SIDLEY AUSTIN BROWN & WOOD
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IN CONTENTION

Civil Justice Reform in Hong Kong

In early 2000, Hong Kong's Chief Justice appointed a Working Party to review the civil rules and procedures of the High Court, and to recommend changes with a view to ensuring and improving access to justice at reasonable speed.

An interim report was published in late November 2001, containing 80 proposals for public consideration. On 3 March 2004, the Working Party issued a Final Report setting out 150 reform recommendations. Finally, on 19 March 2004, the Chief Justice issued a statement accepting the recommendations.

The main problems with Hong Kong's civil justice system which the reforms are intended to resolve or alleviate are as follows:

- expense, with the costs of Hong Kong litigation often exceeding the claim
- delay
- inequality between wealthy and other litigants
- litigation too uncertain, too aggressive, incomprehensible

The Working Party also had to consider the 1999 enactment in England of civil justice reforms which have become known as the Woolf Reforms (after Lord Woolf, currently the English Lord Chief Justice). Much thought was given to whether the Woolf Reforms should be imported into Hong Kong in their totality, or whether a more piecemeal approach might be taken instead.

The major reforms recommended, and *not* recommended, in the Final Report are as follows:

- The Woolf Reforms will not be adopted in their entirety. The recommendations will instead be adopted largely by amending existing High Court Rules, and by legislative change
- Certain "underlying objectives" of the system will be identified to assist the interpretation and application of rules, of practice directions and procedural jurisprudence, and to serve as a statement of the legitimate aims of judicial case management. These are:
    - » increasing cost effectiveness
    - » expeditious disposal of cases
    - » promoting a sense of reasonable proportion and procedural economy
    - » promoting greater equality between parties
    - » facilitating settlement
    - » the fair distribution of the court's resources
- Pre-action protocols are not to be prescribed across the board, but should be restricted to specialist courts lists, including Commercial, Construction and Arbitration, and Admiralty

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- Defences are to be required to be pleaded substantively, with denials supported by reasons, and with positive cases being advanced
- Pleadings are to be verified by a Statement of Truth given by a party or their legal representative, with contempt sanctions possible if false statements are made without an honest belief in their truth
- No change to be made to the current threshold test for summary disposal of proceedings
- Introduction of "sanctioned" offers of settlement and payments into court, i.e. rules which penalise parties in costs (plaintiffs *and* defendants), if they unreasonably refuse to accept offers of settlement, and then fare worse at trial than they would have done if they had accepted the offer
- Court to have jurisdiction to grant asset-freezing injunctions in support of foreign proceedings and arbitrations, provided those proceedings could result in a judgment or award enforceable in Hong Kong
- Procedures to be introduced to establish court-determined timetables taking account of the parties' reasonable wishes, and the needs of the particular case. The timetable to be determined using techniques such as:
    - questionnaires completed by the parties concerning nature, size, complexity and case management needs
    - the parties' own proposals
    - largely immovable milestones
    - case management conferences and pre-trial reviews
    - fixed trial dates and "trial periods"
- Automatic striking out of certain dormant proceedings
- No blanket introduction of a "docket" system for managing cases
- Adoption of a scheme for multi-party litigation
- No alteration to existing automatic discovery principles and procedures but a broadening of the court's powers to order pre-action, and non-party, discovery
- "Self-executing" interlocutory orders, and more "paper" hearings of interlocutory applications
- More summary assessment of costs of interlocutory applications
- Expert witnesses to owe duties to the court overriding their obligations to those instructing them; a code of conduct for experts to be drawn up and approved by the court
- Leave to appeal required in relation to more interlocutory appeals
- Solicitors and barristers to be obliged to provide clients with full information and estimates as to fees and expenses
- Unreasonable refusal of mediation resulting in adverse costs orders

It is ironic that an investigation into how to improve our system of civil justice, and to make it work faster, has already taken 4 years, and that it will take a further two or three years to implement the recommendations. Nonetheless, wholesale changes are certainly necessary, and hopefully the process of implementation will now get underway without further delay.

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