

立法會
Legislative Council

LC Paper No. CB(2)1776/07-08
(These minutes have been
seen by the Administration)

Ref : CB2/BC/8/06

Bills Committee on Statute Law
(Miscellaneous Provisions) Bill 2007

Minutes of the 8th meeting
held on Friday, 11 April 2008, 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 Emily LAU Wai-hing, JP
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC

Member absent : Hon LEUNG Kwok-hung

Public Officers attending : Item I

Department of Justice

Mr Ian Wingfield
Solicitor General

Mr Michael Scott
Senior Assistant Solicitor General

Ms Rayne CHAI
Senior Government Counsel
Law Drafting Division

Ms Carmen CHU
Senior Government Counsel
Law Drafting Division

Ms Stella CHAN
Senior Government Counsel (Ag.)
Legal Policy Division

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Chris LAI
Senior Council Secretary (2) 7

Action

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

I. Meeting with the Administration

Part 7 of the Bill concerning wasted costs in criminal proceedings

2. Solicitor General, Department of Justice (SG/DoJ) briefed members on the Administration's proposed amendments to Part 7 of the Bill to reflect The Hong Kong Bar Association's alternative position on the definition of "wasted costs" as set out in its paper (LC Paper No. CB(2)1482/07-08(01)).

3. The Chairman advised that the Law Society of Hong Kong had indicated that it did not think the Administration's proposed amendments had addressed its concerns and reiterated that it could not support the legislative proposal put forward in Part 7 of the Bill. Members noted that the Law Society had indicated its support for the views of the Bar Association vide its earlier letter dated 10 October 2007.

4. While agreeing with the Administration's proposed amendments to narrow down the definition of "wasted costs", the Chairman and Mr Ronny TONG expressed concern about the threshold for making a wasted cost order under sub-paragraph 2(a)(ii) of the definition of "wasted costs" as the meaning of "any undue delay" and "any other misconduct" were too wide and uncertain. They considered that the jurisdiction to make a wasted costs order should be invoked only where there was a seriously improper act or omission, undue delay amounting

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to or caused by serious misconduct, or any other serious misconduct. To maintain a consistent threshold for making wasted costs orders under sub-paragraph 2(a)(i) and (a)(ii), members requested the Administration to review the wording of sub-paragraph 2(a)(ii). The Administration agreed to consider.

5. Assistant Legal Adviser 2 pointed out that apart from suggesting amendments to the definition of "wasted costs", the Bar Association, in its submission, also proposed to extend the application of the proposed section 18(6) of the Costs in Criminal Cases Ordinance (Cap. 492) to all counsel appearing on behalf of the Government or the legal aid fund so that wasted costs orders against them were to be borne by the general revenue or to delete the proposed section 18(6) of Cap. 492 in this regard.

6. SG/DoJ explained that the subject matter was separate from the scope of the definition of "wasted costs" in section 2 of the Costs in Criminal Cases Ordinance. The purpose of the subsection was to provide a fund out of which the costs of the other party would be paid and ensure that the costs would be met from the general revenue.

Proposed Committee Stage amendment (CSA) to be moved by the Administration

7. Members noted that the Administration would propose an additional CSA to make a technical amendment to clause 78 of the Bill as detailed in LC Paper No. CB(2)1510/07-08(01). Members raise no questions on the CSA.

Way forward

8. Members agreed that subject to the Administration acceding to members' suggestion of further amending the definition of "wasted costs" under Part 7 of the Bill, the Bills Committee would not hold further meetings to discuss the Administration's response and would report its deliberations to the House Committee. Should the Administration's reply be negative, the Bills Committee would reconsider its previous decision to move a CSA to delete the proposed amendments under Part 7 of the Bill.

II. Any other business

9. There being no other business, the meeting ended at 9:32 am.

**Proceedings of the 8th meeting of the
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007
on Friday, 11 April 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker(s) | Subject(s) | Action required |
|--|--|--|--------------------------|
| 000000 - 000310 | Chairman | Opening remarks | |
| <i>Part 7 of the Bill – proposed amendments relating to wasted costs in criminal proceedings</i> | | | |
| 000311 - 000534 | Chairman Admin | The Administration's proposed amendments to Part 7 of the Bill (LC Paper No. CB(2)1482/07-08(01)) | |
| 000535 - 001259 | Chairman Ms Emily LAU Mr Ronny TONG | Ms Emily LAU's concern about the views of the two legal professional bodies on the Administration's proposed amendments to Part 7 | |
| 001300 - 002428 | ALA2 Chairman Mr Ronny TONG Admin | The Administration's response to the Bar Association's views on the proposed section 18(6) of the Costs in Criminal Cases Ordinance (Cap. 492) | |
| 002429 - 003654 | Chairman Mr Ronny TONG Admin | Concern raised by the Chairman and Mr Ronny TONG about the application of sub-paragraph 2(a)(ii) of the definition of "wasted costs" | |
| 003655 - 010014 | Chairman ALA2 Mr Ronny TONG Ms Emily LAU Admin | Discussion on the Chairman's suggestion of further amending the definition of "wasted costs", i.e. sub-paragraph 2(a)(ii) | Admin to consider |
| <i>Proposed Committee Stage amendment to be moved by the Administration</i> | | | |
| 010015 - 010135 | Chairman ALA2 Admin | Committee Stage amendment proposed by the Administration (LC Paper Nos. CB(2)1510/07-08(01) and (02)) | |
| <i>Any Other Business</i> | | | |
| 010136 - 010228 | Chairman | Way forward | |