

立法會
Legislative Council

Ref : CB2/BC/7/06

LC Paper No. CB(2)383/07-08
(These minutes have been seen by
the Administration)

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

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

Members present : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Ronny TONG Ka-wah, SC

Member absent : Hon LI Kwok-ying, MH, JP

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. Confirmation of minutes of meeting
(LC Paper No. CB(2)170/07-08)

The minutes of the meeting held on 12 October 2007 were confirmed.

II. Meeting with the Judiciary Administration and the Administration
(LC Paper No. CB(2)154/07-08(01) - A check-list of follow-up actions required of the Administration and Judiciary Administration

LC Paper No. CB(2)137/07-08(01) - Order 1A of the Rules of the High Court (RHC)

LC Paper No. CB(2)137/07-08(02) - Order 1B of RHC

LC Paper No. CB(2)137/07-08(03) - Order 35 of RHC

LC Paper No. CB(2)137/07-08(04) - Order 62 of RHC

LC Paper No. CB(2)137/07-08(05) - Order 62A of RHC

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)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)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

Action

LC Paper No. CB(2)93/07-08(01) - Assistant Legal Adviser's further letter dated 11 October 2007 to the Assistant Director of 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 "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)

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

Part 7 - Wasted costs

Admin/
Judiciary
Admin

3. Regarding the Hong Kong Bar Association's proposal that the Bill should make provision for public funds to meet the legal representative's costs in successfully defending a wasted cost order made on the court's own motion, the Administration/Judiciary Administration were requested to advise in writing whether the concern of the Bar Association could be dealt with by way of amendments to the relevant provisions of the subsidiary legislation, if no such provision as suggested by the Bar Association was provided in the Bill.

Part 8 - Leave to appeal required for interlocutory appeals to the Court of Appeal

Admin/
Judiciary
Admin

4. Members expressed concern that the phrase "some other compelling reason" in the proposed section 14AA(4)(b) of the High Court Ordinance and the proposed section 63A(2)(b) of the District Court Ordinance would import too high a threshold for obtaining leave to appeal. The Administration/Judiciary Administration were requested to consider deleting the word "compelling" from the sections, such that the phrase would read "some other reason why the appeal should be heard".

Part 12 - Lands Tribunal

Judiciary
Admin

5. The Judiciary Administrator informed members that the Judiciary Administration would submit for the next meeting a paper setting out a proposal to introduce Committee Stage amendments to Part 12 of the Bill to bring in the requirement that an appeal from the Lands Tribunal to the Court of Appeal, which must be on a point of law, could only be brought with leave.

Action

III. Any other business

6. The Chairman reminded members that the next meeting would be held on 20 November 2007 at 10:45 am.
7. The meeting ended at 11:55 am.

Council Business Division 2
Legislative Council Secretariat
19 November 2007

**Proceedings of the seventh meeting of the
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007
on Tuesday, 30 October 2007, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000407-000553	Chairman	Opening remarks Confirmation of minutes of meeting	
000554-001213	Chairman Administration Judiciary Administration Mr James TO	Clause-by-clause examination of the Bill (English version) Clauses 20 and 21 (proposed sections 14AA and 14AB of the High Court Ordinance (HCO))- Leave to appeal required for interlocutory appeals Criteria for the grant of leave to appeal - Mr James TO's enquiry on the meaning of the phrase "some other compelling reason why the appeal should be heard" in the proposed section 14AA(4)(b) The Administration's response that the Final Report had set out some examples to illustrate the meaning of the phrase. For instance, the Court of Appeal (CA) might wish to take the opportunity to provide much needed clarification in an area of law or to entertain an argument that the law ought to be changed, even though it was questionable whether the appellant had a reasonable prospect of success	
001214-001351	Mr James TO Judiciary Administration	Mr James TO expressed concern that the word "compelling" would import too high a threshold for obtaining leave to appeal, and suggested deleting it from the proposed section 14AA(4)(b), such that the phrase would read "some other reason why the appeal should be heard" The Judiciary Administration's response that the wording of the proposed section 14AA(4)(b) was the same as that in the Civil Procedure Rules of the UK	
001352-001916	Mr Ronny TONG Chairman	Mr Ronny TONG concurred with Mr James TO's suggestion of deleting the	

Time marker	Speaker	Subject(s)	Action Required
	Judiciary Administration	<p>word "compelling", as imposing too high a threshold might result in justice not being served in some cases and would also restrict the development of the common law</p> <p>The Judiciary Administration agreed to consult the Steering Committee on members' view and revert to the Bills Committee</p>	Judiciary Administration to follow up
001917-002223	Chairman Judiciary Administration Mr Ronny TONG	<p>Clause 22 (proposed section 34(B) of HCO) - Providing that the CA might hear or determine applications for leave to appeal on paper without a hearing</p> <p>Chairman's enquiry on whether a decision of the CA on leave to appeal which was determined on paper was subject to appeal</p> <p>The Judiciary Administration 's response that it was provided under Order 59 of the Rules of the High Court (RHC) that if an application to the CA for leave to appeal was refused otherwise than after a hearing in open court, the applicant was entitled, within a specified time frame, to have his application reconsidered in open court</p>	
002224-002254	Chairman	Clause 23 (proposed section 35(1) of HCO) - Powers of single judge in the CA to hear or determine an application for leave to appeal	
002255-002429	Chairman Judiciary Administration Mr Ronny TONG	<p>Clauses 24 and 25 (proposed sections 63 and 63A of the District Court Ordinance (DCO)) - Amendments to DCO regarding applications for leave to appeal to the CA</p> <p>The Judiciary Administration was requested to consider members' view on the use of the word "compelling" in the proposed section 63A(2)(b) of DCO, as in the case of the proposed section 14AA(4)(b) of HCO</p>	Judiciary Administration to follow up

Time marker	Speaker	Subject(s)	Action Required
002430-002548	Chairman Judiciary Administration	Clause 26 (proposed section 34B(4)(ab) of HCO) - Providing that the CA comprising two Justices of Appeal had jurisdiction to hear or determine interlocutory applications of pending appeals on paper without a hearing	
002549-002624	Chairman Judiciary Administration	Clause 27 (proposed section 52A(2) of HCO) - Empowering the Court of First Instance (CFI) and CA to award costs against a non-party	
002625-003221	Chairman Judiciary Administration Administration	<p>Order 62 Rule 6A of the Rules of High Court (LC Paper No. CB(2)137/07-08(04))</p> <p>The Chairman's enquiry on the criteria for awarding costs against a non-party</p> <p>The Administration's response that -</p> <p>(a) there were well-established principles at common law governing the court in exercising its discretion to order costs against non-parties. For instance, a recent Court of Final Appeal case had recognized that justice would normally require that a self-interested funder behind a litigation who was not a party to the proceedings be ordered to pay the costs of the funded litigant's successful opponent; and</p> <p>(b) to safeguard the interests of the non-party concerned, it was proposed to add a new Rule 6A to Order 62 of RHC 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 proceedings 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>	
003222-003307	Chairman Judiciary	Clause 28 (proposed section 53(2) of DCO) - Empowering the District Court	

Time marker	Speaker	Subject(s)	Action Required
	Administration	(DC) to award costs against non-parties	
003308-003411	Chairman Judiciary Administration	Clause 29 (proposed section 38A of DCO) - Equipping the DC with the power to nominate a person to execute documents where another person having such obligation had failed to do so or could not be found	
003412-003729	Chairman Judiciary Administration	Clause 30 (proposed section 8 of the Lands Tribunal Ordinance (LTO)) - Jurisdiction of the Lands Tribunal (LT) in respect of repossession of premises Clause 31 - Repealing section 8B of LTO	
003730-003910	Chairman Judiciary Administration	Clause 32 (proposed section 10 of LTO) - Making it clear that the LT had the same jurisdiction, powers and duties of the CFI in respect of its practice and procedure	
003911-004247	Chairman Judiciary Administration Administration	Clause 33 (proposed section 12 of LTO) - Empowering the LT to make costs orders against non-parties and wasted costs orders against legal representatives	
004248-004325	Chairman Judiciary Administration	Clause 34 (proposed section 12A of LTO) - Costs in transferred cases	
004326-004500	Chairman Judiciary Administration	Clauses 35 to 38 - Amendments to HCO and DCO to empower the CFI and DC respectively to order the transfer of proceedings to the LT	
004501-004722	Chairman Judiciary Administration	The Judiciary Administration informed members that it would submit for the next meeting a paper setting out a proposal to introduce Committee Stage amendments to bring in the requirement that an appeal from the LT to the CA, which must be on a point of law, could only be brought with leave	Judiciary Administration to follow-up
004723-005240	Chairman Judiciary Administration Administration	Examination of Clauses 18 and 19 (wasted costs) of the Bill and the relevant subsidiary legislation	

Time marker	Speaker	Subject(s)	Action Required
		Draft Order 62 Rule 8 of RHC-Personal liability of legal representatives for costs	
005241-005744	Chairman Judiciary Administration Mr Ronny TONG Administration	Regarding the Hong Kong Bar Association's proposal that the Bill should make provision for public funds to meet the legal representative's costs in successfully defending a wasted cost order made on the court's own motion, the Administration/Judiciary Administration were requested to advise in writing whether the concern of the Bar Association could be dealt with by way of amendments to the relevant provisions of the subsidiary legislation, if no such provision as suggested by the Bar Association was provided in the Bill	Administration/ Judiciary Administration to follow-up
005745-010111	Chairman Judiciary Administration Administration	Draft Order 62 Rules 8A to 8D of RHC - provisions relating to wasted costs orders The Judiciary Administration's advice that in response to the comments of the Hong Kong Bar Association, amendments would be made to Order 59 of RHC to provide that wasted costs orders should be subject to an unqualified right of appeal to the CA	
010112-010455	Chairman Mr Ronny TONG	The remaining draft subsidiary legislation to be scrutinized at the next meeting	
010456-010650	Chairman Judiciary Administration Administration	Outstanding issues to be dealt with Date of next meeting	