

CJRB 5/2007

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

**Attendance at Bills Committee Meetings by
Representatives of the Judiciary**

Purpose

This paper sets out the Judiciary's position on the issue of attendance at meetings of the Bills Committee by representatives of the Judiciary raised at the Bills Committee meeting on 30 May 2007.

Background

2. At the meeting on 30 May 2007, the Bills Committee asked the Judiciary to provide a paper to explain its position as to why the Chief Judge of the High Court, as the Chairman of the Steering Committee on the Civil Justice Reform ("Steering Committee"), should not attend the Bills Committee meetings to explain the proposals in the Bill.

Constitutional Arrangements

3. Under Article 62(5) of the Basic Law, the Government of the Hong Kong Special Administrative Region ("HKSAR"), defined by Article 59 to mean the executive authorities of the Region ("the executive authorities"), shall exercise the power and function to draft and introduce bills.

4. Article 64 of the Basic Law provides that the Government of the HKSAR must be accountable to the Legislative Council.

5. The Basic Law does not provide for the Judiciary to introduce bills or to be accountable to the Legislative Council.

**Hong Kong Court of Final Appeal Ordinance (“HKCFAO”)
(Cap. 484)**

6. Section 6(2) of the HKCFAO provides that the Chief Justice shall be the head of the Judiciary and shall be charged with the administration of the Judiciary.

Attendance before Bills Committee by Representatives of the Judiciary

7. The Steering Committee is appointed by the Chief Justice to oversee the implementation of the recommendations of the Final Report of the Working Party (“Final Report”) on Civil Justice Reform (“CJR”) relating to the Judiciary. The Judiciary Administration is involved in and supports the work of the Steering Committee. The Steering Committee and the Judiciary Administration are responsible and accountable to the Chief Justice.

8. The Steering Committee considers that the legislative amendments proposed in the Bill are necessary for the implementation of the recommendations of the Final Report. Having accepted the need for such legislative amendments, the executive authorities introduced the Bill into the Legislative Council pursuant to Article 62(5). The official in the executive authorities concerned is the Chief Secretary for Administration supported by the Administration Wing of the Chief Secretary’s Office. Having introduced the Bill into the Legislative Council, the executive authorities are responsible for piloting the Bill through the legislative process.

9. Together with the executive authorities who are responsible for piloting the Bill through the legislative process, representatives from Judiciary Administration would, on behalf of the Judiciary and as authorized by the Chief Justice as head of the Judiciary charged with its administration under section 6(2) of the HKCFAO, facilitate the work of the Bills Committee in its scrutiny of the Bill during the legislative process. The Judiciary Administration’s representatives have been closely involved in the process of Civil Justice Reform, both in the work of the Working Party on CJR (both the Interim and Final Reports) as well as the work of Steering Committee.

10. As to the suggestion that the Chief Judge of the High Court, as Chairman of the Steering Committee, should attend the Bills Committee,

the Judiciary finds this suggestion objectionable as a matter of constitutional principle. The appearance of judges before a committee of the Legislative Council would undermine the independence of the Judiciary and its constitutional independence from the executive authorities and the legislature, which is guaranteed by the Basic Law and is fundamental to the rule of law. And as importantly, the perception of such independence would be jeopardized. Further, the appearance of judges before a committee of the Legislative Council would politicise the Judiciary and give rise to the perception of such politicisation.

11. Members pointed out that there were isolated occasions when Judges, in their capacities as chairman of a Sub-committee of the Law Reform Commission or as chairman of the Standing Committee on Company Law Reform, attended meetings of Panels of the Legislative Council in relation to law reform matters which are not related to the Judiciary's operation. It must be emphasised that they did not appear in their capacity as judges on behalf of the Judiciary and that they did not speak on matters relating to the Judiciary's operation. Such appearances are of a totally different nature from what is being suggested. The appropriateness of such appearances by judges would depend on the circumstances in question, including the capacity and the subject matter in question. And in any event, the appropriateness of such appearances may need to be re-visited in future.

Conclusion

12. Accordingly, the Judiciary's firm position is that as a matter of constitutional principle, judges should not appear before the Bills Committee.

13. In accordance with consistent practice, together with the executive authorities who are responsible for piloting the Bill through the legislative process, the Judiciary Administration should continue, on behalf of the Judiciary and as authorized by the Chief Justice, to facilitate the Bills Committee in its work by providing the necessary explanation and assistance.

14. In addition, the Chairman of the Steering Committee, together with the Judiciary Administration, is pleased to provide a briefing to members of the Bills Committee on the principles behind the provisions in the Bill in order to assist it in its work. Such a briefing would be held at the Judiciary's premises, and would not be part of the proceedings of

the Bills Committee. Briefings of this nature have been held before, including briefings on the progress of CJR. The Bills Committee may consider such a briefing to be of assistance.

Judiciary
June 2007