

**立法會**  
**Legislative Council**

Ref : CB2/BC/7/06

LC Paper No. CB(2)747/07-08  
(These minutes have been seen by  
the Administration)

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

**Minutes of meeting  
held on Wednesday, 5 December 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)

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)481/07-08)

The minutes of the meeting held on 20 November 2007 were confirmed.

**II. Meeting with the Judiciary Administration and the Administration**  
[LC Paper No. CB(2)483/07-08(01) - Draft Committee Stage amendments proposed by the Administration/Judiciary Administration

LC Paper No. CB(2)376/07-08(04) - Paper provided by the Administration/Judiciary Administration setting out a list of the proposed Committee Stage amendments to be moved by the 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

Revised Proposals for Amendments to Subsidiary Legislation under the Civil Justice Reform published in October 2007 (Revised Proposals) (tabled at the meeting)]

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

Scrutiny of Committee Stage amendments (CSAs)

3. In the course of examining the CSAs to be moved by the Administration, the Administration/Judiciary Administration undertook –

- (a) to review the wording of the phrase “any costs awarded by the Court of First Instance or the Court of Appeal/Court” in the proposed section 55D(1)(a) of the High Court Ordinance and the proposed section 72CA(1)(a) of the District Court Ordinance (i.e. new clauses 28A and 28B respectively) to make it clear that the provisions did not seek to empower the taxing master to vary an order for costs made by the court;

Admin/  
Judiciary  
Admin/  
ALA5

Action

- (b) to make a textual amendment to the proposed section 11(2) of the Lands Tribunal Ordinance (i.e. new clause 32A) to replace the phrase “determination or order” where it first appeared with “judgment, order or decision” to achieve textual consistency; and
- (c) to provide an updated set of CSAs, in bilingual form, to the Bills Committee as soon as practicable.

*(Post-meeting note: A set of revised draft CSAs to be moved by the Administration was issued to members vide LC Paper No. CB(2)684/07-08 on 3 January 2008.)*

Subcommittee to study draft subsidiary legislation

4. In view of the relatively large number and complexity of the amendments to subsidiary legislation to be made and to allow sufficient time for scrutiny, members agreed to recommend to the House Committee that a subcommittee be formed under the House Committee to study the draft subsidiary legislation.

**III. Any other business**

Date of resumption of Second Reading debate

5. Subject to the amendments to be made by the Administration to the CSAs, members supported the resumption of the Second Reading debate on the Bill to take place at the Council meeting on 23 or 30 January 2008. The Chairman informed members that subject to the availability of the revised CSAs from the Administration, the Bills Committee would report its deliberation to the House Committee on 11 January 2008. Otherwise, it would report to the House Committee on 18 January 2008.

*(Post-meeting note: The Administration subsequently advised the Clerk that it intended to resume the Second Reading debate on the Bill on 30 January 2008.)*

6. On behalf of the Bills Committee, the Chairman thanked the Administration and the Judiciary Administration for their assistance in the scrutiny work.

7. The meeting ended at 11:46 am.

**Proceedings of the ninth meeting of the  
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007  
on Wednesday, 5 December 2007, at 8:30 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> |
|--------------------|--|--|------------------------|
| 000225-000317      | Chairman   | Confirmation of minutes<br><br>Opening remarks   |                        |
| 000318-000524      | Chairman<br>Administration   | Scrutiny of the proposed Committee Stage amendments (CSAs) to the Bill (LC Paper No. CB(2) 483/07-08(01) – Annex B)<br><br><u>Part 2 – Costs-only proceedings</u><br><br>Clauses 3 and 5   |                        |
| 000525-000622      | Chairman<br>Mr Ronny TONG  | <u>Part 4 – Interim remedies in aid of proceedings outside Hong Kong</u><br><br>Clause 10  |                        |
| 000623-000707      | Chairman   | <u>Part 6 – Discovery</u><br><br>New clauses 15A, 16A, 16B and 17A – consequential amendments following the extension of pre-action discovery to all civil claims  |                        |
| 000708-000755      | Chairman   | <u>Part 8 – Leave to appeal</u><br><br>Clauses 21 and 25   |                        |
| 000756-002612      | Chairman<br>Judiciary<br>Administration<br>Mr Ronny TONG<br>Administration | <u>New Part 10A – Rules of Court</u><br><br>Briefing by the Judiciary Administration on the proposed CSAs in New Part 10A<br><br>New clause 28A – Proposed section 55D(1)(a) of the High Court Ordinance (HCO)<br><br>Mr Ronny TONG’s view that the Registrar should not be granted the power to vary an order for costs made by the court, which could only be varied by way of an appeal |                        |

| Time marker | Speaker | Subject(s)   | Action Required  |
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|             |         | <p>The Administration’s clarification that –</p> <ul style="list-style-type: none"> <li>(a) it was not the Administration’s intention to empower the taxing master to vary an order for costs made by the court; and</li> <li>(b) under the existing Order 62 rule 22(3) of the Rules of the High Court (RHC), in the event of undue delay, a taxing master was empowered to disallow any item contained in the bill of costs. The Steering Committee was of the view that a taxing master should have the power to make a global deduction of the bill, instead of the power to arbitrarily disallow an item. Hence, it had been proposed in the Consultation Paper issued in April 2006 that the existing rule 22(3) be amended to permit a taxing master to make any order as he saw fit as to any part of the costs and to disallow interest, to ensure that taxation is proceeded with expeditiously (see new Rule 22(4) in the Revised Proposals). To pursue the proposed amendments to Order 62, the Steering Committee proposed that enabling provisions be introduced to HCO and DCO by way of CSAs</li> </ul> <p>The Administration/Judiciary Administration were requested to review the wording of the phrase “any costs awarded by the Court of First Instance or the Court of Appeal” in the proposed section 55D(1)(a) to make it clear that the provision did not seek to empower the taxing master to vary an order for costs made by the court. The Clerk would circulate the revised CSAs to members when they were available</p> | <p><b>Administration /Judiciary Administration , ALA5 and Clerk to follow up</b></p> |

| Time marker   | Speaker  | Subject(s)   | Action Required   |
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|               |  | <p>New clause 28A – Proposed section 55D(1)(b) of HCO</p> <p>The Administration’s clarification that the word “interest” in the proposed section 55D(1)(b) referred to interest on taxed costs</p>   |   |
| 002613-004501 | Mr Ronny TONG<br>Administration<br>Chairman<br>Judiciary<br>Administration | <p>New clause 28A – Proposed section 55D(1)(c) of HCO</p> <p>The Administration/Judiciary Administration’s explanation that the proposed section 55D(1)(c) was an enabling provision in the primary legislation for rules of court to be made to empower the Registrar, in appropriate circumstances, to increase the rate of interest on whole or part of the costs allowed to the receiving party to penalize the paying party for unnecessary taxation as a result of his failure to accept “sanctioned offers and payments” on costs (see new RHC Order 62A rule 16 in the Revised Proposals), along the lines of Part 36 of the Civil Procedure Rules of UK</p> |   |
| 004502-004520 | Chairman   | <p>New Clause 28B – Proposed section 72CA of the District Court Ordinance (DCO)</p> <p>The Administration/Judiciary Administration were requested to review the wording of the phrase “any costs awarded by the Court” in the proposed section 72CA(1)(a) of DCO, as in the case of the proposed section 55D(1)(a) of HCO</p>  | <b>Administration /Judiciary Administration , ALA5 and Clerk to follow up</b> |
| 004521-004720 | Chairman<br>Judiciary<br>Administration<br>Mr Ronny TONG                   | <p><u>Part 12 –Lands Tribunal</u></p> <p>New Clause 32A</p> <p>Judiciary Administration’s advice that it would make a textual amendment to the proposed section 11(2) of the Lands Tribunal Ordinance (LTO) to replace the phrase “determination or</p>  | <b>Administration /Judiciary Administration to follow up</b>                  |

| <b>Time marker</b> | <b>Speaker</b>   | <b>Subject(s)</b>   | <b>Action Required</b> |
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|                    |  | order” where it first appeared with “judgment, order or decision” to achieve textual consistency  |                        |
| 004721-005138      | Chairman<br>Mr Ronny TONG<br>Administration<br>Judiciary<br>Administration | New Clause 32B<br><br>The Administration’s clarification that the proposed section 11AB of LTO which provided that the decision of the Court of Appeal was final was not inconsistent with the Hong Kong Court of Final Appeal Ordinance as it related only to decisions on leave to appeal, and not to judgments made by the Court of Appeal |                        |
| 005139-005320      | Chairman<br>Judiciary<br>Administration<br>Mr Ronny TONG                   | Clauses 33 and 34<br><br>Judiciary Administration’s explanation that the new sections 12B and 12C of LTO regarding (i) interest on claims for debt and damages, and (ii) interest on judgments to the LTO were modelled on sections 48 and 49 of HCO respectively and were added for consistency with HCO and DCO                             |                        |
| 005321-005412      | Chairman   | Members agreed to recommend to the House Committee that a subcommittee be formed under the House Committee to study the draft subsidiary legislation  |                        |
| 005413-005544      | Chairman<br>Administration   | Dates of reporting to the House Committee and resumption of Second Reading debate   |                        |
| 005545-005618      | Chairman<br>Judiciary<br>Administration                                    | Chairman’s expression of thanks to the Administration and Judiciary Administration for their assistance in the scrutiny work  |                        |