. Statistical data on two indicators, "Days fixed" and "Actual days spent", were retrieved.

Table 8.1: Duration of Trial in the CFI

CFI	Pre-CJR Period	Post-CJR Period	
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
Average days fixed	4.89	5.51	5.30
Average days spent	4.02	3.08	3.88

Table 8.2: Duration of Trial in the DC

DC	Pre-CJR Period	Post-CJR Period	
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
Average days fixed	2.60	2.45	2.88
Average days spent	2.49	2.23	2.53

35. In the second year of the Post-CJR Period, the average days fixed for trials in the CFI decreased from 5.51 days to 5.30 days for CFI. Although the average actual days spent on trials increased from 3.08 days to 3.88 days, it shows that the average number of days fixed was much closer to the average number of days spent reflecting more effective case management in these cases and more accurate estimation of the duration of trials. For the DC, both the average days fixed for trials and the average actual days spent on trials increased in the second year of the Post-CJR Period, from 2.45 days to 2.88 days for the former and from 2.23 days to 2.53 days for the latter. Further analysis reveals that there were a number of complex cases with long duration of trial in the second year.

(C) Settlement

36. A just settlement for the right reasons involves a timely settlement. Prior to CJR, a majority of the settlements did not occur until the eve of trial. Often, it was only when counsel were fully instructed in a case before a serious evaluation of the merits took place, leading to settlements being made.

(a) Admission under Order 13A

37. Order 13A provides a new procedure for a defendant in a money claim (both liquidated and unliquidated) to make admission and propose payment terms as to time and instalments to satisfy the claim.

Table 9.1: Admission under Order 13A in the CFI

CFI	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of CJR related cases filed (monetary claim only)	1,757	1,711
Number of admissions made	39	19
Number of applications for instalment	15	8
Number of cases disposed of by Order 13A	13	6

Table 9.2: Admission under Order 13A in the DC

DC	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of CJR related cases filed (monetary claim only)	14,155	13,874
Number of admissions made	364	312
Number of applications for instalment	300	255
Number of cases disposed of by Order 13A	197	152

38. During the second year of the Post-CJR Period, there were only six cases settled by Order 13A out of 1,711 cases of monetary claims filed in the CFI while there were 152 cases settled by Order 13A out of 13,874 cases of monetary claims filed in the DC. The numbers of applications of Order 13A in both the CFI and the DC remained low.

(b) Sanctioned Payments

39. The making of a sanctioned payment is an offer made by way of a payment into court. Prior to CJR, only defendants could offer to settle by making a payment into court. Under CJR, both plaintiffs and defendants are able to make sanctioned payments, whether to settle claims or issues within claims (under Order 22) or to settle a party's entitlement to costs (under Order 62A). There are costs consequences should the sanctioned payment not be bettered. Sanctioned payment acts as a significant incentive for parties to settle disputes at an earlier stage. This is regarded as an important measure in the just and expeditious resolution of disputes.

(i) Order 22

Table 10.1: Number of Order 22 Sanctioned Payment Made and Accepted within Time in the CFI

CFI	**Pre-CJR Period**	**Post-CJR Period**			
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**		**(1.4.10-31.3.11)**	
	Payment-in made	**Sanctioned payment made**	**Sanctioned payment accepted**	**Sanctioned payment made**	**Sanctioned payment accepted**
Number of CJR related cases (excluding PI cases)	151	127	15	100	11
Number of CJR related cases (PI cases only)	826	1,786	420	1,255	326
Total	**977**	**1,913**	**435**	**1,355**	**337**

Table 10.2: Number of CJR Related Cases Disposed of by Order 22 Sanctioned Payment in the CFI

CFI	Post-CJR Period	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of cases filed (excluding PI cases)	3,247	3,101
Number of cases filed (PI cases only)	606	736
Number of cases filed	**3,853**	**3,837**
Number of cases (excluding PI cases) disposed of by Order 22 sanctioned payment	2	2
Number of cases (PI cases only) disposed of by Order 22 sanctioned payment	51	58
Number of cases disposed of by Order 22	**53**	**60**

Table 10.3: Number of Order 22 Sanctioned Payment Made and Accepted within Time in the DC

DC	Pre-CJR Period	Post-CJR Period			
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**		**(1.4.10-31.3.11)**	
	Payment-in made	**Sanctioned payment made**	**Sanctioned payment accepted**	**Sanctioned payment made**	**Sanctioned payment accepted**
Number of CJR related cases (excluding PI and employee's compensation ("EC") cases)	221	207	55	224	87
Number of CJR related cases (PI cases only)	2,025	2,518	1,012	2,489	1,157
Number of CJR related cases (EC cases only)	1,070	1,398	702	1,304	774
Total	**3,316**	**4,123**	**1,769**	**4,017**	**2,018**

Table 10.4: Number of CJR Related Cases Disposed of by Order 22 Sanctioned Payment in the DC

DC	Post-CJR Period	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of cases filed (excluding PI and EC cases)	12,360	11,094
Number of cases filed (PI cases only)	1,965	2,432
Number of cases filed (EC cases only)	1,440	1,748
Number of cases filed	**15,765**	**15,274**
Number of cases (excluding PI and EC cases) disposed of by Order 22 sanctioned payment	35	27
Number of cases (PI cases only) disposed of by Order 22 sanctioned payment	319	292
Number of cases (EC cases only) disposed of by Order 22 sanctioned payment	378	382
Number of cases disposed of by Order 22	**732**	**701**

40. During the second year of the Post-CJR Period, there were 1,355 sanctioned payments made in the CFI. Out of these, 337 were accepted within time. Out of these 337 cases, 60 cases were finally disposed of by sanctioned payment under Order 22. For the DC, 4,017 sanctioned payments were made in the second year of the Post-CJR Period and out of these, 2,018 were accepted within time. Of these, 701 cases were disposed of by sanctioned payment under Order 22. The position is quite similar to that of the first year.

(ii) Order 62A

Table 11.1: Number of Order 62A Sanctioned Payment Made and Accepted within Time in the CFI

CFI	**Post-CJR Period**			
	(2.4.09-31.3.10)		**(1.4.10-31.3.11)**	
	Made	Accepted	Made	Accepted
Number of Order 62A sanctioned payments	78	15	64	18
Number of Order 62A sanctioned payments (without bills filed)	155	84	212	102
Total number of taxation avoided because of acceptance of Order 62A sanctioned payment		99		120

Table 11.2: Number of Order 62A Sanctioned Payment Made and Accepted within Time in the DC

DC	**Post-CJR Period**			
	(2.4.09-31.3.10)		**(1.4.10-31.3.11)**	
	Made	Accepted	Made	Accepted
Number of Order 62A sanctioned payments	97	32	83	28
Number of Order 62A sanctioned payments (without bills filed)	646	427	808	539
Total number of taxation avoided because of acceptance of Order 62A sanctioned payment		459		567

41. During the second year of the Post-CJR Period, a total of 120 and 567 taxations were avoided in the CFI and the DC respectively. This represents an increase of more than 20% and 23% when compared to the corresponding figures in the first year of the Post-CJR Period.

(c) *Sanctioned Offer*

42. Sanctioned offer is an offer made (otherwise than by way of a payment into court) to settle claims or issues within claims (under Order 22) or a party's entitlement to costs (under Order 62A). Again, there are costs consequences should the sanctioned offer not be bettered after trial. It operates in a similar way and brings about similar benefits as the scheme of sanctioned payments.

43. The Judiciary does not have statistics on sanctioned offers, since they involve dealings between the parties outside the court, and there is no requirement for the parties to inform the court of the making of a sanctioned offer. Nevertheless, in order to have some data, the Registry sent out questionnaires seeking to collect feedback on sanctioned offers after a case was disposed of, starting from July 2009.

44. The information collected by the Registry through the questionnaires sent out during the nine-month period from July 2009 to March 2010 and the 12-month period from April 2010 to March 2011 is set out at **Annex B**. The rate of distribution and return of the questionnaires, however, only constituted a small percentage of the total number of cases disposed of. Some parties did not fill in the form, there being no compulsion to do so. The information collected therefore does not present a comprehensive picture.

45. The Monitoring Committee explored how statistics on sanctioned offers could be collected better. In this regard:

(a) The Law Society of Hong Kong conducted a survey among its members on the "Effectiveness of CJR" in April 2011, covering the use of sanctioned offers. The survey indicated that sanctioned offers may be regarded as one of the successes of CJR (see paragraph 85(a) below);

(b) The Legal Aid Department has been collecting statistics on sanctioned offers in legally aided cases. For the period 2 April 2009 to 31 October 2011, 297 cases were settled before trial; and out of the 297 cases, one was settled by sanctioned offer. While the one case is not on the high side, the Monitoring Committee noted that the initiatives of sanctioned offers and payments should have facilitated an earlier settlement of the other 296 cases either directly or indirectly, as parties had to consider the costs consequences of rejecting sanctioned offers or payments; and

(c) The Department of Justice is considering to devise a means to collect statistics on sanctioned offers under its purview systematically. So far, sanctioned offers have been made primarily in relation to monetary claims.

(d) Costs-only Proceedings

46. To facilitate settlement, CJR introduced a new cause of action called "costs-only proceedings". Such proceedings enable parties who have essentially reached settlement on their dispute and have also agreed on who should in principle pay the costs, but cannot agree on the amount of such costs, to apply for their costs to be taxed by the CFI or the Court of Appeal.

Table 12.1: Number of costs-only proceedings in the CFI

CFI	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of costs-only proceedings	0	0

Table 12.2: Number of costs-only proceedings in the DC

DC	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of costs-only proceedings	1	2

47. During the second year of the Post-CJR Period, there were no costs-only proceedings in the CFI and only two such proceedings in the DC.

(D) Mediation

48. One of the initiatives under CJR is to promote the wider use of mediation to facilitate early and satisfactory settlement of disputes. A new Practice Direction 31 on "Mediation" applicable to all relevant civil cases in the CFI and the DC came into effect on 1 January 2010, i.e. nine months after the implementation of other CJR measures.

Table 13.1: Number of Mediation Notice in the CFI

CFI	1.1.10-31.3.10	1.4.10-31.3.11
CJR related cases (excluding PI cases)	113	579
CJR related cases (PI cases only)	108	523
Total	**221**	**1,102**

Table 13.2: Number of Mediation Notice in the DC

DC	1.1.10-31.3.10	1.4.10-31.3.11
CJR related cases (excluding PI cases)	120	737
CJR related cases (PI cases only)	80	519
Total	**200**	**1,256**

Table 14.1: Number of Cases Directed by the Court to Report the Progress of Mediation in the CFI

CFI	1.1.10-31.3.10	1.4.10-31.3.11
CJR related cases (excluding PI cases)	95	313
CJR related cases (PI cases only)	6	536
Total	**101**	**849**

Table 14.2: Number of Cases Directed by the Court to Report the Progress of Mediation in the DC

DC	1.1.10-31.3.10	1.4.10-31.3.11
CJR related cases (excluding PI cases)	34	394
CJR related cases (PI cases only)	2	518
Total	**36**	**912**

49. The number of mediation notices and that of cases directed by the court to report the progress of mediation from 1 April 2010 to 31 March 2011 are tabulated above. It should be noted that the figures relating to mediation set out for the period of "1.1.10-31.3.10" only covered three months given the fact that the Practice Direction 31 on "Mediation" only came into effect on 1 January 2010. It is only logical to record an increase in absolute number in the second year which covered a period of 12 months from 1 April 2010 to 31 March 2011. However, there was still a significant increase in the second year after discounting this factor reflecting a rising trend for the use of mediation.

50. The Monitoring Committee also noted that mediation cases where the Department of Justice and the Legal Aid Department were involved have shown encouraging results so far:

Department of Justice

(a) For the works-related cases where the Department of Justice was involved, there were three new mediation cases in the first year of the Post-CJR Period and all of them resulted in settlement. In the second year of the Post-CJR Period, there were five new mediation cases; among them, two cases resulted in settlement, two cases were not successful and one case is still in progress;

(b) For the other non-works general claims, there were 16 cases which attempted mediation between 1 January 2010 (the coming into effect of the Practice Direction 31 on "Mediation") and 30 June 2011. Out of the 16 cases, four cases were settled immediately, two cases were settled within three months after

mediation and one case was settled within six months after mediation;

(c) In terms of the nature of cases, nine out of these 16 cases of non-works general claims were personal injury cases and the rest were cases related to damages claims, medical negligence and other miscellaneous claims;

Legal Aid Department

(d) Out of the 364 legally aided cases where approval for mediation was given for the period 2 April 2009 to 31 October 2011, 232 cases proceeded with mediation and 132 cases did not. Among the 232 cases which proceeded with mediation, 155 of them were settled, two were partially settled and 75 were unsuccessful; and

(e) Employee's compensation, personal injury and matrimonial cases accounted for the majority of the cases involved.

51. There has been an increasing awareness among litigating parties that mediation would be one of the means of alternative dispute resolution. Yet, there are still cases where the effectiveness of mediation may not be fully appreciated. It would take more time for the litigating parties to be convinced of the benefits of mediation.

52. The success of mediation also hinges on the mindset of the legal profession and how the legal representatives advise and prepare their clients for mediation. Mediation should be conducted because of its benefits as an alternative dispute resolution procedure; it should not be conducted for the sake of going through the motions. Legal representatives should also help dispel any misconception that mediation is compulsory for every individual case. The Practice Direction 31 on "Mediation" only requires their clients to consider mediation as an option to settle the dispute. If their clients, after consideration, have a reasonable explanation for not engaging in mediation for that particular case, the court will not make any adverse costs order against them. Legal representatives are therefore encouraged to adopt the right mindset so as to alleviate the possible concerns of their clients that they are forced to engage in mediation even though it is neither cost-effective nor time-effective. While the profession has been moving in the right direction, education and training should continue to facilitate the change in culture.

53. It is also noted that there are some concerns about the quality of mediators. The Monitoring Committee considered that as mediation is still in its infancy in Hong Kong, it would take time to develop a bigger pool of experienced and skilled mediators.

54. For cases where it appears that the litigating parties are not making genuine efforts in mediation, the court may direct the parties concerned to attend information sessions held by the Mediation Information Office so that they may re-consider mediation. The Judiciary's Working Party on Mediation chaired by the Honourable Mr Justice Lam has also explored the viability of introducing strengthened measures to ensure a genuine attempt of the parties is made in mediation. The Working Party would continue to monitor the situation closely and consider taking appropriate action if necessary.

55. To reduce the incentive to conduct sham mediation and facilitate the exercise of case management power of the court, the legal profession should be encouraged to adopt the right mindset and advise their clients as appropriate (see paragraph 52 above). In addition, the Judiciary has taken or will take the following measures:

(a) Starting from June 2010, represented parties which intend to seek mediation for the resolution of disputes are directed by court to report the result of mediation as per a form ("the Report on Mediation") as soon as practicable after mediation. Information such as the time and costs spent on mediation is required to be provided in the Report on Mediation;

(b) Starting from January 2011, information on the stages of mediation completed is also required to be provided in the Report on Mediation; and

(c) Starting from January 2012, three additional items will be included in the Report on Mediation: (i) date of appointing mediator, (ii) date of completion of mediation and (iii) name of mediator. Parties will be required to provide information on items (i) and (ii) and it is optional to provide information on item (iii).

(E) Costs Matters

56. To promote a sense of reasonable proportion and procedural economy in the conduct of proceedings is one of the underlying objectives of CJR. A crucial part of proper case management is the sensible handling of the issue of costs. CJR mandates that the decision on costs must take into account the underlying objectives.

57. So far, relatively few problems have been encountered in the determination of costs by the courts. The full impact of the reforms here has, however, yet to be seen.

(a) Summary Assessment of Costs

58. Under CJR, the amended Order 62 provides for summary assessment of costs. The court is empowered, when disposing of an interlocutory application, to (a) make an assessment of costs payable in a summary and broad-brush way, rather than through a process of taxation whereby every item of costs in the receiving party's bill of costs becomes potentially subject to close scrutiny; and (b) order that the payment be made promptly unless otherwise directed by the court. The first feature aims to dispense with the elaborate and lengthy taxation procedures, thereby saving time and costs. The second feature is aimed at discouraging unwarranted interlocutory applications.

Table 15.1: Number of Summary Assessment of Costs in the CFI

CFI	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of Summary Assessment of Costs	373	1,130[7]

[7] With effect from September 2010, the systems have been enhanced to differentiate the summary assessment of costs by standard costs order made, i.e. without costs data details required and non-standard costs order made, i.e. with costs data details required. Amongst the 1,130 summary assessments of costs made in CFI, there were 512 non-standard costs orders made with costs data details required. The remaining 618 were standard costs orders.

Table 15.2: Number of Summary Assessment of Costs in the DC

DC	Post-CJR Period	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Number of Summary Assessment of Costs	1,103	2,222[8]

59. In the second year of the Post-CJR Period, 1,130 and 2,222 summary assessments of costs were conducted in the CFI and the DC respectively. It is a good sign to observe the growing numbers of summary assessments in both the CFI and DC. This new CJR initiative is invariably done for all interlocutory applications heard by Masters.

(b) Provisional Taxation

60. The total number of provisional taxation by Chief Judicial Clerks, provisional taxation by Masters and formal taxation hearings[9] by Masters are set out in the tables below.

Table 16.1: Number of Taxation in the CFI

CFI	Post-CJR Period	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Provisional taxation by Chief Judicial Clerks	202	104
Taxation by Masters	133	98
Formal taxation hearings by Masters[9]	206[10]	141[10]
Total	**541**	**343**[11]

[8] Amongst the 2,222 summary assessments of costs made in DC, there were 869 non-standard costs orders made with costs data details required. The remaining 1,353 were standard costs order.

[9] "Formal taxation hearings" refer to oral taxation hearings.

[10] There might be double counting in the statistics as parties might apply for formal taxation hearings after provisional taxation. However, there would not be many of such cases.

[11] The scope of taxation figures were extended to include taxed bills which had been handled by Chief Judicial Clerks and Masters but might not have the allocatur filed as at the report generation date.

Table 16.2: Number of Taxation in the DC

DC	Post-CJR Period	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Provisional taxation by Chief Judicial Clerks	134	99
Taxation by Masters	24	70
Formal taxation hearings by Masters[9]	98[10]	129[10]
Total	**256**	**298**[11]

(i) By Chief Judicial Clerks

61. Under CJR, a Chief Judicial Clerk is empowered to conduct a provisional taxation if the amount of the bill of costs does not exceed HK$200,000. This initiative is intended to save time and costs through reducing the number of bills for formal taxation hearings[9].

62. In the second year of the Post-CJR Period, there were a total of 104 bills in the CFI and 99 bills in the DC taxed and disposed of on paper without hearing by Chief Judicial Clerks. With the extensive application of summary assessment of costs, the numbers of bills taxed and disposed of on paper without hearing by Chief Judicial Clerks in the second year in both the CFI and DC were reduced. The decrease in bills of costs for taxation has indicated that the initiative of summary assessment of costs is moving along the right direction.

(ii) By Masters

63. Provisional taxation by Masters is a new initiative under CJR. Under this new measure, a taxing Master can (a) conduct a provisional taxation on paper without a hearing and (b) make an order nisi as to the amount of costs to be awarded. The order nisi becomes absolute 14 days after it is made unless a party applies within the 14-day period for a hearing. Upon taxation, if the amount allowed does not materially exceed the amount allowed under the order nisi, the taxing Master may order the party who applied for the hearing to pay the costs of the hearing. Provisional taxation by Masters seeks to save time and costs through reducing the number of bills for formal taxation hearings[9].

64. During the second year of the Post-CJR Period, there were a total of 98 bills in the CFI and 70 bills in the DC taxed and disposed of on paper without hearing by Masters. There was a decrease in the figures for the CFI while the number increased in the DC. More time is required for further observation before more concrete conclusion can be drawn.

(c) Costs Claimed and Costs Allowed

(i) Under taxation

65. The percentage of costs claimed which were allowed under taxation in the CFI and the DC during the Post-CJR Period are set out in the tables below.

Table 17.1: Costs Claimed and Costs Allowed under Taxation in the CFI

CFI	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Percentage allowed (Total costs allowed / Total costs claimed)	**Number of bills taxed**	**Number of bills taxed**
≤ 20%	18 (3%)	4 (2%)
> 20% - 40%	27 (5%)	11 (4%)
> 40% - 60%	73 (14%)	38 (15%)
> 60% - 80%	146 (27%)	75 (29%)
> 80%	277 (51%)	129 (50%)
Total	**541 (100%)**	**257 (100%)**

Table 17.2: Costs Claimed and Costs Allowed under Taxation in the DC

DC	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Percentage allowed (Total costs allowed / Total costs claimed)	**Number of bills taxed**	**Number of bills taxed**
≤ 20%	7 (3%)	2 (1%)
> 20% - 40%	12 (5%)	7 (4%)
> 40% - 60%	60 (23%)	33 (18%)
> 60% - 80%	108 (42%)	85 (48%)
> 80%	69 (27%)	53 (29%)
Total	**256 (100%)**	**180 (100%)**

66. It is observed that about half of the taxations in the CFI fell within the range of allowing more than 80% of the total costs claimed in the second year of the Post-CJR Period. In the case of the DC, close to half of the taxations were in the range of allowing 60% - 80% of the total costs claimed. The pattern of distribution remained more or less the same when compared to the first year of the Post-CJR Period.

(ii) Under summary assessment of costs

67. Statistics on the percentage of costs claimed over costs allowed under summary assessment of costs in the CFI and the DC during the Post-CJR Period are set out in the tables below.

Table 18.1: Costs Claimed and Costs Allowed under Summary Assessment of Costs in the CFI

CFI	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Percentage allowed (Total costs allowed / Total costs claimed)	**Number of summary assessment**	**Number of summary assessment**
≤ 20%	13 (3%)	7 (1%)
> 20% - 40%	36 (10%)	26 (5%)
> 40% - 60%	66 (18%)	71 (14%)
> 60% - 80%	106 (28%)	98 (19%)
> 80%	152 (41%)	193 (38%)
N/A[12]	-	117 (23%)
Total	**373 (100%)**	**512 (100%)**

[12] A receiving party might orally apply for costs without supplying a statement of costs during a hearing. In that regard, there normally was no "Total Costs Claimed" for the application but only with "Total Costs Allowed" granted by the court. In the first year of the Post-CJR Period, these applications could not be identified owing to system constraint and were subsumed under the category of >80%. In the second year of the Post-CJR Period, systems were enhanced to give effect to capture and identify these applications.

Table 18.2: Costs Claimed and Costs Allowed under Summary Assessment of Costs in the DC

DC	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Percentage allowed (Total costs allowed / Total costs claimed)	**Number of summary assessment**	**Number of summary assessment**
≤ 20%	0 (N/A)	4 (0.5%)
> 20% - 40%	12 (1%)	14 (2%)
> 40% - 60%	15 (1%)	30 (3.5%)
> 60% - 80%	33 (3%)	46 (5%)
> 80%	1,043[13] (95%)	488 (56%)
N/A	-	287 (33%)
Total	**1,103 (100%)**	**869 (100%)**

68. The percentage figures show that there were fewer summary assessments with their costs allowed less than 80% of their costs claimed in the second year of the Post-CJR Period in the CFI. The change in this distribution in the DC was less obvious when compared to the first year.

(F) Litigants in Person ("LIPs")

69. The number of cases involving LIPs has been on the rise in general. This presents a challenge to the courts. A multi-faceted approach is being adopted. The change in culture in the conduct of dispute resolution and the use of mediation will contribute to the solution. The provision of legal aid will also help and the Administration's recent initiative in legal aid by raising the financial eligibility limits of applicants for civil legal aid, including that under the Supplementary Legal Aid Scheme, is welcomed. Separately, the Administration's pilot scheme on LIPs, if implemented, should also be able to provide assistance to LIPs. Further, it will be necessary for the legal profession to do its fair share to provide pro bono services.

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[13] In the case of the DC, most of the assessments (about 95%) fell within this range of percentage allowed versus costs claimed. The high percentage in the DC was due to the vast number of cases (652) of summary assessments with cost amount claimed less than or equal to $1,000. These cases mainly involve litigants in person for which the usual amount of $200/$100 is allowed. The exceptionally high percentage also included cases where there was no statement of costs and the verbal claims made during hearing were input to the computer system as equal to the amount allowed. The system has recently been enhanced to exclude such cases for future analysis.

70. The number of cases involving LIPs being heard at different stages (i.e. interlocutory applications, case management summons, CMCs, PTRs and trials) are set out below.

Table 19.1: Number of Cases Involving Litigants in Person Being Heard at Different Stages in the CFI

CFI	**Post-CJR Period (2.4.09-31.3.10)**		
	Number of Hearings		
	At least one litigant in person involved	All represented	**Total**
Interlocutory applications	942 (36.9%)	1,614 (63.1%)	**2,556**
Case management summons	60 (26.2%)	169 (73.8%)	**229**
CMC	125 (18.0%)	568 (82.0%)	**693**
PTR	62 (26.0%)	177 (74.0%)	**239**
Trial	82 (34.3%)	157 (65.7%)	**239**

CFI	**Post-CJR Period (1.4.10-31.3.11)**		
	Number of Hearings		
	At least one litigant in person involved	All represented	**Total**
Interlocutory applications	916 (39.5%)	1,405 (60.5%)	**2,321**
Case management summons	69 (26.3%)	193 (73.7%)	**262**
CMC	161 (23.1%)	537 (76.9%)	**698**
PTR	58 (25.4%)	170 (74.6%)	**228**
Trial	76 (35.0%)	141 (65.0%)	**217**

Table 19.2: Number of Cases Involving Litigants in Person Being Heard at Different Stages in the DC

DC	**Post-CJR Period (2.4.09-31.3.10)**		
	Number of Hearings		
	At least one litigant in person involved	All represented	**Total**
Interlocutory applications	428 (48.9%)	447 (51.1%)	**875**
Case management summons	432 (60.2%)	286 (39.8%)	**718**
CMC	327 (50.2%)	324 (49.8%)	**651**
PTR	81 (65.9%)	42 (34.1%)	**123**
Trial	159 (52.7%)	143 (47.3%)	**302**

DC	**Post-CJR Period (1.4.10-31.3.11)**		
	Number of Hearings		
	At least one litigant in person involved	All represented	**Total**
Interlocutory applications	443 (51.4%)	419 (48.6%)	**862**
Case management summons	330 (61.2%)	209 (38.8%)	**539**
CMC	364 (53.8%)	312 (46.2%)	**676**
PTR	67 (46.2%)	78 (53.8%)	**145**
Trial	148 (47.4%)	164 (52.6%)	**312**

71. Similar to the pattern of distribution in the first year of the Post-CJR Period, higher percentage of LIPs was recorded in the DC than that in the CFI in the second year.

72. With the implementation of CJR, the Judiciary continues to provide appropriate assistance to LIPs. The facilities and services in the Resource Centre for Unrepresented Litigants serve to assist them to deal with the court rules and procedures in the conduct of their cases under CJR.

Table 20.1: Number of enquiries at Resource Centre

	Pre-CJR Period	**Post-CJR Period**	
	(2.4.08 – 31.3.09)	**(2.4.09 – 31.3.10)**	**(1.4.10 – 31.3.11)**
Number of enquiries at Resource Centre	13,893	15,189	14,339

73. In the second year of the Post-CJR Period, the number of enquiries at the Resource Centre slightly dropped from 15,189 to 14,339. However, this was still higher than that of the Pre-CJR Period by 3.2%.

(G) How Some "Individual Changes" Work Out In Practice

(a) Orders against Vexatious Litigants under Section 27 of the High Court Ordinance (Cap. 4)

74. Section 27 of the High Court Ordinance provides that the CFI may, on the application of the Secretary for Justice or an affected person, order that no legal proceedings shall be instituted or no legal proceedings instituted shall be continued by a vexatious litigant without the CFI's leave.

Table 21.1: Number of Orders under Section 27 of the High Court Ordinance (Against Vexatious Litigants)

High Court	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
By Secretary for Justice	0	0
By affected party	0	1

75. In the second year of the Post-CJR Period, there was one order made under section 27 of the High Court Ordinance.

(b) Wasted Costs Orders under Order 62

76. Under Order 62, the court may make a wasted costs order against a legal representative. A wasted costs order may disallow the costs as between the legal representative and his client; and direct the legal representative to repay to his client costs which the client has been ordered to pay to other parties to the proceedings or indemnify other parties against costs incurred by him.

Table 22.1: Number of Wasted Costs Order Made in the CFI

CFI	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Barrister	0	0
Solicitor	3	9

Table 22.2: Number of Wasted Costs Order Made in the DC

DC	**Post-CJR Period**	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
Barrister	0	0
Solicitor	1	2

77. During the second year of the Post-CJR Period, nine wasted costs orders in the CFI and two wasted costs orders in the DC were made against solicitors[14].

(c) Expert Evidence

78. Under CJR, among other things, the court is empowered to order the parties to appoint a single joint expert ("SJE"). When a SJE is appointed in an appropriate case, partisan conflicting views are avoided and only one set of fees and expenses incurred.

[14] Some practitioners were spared wasted costs orders because they had undertaken not to charge or to pay part of the costs that their clients should be paying.

Table 23.1: Number of Cases in which SJE was Appointed in the CFI

CFI	Post-CJR Period	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
	9	5

Table 23.2: Number of Cases in which SJE was Appointed in the DC

DC	Post-CJR Period	
	(2.4.09-31.3.10)	**(1.4.10-31.3.11)**
	2	80

79. During the second year of the Post-CJR Period, SJE was appointed in five cases in the CFI but 80 cases in the DC. When compared with the first year, the number of SJE cases in the DC showed a sharp increase. Further analysis reflects that more than half of these cases were personal injuries claims and the majority of SJE orders were made pursuant to filing of consent summons. As was the case in the first year, no special efforts were made by judges and judicial officers to encourage such appointments in the DC. It is believed that more SJEs were appointed because of the change in litigation culture and the relatively small amount of claims involved in the DC.

80. The statistics only captured the appointment of SJE. In some cases, while there was no SJE, there were joint experts or joint expert reports submitted by experts. In the CFI, although not many cases in the Post-CJR Period involved the appointment of SJE, the use of joint expert reports was common.

(d) Appeals

(i) Number of Appeals against Masters' Decisions on Interlocutory Applications

81. An appeal against a Master's decision on interlocutory matters is as of right. In the second year of the Post-CJR Period, the number of appeals against such decision decreased from 170 to 113 in the CFI and from 81 to 68 in the DC.

Table 24.1: Number of Appeals against Masters' Decisions on Interlocutory Applications in the CFI

	Pre-CJR Period	Post CJR Period	
CFI	**(2.4.08-31.3.09)**	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
	157	170	113

Table 24.2: Number of Appeals against Masters' Decisions on Interlocutory Applications in the DC

	Pre-CJR Period	Post CJR Period	
DC	**(2.4.08-31.3.09)**	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
	53	81	68

(ii) Number of Applications for Leave to Appeal

Table 25.1: Number of Applications for Leave to Appeal handled by the Court of Appeal

	Pre-CJR Period	Post-CJR Period	
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
From CFI	22	52	49
From DC	35	46	34
From other courts	16	28	32
Total	**73**	**126**	**115**

82. In the second year of the Post-CJR Period, the applications decreased from 126 to 115, with the breakdown as set out in the table above.

(iii) Number of Interlocutory Appeals to the Court of Appeal

Table 26.1: Number of Interlocutory Appeals to the Court of Appeal

	Pre-CJR Period	**Post-CJR Period**	
	(2.4.08-31.3.09)	**(2.4.09-31.3.10)**	**(1.4.10-31.3.11)**
From CFI	179	78	61
From DC	10	14	8
From other courts	7	9	4
Total	**196**	**101**	**73**

83. In the second year of the Post-CJR Period, interlocutory appeals filed further dropped from 101 to 73. It is worth noting that the figures in the past three years were in a downward trend. This shows that more stringent requirement of leave has successfully reduced the number of unmeritorious interlocutory appeals to the Court of Appeal.

V. Views of the Legal Profession

84. The Barrister Member of the Monitoring Committee noted the findings presented at the Monitoring Committee meeting and did not indicate any other views.

85. The Monitoring Committee noted that the Law Society of Hong Kong conducted a survey among its members on the "Effectiveness of CJR" in April 2011 and the overall comments of the Law Society on the findings of the survey are as follows:

(a) "*The Law Society continues to support the CJR and notes it will take time for the profession to fully embrace the new culture but there has been significant progress since implementation. There have been clear successes, such as acceptance of the underlying objectives of CJR, sanctioned offers and payments and summary assessment of fees*";

(b) "*The introduction of mediation is still in its infancy and it is unrealistic to expect a rapid change of culture as many practitioners have to gain experience of mediation before they can prepare their clients to change their mindset. This takes time and the comments in the survey reflect the very mixed feelings many practitioners have towards mediation*";

(c) "*The quality of mediators is also an issue – so many newly-qualified mediators have yet to establish any reputation and for many practitioners the selection process can be a lottery for their clients. There is also the perception, rightly or wrongly, that parties must mediate in order to "tick boxes"*"; and

(d) "*The Law Society…will continue to organise training sessions on the CJR*".

86. The Monitoring Committee also noted that the response rate to the Law Society of Hong Kong's survey is 16.9%.

VI. Conclusion

87. The implementation of CJR for the second year continued to be smooth and satisfactory on the whole. Amongst the statistics highlighted above, sanctioned payments under Order 22, sanctioned payments on costs under Order 62A and summary assessments of costs are the more conspicuous indicators reflecting effective measures that have led to case settlement at an early stage and have substantially reduced the number of bills for taxation. For these key indicators, there are positive signs that the intended results of CJR were being achieved.

88. However, less concrete conclusions can be drawn for other key indicators which were affected by a number of factors, not confining to those arising from or related to CJR, such as the deployment of judicial manpower in specific periods, fluctuation in caseload and the challenges posed by the increasing number of LIPs. It would be difficult, if not impossible, to single out the effect of CJR from the other factors by analyzing the statistics covering the first two years of CJR implementation alone. The statistics presented in this paper should therefore be read with caution and in their proper context. It would be inappropriate to interpret them and attribute any yearly changes solely to CJR. A longer time will be required to assess the full impact, benefit and effectiveness of CJR.

VII. Advice Sought

89. Members are invited to note the content of this paper.

Judiciary Administration
December 2011

Annex A

Membership List of Civil Justice Reform Monitoring Committee

Ex-officio Chairman	:	Chief Judge of the High Court
Ex-officio Members	:	Registrar, High Court
		Chief District Judge
		Registrar, District Court
Non Ex-officio Members	:	The Hon Mr Justice Lam
		The Hon Mr Justice Reyes
		The Hon Mr Justice Fung
		Miss Emma Lau, Judiciary Administrator
		Mr Herbert Li (Member of the Department of Justice appointed in consultation with the Secretary for Justice)
		Mr Thomas Kwong (Member of the Legal Aid Department appointed in consultation with Director of Legal Aid)
		Mr Kumar Ramanathan, SC (Barrister appointed in consultation with the Chairman of the Hong Kong Bar Association)
		Mr Alex Lai (Solicitor appointed in consultation with the President of the Law Society of Hong Kong)
		Mr Chan Bing-woon (Member of the mediation community)

Annex B

Feedback Collected through Questionnaires on Sanctioned Offers in the CFI

Total number of cases disposed of (on party level)		Number of questionnaires distributed[1]		Number of questionnaires received	
1.7.09-31.3.10	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**
3,152	4,107	869	1,085	279	455

Sanctioned offer made under Order 22[2]					
Number of sanctioned offer made		**Inclusive of non-money offer**		**Number of sanctioned offer accepted and case settled**	
1.7.09-31.3.10	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**
172	151	23	15	64	43

Sanctioned offer made under Order 62A[2]			
Number of sanctioned offer made		**Number of sanctioned offer accepted and case settled**	
1.7.09-31.3.10	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**
27	32	15	10

[1] A questionnaire for Order 22 and Order 62A should only be distributed to the parties (1) when the court notified the parties of an order in terms of a consent summons which had a disposal effect, whether it was on party level or case level; or (2) when the filing counter received a consent order which had a disposal effect, whether it was on party level or case level; or (3) upon parties having reached settlement, whether at the trial or shortly before.

[2] The questionnaires were returned on a voluntary basis and the rate of return only constituted a small percentage of the total number of cases disposed of. Therefore, the figures in the table do not reflect the full picture of sanctioned offers between the parties.

Feedback Collected through Questionnaires on Sanctioned Offers in the DC

Total number of cases disposed of (on party level)		Number of questionnaires distributed[1]		Number of questionnaires received	
1.7.09-31.3.10	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**
11,979	14,415	1,134	1,453	818	1,298

Sanctioned offer made under Order 22[2]					
Number of sanctioned offer made		Inclusive of non-money offer		Number of sanctioned offer accepted and case settled	
1.7.09-31.3.10	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**
505	431	34	18	239	184

Sanctioned offer made under Order 62A[2]			
Number of sanctioned offer made		Number of sanctioned offer accepted and case settled	
1.7.09-31.3.10	**1.4.10-31.3.11**	**1.7.09-31.3.10**	**1.4.10-31.3.11**
57	60	15	17

[1] A questionnaire for Order 22 and Order 62A should only be distributed to the parties (1) when the court notified the parties of an order in terms of a consent summons which had a disposal effect, whether it was on party level or case level; or (2) when the filing counter received a consent order which had a disposal effect, whether it was on party level or case level; or (3) upon parties having reached settlement, whether at the trial or shortly before.

[2] The questionnaires were returned on a voluntary basis and the rate of return only constituted a small percentage of the total number of cases disposed of. Therefore, the figures in the table do not reflect the full picture of sanctioned offers between the parties.