

## 提出訴訟前應考慮甚麼事項

### What should be considered before taking legal action

- This leaflet is designed to provide you with a brief outline of the practice and procedure of civil proceedings in the High Court and the District Court.
- You should read Rules of the High Court (or Rules of the District Court, as the case may be) for full details.
- The Civil Justice Reform has come into effect on 2<sup>nd</sup> April 2009. You should also note those transitional arrangements that may be applicable to your case. For further information on transitional arrangements, please refer to Leaflet 12 “Civil Justice Reform: Transitional Arrangements” of this series.
- This publication is for general reference only and should not be treated as a complete or authoritative statement of law or court practice. Whilst every effort has been made to ensure that the information provided in this leaflet is accurate, it does not constitute legal or other professional advice. The Judiciary cannot be held responsible for the content of this publication.
- You may approach the Resource Centre for Unrepresented Litigants at LG1 High Court, 38 Queensway, Hong Kong for further information. However, you should note that the assistance provided at the centre is confined to procedural matters only and the staff there will not give legal advice or make any comments on the merits of your case.

## **What should be considered before taking legal action**

### **1. Questions that you should ask before taking court action to resolve your disputes**

1.1 If you are a litigant in person in civil litigation, it is advisable that you read this pamphlet carefully before you start taking court action.

1.2 You should ask yourself the following questions before taking action in court:

1. Can I settle the disputes without going to court?
2. Will I get my money?
3. What are the expenses?
4. Can I afford the time?
5. Will I need a solicitor?

#### 1.3 Can I settle the disputes without going to court?

Court action should be your last resort. You should first consider other ways to settle the disputes. For example, if another person owes you money, you could write a demand letter to him. In your letter, say how much he owes you and what it is for, what steps you have already taken to recover it and give him the warning that if he does not repay you by the date you designate, you will take out court action against him. Sometimes this warning will encourage him to pay and you do not have to go to court. Keep a copy of your letter and any reply. If you have to go to court, you may have to use them as evidence.

You may also consider using other alternative ways such as mediation to resolve the dispute. If you want to know more about mediation, you can read the leaflet “What is Mediation” published by the Judiciary.

#### 1.4 Will I get my money?

It is important to consider whether the person, firm or company you are claiming from is likely to be able to pay. If they

- are unemployed or bankrupt;
- have no money of their own; no personal property and nothing else of value belonging to them (such as a car), which is not hired or subject to a hire purchase or lease agreement;
- ceased to trade; or
- have other substantial debts to pay,

the court may not be able to help you get your money. However, you may be able to get your money if you are prepared to accept small instalments over a period of time. You may also negotiate with your debtor for payments by instalments without going to court.

**If the person is bankrupt or the company is wound up, you will probably not get your money.** You can contact the Official Receiver's Office at 10th Floor, Queensway Government Offices, 66 Queensway, Hong Kong (by telephone 2867 2448 or by fax 3105 1814). They will tell you if the person is bankrupt or the company in compulsory liquidation, which means that the company has stopped trading and probably has neither money nor other assets.

**If the person you are claiming from has already been taken to court by others, and has not paid, you may also have little chance of getting your money.**

**Remember, even if you win your case and obtain judgment, the court does not guarantee that you will get the money you claim and the costs you incur for the case.**

#### 1.5 What are the expenses?

You will usually need to pay a fee to the court to start your claim. If the person you are suing (the defendant) surrenders and pays you, you may recover your fee as well. In very rare and special circumstances, you may apply to court for exemption of paying the court fees.

If the defendant defends your claim, you may need witnesses to help to tell the court what happened. You may have to pay a deposit to the court (\$500 for each witness, subject to change) for the witness expenses. You have to bear your own expenses of traveling and meals for attending court for lodging (filing) the documents or for the hearing or trial. If you engage a lawyer to represent you, you have to pay your lawyer's fees and expenses. You may ask the court to order the defendant to reimburse you if you win your case. But usually, you may not get the full amount of your expenses. You will only get a portion of them: on the average, about 70% of your expenses.

You may also need to obtain a report from an expert, for example, a doctor, mechanic or surveyor. You may also need to ask this expert to come to court to give evidence on your behalf. You will have to pay expert's expenses and charges. But if you win, the court may order the defendant to pay towards these.

**If you have a solicitor**, you will usually have to pay for fees and the expenses yourself. Even if you win your case and the court orders the defendant to pay your solicitor's fees and expenses, the court will not automatically take steps to make sure that the money is paid. If the defendant does not pay, you will need to ask the court to take action (called 'enforcing your judgment'), for which you may have to pay another fee. You may obtain the information on enforcing your judgment from the "Bailiff's Office" leaflet of the "Guide to Court Services" series.

#### 1.6 Can I afford the time?

If the case is not defended, you may obtain judgment without going to court or going to court once. But you should bear in mind that if your claim is defended, you will need to take time to prepare your case. For example, you will have to put together copies of all relevant documents or spend time getting statements from witnesses. You will probably be required to go to court hearing and, even if you win the case, you may have to spend more time completing forms to enforce your judgment.

### 1.7 Will I need a solicitor?

If your claim is a simple money claim and the facts are simple without involving complicated argument on law, you may not consider it necessary to consult a solicitor. Other types of claims, for example, personal injury claims, can be more complicated and it may be preferable to get some professional help and advice no matter what the value of your claim is. It involves things like writing to the person you are claiming from to set out the details of your claims, exchanging some evidence, allowing him to see your medical records and trying to agree the medical expert you will use.

Remember that you also have to prove your case. To do this, you will need evidence, for example, a report from a doctor, or statements from witnesses who saw your accident. You are the witness yourself and you have to prepare a witness statement. You will also need to make a realistic assessment of the amount of damages you are seeking. It may save time and money to first ask a solicitor if it is worth your making a claim and, if it is, how best to prepare it, what evidence you need and what amount of damages to ask for.

If you are claiming on behalf of a company, you may need a solicitor to go to the hearing for you. If you wish to have a director of the company to represent the company, you may have to ask permission (leave) from the court for matters in the High Court. The procedures are different in the District Court. This will be discussed in a separate section on the procedure of the court proceedings in Leaflet 2 “What should be noted about civil proceedings” of this series.

If you have considered all the questions above and decide to take your matter to court for resolution, you should pay attention to other things for court hearings. There are other leaflets that are designed to help you. However, they can only give you a general idea of what is likely to happen. They cannot explain everything about court rules, costs and procedures, which may affect different types of claim in different ways.

Court staff can help you on court procedures, give you the forms you need and assist you to fill them in. But they cannot give you legal advice. For example, they cannot tell you if you have a good claim or whom you should sue. You may be able to get free legal

advice through the Free Legal Advice Scheme of the Duty Lawyer Service at some District Offices. For details, please refer to the website of the Duty Lawyer Service at <http://www.dutylawyer.org.hk>. The pro-bono scheme of the Bar Association may also give you some help. Its office is situated at LG2 Floor of the High Court Building.

## **2. Things you should pay attention to if you decide to take court action**

### The judicial system

2.1 The function of the court is to solve the disputes between the parties. All parties are equal before the court. They have the right of acting in person. Alternatively, they have the right of getting solicitors and barrister (counsel) to represent them to present their case to court. If one party is a Limited company, see “Where the parties are limited companies” section in Leaflet 2 “What should be noted about civil proceedings” of this series.

2.2 Although the judge will take into consideration that a litigant in person may not fully understand the rules or the procedures, on the principle that all parties are equal before the court, litigants in person are required to comply with the requirements of the rules for the proceedings. The rules for civil proceedings in the High Court are Rules of the High Court. The rules for civil proceedings in the District Court are Rules of the District Court. They can be found in Chapter 4A and Chapter 336H of the Laws of Hong Kong in both Chinese and English languages.

2.3 The judicial system in Hong Kong is adversarial. The parties should present their case to the court for its determination. The judge will be acting as an umpire and makes decisions after considering the evidence and hearing the arguments from all parties. It is the duty of the parties to present their case to the court. The court does not make investigation into the case. Therefore parties should make good preparation to present evidence to the court to prove their case. They may submit the relevant case law, legislation or other materials in support of their arguments in court. If you are a litigant in person, you may not expect the

judge to give much assistance in presenting your case. The judge may only give you guidance as to the requirements of the rules or to remind you of the steps that you should take in the proceedings. You should not assume that the judge acts as your own lawyer.

2.4 After the court has heard the evidence and the legal arguments, it will pass a judgment. The losing party will normally be ordered to pay the costs to the winning party. It makes no exception if any party is a litigant in person. The costs are the expenses that the winning party has to spend on the preparation and hearing of the matter. These include the expenses for the solicitors and barristers representing them. The amount for the costs can be substantial, depending on the complexity of the case, the work required for preparation for hearing and the length of the hearing. The situation for the appeal to the higher courts is the same. The court may order the costs to be paid at the end of the trial or forthwith.

#### Getting a lawyer, legal aid, settlement

2.5 Since litigation is like a tug of war between the one who sues (called the plaintiff) and the one to be sued (called the defendant), it is therefore advisable to get legal representation for civil litigation.

If you can afford the cost, you should get your own lawyers. If you cannot afford the cost, you should consider applying for legal aid. If you do not have the sufficient means for the cost but you are not eligible for legal aid, you may have to act in person yourself in the proceedings. Whether or not you can afford legal costs or you have legal aid, before you proceed to court, you should explore the possibility of settling the disputes without going to court. You may make proposals to the other side for settlement. This does not mean that you admit that your case is a weak case. It is only proposing a practical solution to solve the disputes. You may protect your own position by specifying clearly that the proposals for the settlement are for settlement only and they are not binding on you if the matter goes to trial in court. If you want this protection, you should mark your letters concerning settlement with "without prejudice", which means you and other party agree that the court should not consider the terms of your agreement of settlement when the matter comes to trial. You may settle your

disputes at any stage of the proceedings before the court passes the judgment.

2.6 After the commencement of the legal proceedings, you may also consider to use the procedures called “sanctioned offer” and “sanctioned payment” to settle the dispute with the other party. If you want to know more about such procedures, you can read Leaflet 8 “How to shorten legal proceedings: Sanctioned offers and sanctioned payments” of this series. You should also note that if the claim is only for payment of money, the defendant may make an admission of liability to pay and request for time to pay. If you want to know more about this procedure, you can read Leaflet 7 “How to shorten legal proceedings: Order 13A admissions in monetary claims” of this series.

2.7 If you have settled your dispute, you should inform the court immediately, particularly when your case has been set down for trial.

#### Preparation for the proceedings

2.8 If you have to resort to court to solve the disputes and you have to act in person, then you should pay attention to the following things.

2.9 The best policy for a litigant in person is to get full preparation for the proceedings. You have to note that civil litigation may be a long-drawn battle, which will take months or even years before the case is heard and the court passes the judgment. The pressure on the preparation of the evidence and the procedures under the rules will be tremendous.

The following are the preparations for the trial:

1. Collect all the materials to support your case.
2. Prepare the writ or originating summons if you are the plaintiff. Prepare the defence and counterclaim if you are the defendant.
3. Attend court from time to time for the proceedings before trial.
4. Comply with the court orders. If you fail to do so without good reason, the

court may enter judgment against you without a trial.

5. Complete the case management questionnaires in accordance with the Rules and Practice Directions of the Court.
6. Prepare the list of documents, the witness statements and the expert reports, if any, in accordance with the procedures and directions of the court.
7. Before trial, you have to put all relevant documents into bundles for the trial.
8. Lodge your bundles of documents with the court before trial.
9. You should come to court with your witnesses for the trial. You may take out subpoenas to make sure your witnesses attend. You should do so at least 3 weeks before the trial, otherwise there will not be sufficient time for the bailiff to serve the subpoenas on your witnesses.
10. You must be punctual for the trial. If you are absent, the trial will proceed in your absence.
11. At the trial, you have to follow the guidance of the court.

#### The practice to be observed

2.10 You should also observe the following practice:

1. You may have to pay the prescribed court fee for filing the court documents.
2. Whilst the court staff will give you assistance in the filing of the court documents, they should not give legal advice to you. If you wish to have legal advice, you have to consult your own lawyer.
3. The parties are entitled to use Chinese or English in their pleadings or other court documents. If one of the parties requires the other party to use English or Chinese in the pleadings or other court documents, an application may be made to the court. The court will take all relevant factors into consideration and make the order. The court may order that all the proceedings be in Chinese or in English. Alternatively, the court may order a party to provide translation of the documents for the other party. The court may order the requesting party to pay the costs for the translation of the documents. Such

costs may be ordered to be paid at the end of the trial or forthwith.

4. You should NEVER directly contact the judge or master by any means in the course of the proceedings or relating to the matter. You should address your letters to the clerk to the judge or master. You should also send a copy of the letter to the other party as well. You should not send letters to the judge to state the merits of your case. Your case should be clearly set out in the pleadings and you may state your facts in the witness statements.
5. You should read the explanatory notes of the sample forms carefully before you prepare any court documents.
6. You should also remember that when you file a document with the court, you have to send a copy of that document to the other party or parties as well in order to give him or them notice. For the same reason, you should check your mailbox to see if the other party or parties are sending you court documents. This is your own duty. You have no excuse for not doing this and tell the court that you have no notice of the court documents at the hearing.
7. You will only be required to attend court upon notice or by summons. You may make inquiries at the Court Registry.
8. You have to observe the deadlines set by the court about the various steps in the preparation of the case. You may lose the case or suffer other serious consequences if you fail to observe these deadlines. Unless there are very good reasons, the court will not change the date of the trial.
9. Be punctual for the hearing or trial. You do not have to bring your witness to court for the hearings before trial unless the court has made an order. For the trial, you have to come to court with your witnesses. You should also bring along the bundles of documents and the original documents for the inspection of the court or the other party. If you want to secure the attendance of your witnesses, you may apply to the court for subpoena. You should do it at least 3 weeks before the trial. You have to serve the

subpoenas on your own witnesses yourself at least 4 days before the trial. You should apply early in order to give yourself sufficient time to serve the subpoenas on your witnesses. If you fail to subpoena your witnesses for the trial, the trial may have to be adjourned. You may have to bear the costs for the adjournment.

10. At the hearing or trial, you should act according to the direction of the judge. The parties will take turns to make speeches. When the other party is making a speech, you should not intervene even if you disagree. You may take down notes of your disagreement and put forward your arguments when your turn comes to make a speech. The judge may also set a time limit for you to make a speech or to ask questions from a witness. It is important that you should behave properly in court. You must not use abusive language or remarks. Although the atmosphere during the argument will sometimes become heated or even emotional, you should bear in mind that the best way to put forward your arguments is to speak in a calm, cool and polite manner. Therefore you should control your temper in court.
11. After the hearing or trial, if the judge delivers the judgment and the reasons orally, you should not intervene even if you do not agree with the judge. There is no use to argue with the judge. You have the right to appeal against the judge's decision except in those cases where leave to appeal is required.

#### Difference of proceedings in High Court and District Court

2.11 The proceedings in High Court and those in District Court are very similar. But they are not identical. The major differences will be outlined below.

2.12 The High Court has unlimited power to deal with civil claims. The District Court can deal with civil claims for an amount over \$75,000 but not more than \$3 million, after taking into account of the undisputed amount claimed by the defendant by way of set-off or counterclaim. If your claim exceeds \$3 million, you may still start the action in the District

Court if you give up the excess. If you are the defendant and your counterclaim exceeds \$3 million after taking in account of the plaintiff's undisputed claim, you may give up the excess so that the action can be dealt with by the District Court.

The District Court can deal with claims for possession of land or building, the annual rent or rateable value or the annual value of which does not exceed \$320,000. In most tenancy cases where possession of the premises or renewal of tenancies is claimed, application should be filed with the Lands Tribunal. For these proceedings, you should refer to the "Lands Tribunal" leaflet of the "Guide to Court Services" series.

Where the proceedings relate to land, the District Court has power to deal with claims not exceeding \$7 million.

### **3. What are "sample court forms"?**

3.1 To help you prepare the court documents, there is a separate "samples court forms" file, which you may obtain from the staff of the Resource Centre for Unrepresented Litigants. You may select the appropriate form for your case. Please return the file to the staff of the Resource Centre after use. Alternatively, you may download the forms from the Judiciary website. You should note the following when you use the sample forms.

3.2 The samples are just examples designed for your reference only. They are not meant to be the samples that suit your case. You should make adjustments or variations to them to suit your own case. If you have any doubt, you should consult your own lawyer. If you cannot find the appropriate sample for your case, you have to seek independent legal advice.

3.3 Before you consider the forms, you should first read the explanatory notes carefully. They give you the guidelines for completing the forms.

3.4 You may find the following court forms together with the explanatory notes on the file:

1. statement of claim
2. defence and counterclaim
3. reply and defence to counterclaim
4. statement of truth
5. case management questionnaires
6. list of documents
7. witness statement
8. affidavit or affirmation
9. affidavit or affirmation of service of a writ or originating summons
10. affidavit of affirmation of service of documents other than writ or originating summons

#### **4. Assistance that you can get from this series of leaflets**

4.1 The purpose of this series of leaflets is to introduce to litigants in person the broad outlines of the civil proceedings in High Court and District Court. It is designed to give information about the proper procedures of the proceedings, the manner the parties should present their case, evidence and other materials to court. This will also assist the court hearing the matter so that the judge does not have to explain the procedures described here again to the litigant in person in the course of the proceedings.

4.2 The leaflets are not intended to be a summary of the civil practice, Rules of the High Court or Rules of the District Court. They only give guidelines on the procedures generally. For details and further information, you should refer to the Rules themselves. The

Rules of the High Court can be found in Chapter 4A of the Laws of Hong Kong. The Rules of the District Court can be found in Chapter 336H of the Laws of Hong Kong. You should also refer to the relevant Practice Directions as well. The English and Chinese versions of these documents can be found on the Judiciary website. You may make enquiry with the staff at the Resource Centre for Unrepresented Litigants.

4.3 The leaflets do not touch on any law on civil right, claim or liability.

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