

# Civil Justice reform in Hong Kong



**By Simon McConnell  
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At the ceremonial opening of the Legal Year 2008, Chief Justice Andrew Li confirmed that the enactment of the civil justice reform legislation is expected to occur this summer, and be operational by April 2009. The principal proposed changes are as follows.

## Discovery

Presently the court has power only to order pre-action discovery in personal injury claims and to compel non-parties to produce documents pursuant to a subpoena at trial. To facilitate early settlement, the court will have the power to order discovery of directly relevant documents in contemplated proceedings. Pre-action discovery is limited to prevent it escalating to a costly and onerous exercise, thereby diminishing goodwill.

## Costs against non-party

The court will be permitted to make a costs order against a non-party if it is in the interests of justice to do so. It is intended to target the non-party who puts up the funding of litigation so as to validate agreements involving maintenance and champerty, for instance, legally aided proceedings, liquidators' claims funded by creditors and defences with indemnity from insurers.

## Vexatious claims

Vexatious litigation inevitably leads to misuse of judicial resources. At the same time, public interest demands easy access to the legal process. Presently, only the Secretary for Justice has the legal standing to apply for a vexatious litigant order. The changes will allow persons affected to apply. They will also have the effect of raising the threshold for granting leave to commence fresh proceedings and abolishing the right to appeal against any vexatious litigant order.

## Interlocutory appeals

To discourage interlocutory appeals which take up a lot of the

court time and cause delay to trial, a leave requirement will be introduced for most interlocutory appeals.

## Wasted costs

The court will have power to make wasted costs order against counsel and solicitors where the costs wasted are attributable to their unreasonable conduct or default. The change, when implemented, will have the effect of allocating to the court some responsibility of case management without compromising the adversarial nature of our legal system.

## Mareva injunctions

Under the present court rules, a plaintiff who has no jurisdictional basis for bringing proceedings for substantive relief, is unable to obtain interim injunctive relief such as Mareva injunction in respect of the defendant's assets located in Hong Kong.

The new rules will allow the court to grant interim injunctive relief irrespective of whether the defendant is domiciled or present in Hong Kong. The plaintiff will need to satisfy that there are pending foreign proceedings which will potentially give rise to a judgment or arbitral award enforceable in Hong Kong.

## Next steps

Once the Bill seeking to introduce these changes is passed, amendments to the existing court rules will be made by way of subsidiary legislation. It is anticipated that greater case management powers will be given to the court.

There is scepticism as to whether the civil justice reform would be adequate to improve the legal process, given its limited scope relative to Lord Woolf's reforms in England. The success, or otherwise, of the civil justice reform, in our view, would be dependent on how the judiciary and the legal profession put the changes into practice. As intimated by the Chief Justice, adequate training and briefing would be essential to the implementation of the new civil process.

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