

# **Rules of the District Court (Amendment) Rules 2008**

## **The Rules of the District Court (Cap. 336H)**

### **Order 78 – PROCEEDINGS OF COURT OF FIRST INSTANCE TRANSFERRED TO THE COURT**

#### **Remarks**

#### **1. Duties of Registrar of High Court and the Court after order for transfer to the Court (O. 78, r. 1)**

(1) Where the Court of First Instance has made an order for the transfer of any action or proceedings to the Court pursuant to section 43 or 44 of the Ordinance (in this Order referred to as a “transfer order”, the Registrar of the High Court shall, as soon as practicable after the transfer order has been perfected, send to the Registrar of the Court –

- (a) all documents issued out of or filed or lodged in the Court of First Instance; and
- (b) any notes made by a judge of the Court of First Instance or master of the High Court, and any transcripts or other records, of any proceedings in court or in chambers,

in the action or proceeding transferred.

(2) As soon as practicable after receipt of the documents pursuant to paragraph (1), the Registrar of the court shall notify all the parties to the action or proceeding of his receipt of the documents.

#### **2. Effects of transfer (O. 78, r. 2)**

(1) Upon the making of a transfer order the action or proceeding shall be deemed to be transferred to the Court.

(2) Subject to paragraph (4), upon transfer, the writ or other originating process by which the action or proceeding was commenced in the Court of First Instance and all pleadings, counterclaims, notices and other documents, issued, served, filed or lodged in the action or proceeding and all other steps taken by the parties therein before the transfer order was made shall have effect in the Court as if they had been issued, served, filed, lodged or taken in the Court on the dates they were issued, served, filed, lodged or taken in the Court of First Instance.

(3) Subject to paragraphs (4) and (5), upon transfer, all orders and directions, if any, made in the action or proceeding before the transfer order was made shall have effect in the Court as if they had been made by the Court on the dates they were made in the Court of First Instance.

(4) The Court may, at any stage of the proceedings in the action or

proceeding transferred, either on its own motion or on the application of any party, order that any such document or step as is mentioned in paragraph (2) or any such order or direction as is mentioned in paragraph (3) –

- (a) shall not have effect in the Court; or
- (b) shall have effect in the Court subject to such modifications as the Court shall specify.

(5) A transfer order shall not affect –

- (a) any right of appeal in the Court of First Instance or to the Court of Appeal from the transfer order itself or any judgment, order or direction made in the action or proceeding before the transfer order was made;
- (b) the right to enforce in the Court of First Instance any judgment or order made in that Court before the transfer.

(6) Where, before the transfer order was made, an application had been issued but not yet determined in the action or proceeding, the application shall be deemed to have been issued out of the Court and shall be dealt with by the Court accordingly.

(7) Where any such application as is mentioned in paragraph (6) has been part-heard in the Court of First Instance, the Court may either –

- (a) continue to hear the application as if the earlier proceedings in the application had taken place before the Court; or
- (b) require the application to be heard de novo.

### **3. Procedure in Court after transfer (O. 78, r. 3)**

(1) Subject to paragraph (2) and rule 2, after transfer, the action or proceeding shall proceed in the Court as if, before transfer, it had been commenced and had proceeded in the Court.

(2) Where the special circumstances of the case may require, as soon as practicable after the Registrar has given notice pursuant to rule 1(2), the Court of its own motion may, and on the application of any party shall, ~~conduct a directions hearing under Order 23A, rule 9~~ **set the action or proceeding down before a master who shall make such directions as he sees fit for the further conduct of the action or proceeding.**

Rule 99  
Rec 52-60, 62