Asia-Pacific
Economic Cooperation

2010/EC/WKSP3/003

Civil Justice Reform and Its Impact on Civil Litigation in Hong Kong, China

Submitted by: Mayer Brown Practices

JAPAN 2010

Workshop on Enforcing Contracts
Seoul, Korea
21-22 June 2010

Civil Justice Reform and its Impact on Civil Litigation in Hong Kong

APEC Sponsored Workshop on Enforcement of Contracts

Thomas So
Partner at Mayer Brown JSM / Law Society of Hong Kong
+852 2843 4502
thomas.so@mayerbrownjsm.com

21/22 June 2010

Outline

- Why need to change?
- Caseload at Hong Kong Courts
- Objectives of CJR
- Impact of CJR on civil litigation in Hong Kong

Caseload at Hong Kong Courts

Caseload										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
District Court	32,515	36,748	32,835	35,466	36,460	32,016	30,948	28,820	28,527	27,329
High Court	29,132	32,421	41,903	39,288	23,781	20,067	20,603	20,504	21,403	26,451

3

Waiting Time for Cases in the District Court

		Waiting Time (days)									
	Target	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Civil cases - from date of listing to hearing	120	82	78	102	108	54	120	125	58	85	104

4

Waiting Time for Cases in the Court of First Instance

		Waiting Time (days)									
	Target	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Civil Fixture - from application to fix date of hearing	180	216	216	198	197	239	233	124	114	145	179
Civil Running List - from date settling down hearing	90	120	154	148	53	116	54	64	61	59	55

5

Why need to change?

Problems with the Civil Justice System

- too expensive
- too slow
- lack of equality between litigants
- too adversarial as cases run by the parties and not by the courts, with the rules all too often being ignored by the parties and not enforced by the courts
- Woolf Reform

6

Objectives of CJR

- CJR came into effect on 2 April 2009
- CJR underlying objectives:
  a) to increase the cost-effectiveness of any practice and procedure to be followed in relation to civil proceedings before the Court;
  b) to ensure that a case is dealt with expeditiously as is reasonable practicable;
  c) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
  d) to ensure fairness between the parties
  e) to facilitate the settlement of disputes; and
  f) to ensure that the resources of the Court are distributed fairly.

7

Impact of CJR on litigation in Hong Kong

1. active case management by the Court
2. streamlining / costs- cutting procedure
3. encouraging settlement of disputes

8

1. Active Case Management by the Court

a) encouraging the parties to co-operate with each other in the conduct of the proceedings;

b) identifying the issues at an early stage;

c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

d) deciding the order in which the issues are to be resolved;

e) encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate, and facilitating the use of such a procedure;

f) helping the parties to settle the whole or part of the case;

g) fixing timetables or otherwise controlling the progress of the case;

h) considering whether the likely benefits of taking a particular step justify the cost of taking it;

i) dealing with as many aspects of the case as practicable on the same occasion;

j) dealing with the case without the parties needing to attend at court;

k) making use of technology; and

l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

9

1. Active Case Management by the Court (cont'd)

- Case Management Conference
- Directions as to milestone dates (such as pre-trial review, trial date)
- Milestone dates cannot be varied unless exceptional circumstances, not even by consent between parties

10

2. Streamlining/ Cost- cutting procedures

- To reduce the number of interlocutory applications
- To permit paper applications
- A party who is found to have made an unnecessary or wasteful interlocutory application will have to bear costs of that application, even if he ultimately wins the case.

11

3. Encouraging Settlement of Disputes

a) *sanctioned offers and sanctioned payments;*

b) *mediation*

c) *admission to monetary claim;*

d) *extending scope of pre-discovery; and*

e) *costs-only proceedings.*

12

3. Encouraging Settlement of Disputes (cont'd)

(a) Sanctioned Offers and Sanctioned Payments

- in respect of both monetary and non-monetary claims
- court may impose indemnity cost sanction and enhanced interest on costs - up to 10% above judgment rate

13

3. Encouraging Settlement of Disputes (cont'd)

(b) Mediation

- Practice Direction 31 on Mediation, came into effect on 1 January 2010
- any unreasonable failure to engage in mediation may result in penalty of costs by Court
- adverse costs orders will not be made where:
  - the party has engaged in mediation to the *minimum level of participation* agreed to by the parties or as directed by the court prior to the mediation; and
  - a party has *a reasonable explanation* for not engaging in mediation
- Court with power to stay the proceedings for the purpose of mediation

14

3. Encouraging Settlement of Disputes (cont'd)

(c) Admission of liability to pay

- in respect of monetary claim only
- proposal regarding payment terms

(d) Pre-action discovery

- apply to cases other than personal injury or death claims

(e) Costs-only settlements

15

Conclusion / Overview of CJR - one year on

- generally strictly applied and upheld by Court
- examples:
  - Courts not allow unreasonable delay unless with good reason; and
  - Courts impose stringent costs sanction when a party declined the sanctioned offer and then failed to better them at trial

16