



**REPORT OF  
THE HONG KONG MARITIME LAW ASSOCIATION WORKING PARTY  
ON  
CIVIL JUSTICE REFORM**

**INTRODUCTION AND GENERAL COMMENTS**

1. A Working Party was appointed by the HKMLA Executive Committee in January this year. The members of the Working Party are:-

Martin Heath, Chairman (Clyde & Co.),  
Will Harrison, Secretary (Clifford Chance),  
Bill Amos (Johnson Stokes & Master),  
George Lamplough (Holman Fenwick & Willan),  
Firoz Nasir (Koo & Partners),  
Elliot Woodruff (Ince & Co),  
Colin Wright (Counsel).

Biographies of each member of the Working Party are attached.

2. The Terms of Reference for the Working Party are also attached. We were required to produce this report by 12<sup>th</sup> April, 2002. We held fortnightly, and occasionally weekly, lengthy meetings with homework in-between. In accordance with the Terms of Reference and due to the short time available, we limited our efforts strictly to the perspective of the Commercial and Admiralty Lists of the High Court in which we all very predominantly practise. Necessarily this report reflects the perspective of Commercial and Admiralty List practitioners and their clients. These clients, predominantly banks, trading companies, the buyers and sellers of goods carried from one country to another, companies operating in what is broadly now known as the logistics industry whether they be shipowners and operators, freight forwarders, terminal operators, air carriers etc., and their property and liability insurers, generally know what they want and tell us what they want in terms of access to justice and the conduct of litigation. We stand at the interface between litigants in the Commercial and Admiralty Lists on the one hand, and the Courts – and in particular the Admiralty and Commercial Judges – on the other hand.
3. The approach of the Consultation Paper has, of course, a much wider perspective. We have made little or no comment on proposals which we think do not impinge on practice in the Admiralty or Commercial Lists nor, where we think they should not impinge on the Commercial and Admiralty Lists, have we commented on their merit in the broader context. This approach was considered appropriate in view of an early conclusion we reached that **Proposal 21** should be the cornerstone of our recommendations.
4. This starting point was predicated on certain more general beliefs that we hold about what is good for Hong Kong and which we should disclose:-
  - (a) It is vital to the economy of Hong Kong that it flourishes as both a major port and trading centre as well as a major financial services centre. These aspects of the economy are symbiotic. The insurance industry is a major arm of the financial services industry. The insurance industry, internationally, is in reality the major user of the Admiralty and Commercial Lists, although the insured is more often the visible party.

- (b) Hong Kong's common law legal system is an essential part of the infrastructure of the above aspects of the economy. It is essential that it is, and is seen to be, of high quality and effective to meet the needs of, inter alia, the financial services, trade and logistics industry sectors not only domestically, but internationally. There is equally a symbiotic relationship between the good health of these aspects of the economy and the Commercial and Admiralty Lists. The aim should be that Hong Kong is regarded as a centre of excellence for legal services to litigants who use these Lists.
- (c) These Lists are used by litigants with commercial disputes. Sometimes they are business enterprises resident and operating exclusively in Hong Kong, but more often they are not. Very often they are operating regionally or internationally and often they are not within the jurisdiction at all. Very often their disputes have no connection with Hong Kong other than that they have chosen to have their disputes resolved here, even though in one way or another they may have had a choice to resolve their disputes elsewhere. Anything which might detract from the popularity of the Admiralty and Commercial Lists as specialist courts resolving shipping, international trade, insurance and other commercial disputes within the jurisdiction of these courts is bad for the economy.

We disclose these beliefs knowing that members of HKMLA have a healthy dose of self-interest in these views. However, this is irrelevant if our views are in the interests of Hong Kong and its economy. Court practitioners also make their own contribution to the economy as do the courts themselves. Indeed self-interest, if it coincides with the common good, is healthy. We are all part of an industry that is fundamental to Hong Kong's past and future. This is evidenced by our significant contribution to invisible earnings. An immediate and tangible benefit is found in the revenue generated by Court sanctioned sales of vessels which, on an annual basis, contributes many hundreds of thousands of United States dollars to the Hong Kong Government treasury.

5. **Proposal 21** states:-

“Specialist lists should be preserved and Specialist Courts permitted to publish procedural guides modifying the application of the general body of rules to cases in such specialist lists.

*Report paras 371-375*

*CPR 49 and associated Practice Directions.”*

We might go further and emphasise the importance of the Commercial and Admiralty Lists as courts of High Court jurisdiction dedicated to resolving commercial disputes, by re-naming them the Commercial Court and the Admiralty Court. We learn from practitioners in Singapore that it is proposed to set up a dedicated Admiralty Court in the High Court of Singapore.

6. It follows from our approach that we are in favour of preserving and strengthening the de facto docket system (proposal 20) which currently operates in the Commercial and Admiralty Lists and consider that the alternative proposals which are put forward as proposals 18 and 19 should not apply to these courts. We disagree with Lord Woolf’s reasons for rejecting the docket system set out in para 369 of the Consultative Paper if these are thought to be applicable to the Admiralty and Commercial Lists. The first three reasons seem to be aimed at reducing, or at least avoiding an increase in available Government resources. Any reduction of resources available to the Commercial and Admiralty Lists will be a false economy for the reasons clear from our earlier remarks. The fourth reason is frankly perplexing in the context of these Lists. This reads “It would lead to a far more specialised judiciary whereas a preference [by whom it is not stated] exists for generalist judges especially in appellate courts.”
7. Commercial and Admiralty List litigants like dedicated Judges with experience of the recurring subject-matter of the disputes in those courts, the experience gained of commercial reality and of how things work. Our clients frequently complain about jurisdictions where their disputes are heard and decided by judges without such experience.

8. The significant contribution to the development of the law in the appellate courts in London made by those who started their judicial careers in the Commercial and Admiralty Courts is in our view out of all proportion to their numbers. Why have they been promoted in such disproportionate numbers if there is a preference for more generalist judges?
9. In our discussions there have been some continuing themes and consensus, in line with what has already been said, about our approach to many of the Proposals in the Consultative Paper.
10. Commercial litigants' idea of fairness in justice requires certainty of the law. This is the attraction to them of the common law system. Well tried and tested procedures, though of course capable of improvement which would be welcome, should not be replaced by procedural uncertainty. Uncertainty is anathema to users of the Admiralty and Commercial Lists. This is relevant to case management. Procedures which give the Court the discretion to make orders on its own initiative, irrespective of the wishes of and any application by any of the parties, will be a heavy blow to the popularity of these courts. If none of the parties have chosen to apply to the court for some order or direction available to them, there is invariably a very good reason. Having to justify not taking certain steps at any particular stage (other than on the application of one of the parties) will result in additional court activity and costs (see remarks by Lord Phillips referred to in the closing remarks of this introduction).
11. We also think that neither the Admiralty nor Commercial List judges are shy or reluctant about hands-on case management within the existing rules. It is preferable that such case management is applied with a greater understanding from experience of what is appropriate, fair and just in the context of their customers, the litigants, which is unlikely to be the case with more generalist judges. We make no apology for the use of the word "customer" which does not imply any disrespect. We think Commercial and Admiralty judges do recognize the vital service industry aspect of their courts. The de facto docket system for a Specialist Court is conducive to tailoring case management to the needs of the litigants in that Court.

12. To take summary assessment of costs as an example of case management within the existing rules, Mr. Justice Waung has been at the forefront of its development in Hong Kong. This is a useful weapon in the armoury of the Court in concentrating the minds of the parties on avoiding unnecessary interlocutory battles. We are in favour of reforms of this kind, such as Part 36 offers which can be made by a Plaintiff as well as a Defendant. This is an effective procedural tool, which will promote settlements without the parties incurring significant additional costs.
13. Proposals aimed at reducing the costs of litigation and resolving disputes speedily will of course be welcome to our clientele, the court users, provided they are not at the expense of the quality of the courts and do not impose significant extra administrative burdens on the Commercial and Admiralty List judges.
14. Proposals to reduce complexity are in principle welcome and sensible, up to a point and with some qualification. As far as litigants in the Admiralty and Commercial Lists are concerned, they are comparatively familiar with the procedures and terminology. Reforms which substitute familiar procedures and terminology with different procedures and terminology for the sake of modern and accessible vocabulary, without achieving a saving of costs and efficiency are unwelcome in the Commercial and Admiralty Lists if at the expense of certainty and predictability. We will have the advantage of the work done on CPR such as Part 58 (Commercial Court), Part 61 (Admiralty Court), Part 62 (Arbitration) and the new Practice Directions and Forms. These are now already in their fifth edition taking effect on 25<sup>th</sup> March, 2002 (having first appeared on 19<sup>th</sup> March, 2001!). The English Commercial Court Guide (most recently published in February, 2002) is a massive document, which bears little resemblance to the clear concise statement of principles that existed in that jurisdiction in the early 1990's.
15. The above said, however, there is no doubt that improvements could be made on current procedure found in Orders 72, 73 and 75 and some guidance could be obtained from the English Commercial Court Guide. Generally speaking, however, we would like to avoid over-enthusiastic reforms to terminology and procedure which

unnecessarily change what is familiar and understood. It might also be that the need for bi-lingual translation is a matter which in this context militates against too much change, particularly where the substance of the procedures is not improved.

16. It is vitally important that the overriding objectives discussed at CJR paras. 225-233 are refined to meet the needs of litigants in the Commercial and Admiralty Lists. Just as it is envisaged by Proposal 21 that the general body of rules may be modified, so too should the overriding objectives be refined in their application where necessary. An equal financial footing, for example, will seldom be of importance in these courts but equality of information often will be; this may be of specific relevance in some cases, for example to inspection orders or discovery. Special procedural rules for specialist courts will ensure flexibility and fairness in determining and applying overriding objectives appropriately.
17. Expert evidence is another example where the needs of commercial litigants may not coincide exactly with what is proposed by the Consultative Paper. The issues can be very different from case to case and the introduction of a single joint expert will usually involve the costs of three experts (even if this is not visible to the court) instead of two, thereby creating an additional layer of activity and expense.
18. Finally, before setting out our views proposal by proposal so far as relevant to the Commercial and Admiralty Lists, we have a general comment on front-loading of costs. The Consultative Paper is dismissive of complaint about this (para 292). Proposals designed to promote pleadings which as so far as possible get quickly to the real issues are of course in themselves welcome, but it must be recognised that often the issues and what will or will not be disputed cannot be fully anticipated by the parties, or effectively and efficiently flushed out, without commencing proceedings and exchanging pleadings.
19. Front-loading shifts costs out of sight of the judiciary but it does not save costs for litigants. If it becomes a deterrent to litigation in the Commercial and Admiralty Lists, as the evidence suggests it will, for reasons already stated we think this will be a bad development. The English Master of the Rolls, Lord Phillips, makes some

interesting comments in a keynote speech on “Woolf: the feed-back and the future” at the Law Society’s Civil Litigation Conference 2002 reported in *New Law Journal* 1 February, 2002 page 126. He said case management has reduced the average length of time for a case to come on for trial but he has “heard quite a lot of anecdotal evidence to the effect that the Woolf Reforms have actually increased the costs of litigation in relation to those cases which go the whole way to trial.” He said this was because “the court sometimes made unnecessary procedural requirements in order to keep a firm grip on the case.” He said “the jury is out on the question of the costs of litigation.”

20. He also said that the volume of cases started last year in the High Court had fallen by an “astonishing” 80%. We have not been able to find separate statistics for the Commercial or Admiralty Courts. He said this drop in litigation was a result of the impact of the new pre-action procedures and “shows that both lawyers and litigants are acting in the spirit of co-operation, and far less aggression.” Why does it show this? How can the judiciary possibly know this is a substantial reason for the 80% drop, when referring to disputes on which proceedings have not even been commenced? It is equally as plausible and arguable to conclude that the front-loading of costs has deterred many litigants from pursuing their claims or in the case of potential Commercial and Admiralty Court users many might have been driven to another jurisdiction. There is no hard evidence on the causes.
21. To be blunt, it is said by our colleagues in London serving on the Commercial Court Working Party on the CPR Rules that this drop in litigation was exactly what the Government wanted, to save government resources. Another factor in the drop may be additional use of ADR mediation, but this not cheap, both in terms of legal input and the clients’ resources at senior management level. It also constitutes an additional layer of costs when unsuccessful.
22. Singapore practitioners tell us that there has been a dramatic drop in Admiralty actions in that jurisdiction by 60%. They attribute this drop to a reaction to draconian and indiscriminate case management. The number of judges has been nearly halved and we are told there is now a move to put things in reverse, to slow things down, due



to concerns about the loss of invisible export earnings which commercial and shipping litigation represents. Court-ordered mediation is said to be frequent and working well – however, it is important to note that it is heavily subsidised by the Government. A full day’s mediation costs S\$1,500 whether for one or often three mediators, all the facilities of the Arbitration Centre (and lunch for all the attendees!)

## **COMMENTS ON THE SPECIFIC PROPOSALS**

### **Proposal 1 – Overriding objectives**

23. The overriding objective of the Hong Kong Commercial and Admiralty Lists is to provide a first class dispute resolution service to domestic and international commercial litigants. It is the predictability of the Commercial and Admiralty Lists that is valued most by commercial men and women. Also, within the comfort of this predictability, commercial litigants should be free to spend disproportionate amounts of money on legal costs to determine a new point of law or challenge an established principle. They should be encouraged to test the law in this way and not deterred from so doing. The function of the Commercial and Admiralty Lists is to serve and respond to the needs of the commercial community for justice.

### **Proposals 2 & 3 – Case management**

24. Our experience is that commercial solicitors practicing in the Commercial and Admiralty Lists generally manage litigation effectively and commercial litigants are generally experienced in managing the manner in which their solicitors handle their cases. Note the significant development of the role of the in-house counsel. We therefore have significant reservations about imposing positive duties of case management on the Commercial and Admiralty List judges who, in our experience, take a very hands-on approach when requested so to do by the parties. (See comments on proposals 18 – 20, 29 and 45.)

### **Proposals 4 & 5 – Pre-action protocols**

25. The pre-action protocols contained in CPR do not apply to actions before the Admiralty and Commercial Courts in England and Wales. Our experience is that pre-action litigation is generally properly conducted by commercial solicitors and their clients in Hong Kong.

### **Proposal 6 – Commencing proceedings**

26. Simplifying the form by which proceedings are commenced is sensible. It does not, however, follow that it is necessary to change nomenclature. Commercial litigants know what writs and Mareva injunctions are.

### **Proposal 7 – Challenges to jurisdiction**

27. These principles are not new and the list should remain inclusive and open to further development by the courts.

### **Proposal 8 – Part 14 offers**

28. It is unlikely that a formalised set of words such as those contained in Part 14 will be flexible enough to cater for many situations in the Commercial and Admiralty Lists. Commercial practitioners and their clients are likely therefore to resolve what matters they can between themselves.

### **Proposals 9 & 10 – Pleadings**

29. We would encourage the use of full pleadings, which identify clearly the relevant facts, causes of action and, where appropriate, the relevant principles of law upon which the parties rely. Bare denials should be discouraged and positive defences should be pleaded. However, in complex commercial litigation it is often not possible to clarify the issues that divide the parties from the initial pleadings themselves. Pleadings are often amended after discovery and inspection has taken place and as

each party becomes more conversant with the others' case. (See comments on proposal 13).

### **Proposal 11 – Statements of truth**

30. We do not consider statements of truth are necessary or have a proper place in commercial cases. Often the party called upon to sign the statement will be abroad. Solicitors will not sign them. Moreover, in large commercial cases, the pleading may be put together by the solicitor for the party concerned from a large number of documents assembled from a pool of people. The upfront cost of litigation will be increased substantially, as it has in England.

### **Proposal 12 – Clarification**

31. If a party considers it requires further information in relation to a pleading, it is already possible for that party to serve a request for clarification or discovery of documents and apply to the court for an appropriate order if the information is not supplied.

### **Proposal 13 – Limiting the right to amend pleadings**

32. A significant amount of a commercial litigation - including particularly large fraud actions - will require amendments to the pleadings, to take into account information obtained through investigations and from discovery. We consider that the existing rules in relation to the amendment of pleadings (which have been in place for many years) should be retained. They are sensible and workable and we have seen no evidence of abuse. They have stood the test of time. (See comments on proposals 9 and 10.)

### **Proposal 14 – Summary judgment**

33. Lowering the threshold for obtaining summary judgment might focus the parties' minds on the fact that one function of the Commercial and Admiralty Lists is to

deliver tough commercial decisions. However, in difficult cases, we consider that the courts should be encouraged to make greater use of the many existing sensible conditions that can be attached to the granting of leave to defend - such as the defendant providing security for the plaintiff's claim or for the plaintiff's costs, or entering judgment for the plaintiff with a stay of execution pending the outcome of the defendant's counterclaim.

34. We agree that, whatever the test, it would be sensible for the same test to apply to all cases where summary dismissal ensues.

#### **Proposal 15 – Part 36 offers**

35. This reform is generally regarded in England as the only major reform brought about by CPR and would be welcomed. It is generally accepted that the existing rules already give the parties and the courts the power to do everything else ostensibly brought about by the reforms.

#### **Proposals 16 & 17 – Interim relief**

36. It makes sense that applications for interim relief generally should be rationalised and governed by practice directions. The *Mareva* and *Anton Piller* standard form orders have been particularly successful, although it must be stressed that these standard orders are only the starting point for any application for interim relief. Although *Mercedes Benz AG v Leiduck* was undoubtedly correctly decided, the law of Hong Kong would benefit from a jurisdiction similar to the Civil Jurisdiction and Judgments Act (Interim Relief) Order 1997 (UK) and CPR 25.4 to enable the courts of Hong Kong to grant interim relief in aid of foreign proceedings.
37. We would support legislative amendment to section 52A(2) of the High Court Ordinance so that applications for security for costs can be extended in Hong Kong along the lines of CPR 25.14.

## Proposals 18 - 20 – Timetables

38. The questionnaire referred to in proposal 18 should not be used in the Admiralty and Commercial Lists. Instead, the courts should retain maximum flexibility when devising, in conjunction with the parties, timetables and directions for the conduct of commercial litigation. Immovable milestones are paternalistic in the context of Commercial and Admiralty Lists and should be discouraged. Commercial litigants are generally experienced litigants and the legal advisors they select know how best to represent their interests.
  
39. The criticism of the current practice in Hong Kong contained in paragraphs 332 – 335 of the CJR to a large extent proceed on the assumption that litigants actually want to go to trial. In our experience, this is very often not the case. Sometimes, a commercial case will not proceed after the issue of a writ or after close of pleadings and discovery. At the completion of each stage of the proceedings, the parties have time to reflect on their positions. This is because commercial litigation is not an end in itself, but a means to an end. Commercial litigants often approach commercial litigation on the footing that while they are ready to fight, they choose not to force their opponent into battle, preferring often to give their opponents other options and sometimes a “way out”. Immovable milestones can become millstones to this process. By way of example, in commercial litigation, the threat of obtaining a money judgment may result in a settlement, whereas the act of entering judgment itself may result in the defendant resigning itself to closing its business and walking away from its responsibilities.
  
40. Dispute resolution requires a significant amount of subtlety and psychology. Often, both parties to commercial litigation will be content for the litigation not to progress – sometimes for entirely different reasons. For example the plaintiff may wish to await the outcome of litigation between related parties in another jurisdiction, while the defendant may wish to await the outcome of private commercial negotiations taking place between itself and a party connected to the plaintiff. Crucially, neither may wish the other to know the reasons why they are content to let matters lie for the time being. To suggest that commercial disputes should be resolved by determining

material facts and applying the applicable legal principles within an immovable timetable is to misunderstand the business of dispute resolution.

41. Of course considerable benefits can result from establishing and enforcing milestones – but in commercial litigation, those milestones must be created by the parties themselves and enforced by the courts at the request of the parties. Effective costs orders should be made.
42. The past 10 years in particular has seen a significant rise in the development of international commercial arbitration. The underpinning principles of most international commercial arbitration legislation (such as the Arbitration Ordinance), is that it is open to the parties themselves to determine their own procedures and to control the timing of the resolution of their disputes. It would be odd if the Commercial and Admiralty Lists head in a different direction.
43. The Commercial and Admiralty Lists already have their own judges, the upshot of which is that there is already in place a flexible “docket” system.

#### **Proposal 21 – Specialist lists**

44. This proposal is the cornerstone of our recommendations. Businessmen and women choose Hong Kong law and jurisdiction for the resolution of their disputes because of the certainty, fairness and procedural flexibility that this jurisdiction affords. It is crucial, therefore, that any reforms that take place do not impinge upon these important values, which have made Hong Kong the most sought-after jurisdiction for dispute resolution in the Asia region. The procedural flexibility of the Commercial and Admiralty Lists must therefore be maintained and commercial litigants must continue to be free to regulate the timing of the resolution of their disputes before the Commercial and Admiralty Lists.

## **Proposals 22 - 24 – Unrepresented litigants, multiparty litigation and derivative actions**

45. As these proposals do not directly concern the practice of the Admiralty and Commercial Lists, we do not propose to comment on them in this paper.

## **Proposal 25 – Automatic discovery applying the primary test**

46. The *Peruvian Guano* test of relevance is one of the cornerstones of commercial litigation in Hong Kong. Experienced commercial litigants are aware of their discovery obligations and make decisions about commencing proceedings with those obligations in mind. Where the parties are represented by solicitors with a reputation for honesty and integrity, then all crucial documents in the control of their opponents are likely to be disclosed. It is the transparent nature of the Hong Kong legal system that attracts commercial litigants from all over the world to this jurisdiction. Effective discovery procedures are a key factor in giving common law systems an edge over civil law systems.

47. It is crucial, therefore, that the adoption of a primary test of relevance restricted to documents which:

- (a) are relied on by the parties themselves;
- (b) [may] adversely affect a party's own case; and
- (c) [may] support the other side's case

if adopted, should be scrutinised carefully by the courts. We would support the insertion of the word “may” at the beginning of each of the second and third limbs of the primary test of relevance.

48. While discovery may in complex cases be a major source of litigation expense, it also constitutes a stage in the litigation process where the parties consider settlement. We do not consider that the criticism that it is used as an oppressive weapon by rich litigants to delay, harass or exhaust the financial resources of poorer opponents is in any way justified in the case of the Commercial and Admiralty Lists.

**Proposal 26 – The primary test of relevance coupled with a “reasonable search” test**

49. If the test of relevance is to be narrowed, the test of “leaving no stone unturned” in searching for documents which meet the primary test of relevance should be retained. The problem with the “reasonable search” test is that it will be very difficult to police. If one party discovers his opponent has failed to produce a relevant document, it may be too easy for the opponent simply to state “I did not find it when I conducted my reasonable search”, whereas it would be much more difficult for him to reply “I did not find it when I conducted my search leaving no stone unturned”.

**Proposal 27 – No automatic discovery, only at a party’s request**

50. The New South Wales approach is not considered appropriate to Commercial and Admiralty actions in Hong Kong, as it gives the parties no more (and possibly less) than what they are currently entitled to under O24 r10. It may well be helpful in cases where the litigation is not document intensive, e.g. personal injury actions, but can have no place in the Commercial and Admiralty Lists.

**Proposal 28 – Pre-action discovery and discovery from non-parties**

51. We would generally support the introduction of a rule empowering parties to seek discovery before commencing proceedings and discovery from non-parties along the lines provided for by the CPR.

**Proposal 29 – Tailoring discovery through case management**

52. Subject to what we have said about case management (i.e. in Commercial and Admiralty actions the court should take a hands-on approach to case management only upon the application of one of the parties) – see comments on proposals 2, 3, 18 - 20 and 45, it makes sense for the court to have the power to order full *Peruvian Guano* discovery in appropriate cases and regulate the way in which discovery should be given.



### **Proposal 30 – Interlocutory applications**

53. Commercial and Admiralty List practitioners regularly co-operate with one another and agree procedural arrangements. The existing rules enable the parties to agree directions that will suit the case in hand. Provisions already exist within the existing Rules for the Court to give suitable directions for the efficient prosecution of an action where agreement cannot be reached and if these are used properly, there should not be any need for a formal case management system as implemented by the CPR in England. Ultimately, the efficiency of the process will depend on the parties being willing to co-operate and the Court being sufficiently robust to grant appropriate orders to discourage unnecessary applications and delaying tactics.
54. We take the view that any proposal granting the Court the power to act of its own motion would be inappropriate in the Commercial and Admiralty Lists in Hong Kong.
55. “Self-executing” orders shift the burden and up-front costs of making an application from the innocent party to the party seeking an extension of time, or similar relief. In many instances (e.g. applications for extension of time) the burden is on the party seeking the relief to apply. Once again, carefully structured costs orders will ensure that commercial litigants and their legal advisers make the right decisions in relation to interlocutory applications.
56. Although we are not in favour of a formal case management system, parties should be encouraged to flag up what kinds of orders they are likely to seek and their reasons why. Summonses for directions should therefore be encouraged at an early stage. However, in commercial actions it is often the case that issues do not crystallise until after discovery and there will be times when a party will need to make interlocutory applications at other stages in the litigation process. Under the CPR in England, milestones and the trial date have become immutable and the time-table for interlocutory applications and other intermediate procedural steps becomes telescoped to fit the time-table. This process does not always meet with the approval of either party to an action and we would suggest that the Court should be flexible when allocating trial dates.

57. Few applications are made to Masters in the Commercial and Admiralty Lists, so the comment that applications before Masters achieve little save a dress-rehearsal of the arguments and an opportunity for the parties to trim their case has limited application.

**Proposal 31 – Streamlining interlocutory applications**

58. Procedures for dealing with applications on paper or the use of video-conferencing or telephone applications (which are common in US jurisdictions) may also be welcome although in practice, given the physical proximity of practitioners in the Hong Kong Commercial and Admiralty Lists to the Court (or duty judges) the need to make use of such facilities may be limited.

**Proposal 32 – Summary assessment of costs**

59. There is in principle no reason why a successful party should not recover his costs within a very short time. This may actually be a more equitable way of dealing with costs and the proposal is therefore generally welcomed.
60. The Hong Kong courts already have the power under RHC Order 62 to award costs on a summary basis payable forthwith. The Hong Kong Admiralty judge, Mr Justice Waung, is at the forefront of this development.
61. However, anecdotal evidence from England suggests that the requirement to attend an interlocutory hearing armed with a schedule of costs is excessively onerous because of the requirement in Rule 44PD 13.5(4) that schedules of costs must be filed and served "not less than 24 hours before the date is fixed for the hearing". As much of the preparatory work for urgent interlocutory applications is done at short notice after this 24 hour deadline has passed, the schedule has to estimate how much time will be expended on the day immediately preceding the hearing and the hearing itself. Those of us with offices in London report that schedules of costs are often exchanged at the last minute and, on occasions, at the hearing itself.

62. We consider that requiring both parties to prepare a schedule of costs is a waste of resources, as only one party (i.e. the winning party) is likely to make use of the schedule. While it should be open to either party to prepare and serve their schedule prior to the hearing, it would make more sense if they had the option of filing and serving the schedule at the hearing itself or within a day or two later since, by that time, the winning party should be able to quantify the amount of time spent and the costs incurred better. The Court would then be in a better position to make a summary assessment. If the schedule is filed after the event, the summary assessment could then be done on paper by the judge, with either party having the right subsequently to appear before the judge to make oral submissions on whether the assessment is too high or too low – again with appropriate costs sanctions in the event that the application does not succeed. (See comments on proposals 60 and 61)

#### **Proposal 33 – Wasted costs orders against solicitors**

63. We consider that the test for wasted costs orders under existing Order 62 rule 8(1) is the right one. Such orders should be made against a party’s legal representatives sparingly and reserved only for special cases.

#### **Proposal 34 – Wasted costs orders against barristers**

64. We agree that there is undeniable force in the argument that, where costs are wasted due to the default of the barrister, little justification exists for penalising only the solicitor. If the default meets the Order 62 r8(1) threshold, we cannot see how a barrister should be entitled to justify proved misconduct by pointing to his “fearless approach” to his advocacy.

#### **Proposals 35 - 37 – Witness statements**

65. The practice of exchanging witness statements is desirable. In this way, each party knows in advance his opponents’ case. This process promotes settlement and saves costs. The criticism of witness statements is that they have become overly detailed

pieces of advocacy by the parties' lawyers and are excessively expensive. In other words, they are not being drafted properly.

66. It is proposed that greater flexibility be introduced into the treatment of witness statements, such that a witness at trial may be allowed to amplify his statement and give evidence in relation to new matters that have arisen since the statement was served.
67. The intention of the proposal is to lessen the excesses of lawyers in the detailed preparation of the statements. However, we believe that the proposal as drafted risks bringing in the worst of both worlds: a lack of certainty as to the case a party will have to meet and insufficient comfort to a party that he will be able to elaborate on matters that may not have been dealt with in the greatest detail in his witness statement.
68. The provision of the CPR states that 'The court will give permission...only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement'. The uncertainty inherent in such a discretionary power would not lead a prudent solicitor in a commercial case to rely upon this provision in order to justify spending less time drafting a witness statement. Therefore we believe that the benefits sought by the provision would be unlikely to be realised.
69. Conversely, the fact that a party may be able to amplify his statement or give evidence on new matters at trial, may encourage a party to 'hang-on' until trial in the hope that new matters may come to light by then, or that they would be able to amplify their evidence sufficiently at trial to give them a tactical advantage. This may make early settlement less likely.
70. Solicitors should, however, know how to draft proper witness statements covering all of the matters that must be proved at trial clearly, concisely and efficiently. If a 100 page witness statement is produced, in respect of which only 20 pages is relevant, some thought should be given to whether only a proportion of the costs claimed for preparing the statement should be allowed on taxation or on summary assessment.

### **Proposal 38 – Countering the excessive use of expert witnesses**

71. Rules curbing the ‘*inappropriate or excessive*’ use of experts should be welcomed. The CPR states that expert evidence should be restricted to that which is reasonably required to resolve the proceedings. In all cases, leave of the court is required to call an expert and the applicant must state the issues on which he wishes to rely on expert evidence.
72. In non-commercial cases this may be a useful way to reduce costs. However, in the Commercial and Admiralty Lists, it is unlikely to have a great impact. In practice, where leave to call expert evidence is given, it is because expert evidence is necessary.
73. The potential for one party to make an application (or for the court of its own motion) to disallow unnecessary use of experts may be a useful tool in exceptional cases, but would appear to be likely to increase rather than reduce costs, as any application would be likely to be met with fierce resistance from the party subject to the application.
74. The proposed provision allowing each party a single opportunity of putting to the other side's expert written questions about his report appears to be a sensible provision allowing some degree of clarification of the report before trial.
75. Limiting the amount of expert fees that may be recovered in advance of their instruction may be effective in forcing down the costs of instructing experts. However, in commercial cases it is more likely to lead to further applications to the Court to raise any cap imposed, as the market will generally dictate the rates which experts charge. Any competent expert must have a better understanding of how much work needs to be done after he receives his instructions than the Court can have in advance of his instructions.

### **Proposal 39 – The “independence” of experts**

76. The express declaration of an expert's duty to assist the court over his duty to the client or the solicitors paying his fees is unobjectionable. As the Interim Report acknowledges, this is simply a restatement of *The Ikarian Reefer*. Further, a statement by the expert in his report that he understands and has complied with his duty may serve to focus his mind on the content of his report.
77. However, the practical effect of these provisions, particularly in commercial cases, is likely to be minimal. We have to presume that solicitors always advise their experts of their duty to the court. As a practical matter, therefore, the statement of compliance with the duty is likely to be reduced to a ‘boiler plate’ formality at the conclusion of the report.
78. Of greater significance is the proposal that the expert's report must state the substance of all material instructions, written or oral, on the basis of which the report was written and the removal of privilege in respect of any such instructions. The principal criticism of this proposal in England is that it limits a party’s ability to communicate freely with its expert and leads to the appointment of ‘shadow’ experts to deal with questions that the party does not want a court to know it has asked. This will increase, rather than reduce costs.
79. There have been reports in English commercial cases of shadow experts being appointed. However, the impact of the provisions should not be overstated and a more robust approach by solicitors would limit their impact. First, it is only those material instructions '*on the basis of which the report was written*' that must be stated. This should not limit a party from asking the opinion of an expert on any matter, provided that if the response was not favourable, the 'instructions' could be given in such a way so as to avoid an unwanted answer. Secondly, under the CPR provision, disclosure of material instructions will only be ordered if the court has reasonable grounds to consider that the stated instructions are inaccurate or incomplete.

80. The proposal to allow experts to approach the court for instructions without reference to their instructing party is consistent with their paramount duty to the court. However, we cannot imagine an expert in a commercial case taking up this opportunity, except in the most exceptional circumstances.

#### **Proposal 40 – Single joint experts**

81. The appointment of single joint experts appears to be eminently sensible in low value, non-commercial cases where there are defined and simple issues in dispute. Where the issues are complex, each side may legitimately be seeking expert evidence in different areas applicable to their respective cases. In such situations, a single joint expert would be inappropriate.
82. The appointment of a single joint expert in commercial litigation will also rarely be appropriate as the process is fraught with potential disputes over the identity of the expert and the scope of the instructions to be given.
83. Further, the appointment of single joint experts risks usurping the function of the Court. There will be an inevitable tendency towards passing responsibility for deciding an issue in relation to which expert evidence has been heard from the Court to the expert if evidence is heard from a single joint expert only. This would not be a welcome development in Commercial or Admiralty cases.
84. As acknowledged in the Interim Report, firms are likely to instruct shadow experts to advise them on the most appropriate way to deal with the single joint expert. It is therefore highly questionable whether costs savings would flow from the use of single joint experts.
85. Anecdotal evidence from London suggests that the Commercial Court has largely insulated itself from these provisions and single joint experts are rarely (if ever) appointed. We believe that such a provision would be inappropriate in the Commercial and Admiralty Lists in Hong Kong.

### **Proposal 41 – Trials**

86. A trial is an adversarial event. That is the nature of the common law system and it has served Hong Kong well over the years. The right of both parties to state their own cases and challenge the case of their opponent is central to our jurisprudence and should be preserved. It is the adversarial nature of our system that attracts litigants from all over the world to bring their cases in our Commercial and Admiralty Lists. Few of the civil jurisdictions of the world can boast the same popularity.
87. The problem with a rule allowing the court of its own motion to set a trial date at an early stage is that it proceeds on the incorrect assumption that commercial litigants commence and/or defend proceedings because they want to go to trial. More often than not commercial litigants commence proceedings to focus their opponents' minds on settlement.
88. If, on the other hand, one of the parties wants to fix an early trial date, that is an entirely different matter. That is the party's right. We fully support party autonomy in relation to the resolution of disputes.
89. Fixing trial dates before discovery would be of doubtful utility in a commercial action. Fixing a trial date before the commercial litigants themselves want one would be entirely inappropriate.
90. As to the conduct of the trial and the management of the evidence, the existing rules already give the trial judge a significant amount of discretion to manage the extent to which evidence in chief may be led and questions may be asked on cross examination. Judges have their own styles in relation to how much latitude they give parties during the course of a trial. The extent of that latitude is based on experience and it is out of that experience that justice is done.

### **Proposals 42 & 43 – Appeals**

91. Finality is important in any litigation and speedy finality should be the aim of any judicial system designed to serve the commercial community. Reforms designed to



weed out appeals which are totally lacking in merit are therefore welcome. We therefore agree that all appeals from the High Court to the Court of Appeal (and not merely interlocutory appeals) should be subject to a requirement of leave.

**Proposal 44 – “Real prospect of success”**

92. The CPR test is whether “the appeal would have a real prospect of success” (CPR 52.3(6)). As interpreted by the English Courts, this means that the prospect of success must not be “fanciful” (see *Swain v. Hillman* The Times 4 November 1999, CA Transcript No. 1732 of 1999). We would support this test and its interpretation, as the weeding out process should be limited to hopeless cases only.

**Proposal 45 – Appeals from case management decisions**

93. We strongly oppose case management along the lines introduced in England and Wales by the CPR. We support party autonomy in Commercial and Admiralty actions. Litigants in the Commercial and Admiralty Lists are able to look after their own interests and there are strong arguments for limiting the scope of judicial intervention (see our comments on proposals 2, 3, 18 – 20 and 29).
94. If, however, contrary to these recommendations, formal case management procedures are introduced into the Commercial and Admiralty Lists, the scope for appeals from such decisions should be restricted so as not to frustrate the speedy disposal of the action. However, restricting appeals to cases involving “a point of principle of sufficient significance to justify the adverse procedural and costs consequences of permitting the appeal to proceed” goes too far. The appropriate test should be: “is the appeal seriously arguable?”. This test will filter undeserving cases since the appellate court will more often than not view case management decisions as decisions involving the exercise of a discretion.

**Proposal 46 – Leave to appeal from a decision itself given on appeal**

95. We consider this proposed test is too strict. “Important” is too strong a word. Guidance on the meaning of “some other compelling reason” would also be helpful.

We consider that the meaning should include a good arguable case on a point of principle whether perceived as important or not. Justice should permit that. Proper costs sanctions should dissuade litigants from bringing appeals that will not succeed, not limiting the right of appeal itself.

#### **Proposal 47 – Powers of the Court of Appeal**

96. It would be beneficial to introduce a procedure for determining questions of leave to appeal in the first instance by a single JA. If leave to appeal is refused on paper, it should be open to the appellant to make an oral application. We would not support a procedure that involves the appellant making oral submissions to the appellate court in the absence of the respondent.

#### **Proposal 48 – Rules relating to appeals**

97. Our experience is that appeals from the Commercial and Admiralty Lists are dealt with promptly. There is in our experience no evidence of delay. We further note that the CJR does not identify any mischief or problem which this proposal is designed to address.

#### **Proposal 49 – Limiting the scope of appeals**

98. We would not support this proposal. Where the trial judge makes a finding based on oral evidence, the Court of Appeal will always be slow to come to a different view. However, where the evidence is documentary, it should be open to the Court of Appeal to re-hear the matter.
99. The rehearing of matters on appeal as presently undertaken by the Court of Appeal in Hong Kong strikes about the right balance for the commercial community between finality and the correction of errors in the Court of First Instance. Any changes which involve a review and subsequent remission to the trial judge should be resisted as this would increase rather than save costs.

### **Proposal 50 – Uniformity of approach to appeals**

100. In the Commercial and Admiralty Lists, judges generally deal with all interlocutory applications. All appeals must therefore be made to the Court of Appeal.
101. We would support the proposal that all appellate courts should apply the same principles when dealing with appeals.

### **Proposals 51 - 61 – Generally**

102. Commercial litigants would undoubtedly welcome reforms designed to reduce the cost of litigation. There is, however, no persuasive evidence that the Woolf reforms in England and Wales have reduced the costs of commercial litigation. On the contrary, it appears that many of the reforms, such as those requiring the front-loading of cases and case management, may actually have increased the cost to the parties of bringing commercial claims in England and Wales and increased the administrative burden on the judges and the court registries.

### **Proposal 51 – Shifting the emphasis**

103. Costs should be assessed in a flexible manner so as to encourage reasonable behaviour in the conduct of litigation. We would generally support the shift in emphasis proposed.
104. It should not be assumed, however, that requiring summary assessment of costs will necessarily reduce costs. The experience in England and Wales suggests that the rules relating to summary assessment of costs requiring the preparation of costs schedules by both parties before every interlocutory hearing may increase costs. One reason is that the time spent preparing the schedule will generally be wasted by the unsuccessful party. It also inevitably proves difficult for the unsuccessful party to argue that the costs awarded to the successful party should be lower than the amount claimed in his own schedule. (See comments on proposal 32.)

### **Proposal 52 – Disclosure of cost estimates**

105. This proposal generally reflects current commercial practice. Many commercial litigants are professional litigants, e.g. insurance companies. Failing to keep commercial clients fully informed of present and future cost estimates is the surest way to lose the client. Many law firms make use of retainer letters, which disclose at the outset the rates at which their lawyers will be charged and how the case will be billed. Responsible in-house counsel regularly discuss costs with their lawyers. Our impression of this proposal, therefore, is that while generally sensible, it would be overly paternalistic for it to be introduced by legislation.
106. In commercial matters, the vast majority of litigants are able effectively to negotiate the terms of their solicitors' engagement. Although transparency and predictability in charging should be encouraged, there should be no need for rules of procedure to govern this area.

### **Proposals 53 & 54 – Keeping legal costs in check**

107. Following on from our comments on proposal 52, while these proposals may be of some benefit to the man or woman in the street, they are unlikely to provide any additional benefit to commercial litigants, who are generally themselves very experienced in keeping costs under control.

### **Proposal 55 – Solicitor-client benchmark costs**

108. Having only recently abolished scale fees for conveyancing, it is odd that this proposal has been contemplated at all.
109. The difficulty with benchmark costs is that they are incapable of precise reckoning. Once set, because they are benchmarks, they will be difficult to alter (either up or down). They will tend to become the minimum charged by firms. In commercial matters it would be preferable to allow a free market to operate (in which case costs

will freely go down as well as up) so that ordinary commercial pressures will promote excellence on the part of practitioners. (See comments on proposal 59.)

#### **Proposal 56 – Party-party cost estimates**

110. Disclosure to one's opponent of the amount of costs incurred to date can be an effective tactic in litigation. Sometimes, however, such information only serves to fuel the disputes that divide the parties. It is therefore uncertain whether the disclosure of party-party cost estimates during litigation will be an effective means of controlling costs or promoting settlement. The mandatory nature of this proposal is another example of paternalism and is unwelcome.

#### **Proposal 57 – Counsel's fees**

111. A winning party who chooses to incur costs extravagantly and unnecessarily should not do so at the losing party's expense. This proposal relating to the exceptional treatment of Counsel's fees is justified.

#### **Proposal 58 – Calderbank letters in taxation**

112. This proposal, which introduces to taxation the equivalent of a Part 36 offer is logical. It is said that Court Officers report that the Calderbank procedure is insufficiently used. That surprises us. Its use should be encouraged. However, the reported under-use may not take into account the extent to which costs have been settled as a result of effective Calderbank letters, which would not be apparent to the Court.

#### **Proposal 59 – Benchmark costs on taxation**

113. Benchmark costs largely already exist in Hong Kong taxations (see Law Society Circular No.00-393 (PA) dated 11<sup>th</sup> December, 2000). (See our (largely negative) comments on solicitor-client benchmark rates in proposal 55.)

### **Proposals 60 & 61 – Provisional taxations on paper and taxation generally**

114. The use of provisional paper-only taxations with appropriate costs sanctions if an unsuccessful oral hearing is demanded should be encouraged. Fully supported and cross referenced bills of costs should be filed in prescribed forms.

### **Proposal 62 – Retaining the HCR**

115. The HCR has served Hong Kong well over the years. As far reaching as the reforms in England and Wales are, a substantial body of rules from the RSC remain in force in that jurisdiction (see CPR 50.1). Our general view is that any changes to HCR should not be wholesale, but should be measured and considered after a careful study of the impact of the reforms in England and Wales. (See comments on proposal 80.)

### **Proposals 63 & 64 – Mediation and ADR**

116. Mandatory mediation is inappropriate in commercial and admiralty matters. ADR is a complementary procedure to the litigation process. It does not suit every situation and this is certainly the case in commercial litigation where one or more of the parties might want a legal point resolved in Court irrespective of the costs involved. The Court should not therefore be empowered to override the intentions of the parties and order ADR.

### **Proposal 65 – Statutory mediation schemes**

117. We do not think that any scheme (statutory or otherwise), which gives one party the right to compel all parties to ADR is realistic in Commercial and Admiralty List matters.

### **Proposal 66 – ADR as a condition for the granting of legal aid**

118. This is neither applicable nor appropriate for shipping/maritime cases. For example, it is difficult to envisage how a crew member requiring Legal Aid could compel a

shipowner to go to ADR on a claim for unpaid wages (and thereby satisfy one of the proposed conditions for the granting of Legal Aid).

### **Proposal 67 – Voluntary ADR**

119. It is open to the parties to a commercial contract to include in its terms a provision for the resolution of any dispute by ADR and this is already done where the parties choose to do so. If the parties chose not to include such a provision, their decision should be respected. Why should they be directed to mediate when they have agreed in their contract that their disputes should be determined by the Commercial Court?

### **Proposal 68 – Information on ADR**

120. Commercial clients are generally aware of facilities for mediation, but there is no objection to this proposal in principle.

### **Proposals 69 - 73 – Judicial review**

121. Not addressed, as these proposals have limited relevance to the Commercial and Admiralty Lists.

### **Proposals 74 - 79 – Implementing the reforms**

122. Few of the proposals will (or ought to) impact significantly on the practice and procedure of the Commercial and Admiralty Lists. It would therefore make more sense to amend the existing HCR to take account of some of the most useful proposals than to bring in wholesale changes along the lines of CPR at this stage. In this way, the reaction of the litigants, practitioners, judiciary and court administration staff can be monitored before considering further steps. Most importantly, more lessons will be learned over time from England and Wales. Since the CPR reforms were brought into England and Wales in April, 1999 there have been 27 updates, the last of which was published in March 2002. This is an average of 1 update every 40 days. Clearly, there have been major problems with the implementation of the reforms in England

and Wales. The Admiralty and Commercial Court in that jurisdiction has produced a set of guidelines which comes to nearly 200 pages, excluding the Practice Directions and Forms, which are attached to those guidelines. This compares most unfavourably to the 20-page guidelines that existed in the early 1990s.

### **Proposal 80 - Research**

123. At present, Hong Kong has a comprehensive set of rules which cover most, if not all, eventualities. We do not think it would be good for Commercial and Admiralty List litigants to be forced to consider overriding objectives, a set of rules that apply to only limited situations (see proposal 62) and what will inevitably become substantial specialist court Guidelines and Practice Directions when little research into the practical effects of implementing such reforms in Hong Kong has been carried out. We recommend that the Hong Kong Government should invest in such research before incurring the expense of implementing widespread reforms which might actually increase the expense and administrative burden of litigation in this jurisdiction, as it appears to have done in England and Wales.

### **CONCLUSIONS**


124. These should be read in conjunction with the Introduction and General Comments, which we will not repeat here.
125. The need to ensure that the procedures in commercial and admiralty matters are appropriate and cost effective is important, not only to the parties but also to Hong Kong's general prosperity. If Hong Kong becomes a less attractive jurisdiction for commercial parties to select for the adjudication of their disputes, it will affect the value of an important invisible export.
126. The Woolf reforms in England and Wales were introduced in an attempt to alleviate three perceived failings in the existing civil justice procedures, which were regarded as being too expensive, too slow and too complex. Woolf considered that procedures designed to give the right answer in any given case might on average prevent justice



being done, simply because in a great many cases the costs involved in arriving at the right answer were out of all proportion to the amounts claimed. The Woolf Report in effect recognised that a Rolls Royce procedural system would not be appropriate for every case.

127. The users of the Commercial and Admiralty Lists in Hong Kong are generally sophisticated litigants represented by specialist lawyers. Any reforms will only improve the system if it is recognised that the complexities of and amounts involved in many cases in the Commercial and Admiralty Lists require flexible procedures. The rights of commercial litigants to control their own procedures and proceed to trial (or appeal) on points of principle or in cases involving considerable amounts of money should be preserved.
  
128. The cost of implementing the reforms must not be underestimated. As commercial and admiralty practitioners, we want to ensure that the energy of our specialist judges remain directed towards resolving disputes that the parties themselves are unable to resolve and are not channelled into performing administrative tasks. In England and Wales, there is a large infrastructure within the court system which has, to a large extent, been able to absorb many of administrative requirements of the reforms in that jurisdiction. The same cannot be said for Singapore, where the evidence is that a huge administrative burden has been placed on the judges themselves.
  
129. The CJR raises two fundamental issues - (1) whether the primary responsibility for the conduct of cases should lie with the users of the Court or with the Court itself; and (2) whether we want a completely new code such as has been enacted in England and Wales or simply to modify the existing RHC by adopting attractive reforms/proposals (such as CPR Part 36) as and when they arise. The Admiralty and Commercial Lists have generally successfully done this over the years by way of incremental changes and improvements. The Working Party's views are that responsibility should lie with the litigants and that incremental improvements and changes are infinitely preferable to the dislocation and expense involved in implementing an entirely new code.

130. If the decision is taken that Hong Kong should follow England and Wales so that Hong Kong can continue to benefit from the developments in that jurisdiction, then the prudent step would be for Hong Kong to wait a few more years to see exactly how the reforms in England and Wales have improved or frustrated the administration and process of the law. Hong Kong should first carry out its own research into the effect of any proposed reforms on the cost and effectiveness of the administration of justice in Hong Kong. Certainly Hong Kong should wait at least until the updates to CPR are made at the rate of, say, one a year instead of one a month before considering adopting CPR in Hong Kong.
131. Hong Kong has not been served badly by the existing rules. Any changes to those rules should therefore be measured and considered carefully before wholesale changes are made. Time is on Hong Kong's side.

A handwritten signature in cursive script that reads 'Martin Heath'.

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Martin Heath

Working Party Chairman

29<sup>th</sup> April 2002

Attachment 1: Biographies of each member of the Working Party

Attachment 2: HKMLA Working Party Terms of Reference.

## Attachment 1

### **MARTIN HEATH (Chairman)**

Martin Heath was educated at University College London (Law). He was admitted as a solicitor in England and Wales in 1965 and in Hong Kong in 1981.

Martin joined Clyde & Co. in 1965 and has been a partner of that firm since 1968. His principal area of practice is shipping and marine insurance litigation.

Martin has been in Hong Kong since 1988.

### **WILLIAM HARRISON (Secretary)**

William Harrison was educated at the University of Leeds (Law) and was admitted as a solicitor in England and Wales in 1999 and in Hong Kong in 2001.

He is a solicitor with Clifford Chance and practices in the fields of insurance and commercial litigation, insurance regulatory, insurance M&A/finance advisory and employment law.

William has been in Hong Kong since 2001.

### **BILL AMOS**

Bill Amos qualified as a solicitor in England and Wales in 1991 and was admitted in Hong Kong in 1995.

Bill is a partner in the litigation department of Johnson Stokes & Master, where he practises commercial, shipping and insurance litigation and arbitration. In addition to the HKMLA, he is a member of the Hong Kong Admiralty Court Users' Committee.

Bill has been in Hong Kong since 1994.

## **GEORGE LAMPLOUGH**

George Lamplough read law at Otago University and Trinity Hall, Cambridge. He qualified in New Zealand (1984), England and Wales – where he is admitted as a solicitor advocate in all courts (1989 and 1994) and Hong Kong (1997).

George is a partner of Holman Fenwick & Willan and practices in the fields of international commercial litigation and arbitration, cross-border fraud, banking and international trade disputes and shipping law (wet and dry). In 2001 he edited the marine insurance chapter of *Halsbury's Laws of Hong Kong – Insurance*.

George has been at Hong Kong since 1996.

## **FIROZ NASIR**

Firoz Nasir was educated in the sciences and engineering in England and Scotland, and in law at the University of Hong Kong. He was called to the Hong Kong Bar (1995). He is also admitted as an attorney in California (2001) and as a solicitor in Hong Kong (2002) and England and Wales (2002).

Firoz is presently a consultant with Koo and Partners, having practiced at the Hong Kong bar from 1996 until 2001. He practises in the field of general maritime litigation, domestic and international arbitration, intellectual property, personal injury and employees compensation litigation.

Firoz has been in Hong Kong since 1987.

## **ELLIOT WOODRUFF**

Elliot Woodruff was educated at Christ Church, Oxford (Modern History) and at Downing College Cambridge (Law). He was called to the English bar in 1990 and admitted as a solicitor in England and Wales in 1993 and in Hong Kong in 1998.

Elliot worked as in-house counsel at SK Shipping Co. Ltd. of Seoul, Korea between 1995 and 1997. He is now a partner of Ince & Co. He practises in the field of contentious and non-contentious commercial law - principally general maritime law, including charterparty/bill of lading disputes, carriage of goods, salvage and other casualty-related work, marine and non-marine insurance, offshore construction and shipbuilding law.

Elliot has been in Hong Kong since 2001.

## **COLIN WRIGHT**

Colin Wright was educated at the University of Leicester (Law) and the Inns of Court School of Law, London. He was called to the Bars of England and Wales and New South Wales, Australia in 1987. In 1999, he was called to the Bar of Hong Kong.

Colin has practised as a barrister in each of these jurisdictions and has observed the operation of judicial case management in the English Admiralty and Commercial Courts following the implementation of the Woolf Reforms. He has also observed judicial case management in the Supreme Court of New South Wales, in particular in the Commercial List.

Between 1991 and 1995 Colin worked in Hong Kong for two leading firms of shipping solicitors and with a prominent P&I Club and mutual hull underwriter. Since 1999, he has practised at the Hong Kong Bar.

## Attachment 2



### **TERMS OF REFERENCE FOR CIVIL JUSTICE REVIEW WORKING PARTY**

1. To read the Interim Report and Consultative Paper on Civil Justice Reform of the Chief Justice's Working Party, and report to the Executive Committee thereon from the perspective of practice in the Commercial and Admiralty Lists of the High Court, particularly, practice in the field of shipping international trade and insurance.
  
2. To provide comments to the Executive Committee by way of overview on :
  - The main impacts of the proposals in the Interim Report and Consultative Paper from the perspective of practitioners in Hong Kong in the above fields; and
  - Whether, from that perspective and also drawing on any experience of members of the Working Party and/or their firms of practice in other jurisdictions, (i) the "Woolf reforms" in the UK are, broadly, the way forward for Hong Kong, or (ii) any alternative model of Civil Justice Procedure as practised in other common law jurisdictions, or (iii) Hong Kong's existing system should remain unchanged, or (iv) minimal as opposed to far-reaching changes should be made (in procedure in the Commercial and Admiralty Lists).
  
3. To provide comments paragraph-by-paragraph on the 80 "Proposals for Consultation" arising out of the Interim Report and Consultative Paper, expressing the opinion of the Working Party in each case as to :-
  - Whether the Proposal in question is appropriate or useful to practice in the Commercial and/or Admiralty Lists and should (in principle) be adopted in those Lists; and

- If not, whether the existing procedure in these Lists (in the relevant respect) should remain unchanged, or some other model (than the one in the Proposal under consideration) should be adopted in those Lists instead.
4. To provide comments to the Executive Committee on any other issues of procedure in the Commercial and Admiralty Lists which have not been considered in the Interim Report and Consultative Paper, but in the opinion of the Working Party should be reformed as part of the Civil Justice Review.
  5. To provide its written report to the Executive Committee covering points 2-4 above, no later than Friday 28 March 2002.

Note : The purpose of this review by the HKMLA's Working Party is not to conduct a "drafting exercise" on specific provisions of Order 75 (or other provisions of the existing Rules), which should be taken "as is" or at worst capable of the required improvement by the Rules Committee, but to address the proposals for reform as a matter of principle.

18 January 2002