

司法機構

民事司法制度改革  
概述

CIVIL JUSTICE REFORM  
An Overview

JUDICIARY

# **Civil Justice Reform: An Overview**

## **Introduction**

The commencement date of the Civil Justice Reform (CJR) is 2 April 2009. This major reform applies to civil proceedings of the High Court and the District Court, except for specialist lists to which the application of the new rules will be determined by the judges concerned. Some of the new rules and procedures also apply to the Lands Tribunal and the Family Court with necessary modifications. To facilitate smooth transition of the CJR, Rules of the High Court and Rules of the District Court have provided for various transitional arrangements.

## **Objectives**

2. The underlying objectives of the CJR are:
  - (1) to increase the cost-effectiveness of any practice and procedure to be followed in relation to civil proceedings before the Court;
  - (2) to ensure that a case is dealt with as expeditiously as is reasonably practicable;
  - (3) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
  - (4) to ensure fairness between the parties;
  - (5) to facilitate the settlement of disputes; and
  - (6) to ensure that the resources of the Court are distributed fairly.
  
3. The following paragraphs give an overview of how these objectives are to be met.

## **Case Management**

4. Before the CJR, the pace of proceedings was largely party-driven. That sometimes led to problems, for example,
  - (1) too many interlocutory applications;
  - (2) discovery getting out of hand;
  - (3) proceedings lacked focus until a very late stage, that is, at trial; and
  - (4) consequently, delay and expense.
  
5. Proper case management is the most crucial and integral part of the CJR. The Court will assume greater control of the proceedings from an early stage of the action. This ensures that cases are dealt with as quickly as is practicable in order to increase the cost-effectiveness of Court's practices and procedures.

6. To closely monitor the progress of proceedings, parties are now required to file a timetabling questionnaire within 28 days after the close of pleadings and where appropriate, a case management summons. The parties are expected to agree on a timetable for the progress of the case up to trial. If there is no agreement, the parties should indicate in the questionnaire how the case should proceed to trial. Based on the agreement of the parties and/or the information in the questionnaire, the Court will set a timetable for the progress of the case.

7. A court-determined timetable will set "milestone dates" for the major steps in the proceedings and these dates must be adhered to. Milestone Dates include the dates fixed for a case management conference, a pre-trial review, the trial dates or the period in which a trial is to take place.

### **Interlocutory applications and appeals**

8. One of the leading causes of additional delay and expense in litigation is the over-use of interlocutory applications. To tackle this problem, the CJR seeks to reduce the number of interlocutory applications. The Court may make orders specifying automatic sanctions for non-compliance of their orders. This will dispense with the need for further applications to enforce the orders.

9. Where interlocutory applications cannot be avoided, the CJR has introduced measures to streamline the process by permitting applications to be dealt with on paper and without a hearing. A party who is found to have made an unnecessary or wasteful interlocutory application will have to bear the costs of that application, even if he ultimately wins the case.

10. The CJR also extends the leave requirement to interlocutory appeals, in particular, appeals against interlocutory decisions of Judges of the Court of First Instance. The purpose is to reduce unnecessary delay and expense caused by litigation on interlocutory issues, which are often of only marginal significance to the outcome of the case.

### **Statements of truth**

11. Another change brought by the CJR is the requirement that pleadings, witness statements and expert reports must be verified by statements of truth.

12. A statement of truth is a statement that the maker of the document believes the facts stated in it are true, or, in the case of an expert report, the opinion expressed in it is honestly held.

13. This requirement aims to deter sloppy and speculative pleadings and to provide a disincentive against parties advancing a dishonest case. In this way, the parties' minds can be focused on the real issues in the case and they will not just put forward pleadings in the hope that something might turn up later on.

14. If a person has made a statement of truth falsely, proceedings for contempt of court may be brought against him by the Secretary for Justice or by a person aggrieved by the false statement with the permission of the Court.

### **To encourage settlement of disputes**

15. **Sanctioned offers and sanctioned payments:** A new regime called “**sanctioned offer**” and “**sanctioned payment**” is introduced to encourage early settlement of litigation. Previously, a defendant may offer to settle a monetary claim by making payment into court. The CJR brings greater flexibility to the parties in reaching a settlement. Not only can a defendant make an offer to settle a claim by way of payment into court, a plaintiff can also make an offer to settle the claim. There will be consequences in terms of costs and interest where the party concerned fails to do better than the sanctioned offer or sanctioned payment.

16. **Admissions in monetary claims:** Early settlement of litigation is further facilitated by enabling a defendant to make admission to a monetary claim and to make proposal regarding payment terms. The Court has power to determine the time and rate of payment where the parties cannot reach agreement.

17. **Alternative dispute resolution:** Another important feature of the CJR is to encourage and facilitate the parties to resolve their dispute by means other than litigation in court, before they start the court action. Alternative dispute resolution allows the parties to resolve their disputes in a way that can be less costly and more efficient than litigations in court. A common mode of alternative dispute resolution is mediation. The parties jointly engage a mediator to help them in settling their dispute either before or after court proceedings are brought. If a party fails to make a reasonable attempt to settle a dispute out of court, it may be taken into account by the Court in deciding costs at the conclusion of the proceedings.

18. **Pre-action discovery:** To facilitate alternative dispute resolution, the CJR extends the scope of application of pre-action discovery to cases other than personal injury or death claims. This enables the parties in other types of cases to have more information about their claims or defence before the commencement of an action. They will then be able to conduct negotiations on a properly informed basis before going to court.

19. **Costs-only proceedings:** To further enable pre-action settlements, a new proceeding called “costs-only proceedings” is introduced. The procedure can be invoked when costs is the only issue that remains unresolved, and the parties can seek to have the matter of costs decided by the Court.

## **Fair distribution of court resources**

20. To enable better deployment of court resources and to enhance the efficiency of a trial, the Court may, based on information from the parties, limit the number of witnesses, the time taken to question each witness and the time for making oral submissions.

21. With the CJR, parties are required to pay attention to proportionality when incurring costs for and conducting litigations.

22. Under the CJR, the previous rule of “costs follow event” (i.e. the unsuccessful party pays the costs of the winning party) is not always applicable. The Court will have greater flexibility in awarding costs. When awarding costs to the successful party, the Court may also take into account the six objectives of the CJR, including the intention to promote a sense of reasonable proportion between the amount claimed and the legal costs as well as procedural economy in the conduct of the proceedings.

23. For better use of court resources, summary assessment of costs for interlocutory applications instead of taxation of costs is encouraged. In addition, taxing masters may conduct provisional taxation of costs on paper without holding an oral hearing.

## **Conclusion**

24. The new measures under the CJR will bring improvement to the civil justice system in Hong Kong by ensuring fair and expeditious administration of justice.

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