

**立法會**  
**Legislative Council**

Ref : CB2/BC/7/06

LC Paper No. CB(2)2705/06-07  
These minutes have been seen by  
the Administration)

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

**Minutes of meeting  
held on Monday, 6 July 2007, at 10:45 am  
in Conference Room B of the Legislative Council Building**

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

**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

Mr K C YAU  
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

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Action

**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(2)2375/06-07)

The minutes of the meeting held on 11 June 2007 were confirmed.

**II. Meeting with the Judiciary Administration and the Administration**  
(LC Paper No. CB(2)2429/06-07(01) - The Hong Kong Bar Association's letter dated 30 June 2007 concerning attendance at Bills Committee meetings by representatives of the Judiciary, and the Chairman's reply dated 5 July 2007

LC Paper No. CB(2)2429/06-07(02) - Further submission dated 5 July 2007 from the Hong Kong Law Costs Draftsmen Association concerning draft subsidiary legislation for implementing Civil Justice Reform

LC Paper No. CB(2)2393/06-07(01) - Further submission dated 26 June 2007 from the Hong Kong Bar Association concerning draft subsidiary legislation for implementing Civil Justice Reform

LC Paper No. CB(2)2393/06-07(02) - Further submission dated 3 July 2007 from Mr W S CLARKE concerning draft subsidiary legislation for implementing Civil Justice Reform

LC Paper No. CB(2)2260/06-07(01) - Further submission dated 22 June 2007 from the Law Society of Hong Kong concerning draft subsidiary legislation for implementing Civil Justice Reform

LC Paper Nos. CB(2)1995/06-07(05) and CB(2)2217/06-07(03) - Assistant Legal Adviser's letter dated 21 May 2007 to the Judiciary Administration on the long title, and Parts 2 and 4 of the Bill and the Judiciary's response

Action

LC Paper No. CB(2)1995/06-07(03) - Assistant Legal Adviser's letter dated 9 May 2007 and the Judiciary Administration's response setting out a summary of the views received on the "Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform" published in April 2006

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

Issued vide LC Paper No CB(2)1960/06-07 - Final Report of the Working Party on Civil Justice Reform published in March 2004)

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

3. The Judiciary Administration was requested to -

Judiciary  
Administra  
tion

Part 6 - Discovery

- (a) provide information on the scope and definition of the term "professional adviser" in section 41(1)(b) of the High Court Ordinance (HCO) after the court's jurisdiction was broadened to cover pre-action disclosure in all types of civil cases;
- (b) consider whether, from a drafting point of view, the proposed amendments to section 41(1) of HCO (which currently applied to orders for pre-action disclosure in cases involving personal injuries and death claims) were appropriate for the purpose of broadening the court's power to order pre-action disclosure in all types of civil cases;

Part 8 -Leave to appeal

- (c) provide information on the success rate of interlocutory appeals;

Part 10 -Costs against non-party

- (d) provide a response to the concern expressed by the Law Society of Hong Kong in paragraph 2(b) of its submission dated 22 June 2007 [LC paper No. CB(2)2260/06-07(01)];
- (e) provide background information on the proposed amendments in Part 10 of the Bill, including reference to the practice and experience in UK;

Action

Part 12 - Lands Tribunal

- (f) provide background information on the proposed amendments in Part 12 of the Bill, including information on consultation conducted and comments received thereon;

Draft subsidiary legislation

- (g) advise when the finalized draft subsidiary legislation would be available for members' reference;
- (h) provide a response to the views expressed by the depositions on the parts of the draft subsidiary legislation which should be examined by the Bills Committee [LC Paper Nos. CB(2)2260/06-07(01), CB(2)2393/06-07(01) & (02), and CB(2)2429/06-07 (02)]; and
- (i) provide for members' reference a copy of the draft subsidiary legislation relating to Parts 5 and 10 of the Bill.

**III. Any other business**

- 4. Members agreed that the next meeting would be held after the summer recess in September 2007. The Clerk would inform members of the date of meeting nearer the time.
- 5. The meeting ended at 12:09 pm.

Council Business Division 2  
Legislative Council Secretariat  
12 September 2007

**Proceedings of the fifth meeting of the  
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007  
on Thursday, 6 July 2007, at 10:45 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000645 - 000731	Chairman	Confirmation of minutes of meeting	
000732 - 000931	Chairman Administration	The Hong Kong Bar Association's letter dated 30 June 2007 concerning attendance at Bills Committee meetings by representatives of the Judiciary, and the Chairman's reply dated 5 July 2007 [LC Paper No. CB(2)2429/06-07(01)] tabled at meeting  Administration's advice that it was considering the proposed arrangement for the Administration to instruct counsel to attend Bills Committee meetings to answer members' questions and concerns on the Bill	
000932 - 001227	Chairman Judiciary Administration	Judiciary Administration was requested to -  (a) advise when the finalized draft subsidiary legislation would be available for members' reference; and  (b) provide a response to the views expressed by the deputations on the parts of the draft subsidiary legislation which should be examined by the Bills Committee	<b>Judiciary Administration to follow up</b>
001228 - 001325	Chairman	Judiciary's response to Assistant Legal Adviser's letter dated 21 May 2007 on the long title, and Parts 2 and 4 of the Bill [LC Paper Nos. CB(2)2217/06-07(03) and CB(2)1995/06-07(05)]	
001326 - 001559	Chairman	<u>Part 5 - Vexatious litigants</u>  The Chairman's concern that the proposed amendments to section 27 of the High Court Ordinance (HCO) to provide for a vexatious litigant order to be made on the application of affected persons would open a floodgate of applications for a vexatious litigant order, which would be at variance with the objectives of the Civil Justice Reform to, inter alia, streamline the civil procedures and discourage unnecessary applications	

Time marker	Speaker	Subject(s)	Action Required
		<p>The Chairman expressed reservation about such amendment and would discuss with members on the need to propose Committee Stage amendment in this regard</p>	
001600 - 002719	Mr Ronny TONG Judiciary Administration Chairman	<p>Mr Ronny TONG's enquiry on the number of applications made under section 27 of HCO in the past</p> <p>Judiciary Administration's response that -</p> <ul style="list-style-type: none"> <li>(a) only two such orders had been made over the past 10 years or so;</li> <li>(b) the number of orders made under section 27 did not reflect the full picture. At common law, the court had inherent jurisdiction to prevent a person from initiating civil proceedings which were likely to constitute an abuse of the process of the court;</li> <li>(c) in recommending the proposed amendments, the Working Party had regard to the need to strike a reasonable balance between protecting the right of access to court and preventing abuse of court resources; and</li> <li>(d) no objection in principle to this part of the Bill had been received during the consultation exercises</li> </ul> <p>The Judiciary Administration was requested to provide for members' reference a copy of the draft subsidiary legislation relating to Part 5 of the Bill</p>	<p><b>Judiciary Administration to follow up</b></p>
002720 - 002859	Chairman ALA5	<p>With reference to paragraph 1 of the submission from the Law Society of Hong Kong dated 22 June 2007 [LC Paper No. CB(2) 2260/06-07(01)], ALA clarified that while the responsibility for making the relevant rules rested exclusively with the Rules Committees, the rules were subsidiary legislation subject to the scrutiny of LegCo pursuant to Cap. 1</p>	

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002900 - 003246	Chairman Judiciary Administration	<p><u>Part 6 - Discovery</u></p> <p>Briefing by the Judiciary Administration on Part 6 of the Bill relating to discovery. The proposed amendments sought to widen the jurisdiction of the court to order pre-action disclosure in all types of civil cases (and not merely in relation to personal injuries and death claims as at present), with a view to facilitating early settlement</p>	
003247 - 004230	Chairman Mr LI Kwok-ying Judiciary Administration Administration Mr Ronny TONG	<p>Mr LI Kwok-ying's enquiry concerning the definition of the term "professional adviser" in section 41(1)(b) of HCO</p> <p>The Judiciary Administration's advice that the court would determine the meaning of "professional adviser" in the light of the circumstances of individual cases</p> <p>Mr Ronny TONG's view that as in the case of other court procedures, the court would decide on the meaning of "professional adviser" taking account of the circumstances of individual cases. Relevant case law would be built up over time to guide the court in exercising its jurisdiction in this respect</p>	
004231 - 005141	Chairman Mr LI Kwok-ying Mr Ronny TONG ALA5 Judiciary Administration	<p>The Judiciary Administration's advice that in UK, the court's power to order pre-action disclosure was no longer limited to personal injury and death cases</p> <p>The Judiciary Administration was requested to</p> <p>(a) provide information on the scope and definition of the term "professional adviser" in section 41(1)(b) of HCO after the court's jurisdiction was broadened to cover pre-action disclosure in all types of civil cases; and</p> <p>(b) consider whether, from a drafting point of view, the proposed amendments to section 41(1) (which currently applied to orders for pre-action disclosure in cases involving personal injuries and death claims) were appropriate for the purpose of broadening the court's power to order pre-action disclosure in all types of civil cases</p>	<p><b>Judiciary Administration to follow up</b></p>

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005142-005208	Chairman	<p><u>Part 7 - Wasted costs</u></p> <p>Further discussion to be made on this part of the Bill upon receipt of the Administration's response to the Bar Association's suggestion that public funds be made available to meet a legal representative's costs in successfully defending or appealing against a wasted costs order made on the court's own motion</p>	
005209 - 005531	Chairman Judiciary Administration Mr Ronny TONG	<p><u>Part 8 - Leave to appeal</u></p> <p>Briefing by the Judiciary Administration on Part 8 of the Bill which introduced the requirement that an interlocutory appeal to the Court of Appeal (CA) be brought only with leave of the Court of First Instance (CFI) or CA, so as to screen out unmeritorious appeals on interlocutory matters. Currently, appeals from CFI to CA were as of right</p> <p>Mr Ronny TONG expressed reservation about the proposed amendments which imposed restrictions on the right to appeal</p> <p>The Judiciary Administration was requested to provide information on the success rate of interlocutory appeals</p>	<b>Judiciary Administration to follow up</b>
005532 - 010141 -	Chairman Judiciary Administration Mr Ronny TONG	<p><u>Part 9 - Appeals</u></p> <p>Briefing by the Judiciary Administration on Part 9 of the Bill which provided that interlocutory applications of pending appeals might be dealt with on paper by two Justices of Appeal without a hearing</p> <p>Mr Ronny TONG expressed reservation about this part of the Bill in view of the following considerations -</p> <ul style="list-style-type: none"> <li>(a) unlike the US judicial system where many applications were dealt with on paper, the common law system placed much emphasis on oral presentation of a case; and</li> <li>(b) interlocutory applications of pending appeals could have significant impact on the outcome of the case. As such, it</li> </ul>	



Time marker	Speaker	Subject(s)	Action Required
		<p>might be prejudicial to the rights of the parties concerned if such applications were determined on paper</p>	
<p>010142 - 011339</p>	<p>Chairman Judiciary Administration Mr LI Kwok-ying Mr Ronny TONG</p>	<p><u>Part 10 - Costs against a non-party</u></p> <p>Briefing by the Judiciary Administration on Part 10 of the Bill which empowered the court to make costs orders against non-parties if it was satisfied that it was in the interest of justice to do so</p> <p>The Judiciary Administration's advice that the proposed amendments did not originate from the Final Report. They were recommendations proposed by the Steering Committee having regard to developments since the publication of the Final Report</p> <p>The Chairman's view that the proposed changes marked a radical departure from the current practice</p> <p>The Chairman's enquiry about the practice in UK and whether there were safeguards to protect the rights of non-parties</p> <p>The Judiciary Administration's response that -</p> <p>(a) the courts in UK were empowered to make cost orders against non-parties; and</p> <p>(b) amendments along the lines of those proposed in Order 15 of the Rules of the High Court would be made to provide that where the court was considering whether to make such an order, the person who was not a party to the proceedings must be joined as a party to the proceeding for the purposes of costs, and that person must be given an opportunity to attend a hearing at which the Court should consider the matter further</p> <p>The Judiciary Administration was requested to -</p> <p>(a) provide a response to the concern expressed by the Law Society of Hong</p>	<p><b>Judiciary Administration to follow up</b></p>

Time marker	Speaker	Subject(s)	Action Required
		<p>Kong in paragraph 2(b) of its submission dated 22 June 2007 [LC paper No. CB(2)2260/06-07(01)];</p> <p>(b) provide background information on the proposed amendments in Part 10 of the Bill, including reference to practice and experience in UK; and</p> <p>(c) provide for members' reference a copy of the draft subsidiary legislation relevant to Part 10 of the Bill</p> <p>Mr LI Kwok-ying sought explanation for the provision of costs orders <i>in favour of</i> non-parties in draft Order 15 [page E46 of the Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform (Consultation Paper) issued in April 2006]</p> <p>The Judiciary Administration's advice that the draft subsidiary legislation in the Consultation Paper was not the finalized version. The Judiciary Administration was fine-tuning the draft subsidiary legislation in the light of the comments received during consultation</p>	
011340 - 011500	Chairman Judiciary Administration	<p><u>Part 11 - Execution of instruments</u></p> <p>Briefing by the Judiciary Administration on Part 11 of the Bill which sought to equip the District Court (DC) with the power to nominate a person to execute documents where another person having such obligation had failed to do so, aligning the practice of CFI and DC in this respect</p>	
011501 - 012007	Chairman Judiciary Administration	<p><u>Part 12 - Lands Tribunal</u></p> <p>Briefing by the Judiciary Administration on Part 12 of the Bill -</p> <p>(a) the provisions sought to provide greater flexibility for the Lands Tribunal to adopt the practice and procedures of the CFI and to streamline the court procedure for repossession of premises;</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) in consideration that the objectives of the Civil Justice Reform applied equally to the Lands Tribunal, some of the proposed changes to the procedures of HC and DC had been introduced to the Lands Tribunal where appropriate; and</p> <p>(c) in November 2006, the Judiciary Administration had reported to the Panel on Administration of Justice and Legal Services on the outcome of its consultation with the two legal professional bodies concerning its review on the Lands Tribunal Ordinance and the Lands Tribunal Rules. Some of the proposed amendments in Part 12 of the Bill were for implementing the recommendations in the review requiring amendment to primary legislation</p> <p>The Judiciary Administration was requested to provide background information on the proposed amendments in Part 12 of the Bill, including information on consultation conducted and comments received thereon</p>	<p><b>Judiciary Administration to follow up</b></p>
012008 - 012449	<p>Chairman Judiciary Administration Mr James TO Mr LI Kwok-ying</p>	Date of next meeting	