

立法會
Legislative Council

Ref : CB2/BC/7/06

LC Paper No. CB(2)170/07-08
(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Friday, 12 October 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 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 Wesley WONG
Senior Assistant Law Officer (Civil Law)

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. Meeting with the Judiciary Administration and the Administration
(LC Paper No. CB(2)27/07-08(01) - A check-list of follow-up actions required of the Administration and Judiciary Administration

LC Paper No. CB(2)27/07-08(02) - Assistant Legal Adviser's letter dated 17 July 2007 to the Assistant Director of Administration on Part 6 of the Bill

LC Paper No. CB(2)27/07-08(03) - Assistant Legal Adviser's further letter dated 28 September 2007 to the Assistant Director of Administration on Part 6 of the Bill

LC Paper No. CB(2)27/07-08(04) - The Administration/Judiciary Administration's consolidated response to Assistant Legal Adviser's letters dated 12 June 2007 and 17 July 2007 on Parts 5 and 6 of the Bill respectively

LC Paper No. CB(2)27/07-08(05) - The Administration/Judiciary Administration's consolidated response to issues raised by the Bills Committee on Parts 4, 5, 6, 8, 10 and 12 of the Bill

LC Paper No. CB(2)27/07-08(06) - The Administration/Judiciary Administration's response to the submissions of deputations to the Bills Committee

LC Paper No. CB(2)47/07-08(01) - The Administration/Judiciary Administration's response to Assistant Legal Adviser's letter dated 28 September 2007

LC Paper No. CB(2)2217/06-07(02) - Assistant Legal Adviser's letter dated 12 June 2007 to the Judiciary Administration on Part 5 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 setting out a summary of the views received on the

Action

"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)

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

Admin/
Judiciary
Admin

2. The Administration /Judiciary Administration was requested to -

Clause 14 - Discovery

- (a) seek the views of the two legal professional bodies on the proposed application of the new stricter test of "direct relevance" to pre-action discovery of personal injuries (PI) cases which would restrict potential PI claimants' right of access to "train of inquiry" documents, and revert to the Bills Committee on the outcome; and

Clause 21 - Leave to appeal

- (b) advise whether the proposed section 14AB of the High Court Ordinance (HCO) would contravene the Basic Law which stipulated that the power of final adjudication was vested in the Court of Final Appeal.

Admin/
Judiciary
Admin

3. The Administration /Judiciary Administration undertook to propose Committee Stage amendments (CSAs) to clause 3 (the proposed section 52B(3)(b) and (c) of HCO) and clause 5 (the proposed section 53A(3)(b) and (c) of the District Court Ordinance) to reflect the policy intent that the reference to "costs" referred to the costs of and incidental to the costs-only proceedings, and not the costs of and incidental to the substantive dispute.

4. Regarding the Administration/Judiciary Administration's proposal to introduce CSAs to the proposed section 27 of HCO to bring in a leave requirement for applications for vexatious litigant orders from affected persons, made in response to ALA's questions, with a view to providing a safeguard to prevent unmeritorious applications, members agreed that there was no need to introduce the proposed leave requirement for the following reasons -

- (a) the definition of "affected person" in relation to non-parties under the proposed section 27(5)(b) was sufficiently narrow to filter out unmeritorious applications; and

Action

- (b) the addition of a leave requirement would be at variance with one of the objectives of the Civil Justice Reform i.e. to reduce unnecessary interlocutory applications as far as possible.

In response to members' views, the Administration/Judiciary Administration agreed to withdraw the proposal of introducing a leave requirement for applications for vexatious litigant orders from affected persons.

Draft subsidiary legislation

5. Members agreed that the Bills Committee should examine the following draft subsidiary legislation -

- (a) those relating to Part 7 (wasted costs) and Part 10 (costs against non-parties) of the Bill;
- (b) draft Orders 1A and 1B (case management powers of the court) of the Rules of the High Court (RHC);
- (c) draft Order 35 rule 3A (court's power to curtail the time allowed for cross-examining witnesses, for making oral submissions, etc) of RHC; and
- (d) draft Orders 62 and 62A (matters relating to costs assessments) of RHC.

Judiciary
Admin

The Judiciary Administration was requested to provide for members' reference the above draft subsidiary legislation when they were ready.

II. Any other business

6. Members agreed that the next two meetings would be held as follows -

- (a) Tuesday, 30 October 2007 at 10:45 am; and
- (b) Tuesday, 20 November 2007 at 10:45 am.

7. The meeting ended at 10:34 am.

**Proceedings of the sixth meeting of the
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007
on Friday, 12 October 2007, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000508	Chairman	Opening remarks The check-list of follow-up actions required of the Administration/Judiciary Administration prepared by the Secretariat (LC Paper No. CB(2)27/07-08(01))	
000509 - 000930	Administration Chairman Judiciary Administration	Administration/Judiciary Administration's response to ALA's letter dated 12 June 2007 on Part 5 (vexatious litigants) of the Bill (LC Paper No. CB(2)27/07-08(04))	
000931- 001827	Chairman Mr Ronny TONG Administration	The Chairman's enquiry on who might apply for a vexatious litigant order under common law Administration's advice that as far as the existing case law was concerned, the applications were made by the defendant	
001828 - 003340	Chairman Mr Ronny TONG Administration Judiciary Administration ALA5 Mr LI Kwok-ying	Discussion on the use of the term "affected person" in the proposed section 27(1) of the High Court Ordinance (HCO) vis-à-vis the terms "person who has a sufficient interest in the matter" and "person aggrieved" used in other common law jurisdictions (LC Paper No. CB(2)27/07-08(05) paragraphs 3 to 5) Concern expressed by the Chairman that the term "affected person" was too wide in scope ALA's enquiry on the scope of "adverse consequences" in the proposed section 27(5)(b) Administration's response that - (a) the definition of the term "affected person" in relation to a non-party under the proposed section 27(5)(b) had sought to	

Time marker	Speaker	Subject(s)	Action Required
		<p>narrow down the coverage of the term to include only those who had directly suffered adverse consequences resulting from such proceedings; and</p> <p>(b) according to the case law on Grepe v Loam orders, "adverse consequences" were not restricted to financial loss suffered by the applicant</p> <p>Members did not raise any further queries on the use of the term "affected person"</p>	
003341 - 005244	<p>Chairman Judiciary Administration Mr Ronny TONG Administration Mr LI Kwok-ying</p>	<p>Discussion on the Administration/Judiciary Administration's proposal, made in response to ALA's questions, to introduce Committee Stage amendments (CSAs) to the proposed section 27 to bring in a leave requirement for applications for vexatious litigant orders from affected persons with a view to providing a safeguard to prevent unmeritorious applications (LC Paper No. CB(2)27/07-08(04) paragraphs 5 to 7)</p> <p>Members agreed that there was no need to introduce the proposed leave requirement for the following reasons -</p> <p>(a) the definition of "affected person" in relation to a non-party under the proposed section 27(5)(b) was sufficiently narrow to filter out unmeritorious applications; and</p> <p>(b) the addition of a leave requirement would be at variance with one of the objectives of the Civil Justice Reform to reduce unnecessary interlocutory applications as far as possible</p> <p>In response to members' views, the Administration/Judiciary Administration agreed to withdraw the proposal of introducing the leave requirement</p>	

Time marker	Speaker	Subject(s)	Action Required
005245 - 005515	Chairman Administration	Administration/Judiciary Administration's response that there was no need to introduce a mechanism for a person who was subject to a vexatious litigant order to apply for setting aside the order even though he had no intention to issue any legal proceedings (LC Paper No. CB(2)27/07-08(05) paragraph 16)	
005516 - 010042	Chairman Administration Judiciary Administration	Briefing by the Judiciary Administration on the scope and definition of the term "professional adviser" in the proposed section 41(1)(b) of HCO after the court's jurisdiction was broadened to cover pre-action discovery in all types of civil cases (LC Paper No. CB(2)27/07-08(05) paragraphs 18 to 19)	
010043 - 012015	Chairman Administration Judiciary Administration Mr Ronny TONG ALA5 Mr LI Kwok-ying	<p>Discussion on the proposed application of the new stricter test of "direct relevance" to pre-action discovery of personal injuries (PI) cases in the proposed section 41(b) of HCO (LC Paper No. 27/07-08(04) paragraphs 8 to 9, and LC Paper No. CB(2)47/07-08(01))</p> <p>Concern expressed by the Chairman and Mr Ronny TONG on the proposed restriction of potential PI claimants' right of access to "train of inquiry" documents, without which some potential PI claimants might not know whether they had a valid claim</p> <p>Administration/Judiciary Administration was requested to seek the views of the relevant committees of the two legal professional bodies on the proposed amendment in relation to the "direct relevance" test for pre-action discovery in PI cases, and revert to the Bills Committee</p>	Administration/ Judiciary Administration to follow-up
012016 - 012715	Chairman Administration Mr Ronny TONG	Administration's response that it was not justified to make available public funds to meet a legal representative's costs in successfully defending a wasted costs order (LC Paper No. CB(2)27/07-08(06))	

Time marker	Speaker	Subject(s)	Action Required
012716 - 012839	Chairman Judiciary Administration	Information provided by the Judiciary Administration on the success rate of interlocutory appeals (LC Paper No. CB(2)27/07-08(05) paragraph 21)	
012840 - 013140	Chairman Judiciary Administration	Administration/Judiciary Administration's response to issues raised by members in relation to Part 10 (Costs against non-party) of the Bill (LC Paper No. CB(2)27/07-08(05) paragraphs 22 to 25)	
013141 - 013416	Chairman Judiciary Administration Administration	Background information provided by the Judiciary Administration on the proposed amendments in Part 12 (Lands Tribunal) of the Bill (LC Paper No. CB(2)27/07-08(05) paragraphs 26 to 28)	
013417 - 013950	Chairman Administration Mr Ronny TONG	<p>Members agreed to examine the following draft subsidiary legislation -</p> <ul style="list-style-type: none"> (a) those relating to Part 7 (wasted costs) and Part 10 (costs against non-parties) of the Bill; (b) draft Orders 1A and 1B (case management powers of the court) of the Rules of the High Court (RHC); (c) draft Order 35 rule 3A (court's power to curtail the time allowed for cross-examining witnesses, for making oral submissions, etc) of RHC; and (d) draft Orders 62 and 62A (matters relating to costs assessments) of RHC <p>The Judiciary Administration was requested to provide for members' reference the above draft subsidiary legislation when they were finalized</p>	Judiciary Administration to follow-up
013951 - 014426	Chairman ALA5 Judiciary Administration	<p>Clause-by-Clause examination of the Bill (English version)</p> <p>Long title and short title of the Bill</p>	

Time marker	Speaker	Subject(s)	Action Required
014427 - 014541	Chairman Judiciary Administration	Clauses 3 to 5 - the Administration/Judiciary Administration undertook to propose CSAs to clause 3 (proposed section 52B(3)(b) and (c) of HCO) and clause 5 (proposed section 53A(3)(b) and (c) of District Court Ordinance) to reflect the policy intent that the reference to "costs" referred to the costs of and incidental to the costs-only proceedings, and not the costs of and incidental to the substantive dispute	Administration/ Judiciary Administration to propose CSAs
014542- 014638	Chairman Judiciary Administration	Clause 6 - Amendments to make it clear that the Small Claims Tribunal did not have jurisdiction to hear and determine costs-only proceedings	
014639 - 014756	Chairman Judiciary Administration	Clauses 7 and 8 - Amendments to extend the common law defence of tender before action to a claim for unliquidated damages	
014757 - 014858	Chairman	Administration's response that Part 4 of the Bill would apply to cases in the Mainland the enforcement of which in Hong Kong was covered under the terms of the Mainland Judgments (Reciprocal Enforcement) Bill (LC Paper No. CB(2)27/07-08(05) paragraph 2)	
014859 - 015419	Chairman Judiciary Administration	Clauses 9 to 11 - Interim relief in aid of proceedings outside Hong Kong Clause 12 - Provision for the Rules Committee of the High Court to make rules of court relating to applications for interim relief	
015420 - 015554	Chairman	Clause 13 - Vexatious litigants Administration/Judiciary Administration's response that it was inappropriate to change the conjunctive phrase "habitually and persistently" in the proposed section 27(a) to a disjunctive phrase "habitually <u>or</u> persistently" (LC Paper No. CB(2)27/07-08(05) paragraph 8)	

Time marker	Speaker	Subject(s)	Action Required
015555 - 015608	Chairman	Clauses 14 to 17 (Discovery) - Scrutiny of these clauses to be put on hold pending outcome of the Administration/Judiciary Administration's consultation with the two legal professional bodies concerning pre-action discovery for PI cases	
015609 - 015629	Chairman	Clauses 18 to 19 (Wasted costs) - to be scrutinized together with the relevant draft subsidiary legislation	
015630 - 015924	Chairman Judiciary Administration Mr LI Kwok-ying	Clause 21 - Leave to appeal - Mr LI Kwok-ying's enquiry on whether the proposed section 14AB of HCO would contravene the Basic Law which stipulated that the power of final adjudication was vested in the Court of Final Appeal	Administration/ Judiciary Administration to follow-up
015925 - 020349	Chairman Mr LI Kwok-ying Mr Ronny TONG Administration	Date of next meeting	