

立法會
Legislative Council

Ref : CB2/BC/7/06

LC Paper No. CB(2)2127/06-07
(These minutes have been seen by
the Administration)

**Bills Committee on
Civil Justice (Miscellaneous Amendments) Bill 2007**

**Minutes of meeting
held on Wednesday, 30 May 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC

Member absent : Hon James TO Kun-sun

Public Officers attending : **Judiciary Administration**

Miss Emma LAU
Judiciary Administrator

Miss Annie TANG
Deputy Judiciary Administrator (Development)

Miss Vega WONG
Assistant Judiciary Administrator (Development)

The Administration

*Administration Wing, Chief Secretary for
Administration's Office*

Mrs Alice CHEUNG
Assistant Director of Administration

Department of Justice

Mr K F CHENG
Senior Assistant Law Draftsman

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2) 3

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Amy YU
Senior Council Secretary (2) 3

Action

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1998/06-07)

The minutes of the meeting held on 15 May 2007 were confirmed.

II. Meeting with the Administration

(LC Paper Nos. CB(2)1995/06-07(01) and (02) - Judiciary Administration's response to the issues raised on Parts 2 and 4 of the Bill

LC Paper Nos. CB(2)1995/06-07(03) and (04) - Assistant Legal Adviser's letter dated 9 May 2007 and the Judiciary Administration's response

LC Paper No. CB(2)1995/06-07(05) - Assistant Legal Adviser's letter dated 21 May 2007 to the Judiciary Administration

LC Paper No. CB(2)1836/06-07(01) - Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(3)452/06-07 - The Bill)

2. The Bills Committee deliberated (index of proceedings attached at **Annex.**)

3. The Judiciary Administration was requested to review the drafting of the proposed section 52(B)(3)(b) and (c) of the High Court Ordinance in relation to costs-only proceedings to reflect the policy intent that the reference to "costs" in the proposed section 52(B)(3)(b) and (c) referred to the costs of and incidental to the costs-only proceedings, and not the costs of and incidental to the substantive dispute.

Judiciary
Administration

4. The Chairman was of the view that it might not be appropriate for the Judiciary Administration to answer members' queries and concerns about the Bill during meetings of the Bills Committee, as the subject matter of the Bill was related to the administration of justice which should be a matter for the

Action

Judiciary and outside the remit of the Judiciary Administration. The Judiciary Administration responded that it had been the established practice for the Judiciary Administration to represent the Judiciary at relevant committees of the Legislative Council to convey the views and positions of the Judiciary. In the light of the concerns expressed by the Chairman,

Judiciary Administration (a) the Judiciary Administration was requested to provide a written response to explain the Judiciary's position on the matter and suggest practicable arrangements for the Judiciary to discuss the Bill with members; and

ALA5 (b) ALA was requested to seek the advice of the Legal Adviser on how best to proceed with the scrutiny of the Bill having regard to members' concerns and making reference to overseas practices where appropriate.

Judiciary Administration 5. The Judiciary Administration aimed to provide a written response to the Assistant Legal Adviser's letter dated 21 May 2007 concerning the long title, and Parts 2 and 4 of the Bill before the next meeting if possible.

III. Any other business

6. The Bills Committee noted that the next meeting would be held on 11 June 2007 at 4:30 pm to meet with deputations.

7. The meeting ended at 9:42 am.

Council Business Division 2
Legislative Council Secretariat
8 June 2007

**Proceedings of the second meeting of the
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007
on Wednesday, 30 May 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000657	Chairman	Confirmation of minutes of meeting	
000658 - 002401	Chairman Judiciary Administration	<p>Judiciary Administration's briefing on its response to issues raised by members on Part 2 of the Bill (costs-only proceedings) at the last meeting (LC Paper No. CB(2)1995/06-07(01))</p> <p>Clarification by the Judiciary Administration that -</p> <p>(a) the court would not re-open the question of who should pay the costs of the dispute which had already been agreed upon by the parties before commencing the costs-only proceedings;</p> <p>(b) the proposed section 52B (3)(b) of the High Court Ordinance (HCO) was intended to empower the court to make an order awarding the costs of and incidental to <u>the costs-only proceedings</u>, and not the costs of and incidental to the <u>substantive dispute</u>, to or against any party to the proceedings;</p> <p>(c) the power under the proposed section 52(B)(3)(b) was no different from the general rule in relation to other court proceedings that the costs of and incidental to such proceedings were at the discretion of the court as provided under section 52(A)(1) of HCO;</p> <p>(d) the proposed section 52B(3)(c) concerning the power of the court to award costs against a non-party likewise referred only</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>to the costs of and incidental to <u>the costs-only proceedings</u>, and not the substantive dispute; and</p> <p>(e) the proposed section 52B(3)(c) was included having regard to the proposal in part 10 of the Bill to empower the court to make a cost order against a non-party if it was in the interest of justice to do so.</p> <p>The Judiciary Administration was requested to review the drafting of the proposed section 52(B)(3)(b) and (c) to reflect the policy intent as explained in (a) to (e) above</p>	<p>Judiciary Administration to follow up</p>
002402 - 002827	Chairman Judiciary Administration	Judiciary Administration's briefing on its response to issues raised by members on Part 4 of the Bill (interim relief in aid of proceedings outside Hong Kong) at the last meeting (LC Paper No. CB(2)1995/06-07(01))	
002828 - 003032	Chairman ALA5 Judiciary Administration	The Judiciary Administration's advice that it would reply to ALA's letter dated 21 May 2007 concerning the long title, and Parts 2 and 4 of the Bill as soon as practicable	
003033 - 010431	Chairman Judiciary Administration Admin Hon LI Kwok-ying	<p>Concerns raised by the Chairman –</p> <p>(a) it might not be appropriate for the Judiciary Administration to answer members' queries and concerns about the Bill during meetings, in particular the policy aspects of the Bill - matters relating to the operation of courts and powers of judges in the administration of justice - were the responsibilities of the Judiciary and outside the remit of the Judiciary Administration;</p> <p>(b) the Judiciary Administration could at best relay the views of</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the Judiciary in writing to the Bills Committee;</p> <p>(c) when Bills Committees scrutinised bills, it was the established practice that the sponsors of the bills concerned would attend the meetings of the Bills Committees to explain the policy intent and the provisions of the bills; and</p> <p>(d) whether it would be possible for representatives of the Judiciary to attend meetings of the Bills Committee to explain the Bill to members, given that the Judiciary was in essence the sponsor of the Bill; there were precedents where judges attended LegCo committee meetings to answer members' questions, for instance Hon Mr Justice Rogers and Hon Mr Justice Stock</p> <p>Response of the Administration that the Chief Secretary for Administration's Office was the sponsor of the Bill</p> <p>Response of the Judiciary Administration that –</p> <p>(a) in view of the constitutional rule of independence of the Judiciary, it was the established practice that for matters relating to the Judiciary, the Judiciary Administration would act as the representative of the Judiciary to attend the relevant LegCo committee meetings to convey the Judiciary's views/stance on the matters and assist members in their discussion; and</p> <p>(b) Hon Mr Justice Rogers and Hon Mr Justice Stock attended the LegCo committee meetings in</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>their respective capacity as Chairman of the Standing Committee on Company Law Reform and Chairman of the Subcommittee on Hearsay in Criminal Proceedings under the Law Reform Commission;</p> <p>(c) in relation to (b) above, the proposals under discussion did not originate from the Judiciary. As far as the Bill was concerned, the amendments were proposed by the Steering Committee on Civil Justice Reform to implement some of the recommendations made by the Working Party on Civil Justice Reform. Both were appointed by the Chief Justice. The Judiciary Administration had provided support to both and was in a position to assist the Bills Committee in its scrutiny</p> <p>The Chairman requested ALA to seek the advice of the Legal Adviser on how best to proceed with the scrutiny of the Bill having regard to her concerns, and making reference to overseas practices where appropriate</p> <p>The Chairman requested the Judiciary Administration to provide a written response to explain the Judiciary's position on the matter and suggest practicable arrangements for the Judiciary to discuss the Bill with members</p>	<p>ALA to follow up</p> <p>Judiciary Administration to follow up</p>
010432 - 010855	Chairman Judiciary Administration	Briefing by the Judiciary Administration on Part 5 of the Bill concerning vexatious litigants which sought to allow a vexatious litigant order to be made not only on the application of the Secretary for Justice as at present, but also on the applications of persons vexed	

Time marker	Speaker	Subject(s)	Action Required
		The Chairman's view that the proposed amendments would involve important changes to the right of access to the court	
010856 - 011239	Chairman Judiciary Administration	The Judiciary Administration aimed to provide a written reply to ALA's letter dated 21 May 2007 before the next meeting if possible	Judiciary Administration to follow up

Council Business Division 2
Legislative Council Secretariat
8 June 2007