

## **Statistics on the First Three Years' Implementation of the Civil Justice Reform from 2 April 2009 to 31 March 2012**

### **I. Purpose**

This note sets out the findings on the implementation of the Civil Justice Reform (“CJR”) for the first three years from 2 April 2009 to 31 March 2012.

### **II. Background**

2. 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.

3. 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.

4. Statistics on these 32 key indicators have been collated from available data by the Judiciary. Annual statistics for the first two years of implementation have been released separately. This paper provides the updated position by including relevant findings of the “third year

of the Post-CJR Period” (i.e. from 1 April 2011 to 31 March 2012)<sup>1</sup>.

### **III. The Overall Context**

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

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<sup>1</sup> In reading the statistics, it is important to bear the following factors in mind:

- (a) Many statistics cover 36 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.

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 Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Civil cases	24,623	22,926	16,047	15,970
CJR related cases <sup>2</sup>	5,431	3,853	3,837	4,371

6. In the CFI, the overall civil caseload during the Post-CJR Periods has been dropping as compared with the Pre-CJR Period. The drop in the second and third year is mainly due to the sharp decrease in bankruptcy and winding-up cases. Nevertheless, the caseload for the CJR related cases in the third year of the Post-CJR Periods increased by 14% year-on-year, mainly because of the increase in personal injuries actions and civil actions.

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

DC	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Civil cases	29,158	25,112	22,731	22,079
CJR related cases <sup>3</sup>	19,990	15,765	15,274	15,103

<sup>2</sup> 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).

<sup>3</sup> 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).

7. In the DC, the overall civil caseload and the caseload for the CJR related cases during the Post-CJR Periods remained more or less at the same level.

#### **IV. Specific Aspects of CJR**

##### **(A) *A Change of Culture***

8. The key to the success of CJR lies in a change in culture in the conduct of the 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.

9. In the third year of CJR, the Judiciary notes that the change of culture continued along the right track. By now, the legal profession and the public are much more acquainted with the new initiatives under the CJR.

10. Judges have been practising active case management and facilitating parties to use alternative dispute resolution procedure if the court considers that appropriate.

11. The Judiciary also notes that parties and their legal representatives have been adopting a less adversarial and more cooperative approach in litigation, as compared with the Pre-CJR Period. For example :

- (a) they are now more aware of the need to consider mediation as alternative dispute resolution. More and more of them are adopting the desired attitude when considering or adopting mediation;
- (b) they are more responsive to active case management by judges. They are also more attuned to the needs and

expectations of the court, such as taking early preparatory actions before trials and putting forward more realistic and practicable case management timetable/actions. They may further curtail procedural excesses e.g. trimming down the volume of case bundles;

- (c) the number of single joint expert cases in the DC continues to increase. 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 in the CFI 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.

12. Nevertheless, a change in culture, as always, is a gradual process. It would take more time before the full impact of the CJR could be realized. The situation should continue to be monitored.

***(B) Delay***

13. 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 preemptory orders and a more active approach in dealing with interlocutory applications (particularly where Case Management Conferences ("CMCs") are concerned).

(a) Number of Interlocutory Applications<sup>4</sup>

14. 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 Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of interlocutory applications	2,786	3,149	2,914	2,992

15. In the CFI, the numbers of interlocutory applications listed for hearings during the Pre and Post-CJR Periods were comparable.

Table 2.2: Number of interlocutory applications in the DC

DC	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of interlocutory applications	Not available	1,171	1,032	854

16. In the DC, the numbers of interlocutory applications listed for hearings during the Post-CJR Periods were on a decreasing trend. It dropped from 1,171 in the first year of the Post-CJR Period to 1,052 in the second year and then to 854 in the third year. As the DC cases generally involve relatively smaller amounts of claims than CFI ones, parties are more likely to avoid making unnecessary interlocutory applications.

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<sup>4</sup> The number of interlocutory applications listed for hearings does not include those arising from CMCs and Case Management Summons hearings. Interlocutory applications dealt with on paper or additional summon(s)/interlocutory application(s) that may have been taken out at the same listed hearing for an interlocutory application are not counted either.

(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 Disposals of Interlocutory Applications under Order 32, rule 11A in the CFI

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of interlocutory applications before Master	1,139	931	836
Number of paper disposals	32	23	8

18. In the CFI, the number of paper disposals of interlocutory applications under Order 32, rule 11A was on a decreasing trend over the three years of the Post-CJR Periods.

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

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of interlocutory applications before Master	272	213	195
Number of paper disposals	4	2	0

19. In the DC, there were only very few paper disposals of the relevant interlocutory applications in the first and second years of the Post-CJR Periods, with even no application during the third year.

20. The relatively low number of paper disposals is partly due to the fact that simple applications are usually disposed of on-the-spot at the three-minute hearings routinely held for all such interlocutory applications, without going into further hearings or paper disposal.

21. Moreover, the above figures do not capture the position concerning some non-interlocutory applications disposed of on paper by Masters and 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.

(c) Number of Case Management Conferences (“CMCs”)

22. 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 CMCs in the CFI

CFI	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
	Number of checklist hearings	Number of checklist hearing / CMCs	Number of CMCs	Number of CMCs
CJR related cases (excluding PI cases)	779	839	865	771

23. In the CFI, the number of CMCs in the third year of the Post-CJR Periods dropped after an increase in the second year. However, it remained at a similar level when compared with the number of checklist hearings in the Pre-CJR Period.

Table 4.2: Number of CMCs in the DC

DC	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
	Number of PTR by Master	Number of CMCs	Number of CMCs	Number of CMCs
CJR related cases (excluding PI cases)	539	648	788	748

24. Similarly, the numbers of CMCs in the DC slightly dropped in the third year after an increase in the second year. Nonetheless, the numbers for the Post-CJR Periods were higher when compared with those



of the Pre-CJR Period. We will further streamline the CMC arrangements for suitable cases, such as simple ones.

*(d) Number of Milestone Dates Fixed and Then Varied*

25. 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 Periods								
	1 <sup>st</sup> Year			2 <sup>nd</sup> Year			3 <sup>rd</sup> Year		
	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)
CMC	865	76	9%	916	118	13%	785	100	13%
PTR	320	22	7%	287	15	5%	239	16	7%
Trial	419	27	6%	476	33	7%	350	27	8%

26. In the CFI, the percentages of dates of hearings at milestone stages which were varied in the CFI in the Post-CJR Periods remained at a low level.

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

DC	Post-CJR Periods								
	1 <sup>st</sup> Year			2 <sup>nd</sup> Year			3 <sup>rd</sup> Year		
	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)	Number of hearings fixed (a)	Number of hearings varied (b)	% (b)/(a)
CMC	742	30	4%	820	49	6%	782	48	6%
PTR	138	5	4%	168	3	2%	133	2	2%
Trial	577	15	3%	496	21	4%	332	15	5%

27. Similarly, the percentages of dates of hearings at milestone stages which were varied in the DC in the Post-CJR Periods also remained at a low level.

28. Better control and case management by both courts has reduced the delay in the case process.

(e) Average Time Spent

29. 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

*Set 1: Cases commenced in Pre-CJR Period with trial in Pre or Post-CJR Periods*

CFI Trial Date	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of Trial Hearings	212	251	194	93
Average Time from Commencement to Trial (days)	1,013 <sup>5</sup>	1,132 <sup>6</sup>	1,356 <sup>7</sup>	1,635 <sup>8</sup>

*Set 2: Cases with commencement and trial within the same year of Post-CJR Period*

CFI Commencement Date & Trial Date	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of Trial Hearings	16	18	12
Average Time from Commencement to Trial (days)	167	155	153

<sup>5</sup> 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. If the subject cases are discounted from calculation, average time will be reduced from 1,013 days to 972 days.

<sup>6</sup> 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. If the subject cases are discounted from calculation, average time will be reduced from 1,132 days to 1,087 days.

<sup>7</sup> There were seven exceptionally long cases for which the duration from commencement to trial was over ten years. If the subject cases are discounted from calculation, average time will be reduced from 1,356 days to 1,246 days.

<sup>8</sup> There were seven exceptionally long cases for which the duration from commencement to trial was over ten years. If the subject cases are discounted from calculation, average time will be reduced from 1,635 days to 1,417 days.

*Set 3: Cases with commencement and trial within Post-CJR Periods*

<b>CFI</b>	<b>Post-CJR Periods</b>		
<b>Commencement Date &amp; Trial Date</b>	<b>1<sup>st</sup> Year</b>	<b>1<sup>st</sup> &amp; 2<sup>nd</sup> Years (Accumulative)</b>	<b>1<sup>st</sup>, 2<sup>nd</sup> &amp; 3<sup>rd</sup> Years (Accumulative)</b>
Number of Trial Hearings	16	70	163
Average Time from Commencement to Trial (days)	167	277	436

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

*Set 1: Cases commenced in Pre-CJR Period with trial in Pre or Post-CJR Periods*

<b>DC</b>	<b>Pre-CJR Period</b>	<b>Post-CJR Periods</b>		
<b>Trial Date</b>		<b>1<sup>st</sup> Year</b>	<b>2<sup>nd</sup> Year</b>	<b>3<sup>rd</sup> Year</b>
Number of Trial Hearings	269	299	193	38
Average Time from Commencement to Trial (days)	704	743	942	1,410 <sup>9</sup>

*Set 2: Cases with commencement and trial within the same year of Post-CJR Period*

<b>DC</b>	<b>Post-CJR Periods</b>		
<b>Commencement Date &amp; Trial Date</b>	<b>1<sup>st</sup> Year</b>	<b>2<sup>nd</sup> Year</b>	<b>3<sup>rd</sup> Year</b>
Number of Trial Hearings	16	20	9
Average Time from Commencement to Trial (days)	134	159	120

<sup>9</sup> There was one exceptionally long case for which the duration from commencement to trial was over ten years. If the subject case is discounted from calculation, the average time will be reduced from 1,410 days to 1,345 days.

*Set 3: Cases with commencement and trial within Post-CJR Periods*

<b>DC</b>	<b>Post-CJR Periods</b>		
<b>Commencement Date &amp; Trial Date</b>	<b>1<sup>st</sup> Year</b>	<b>1<sup>st</sup> &amp; 2<sup>nd</sup> Years (Accumulative)</b>	<b>1<sup>st</sup>, 2<sup>nd</sup> &amp; 3<sup>rd</sup> Years (Accumulative)</b>
Number of Trial Hearings	16	158	332
Average Time from Commencement to Trial (days)	134	345	434

30. Three sets of data are set out above on the number of cases with:
- (a) cases commenced in Pre-CJR Period with trial in Pre or Post-CJR Periods (Set 1);
  - (b) cases with commencement and trial within the same year of Post-CJR Periods (Set 2); and
  - (c) cases with commencement and trial within Post-CJR Periods (Set 3).

31. It is worth noting that the CJR effect could not be fully reflected by the cases under Set 1 as these cases were commenced before the implementation of CJR.

32. As for Set 2, which covers the cases with commencement and trial within the same year of the Post-CJR Periods, the numbers of cases involved are very small. This shows that such simple and straightforward cases, which could be disposed of within a few months' time, were not typical ones in both the CFI and DC.

33. As regards Set 3, which covers CJR cases with commencement and trial within the first three years of the Post-CJR Periods, the overall population of cases is higher as they also include more complicated cases which are more typical for CFI and DC. The average time from commencement to trial for this bigger pool is longer than that for Set 2. Moreover, as some existing complicated cases may take more time before trial and more new complicated cases may be added onto the data pool, we envisage that such average time may continue to increase in the coming few years until it flats off at a certain juncture. Hence, it is still early to draw any conclusions for both the CFI and DC at this stage and 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 Periods				
	<i>1<sup>st</sup> Year</i>	<i>2<sup>nd</sup> Year</i>		<i>3<sup>rd</sup> Year</i>	
<b>1<sup>st</sup> CMC Date</b>	<i>1<sup>st</sup> Year</i>	<i>2<sup>nd</sup> Year</i>	<b>1<sup>st</sup>&amp;2<sup>nd</sup> Years (inclusive)</b>	<i>3<sup>rd</sup> Year</i>	<b>1<sup>st</sup>,2<sup>nd</sup>&amp;3<sup>rd</sup> Years (inclusive)</b>
End of Trial Date					
Number of cases disposed of	8	5	67	7	83
Average time required (days)	150	148	349	70	435

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

DC	Post-CJR Periods				
	<i>1<sup>st</sup> Year</i>	<i>2<sup>nd</sup> Year</i>		<i>3<sup>rd</sup> Year</i>	
<b>1<sup>st</sup> CMC Date</b>	<i>1<sup>st</sup> Year</i>	<i>2<sup>nd</sup> Year</i>	<b>1<sup>st</sup>&amp;2<sup>nd</sup> Years (inclusive)</b>	<i>3<sup>rd</sup> Year</i>	<b>1<sup>st</sup>,2<sup>nd</sup>&amp;3<sup>rd</sup> Years (inclusive)</b>
End of Trial Date					
Number of cases disposed of	23	21	126	20	103
Average time required (days)	181	134	224	131	283

34. For the second and third year of the Post-CJR Periods, two sets of data are set out above for comparison.

35. For the small number of cases which could have their first CMC and trial taking place within the same year (*in italic*), the relatively short average time required probably reflects that they were very simple and straightforward. As regards cases with the first CMC hearing within the first two and first three years of the Post-CJR Periods respectively, since they captured a larger pool of cases including the more complicated ones, it is natural that the average time is longer. In fact, similar to the analysis in paragraph 33 above, it is likely that the average time will continue to increase in the coming few years before it stabilizes. A longer period of observation is required for both the CFI and DC.

(iii) *Duration of trial*

36. 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 Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Average number of days fixed	4.89	5.51	5.30	5.49
Average number of days spent	4.02	3.08	3.88	4.40

37. For the CFI, during the Post-CJR Periods, the average number of days fixed for trials increased in the third year, after a drop in the second year. However, the average number of days fixed for the first three years in the Post-CJR Periods was all longer than that in the Pre-CJR Period, reflecting a growing complexity of cases. On the other hand, the average number of days fixed was getting closer to the average actual number of days spent, reflecting more effective case management and more accurate estimation of the duration of trials.

Table 8.2: Duration of Trial in the DC

DC	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Average number of days fixed	2.60	2.45	2.88	2.84
Average number of days spent	2.49	2.23	2.53	2.30

38. For the DC, there was a relatively stable trend for both the average numbers of days fixed and actual days spent on trials. The average numbers of days fixed and actual days spent were also very close. These probably reflect the relatively simpler nature of the DC cases which means easier estimation of trial time.

***(C) Settlement***

39. 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 was fully instructed in a case before a serious evaluation of the merits took place, leading to settlements being made.

(a) Admission under Order 13A

40. 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 Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of CJR related cases filed (monetary claim only)	1,757	1,711	2,032
Number of admissions made	39	19	29
Number of applications for instalment	15	8	11
Number of cases disposed of by Order 13A	13	6	2

41. In the CFI, during the Post-CJR Periods, the number of applications of Order 13A and number of cases settled by Order 13A were very low. As CFI cases normally involve relatively higher amounts of claims, the incentive for defendants to make an admission under Order 13A may be relatively lower.



Table 9.2: Admission under Order 13A in the DC

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of CJR related cases filed (monetary claim only)	14,155	13,874	13,665
Number of admissions made	364	312	414
Number of applications for instalment	300	255	313
Number of cases disposed of by Order 13A	197	152	203

42. In the DC, during the Post-CJR Periods, the number of applications of Order 13A and number of cases settled by Order 13A increased in the third year after a drop in the second year.

(b) Sanctioned Payments

43. 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 Periods					
		1 <sup>st</sup> Year		2 <sup>nd</sup> Year		3 <sup>rd</sup> Year	
	Payment-in made	Sanctioned payment made	Sanctioned payment accepted	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	99	24
Number of CJR related cases (PI cases only)	826	1,786	420	1,255	326	1,160	283
<b>Total</b>	977	1,913	435	1,355	337	1,259	307

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

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of cases filed (excluding PI cases)	3,247	3,101	3,442
Number of cases filed (PI cases only)	606	736	929
<b>Number of cases filed</b>	<b>3,853</b>	<b>3,837</b>	<b>4,371</b>
Number of cases (excluding PI cases) disposed of by Order 22 sanctioned payment	2	2	8
Number of cases (PI cases only) disposed of by Order 22 sanctioned payment	51	58	54
<b>Number of cases disposed of by Order 22</b>	<b>53</b>	<b>60</b>	<b>62</b>

44. For the CFI, during the Post-CJR Periods, the number of sanctioned payments made, the number of payments accepted within time

and the number of cases disposed of by Order 22 did not show much fluctuation or any significant trend.

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

DC	Pre-CJR Period	Post-CJR Periods					
	Payment-in made	1 <sup>st</sup> Year		2 <sup>nd</sup> Year		3 <sup>rd</sup> Year	
		Sanctioned payment made	<i>Sanctioned payment accepted</i>	Sanctioned payment made	<i>Sanctioned payment accepted</i>	Sanctioned payment made	<i>Sanctioned payment accepted</i>
Number of CJR related cases (excluding PI and employee's compensation ("EC") cases)	221	<b>207</b>	<i>55</i>	<b>224</b>	<i>87</i>	<b>270</b>	<i>131</i>
Number of CJR related cases (PI cases only)	2,025	<b>2,518</b>	<i>1,012</i>	<b>2,489</b>	<i>1,157</i>	<b>2,620</b>	<i>1,256</i>
Number of CJR related cases (EC cases only)	1,070	<b>1,398</b>	<i>702</i>	<b>1,304</b>	<i>774</i>	<b>1,608</b>	<i>1,033</i>
<b>Total</b>	3,316	<b>4,123</b>	<i>1,769</i>	<b>4,017</b>	<i>2,018</i>	<b>4,498</b>	<i>2,420</i>

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

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of cases filed (excluding PI and EC cases)	12,360	11,094	10,345
Number of cases filed (PI cases only)	1,965	2,432	2,666
Number of cases filed (EC cases only)	1,440	1,748	2,092
<b>Number of cases filed</b>	<b>15,765</b>	<b>15,274</b>	<b>15,103</b>
Number of cases (excluding PI and EC cases) disposed of by Order 22 sanctioned payment	35	27	43
Number of cases (PI cases only) disposed of by Order 22 sanctioned payment	319	292	469
Number of cases (EC cases only) disposed of by Order 22 sanctioned payment	378	382	539
<b>Number of cases disposed of by Order 22</b>	<b>732</b>	<b>701</b>	<b>1,051</b>

45. For the DC, out of the sanctioned payments made in the Post-CJR Periods, the percentage of sanctioned payments accepted within time was on a rising trend, from 43% in the first year to 50% in the second year and further to 54% in the third year of the Post-CJR Periods. Moreover, the number of cases disposed of by Order 22 in the third year of the Post-CJR Periods increased sharply by about 43% and 50% respectively when compared with the first and second years. The smaller amounts of claims and easier assessment of the likely damages for DC cases may explain the growing popularity of Order 22 in the DC.

(ii) *Order 62A*

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

CFI	Post-CJR Periods					
	1 <sup>st</sup> Year		2 <sup>nd</sup> Year		3 <sup>rd</sup> Year	
	Made	Accepted	Made	Accepted	Made	Accepted
Number of Order 62A sanctioned payments	78	15	64	18	60	21
Number of Order 62A sanctioned payments (without bills filed)	155	84	212	102	164	81
Total number of taxation avoided because of acceptance of Order 62A sanctioned payment		99		120		102

46. In the CFI, during the Post-CJR Periods, a total of 321 taxations were avoided as a result of the acceptance of Order 62A sanctioned payments as to costs. The trend remained more or less stable during the three years of the Post-CJR Periods.

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

DC	Post-CJR Periods					
	1 <sup>st</sup> Year		2 <sup>nd</sup> Year		3 <sup>rd</sup> Year	
	Made	Accepted	Made	Accepted	Made	Accepted
Number of Order 62A sanctioned payments	97	32	83	28	57	30
Number of Order 62A sanctioned payments (without bills filed)	646	427	808	539	881	619
Total number of taxation avoided because of acceptance of Order 62A sanctioned payment		459		567		649

47. In the DC, during the Post-CJR Periods, a total of 1,675 taxations were avoided as a result of the acceptance of Order 62A sanctioned

payments as to costs. There was a clear rising trend during the three years of the Post-CJR Periods.

(c) Sanctioned Offer

48. 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.

49. 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 has been sending out questionnaires since July 2009 to collect feedback on sanctioned offers after a case has been disposed of.

50. The information collected by the Registry through the questionnaires sent out during the nine-month period from July 2009 to March 2010, the 12-month period from April 2010 to March 2011 and 12-month period from April 2011 to March 2012 is set out at Annex. 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.

51. We have tried to see if more information can be collated. In this regard, the following two departments of the Administration have been able to provide us with some further information relating to cases under their respective purview, as follows :

- (a) Department of Justice (DoJ) : DoJ has started collecting the statistics for cases under its purview since the third year of the Post-CJR Periods. During that year, DoJ received a total of 46 sanctioned offers under Order 22 and six under Order 62A. It accepted 11 of them, with eight under Order 22 and the remaining three under Order 62A; and

- (b) *Legal Aid Department (LAD)* : for the first and second years of the Post-CJR Periods, out of the respective 132 and 151 legally aided cases handled in-house and settled before trial, none was settled by sanctioned offer. For the third year, of the 99 cases, one was settled by sanctioned offer.

(d) *Costs-only Proceedings*

52. 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 Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of costs-only proceedings	0	0	2

53. In the CFI, there were no costs-only proceedings in the first and second years of the Post-CJR Periods and only two in the third year.

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

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of costs-only proceedings	1	2	4

54. In the DC, during the Post-CJR Periods, the numbers of costs-only proceedings also remained at a low level.

(D) *Mediation*

55. One of the initiatives under CJR is to promote the wider use of mediation to facilitate early and satisfactory settlement of disputes. A 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.

56. 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 2012 are tabulated below. 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 as the Practice Direction only came into effect on 1 January 2010.

Table 13.1: Number of Mediation Notices in the CFI

CFI	Post-CJR Periods		
	1.1.10-31.3.10	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
CJR related cases (excluding PI cases)	113	579	507
CJR related cases (PI cases only)	108	523	566
<b>Total</b>	<b>221</b>	<b>1,102</b>	<b>1,073</b>

Table 13.2: Number of Cases Directed by the Court to Report the Progress of Mediation in the CFI

CFI	Post-CJR Periods		
	1.1.10-31.3.10	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
CJR related cases (excluding PI cases)	95	313	291
CJR related cases (PI cases only)	6	536	758
<b>Total</b>	<b>101</b>	<b>849</b>	<b>1,049</b>

57. In the CFI, during the second and third year of the Post-CJR Periods covering a period of 12 months in each year, the number of mediation notices remained more or less at the same level. When compared to the second year in the Post-CJR Periods, the number of cases directed by the court to report the progress of mediation in the third year increased by 24%.



Table 14.1: Number of Mediation Notices in the DC

DC	Post-CJR Periods		
	1.1.10-31.3.10	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
CJR related cases (excluding PI cases)	120	737	756
CJR related cases (PI cases only)	80	519	743
<b>Total</b>	<b>200</b>	<b>1,256</b>	<b>1,499</b>

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

DC	Post-CJR Periods		
	1.1.10-31.3.10	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
CJR related cases (excluding PI cases)	34	394	340
CJR related cases (PI cases only)	2	518	1,715
<b>Total</b>	<b>36</b>	<b>912</b>	<b>2,055</b>

58. In the DC, during the second and third year of the Post-CJR Periods covering a period of 12 months in each year, the number of mediation notices in the third year recorded a slight increase than that in the second year. Furthermore, when compared to the second year of the Post-CJR Periods, the number of cases directed by the court to report the progress of mediation in the third increased drastically by almost 125%.

59. We also note that mediation cases where the DoJ and LAD were involved have shown encouraging results so far:

(a) DoJ

	Post-CJR Periods		
	1.1.10-31.3.10	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of cases that attempted mediation	Nil	14	15
Number of cases settled	Nil	3	6

Comparing the third year of the Post-CJR Periods with the second year, the number of cases that attempted mediation was similar, while there was an increase in the number of cases settled by mediation.

In terms of the nature of cases, for the two-year period above, most of them were personal injury and negligence claims, as well as damages claims.

(b) LAD

	Post-CJR Periods		
	1.1.10-31.3.10	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of cases that attempted mediation	1	93	260
Number of cases settled	1	62 <sup>10</sup>	162 <sup>11</sup>

The respective number of cases that attempted mediation and settled by mediation in third year of the Post-CJR Periods increased significantly, as compared with those for the second year.

In terms of the nature of cases, most of them were employees' compensation, personal injury and matrimonial cases.

60. More and more litigating parties are aware that mediation would be one of the means of alternative dispute resolution. Yet, there

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<sup>10</sup> This includes one case which was partially settled.

<sup>11</sup> This includes one case which was partially settled.

are still cases where the effectiveness of mediation may not be fully appreciated. We are exploring the possibility of encouraging more use of mediation in certain types of cases. It may take some more time for the litigating parties to be more fully convinced of the benefits of mediation.

61. 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. Over the past few years, legal representatives have been encouraged to adopt the right mindset in advising their clients so as to alleviate the latter's possible concerns that they are forced to engage in mediation even though it is neither cost-effective nor time-effective. While the profession has gradually accepted mediation as a realistic approach in settling disputes, it will probably take some more time for them and their clients to get used to the change in culture completely.

62. 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 Judiciary's Mediation Information Office so that they may re-consider mediation. To reduce the incentive to conduct sham mediation and facilitate the exercise of case management power of the court, the Judiciary has also taken measures to require represented parties to report to the court more information about the mediation they have conducted.

63. We welcome the initiatives taken forward by the Administration and the profession to promote the use of mediation. The Mediation Ordinance, enacted in June 2012, seeks to provide a regulatory framework for mediation. The Ordinance sets out a clearer regime regarding important issues such as confidentiality and admissibility of mediation communications.

64. On the profession's side, the major mediation bodies, including the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre, have reached broad consensus to establish a non-statutory industry-led body, namely the Hong Kong Mediation Accreditation Association Limited. It is a premier accreditation body for mediators in Hong Kong in discharging accreditation and disciplinary functions. This is expected to boost the public's confidence in mediation and encourage them to attempt mediation. The preparatory work of its establishment is under way.

65. The Judiciary's Mediation Information Office will continue to assist litigants in considering mediation as an alternative to litigation by providing them with relevant information on mediation, including the new initiatives above.

66. With collective efforts, it is hoped that the public confidence in mediation will be further enhanced.

***(E) Costs Matters***

67. 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.

68. 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***

69. 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 Assessments of Costs in the CFI

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of Summary Assessment of Costs	373	1,130 <sup>12</sup>	1,594 <sup>13</sup>

70. In the CFI, the number of summary assessments during the Post-CJR Periods increased significantly. On top of a huge jump in the second year, the number made another leap of 41% in the third year.

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

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of Summary Assessment of Costs	1,103	2,222 <sup>14</sup>	3,119 <sup>15</sup>

<sup>12</sup> 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, which included 117 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 618 were standard costs orders.

<sup>13</sup> Amongst the 1,594 summary assessments of costs made in CFI, there were 484 non-standard costs orders made with costs data details required, which included 121 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 1,110 were standard costs orders.

<sup>14</sup> Amongst the 2,222 summary assessments of costs made in DC, there were 869 non-standard costs orders made with costs data details required, which included 287 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 1,353 were standard costs order.

<sup>15</sup> Amongst the 3,119 summary assessments of costs made in DC, there were 769 non-standard costs orders made with costs data details required, which included 561 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 2,350 were standard costs order.

71. In the DC, similar jumps were observed for the Post-CJR Periods. After doubling the number in the second year, there was another sharp increase of 40% in the third year.

72. It is a good sign to observe the growing number of summary assessments during the Post-CJR Periods. This new CJR initiative is invariably done for all interlocutory applications heard by Masters in both court levels.

(b) Taxation

73. The total number of provisional taxations by Chief Judicial Clerks, provisional taxations by Masters (without hearing) and formal taxations by Masters (with hearing) during the Post-CJR Periods are set out in the tables below.

Table 16.1: Number of Taxations in the CFI

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Provisional taxation by Chief Judicial Clerks	202	104	124
Provisional Taxation by Masters (without hearing)	<b>133</b>	<b>98</b>	<b>89</b>
Formal Taxation by Masters (with hearing)	206 <sup>16</sup>	141 <sup>16</sup>	177 <sup>16</sup>
<b>Total</b>	<b>541</b>	<b>343<sup>17</sup></b>	<b>390<sup>17</sup></b>

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<sup>16</sup> There may be double counting in the statistics as parties might apply for taxation hearings after taxation without hearing. However, there should not be many of such cases.

<sup>17</sup> The taxation figures captured here include all taxation bills handled by the Chief Judicial Clerks and Masters, including those bills which require further actions after their handling (e.g. filing of allocator).

Table 16.2: Number of Taxations in the DC

DC	Post-CJR Period		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Provisional taxation by Chief Judicial Clerks	134	99	91
Provisional Taxation by Masters (without hearing)	24	70	39
Formal Taxation by Masters (with hearing)	98 <sup>16</sup>	129 <sup>16</sup>	108 <sup>16</sup>
<b>Total</b>	<b>256</b>	<b>298<sup>17</sup></b>	<b>238<sup>17</sup></b>

(i) *Provisional Taxation by Chief Judicial Clerks*

74. Under the 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 taxation by Masters.

75. The numbers of bills taxed and disposed of on paper without hearing by Chief Judicial Clerks in the third year of the Post-CJR Periods in the CFI increased slightly when compared with the second year. However, both figures in the second and third years were still significantly lower than that in the first year. For the DC, the numbers decreased continuously during the three years of the Post-CJR Periods. The number of bills of costs for taxation dropped from 134 in the first year of Post-CJR Periods to 99 in the second year and then to 91 in the third year. The decrease has indicated that the extensive application of summary assessment of costs is moving along the right direction.

(ii) *Provisional Taxation by Masters*

76. 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.

77. During the Post-CJR Periods, there were a total of 320 bills in the CFI and 133 bills in the DC taxed and disposed of on paper without hearing by Masters. No significant pattern can be observed for the first three years in the Post-CJR Periods and more time is required before a concrete conclusion can be drawn.

*(iii) Average Disposal Time*

78. The numbers of bills filed and average disposal time for taxed bills during the Pre-CJR Period and Post-CJR Periods are set out in the tables below.

Table 17.1: Number of bills filed and average disposal time for taxed bills in the CFI

CFI	Pre-CJR period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of bills filed	1,152	712	702	577
Number of bills taxed	647	623	331	374
Average Disposal Time (Days)	115	133	137	160 <sup>18</sup>

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<sup>18</sup> There were four bills which exceptionally required more than three years for completing the taxation process. Their delay was due to reasons beyond control. If they are discounted, the average disposal time will be reduced from 160 days to 143 days.



Table 17.2: Number of bills filed and average disposal time for taxed bills in the DC

DC	Pre-CJR period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of bills filed	957	545	409	395
Number of bills taxed	316	342	265	221
Average Disposal Time (Days)	83	128	129	159 <sup>19</sup>

79. When compared with the Pre-CJR Period and first two years of the Post-CJR Periods, the average disposal time in both the CFI and DC became longer in the third year. This is understandable as more and more simple and straightforward bills should have been disposed of by summary assessments. The remaining more complex bills would therefore take a longer time to be taxed.

(c) Costs Claimed and Costs Allowed

(i) *Under taxation*

80. 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.

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<sup>19</sup> There were two bills which exceptionally required more than three years for completing the taxation process. Their delay was due to reasons beyond control. If they are discounted, the average disposal time will be reduced from 159 days to 137 days.

Table 18.1: Costs Claimed and Costs Allowed under Taxation in the CFI

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Percentage allowed (Total costs allowed / Total costs claimed)	<b>Number of bills taxed</b>	<b>Number of bills taxed</b>	<b>Number of bills taxed</b>
≤ 20%	18 (3%)	4 (2%)	0 (0%)
> 20% - 40%	27 (5%)	11 (4%)	8 (3%)
> 40% - 60%	73 (14%)	38 (15%)	34 (12%)
> 60% - 80%	146 (27%)	75 (29%)	75 (27%)
> 80%	277 (51%)	129 (50%)	165 (59%)
<b>Total</b>	<b>541 (100%)</b>	<b>257 (100%)</b>	<b>282 (100%)</b>

81. In the CFI, in the third year of the post-CJR Periods, it is observed that no bills were taxed with less than 20% of the total costs claimed. Also, in the same year, about 59% of the taxations had been allowed with more than 80% of the total costs claimed, which was higher than that in the first and second years of the post-CJR periods. This may reflect the situation that the bills were more carefully drawn up by parties.

Table 18.2: Costs Claimed and Costs Allowed under Taxation in the DC

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Percentage allowed (Total costs allowed / Total costs claimed)	<b>Number of bills taxed</b>	<b>Number of bills taxed</b>	<b>Number of bills taxed</b>
≤ 20%	7 (3%)	2 (1%)	1 (1%)
> 20% - 40%	12 (5%)	7 (4%)	6 (4%)
> 40% - 60%	60 (23%)	33 (18%)	27 (17%)
> 60% - 80%	108 (42%)	85 (48%)	69 (43%)
> 80%	69 (27%)	53 (29%)	57 (35%)
<b>Total</b>	<b>256 (100%)</b>	<b>180(100%)</b>	<b>160 (100%)</b>

82. In the case of the DC, up to 35% of the bills taxed were allowed with more than 80% of the total costs claimed in the third year of the Post-CJR Periods. This percentage was on the rise throughout the first

three years of the Post-CJR Periods which may reflect that the gap between the total costs allowed and total costs claimed was closing down. Similar to that for the CFI, this can probably be attributed to the more careful preparation of the bills by parties before taxation.

(ii) *Under summary assessment of costs*

83. 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 Periods are set out in the tables below.

Table 19.1: Costs Claimed and Costs Allowed under Summary Assessment of Costs in the CFI

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Percentage allowed (Total costs allowed / Total costs claimed)	<b>Number of summary assessment</b>	<b>Number of summary assessment</b>	<b>Number of summary assessment</b>
20%	13 (3%)	7 (2%)	10 (3%)
> 20% - 40%	36 (10%)	26 (6%)	19 (5%)
> 40% - 60%	66 (18%)	71 (18%)	64 (18%)
> 60% - 80%	106 (28%)	98 (25%)	101 (28%)
> 80%	152 (41%)	193 (49%)	169 (46%)
<b>Total</b>	<b>373 (100%)<sup>20</sup></b>	<b>395 (100%)<sup>20</sup></b>	<b>363 (100%)<sup>20</sup></b>

84. In the CFI, the percentage figures show that the pattern of distribution remained more or less the same during the Post-CJR Periods.

<sup>20</sup> 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%. From the second year of the Post-CJR Period onwards, systems were enhanced to give effect to capture and identify these applications. In the second and third years of the Post-CJR Periods, there were 117 and 121 records of this kind respectively which had not been included in the table.

Table 19.2: Costs Claimed and Costs Allowed under Summary Assessment of Costs in the DC

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Percentage allowed (Total costs allowed / Total costs claimed)	<b>Number of summary assessment</b>	<b>Number of summary assessment</b>	<b>Number of summary assessment</b>
≤ 20%	0 (N/A)	4 (1%)	1 (0.5%)
> 20% - 40%	12 (1%)	14 (2%)	18 (8.7%)
> 40% - 60%	15 (1%)	30 (5%)	35 (16.8%)
> 60% - 80%	33 (3%)	46 (8%)	61 (29.3%)
> 80%	1,043 <sup>21</sup> (95%)	488 (84%)	93 (44.7%)
<b>Total</b>	<b>1,103 (100%)</b>	<b>582(100%)<sup>22</sup></b>	<b>208(100%)<sup>22</sup></b>

85. In the case of DC, the change in distribution in the second and third year of the Post-CJR Periods was mainly due to the exclusion of the large number of cases involving litigants in person where only verbal claims were made during hearing with no statement of costs submitted.

<sup>21</sup> 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 in the 1<sup>st</sup> year 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 in the 2<sup>nd</sup> and 3<sup>rd</sup> years for future analysis.

<sup>22</sup> 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%. From the second year of the Post-CJR Period onwards, systems were enhanced to capture and identify these applications. In the second and third years of the Post-CJR Periods, there were 287 and 561 records of this kind respectively which had not been included in the table.

**(F) Litigants in Person (“LIPs”)**

86. 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. Separately, the Administration’s pilot scheme on LIPs should also be able to provide assistance to LIPs.

87. 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 20.1: Number of Cases Involving Litigants in Person<sup>23</sup> (LIPs) Being Heard at Different Stages in the CFI

CFI	Post-CJR Periods								
	1 <sup>st</sup> Year			2 <sup>nd</sup> Year			3 <sup>rd</sup> Year		
No. of Hearings	Involving LIPs	All represented	Total	Involving LIPs	All represented	Total	Involving LIPs	All represented	Total
Interlocutory applications	<b>942</b> <b>(36.9%)</b>	1,614 (63.1%)	2,556	<b>916</b> <b>(39.5%)</b>	1,405 (60.5%)	2,321	<b>954</b> <b>(40.7%)</b>	1,391 (59.3%)	2,345
Case management summons	<b>60</b> <b>(26.2%)</b>	169 (73.8%)	229	<b>69</b> <b>(26.3%)</b>	193 (73.7%)	262	<b>60</b> <b>(23.3%)</b>	198 (76.7%)	258
CMC	<b>125</b> <b>(18.0%)</b>	568 (82.0%)	693	<b>161</b> <b>(23.1%)</b>	537 (76.9%)	698	<b>102</b> <b>(17.7%)</b>	475 (82.3%)	577
PTR	<b>62</b> <b>(26.0%)</b>	177 (74.0%)	239	<b>58</b> <b>(25.4%)</b>	170 (74.6%)	228	<b>42</b> <b>(22.3%)</b>	146 (77.7%)	188
Trial	<b>82</b> <b>(34.3%)</b>	157 (65.7%)	239	<b>76</b> <b>(35.0%)</b>	141 (65.0%)	217	<b>46</b> <b>(27.5%)</b>	121 (72.5%)	167

88. In the CFI, the percentage of cases involving LIPs in interlocutory applications remained the highest among the various stages of litigation in the third year of the post-CJR Periods and similar observations were made in the first and second years. However, the percentages of cases involving LIPs in the stages of CMC and trial in the third year dropped after an increase in the second year. In other words, more parties tended to have representation during these two stages of the litigation.

<sup>23</sup> Any one of the parties not legally represented in the hearing will be counted as hearing involving unrepresented litigants (LIPs).

Table 20.2: Number of Cases Involving Litigants in Person<sup>23</sup> (LIPs) Being Heard at Different Stages in the DC

DC	Post-CJR Period								
	1 <sup>st</sup> Year			2 <sup>nd</sup> Year			3 <sup>rd</sup> Year		
No. of Hearings	LIPs	All represented	Total	LIPs	All represented	Total	LIPs	All represented	Total
Interlocutory applications	<b>428</b> (48.9%)	447 (51.1%)	875	<b>443</b> (51.4%)	419 (48.6%)	862	<b>354</b> (50.7%)	344 (49.3%)	698
Case management summons	<b>432</b> (60.2%)	286 (39.8%)	718	<b>330</b> (61.2%)	209 (38.8%)	539	<b>292</b> (62.9%)	172 (37.1%)	464
CMC	<b>327</b> (50.2%)	324 (49.8%)	651	<b>364</b> (53.8%)	312 (46.2%)	676	<b>304</b> (50.5%)	298 (49.5%)	602
PTR	<b>81</b> (65.9%)	42 (34.1%)	123	<b>67</b> (46.2%)	78 (53.8%)	145	<b>69</b> (61.6%)	43 (38.4%)	112
Trial	<b>159</b> (52.7%)	143 (47.3%)	302	<b>148</b> (47.4%)	164 (52.6%)	312	<b>124</b> (61.4%)	78 (38.6%)	202

89. In the DC, the difference in the percentages of cases involving LIPs at different stages of litigation was less obvious than that in the CFI. In particular, the percentage of cases involving LIPs in interlocutory applications was not particularly high when compared with other stages of litigation. However, the percentages of cases involving LIPs at the PTR and trial stages were significantly higher in the third year despite a drop in the second year. More time is required for further observation before more concrete conclusions can be drawn.

90. 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 21.1: Number of enquiries at Resource Centre

	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Number of enquiries at Resource Centre	13,893	15,189	14,339	13,888

91. The number of enquiries at the Resource Centre increased from 13,893 in the Pre-CJR Period to 15,189 and 14,339 in the first and second

years of the Post-CJR Period respectively. Nonetheless, it dropped to 13,888 in the third year of the Post-CJR Period, which is almost at the same level as the Pre-CJR Period. It seems that court users are now more familiar with the CJR procedures.

**(G) *How Some “Individual Changes” Work Out In Practice***

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

92. 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 22.1: Number of Orders under Section 27 of the High Court Ordinance (Against Vexatious Litigants)

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
By Secretary for Justice	0	0	0
By affected party	0	1	0

93. During the Post-CJR Periods, except for one order made in the second year, no order was made under section 27 of the High Court Ordinance.

**(b) Wasted Costs Orders under Order 62**

94. 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 23.1: Number of Wasted Costs Order Made in the CFI

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Barrister	0	0	0
Solicitor	3	9	3

95. In the CFI, during the Post-CJR Periods, there were no wasted costs orders made against barristers and the numbers of wasted costs orders made against solicitors<sup>24</sup> were low.

Table 23.2: Number of Wasted Costs Order Made in the DC

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
Barrister	0	0	0
Solicitor	1	2	1

96. In the DC, during the Post-CJR Periods, there were no wasted costs orders made against barristers and the numbers of wasted costs orders made against solicitors<sup>24</sup> were lower than those of the CFI.

(c) Expert Evidence

97. 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.

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<sup>24</sup> 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 24.1: Number of Cases in which SJE was Appointed in the CFI

CFI	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
	9	5	14

98. In the CFI, the numbers of cases with SJE appointment during the Post-CJR Periods were at a relatively low level, though there was a significant increase in the third year.

Table 24.2: Number of Cases in which SJE was Appointed in the DC

DC	Post-CJR Periods		
	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
	2	80	91

99. In the DC, when compared with the first year, the number of SJE cases in the second and third years of the Post-CJR Periods showed a sharp increase. Further analysis reflects that majority of these cases were civil actions, personal injuries actions and employee’s compensation cases and many of these SJE orders were made pursuant to filing of consent summons. As was the case in the first and second years, no special efforts were made by judges and judicial officers to encourage such appointments in the DC. As the DC cases normally involve relatively small amounts of claims, the cost-effectiveness of engaging SJE becomes more significant. The growing awareness of this might have contributed to the growing numbers. A gradual change in litigation culture might have also helped.

100. The statistics only captured the appointment of SJE. In some cases, while there was no SJE, there were joint experts or joint reports submitted by experts. In the CFI, although not many cases in the Post-CJR Periods 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*

101. An appeal against a Master’s decision on interlocutory matters is as of right. The numbers of appeals against such decision during the Post-CJR Periods are set out below:

Table 25.1: Number of Appeals against Masters’ Decisions on Interlocutory Applications in the CFI

CFI	Pre-CJR Period	Post CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
	157	170	113	105

102. In the CFI, despite a slight increase in the first year of the Post-CJR Periods, the numbers of appeals in the second and third years of the Post-CJR Periods were dropping.

Table 25.2: Number of Appeals against Masters’ Decisions on Interlocutory Applications in the DC

DC	Pre-CJR Period	Post CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
	53	81	68	54

103. Similarly, in the DC, a trend of decreasing numbers of Masters’ appeals was observed during the Post-CJR Periods.

(ii) *Number of Applications for Leave to Appeal*

104. The numbers of application for leave to appeal handled by the Court of Appeal during the Post-CJR Periods, with breakdown by different court levels, are set out in the table below.

Table 26.1: Number of Applications for Leave to Appeal handled by the Court of Appeal

	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
From CFI	22	52	49	65
From DC	35	46	34	59
From other courts	16	28	32	36
<b>Total</b>	<b>73</b>	<b>126</b>	<b>115</b>	<b>160</b>

105. The numbers of applications for leave to appeal increased in the third year of the Post-CJR Periods after a slight drop in the second year.

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

Table 27.1: Number of Interlocutory Appeals to the Court of Appeal

	Pre-CJR Period	Post-CJR Periods		
		1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year
From CFI	179	78	61	62
From DC	10	14	8	8
From other courts	7	9	4	8
<b>Total</b>	<b>196</b>	<b>101</b>	<b>73</b>	<b>78</b>

106. The numbers of interlocutory appeals filed during the Post-CJR Periods dropped significantly when compared with that of the Pre-CJR Period. This shows that more stringent requirement of leave seems to have successfully reduced the number of unmeritorious interlocutory appeals to the Court of Appeal and CJR is moving towards the right direction. That said, more efforts are now needed to handle such leave applications.

## **VI. Conclusion**

107. The implementation of CJR for the third year continued to be smooth and satisfactory on the whole. Among the statistics highlighted above, sanctioned payments under Order 22, sanctioned payments on costs under Order 62A and summary assessments of costs remain to be 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. Besides, there was a growing use of single joint experts to avoid partisan conflicting views and save costs. Mediation has also been gradually used more widely to facilitate early and satisfactory settlement of disputes. For these key indicators, there are positive signs that the intended results of the CJR were being achieved.

108. As in last two years, we remain mindful that the CJR key indicators were inevitably susceptible to factors not related to CJR, such as the deployment of judicial manpower in specific periods, fluctuation in caseload, different nature of the cases in the CFI and DC, as well as the challenges posed by the increasing number of LIPs. It would be difficult, if not impossible, to single out the effect of CJR implementation alone. The statistics presented in this paper, as before, should therefore be read with caution and interpreted in their proper context. While we now have a longer period of observation after implementation of the CJR, it remains inappropriate to attribute any yearly changes solely to CJR. A much longer time will be required to assess the full impact, benefit and effectiveness of CJR.

Judiciary Administration  
November 2012

**Feedback collected through Questionnaires on Sanctioned Offers  
in the CFI and DC**

**CFI**

Total number of cases disposed of (on party level)			Number of questionnaires distributed <sup>1</sup>			Number of questionnaires received		
1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12
3,152	4,107	4,206	869	1,085	1,075	279	455	382

**Sanctioned offer made under Order 22<sup>2</sup>**

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	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12
172	151	68	23	15	4	64	43	13

**Sanctioned offer made under Order 62A<sup>2</sup>**

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	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12
27	32	20	15	10	6

<sup>1</sup> 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.

<sup>2</sup> 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.

DC

Total number of cases disposed of (on party level)			Number of questionnaires distributed <sup>3</sup>			Number of questionnaires received		
1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12
11,979	14,415	13,992	1,134	1,453	2,230	818	1,298	944

Sanctioned offer made under Order 22 <sup>4</sup>								
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	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12
505	431	243	34	18	11	239	184	109

Sanctioned offer made under Order 62A <sup>4</sup>					
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	1.4.11- 31.3.12	1.7.09- 31.3.10	1.4.10- 31.3.11	1.4.11- 31.3.12
57	60	55	15	17	7

<sup>3</sup> 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.

<sup>4</sup> 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.