The New Case Management Regime in the High Court of Hong Kong[*]

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Introduction

The High Court of Hong Kong (comprising the Court of First Instance and Court of Appeal) has introduced significant reforms of its civil procedure, with new Rules that came into effect on 2 April 2009.

The aim of the reforms is, in short, to improve the time and cost effectiveness of proceedings in the High Court. This is in line with reforms in other common law jurisdictions in recent years that have sought to control blowouts in time and cost that have plagued civil litigation for years.

The new Rules put the emphasis on the role of the Court as "case manager", taking primary control of the progress of the litigation out of the hands of the parties (and their lawyers), although case management remains secondary to the Court's duty to ensure the just resolution of disputes according to law.

Obstinacy, obstruction and guerilla tactics are no longer (if they ever were) acceptable from parties in the lead up to trial. The new Rules seek to create a less adversarial framework for pre-trial preparations, in which the parties are encouraged to be open and cooperative in their dealings and, where possible, to reach agreement – if not on the substantive issues, then at least on how to get the matter to trial as quickly and inexpensively as possible.

Together, an amended Order 25 of the Court's Rules and a replacement Practice Direction 5.2 introduce a new regime for the Court to give directions and set timetables for pre-trial steps to be completed, and for the date and length of trial.

The new regime imposes more onerous duties on the parties to keep the Court and the other parties informed about their pre-trial preparations, to conduct the case in an expeditious and cost-effective manner, and to take a more proactive and cooperative approach to dealing with the other parties.

[*] This paper is written for general public information only. It does not constitute and should not be relied upon as legal advice. Persons wishing to know more about the law referred to in this paper and how it might affect them should seek legal advice.

Summary of the case management process

The new regime applies, generally speaking, to all civil actions in the Court of First Instance – although a notable exception is winding-up proceedings per se.

The parties are for the first time required (within 28 days after the close of pleadings) to complete a "Timetabling Questionnaire", which contains nearly 40 specific questions about the party's past and future conduct of the case, on a range of topics from alternative dispute resolution efforts to requirements for trial.

The timing and particularity of the Questionnaire calls for a more front-ended approach to litigation than has previously been the case. Parties and their solicitors will have to act quickly in making strategic decisions and getting their cases ready for trial, and evidence and witnesses will have to be put in order as soon as possible. The parties are also expected to consult, and to agree answers to their Questionnaires where they can.

Within a further 14 days, the plaintiff must file either a "consent summons" (if the parties agree on the case management directions to be made) or a "case management summons" (if they do not agree). This will prompt the Court to make case management directions, and it can do so on an order nisi basis, without a hearing. (Objections will be heard if made in time.)

There is provision for the Court to hold a "Case Management Conference" for directions to be made or varied. This may not be especially popular, given that seven days before a "CMC" each party will have to file "Listing Questionnaires" answering another round of questions about their readiness and intentions for trial.

Throughout the process, the parties and their representatives are expected to act diligently, promptly and cooperatively with respect to the management of the case. Delays and non-compliance – even "unreasonable" behaviour – will be looked upon unfavourably and costs and other sanctions will be imposed.

There will be a final check on the progress of the case at a "Pre-Trial Review", 8 to 10 weeks before trial. The Court will be even less accommodating of applications made at the "PTR" stage, if they could have been made earlier. A date for trial will be fixed, if it has not been already – although the new regime contemplates a period at least, if not a date, being set at the CMC stage.

New (or newly formalised) stringency – some examples

Discovery: The parties are encouraged to get on with discovery straight away, and to try to agree on modifying their discovery obligations (in particular, to limit the scope of discovery).

Expert evidence: The Court will not give permission for a party to adduce expert evidence unless the party has adequately answered the specific questions about expert evidence in its Questionnaire.

Timing of applications: The closer to trial an interlocutory application is made, the less likely it is to be granted.

Extensions of Time: "Sufficient grounds" will have to be shown for any extension of time and there will also be a need to satisfy the Court that an extension will not impinge on the trial date. Dates for CMCs, PTRs and the trial will not be moved, except in the most exceptional circumstances.

Attendance: Trial counsel and the solicitors who have the conduct of the case will have to attend all CMCs and PTRs, so that case management decisions can be made.

Compliance: In relation to the parties' compliance with case management directions generally, the Court may order costs against a party where the fault or default of that party necessitates a hearing or the adjournment of a hearing. Those costs may be summarily assessed and ordered to be paid forthwith. Costs orders can be made against solicitors personally.

Conclusion

It seems clear that the reformers intend with the new regime to minimise unnecessary interlocutory wrangling between the parties and, since most activity in civil proceedings occurs before trial, to thereby achieve long sought-after time and cost savings to litigants.

Increasing the workload on parties and their lawyers is not necessarily an assurance that those aims will be achieved; but of course that remains to be seen, and improvements should come over the longer term as attitudes to litigation – and to not litigating – change. Lawyers and clients who already take a commercial approach to dispute resolution will surely have no complaint about the welcome objectives of the reforms.