

**For Consideration on
24 May 2005**

**Bills Committee on the
Statute Law (Miscellaneous Provisions) Bill 2005**

Proposed Committee Stage Amendments from the Judiciary

Purpose

This paper sets out the Judiciary's proposed Committee Stage Amendments ("CSAs") to the Statute Law (Miscellaneous Provisions) Bill 2005 ("the Bill").

Background

2. The Judiciary has proposed to transfer from the Chief Justice ("CJ") to the Chief Judge of the High Court ("CJHC") (i) the chairmanship of certain Rules Committees and (ii) the rule-making and related powers under the Matrimonial Causes Ordinance ("MCO") (Cap. 179). Amendments for these purposes are in clauses 8 to 15 (Part 2, Divisions 4 and 5) of the Bill.

3. In response to the Bills Committee's request at its meeting on 31 March 2005 for information on the grounds for proposing the amendments in clauses 8 - 10 of the Bill to transfer the chairmanship of the Rules Committees from the CJ to CJHC, the Judiciary has provided the following information -

- (a) Section 55(1) of the High Court Ordinance ("HCO") (Cap. 4) provides that the Rules of the High Court shall be made by the High Court Rules Committee ("HCRC"). The HCRC is at present chaired by the CJ. As the Rules of the High Court regulate and prescribe the procedures to be followed in the High Court, it is considered more appropriate for the CJHC, as the court leader of the High Court, to chair the HCRC;

- (b) Section 9(1) of the Criminal Procedure Ordinance (“CPO”) (Cap. 221) provides for the making of rules and orders regulating the practice and procedure under the Ordinance by the Criminal Procedure Rules Committee (“CPRC”), which shall be chaired by the CJ. As the rules and orders made by the CPRC govern criminal proceedings mainly in the High Court (and in some cases may also apply to the District Court and the Magistrates’ Court), following the same reasoning as in (a) above, it is considered more appropriate for the CJHC to chair the CPRC; and
- (c) Section 17(1) of the District Court Ordinance (“DCO”) (Cap. 336) provides for the establishment of the District Court Rules Committee (“DCRC”) and its Chairman shall be the CJ. As the Rules of the District Court follow largely the Rules of the High Court, it is considered that for the same reasons as in (a) and (b) above, the chairmanship of the DCRC should likewise be transferred to the CJHC.

The above information is incorporated in the Department of Justice (“DoJ”)’s letter dated 19 April 2005 (LC Paper No. CB(2)1341/04-05(01)).

4. As to the CJ’s rule-making and related powers under the MCO (clauses 11 – 15), as the rules made thereunder apply to matrimonial proceedings in the High Court and the District Court, following paras. 3 (a) and (c) above, the Judiciary considers that the rules should also be made by the CJHC, instead of the CJ.

Proposed CSAs

5. Since the publication of the Bill, the Judiciary has noted that the CJ has residual rule-making powers under the HCO, CPO and DCO. The Judiciary considers that the considerations for transferring the Rules Committee chairmanship and the rule-making and related powers from the CJ to CJHC as set out in paras. 3 – 4 above also apply to these residual rule-making powers, and therefore proposes to introduce CSAs to the Bill to transfer these residual rule-making powers from the CJ to the CJHC. A summary of the proposed CSAs to amend the 3 Ordinances is set out at **Annex**.

6. We consider that the proposed CSAs are relevant to the subject matter of the Bill, the long title of which is “*To provide for miscellaneous amendments to various Ordinances and for connected purposes*”. The proposed CSAs are of the same type and purpose as, and are directly relevant to clauses 8 – 15 of the Bill, i.e. transferring the rule-making and related powers of the CJ under various Ordinances to the CJHC, and equally importantly, the considerations in paras. 3 and 4 above for clauses 8 – 15 already in the Bill also apply to them.

7. The proposed CSAs are necessary to rationalise the rule-making and related powers of the CJ in the various Ordinances. Otherwise, after the passage of the Bill, there will be anomalous situations, for example, whereby under the HCO, certain rules on court procedures and practices are made by the Rules Committee chaired by the CJHC, whilst rules governing other more administrative matters such as how moneys in court should be regulated are made by the CJ.

8. The current omnibus Bill would be the most efficient option to accommodate the proposed CSAs to rationalize the CJ’s rule-making and related powers under the various Ordinances. As mentioned in the Secretary for Justice’s speech in moving the second reading of the Bill on 9 March 2005, “*The Bill largely makes minor, technical and non-controversial amendments to the Laws of Hong Kong. ... This Bill is part of a continuing process of tidying up Hong Kong’s statute law and effecting minor reforms.*” It would be most inefficient to achieve this purpose by introducing individual Bills relating to each of the 3 Ordinances containing residual rule-making powers of the CJ.

Way Forward

9. Subject to the Bills Committee’s views on the proposed CSAs at **Annex**, the draft CSAs will be submitted to the Bills Committee for consideration at the next Bills Committee meeting on 7 June 2005, and moved by the Secretary for Justice at the Committee Stage.

Annex

**Rule-making and Related Powers to be
Transferred from the Chief Justice (“CJ”) to the Chief Judge of the High Court (“CJHC”)**

Annex

Serial No.	Title	Section	Power to Make Rules	Considerations Proposed Way Forward
1.	High Court Ordinance (Cap. 4)	s. 57 Rules concerning deposit, etc. of moneys, etc. in High Court	CJ	Following the transfer of the chairmanship of the High Court Rules Committee (“HCRC”) to CJHC, it is proposed that Committee Stage Amendments (“CSA”) be introduced to transfer the rule-making power to CJHC.
2.	Criminal Procedure Ordinance (Cap. 221)	s. 79D Chief Justice to make rules (under Part IIIA – Special Procedures for Vulnerable Witnesses)	CJ	<p>In Cap. 221, “court” is defined to mean the Court of First Instance acting in the exercise of its criminal jurisdiction. In Parts IIIA and B, “court” includes the District Court and a magistrate.</p> <p>Following the transfer of the chairmanship of the Criminal Procedure Rules Committee to CJHC, it is proposed that CSA be introduced to transfer the rule-making power under these provisions to CJHC.</p>
s. 79G Application for dismissal of charges contained in a notice of transfer (under Part IIIA – Special Procedures for Vulnerable Witnesses)		CJ with approval of LegCo		
s. 79L Chief Justice to make rules or give directions (under Part IIIB – Taking evidence from witnesses outside Hong Kong by live television link – not yet commenced)		CJ*		

* Rule-making power not exercised before.

Serial No.	Title	Section	Power to Make Rules	Considerations Proposed Way Forward
3.	District Court Ordinance (Cap. 336)	s. 73 Suitors' Funds Rules	CJ	Following the transfer of the chairmanship of the District Court Rules Committee ("DCRC") to CJHC, it is proposed that CSA be introduced to transfer the rule-making power to CJHC.

* Rule-making power not exercised before.