

立法會
Legislative Council

LC Paper No. LS62/06-07

**Paper for the House Committee Meeting
on 27 April 2007**

**Legal Service Division Report on
Civil Justice (Miscellaneous Amendments) Bill 2007**

I. SUMMARY

1. **Objects of the Bill** To implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform ("Final report") and certain other recommendations made by the Steering Committee on Civil Justice Reform ("Steering Committee") appointed by the Chief Justice.
2. **Comments** The various reform proposals are sought to be implemented by amending the Rules of the High Court (Cap. 4A) ("RHC") instead of a wholesale adoption of the Civil Procedure Rules of England and Wales ("UKCPR"). A question arises as to whether it is necessary to consider the yet to be promulgated RHC, the Practice Directions and Pre-action protocols as an integrated exercise so that Members and the public can appreciate the full effects of the Bill.
3. **Public Consultation** The Administration has conducted public consultations including the consultations with the Hong Kong Bar Association and the Law Society since the publication of the Interim Report and Consultative Paper on Civil Justice Reform ("Interim Report"). The Hong Kong Bar Association holds the view that it is necessary to consider the yet to be promulgated Practice Directions and Pre-action protocols, in addition to the proposed legislative amendments, as an integrated package.
4. **Consultation with LegCo Panel** The Panel on Administration of Justice and Legal Services was briefed on the Interim Report (published in November 2001), the Final Report (published in March 2004) and the Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform (published in April 2006). Members of the Panel raised, inter alia, the following concerns -
 - (a) the interface between the existing and revised RHC, as certain amendments to RHC were modelled on UKCPR;
 - (b) judging from the UK experience, whether the proposed reforms would achieve the objectives of improving cost-effectiveness of the civil justice system and reducing litigation costs; and
 - (c) the wholesale application of the reform proposals to the District Court.
5. **Conclusion** The Bill and the other proposed legislative reforms with respect to the Hong Kong civil justice system such as those yet to be made in the relevant subsidiary legislation raise issues of important concerns, the Legal Service Division therefore recommends a Bills Committee be formed.

II. REPORT

Objects of the Bill

To implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform ("Final Report") and certain other recommendations made by the Steering Committee on Civil Justice Reform ("Steering Committee") appointed by the Chief Justice.

LegCo Brief Reference

2. CSO/ADM CR 4/3221/04 issued by the Chief Secretary for Administration's Office dated 28 March 2007.

Date of First Reading

3. 25 April 2007.

Comments

4. The civil justice system in Hong Kong as governed by the Rules of the High Court (Cap. 4A) ("RHC") basically follows the system in England and Wales existed before 1998 ("the pre-1998 English Rules"). The pre-1998 English Rules have also been adopted as a model in other common law systems. In 1998, the civil justice system in England and Wales was completely revamped as a result of the recommendations made by Lord Woolf. A new system as contained the Civil Procedure Rules ("UKCPR") has been adopted in England and Wales since 1998.

5. In February 2000, the Chief Justice appointed a Working Party to review the civil rules and procedures of the High Court and to recommend changes thereto with a view to ensuring and improving access to justice at reasonable cost and speed. An Interim Report and Consultative Paper on Civil Justice Reform ("Interim Report") was published in November 2001 and the Final Report was published in March 2004. The Panel on Administration of Justice and Legal Services was briefed on the progress of the civil justice reform from time to time since November 2001. The Steering Committee was appointed by the Chief Justice to take overall charge of the implementation of the recommendations pertaining to the Judiciary.

6. A choice of two alternative approaches was open to the Working Party when it considered reforms, namely –

(a) to implement reforms by adopting a new set of court rules which would

largely follow UKCPR and other relevant rules drawn from other jurisdictions; or

- (b) to implement reform proposals by amending RHC.

7. The Administration finally adopts the second approach, i.e., implementing the various reform proposals by amending RHC. The Bill seeks to reform the civil justice system with a view to –

- (a) preserving the best features of the adversarial system whilst curtailing its excesses by giving even greater case management powers to the courts;
- (b) streamlining and improving civil procedures; and
- (c) facilitating early settlement amongst parties, cutting out unnecessary steps and discouraging and if necessary, penalizing unnecessary court applications (ref: para. 3 of LegCo Brief).

8. The Bill seeks to amend the following principal ordinances as part of the package of legislative amendments proposed by the Steering Committee –

- (a) High Court Ordinance (Cap. 4);
- (b) Lands Tribunal Ordinance (Cap. 17);
- (c) Law Amendment and Reform (Consolidation) Ordinance (Cap. 23);
- (d) District Court Ordinance (Cap. 336);
- (e) Small Claims Tribunal Ordinance (Cap. 338); and
- (f) Arbitration Ordinance (Cap. 341).

9. The following issues are dealt with in the Bill –

- (a) “*Costs only proceedings*” (Part 2 of the Bill)

Where no proceedings relating to a dispute has been commenced, the parties to the dispute have in writing agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute, and the parties have failed to agree on the amount of the such costs, either party may commence proceedings for an order of such costs.

(b) ***Extending the defence of tender before action to a claim for unliquidated damages*** (Part 3 of the Bill)

The proposed provisions seek to extend the common law defence of tender in that it is a defence if the defendant proves that he had unconditionally offered to his claimant before the claimant commenced the proceedings the amount due, whether such amount is a liquidated or unliquidated amount. The defendant is not entitled to rely on this defence unless before serving his defence, he has made a payment into court of such amount offered.

(c) ***Receivership or other interim relief in aid of proceedings outside Hong Kong*** (Part 4 of the Bill)

The Court of First Instance (“CFI”) may by order appoint a receiver or grant other interim relief in relation to proceedings which have been or are to be commenced in a place outside Hong Kong and are capable of giving rise to a judgment which may be enforced in Hong Kong. CFI may refuse such application if the fact that the court has no jurisdiction apart from this provision in relation to the subject matter of the proceedings concerned makes it unjust or inconvenient for the court to grant the application.

(d) ***Vexatious litigants*** (Part 5 of the Bill)

CFI may on the application of the Secretary for Justice or an affected person order a vexatious litigant that no legal proceedings shall be instituted or continued without the leave of the court. CFI may not make an order unless it is satisfied that the litigant “has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings” and it has heard the litigant or the litigant has been given the opportunity to be heard.

(e) ***Discovery*** (Part 6 of the Bill)

The Bill seeks to extend the court’s jurisdiction to order pre-action discovery from personal injuries and fatal accident cases to all types of cases with a view to promoting greater transparency at an earlier stage. The test is whether a particular document is directly relevant to an issue in the anticipated proceedings, namely, the document would be likely to be relied on in evidence by any party in the proceedings or the document support or adversely affects any party’s case.

(f) ***Wasted costs by solicitors and barristers*** (Part 7 of the Bill)

Barristers, same as solicitors, may be ordered by the court to personally

bear any wasted costs if such costs were incurred by a party as a result of an improper or unreasonable act or omission or any undue delay or other misconduct or default. When determining whether or not to make an order, the court shall take into account the interest that there be fearless advocacy under the adversarial system of justice.

(g) ***Leave for interlocutory appeal*** (Part 8 of the Bill)

Currently appeals from CFI to the Court of Appeal (“CA”) are as of right. The Bill seeks to restrict interlocutory appeals in that leave must be obtained before from CFI or CA. Leave to interlocutory appeals may be granted subject to such conditions as the court hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal. Leave shall not be granted unless the appeal has a reasonable prospect of success or there is some other compelling reason why the appeal should be heard. No appeal lies from a decision of CA as to whether or not leave to appeal to should be granted. Similar provisions with respect to interlocutory appeals are sought to be made in District Court proceedings.

(h) ***Appeals*** (Part 9 of the Bill)

This Part seeks to clarify that CA comprising two Justices of Appeal has jurisdiction to hear or determine interlocutory applications of pending appeals on paper without a hearing.

(i) ***Costs against non-party*** (Part 10 of the Bill)

The court will be empowered to make an order of costs against a person who is not a party to the relevant proceedings if it is satisfied that it is in the interests of justice to do so.

(j) ***Execution of Instruments*** (Part 11 of the Bill)

The Bill seeks to give a power to the District Court (which is similar to that of CFI) to nominate a person to execute documents where another person having such obligation has failed to do so or cannot be found after reasonable inquiry with a view to benefit judgment creditors who have obtained judgments involving execution of documents.

(k) ***Practice and procedure of the Lands Tribunal*** (Part 12 of the Bill)

Various provisions are proposed to enable the Lands Tribunal (“LT”) to adopt the practice and procedure of CFI and to streamline the processing of claims. Specifically LT will have jurisdiction to make an order for possession of any premises or for ejection of a tenant from those

premises, and make orders for the payment of damages in respect of a breach of tenancy or sub-tenancy in relation to any application for possession or ejection. LT may also make costs order against non-parties and wasted costs orders against barristers and solicitors.

10. The Steering Committee proposed to make amendments to both principal legislation (which are now put forward in the Bill), and subsidiary legislation (RHC, the Lands Tribunal Rules (Cap. 17A) and the Rules of the District Court (Cap. 336H)).

11. Since the various reform proposals are sought to be implemented by amending RHC instead of a wholesale adoption of UKCPR, a question arises as to whether it is necessary to consider the yet to be promulgated RHC, the Practice Directions and Pre-action protocols as an integrated exercise so that Members and the public can appreciate the full effects of the Bill.

Public Consultation

12. The Administration has conducted public consultations including the consultations with the Hong Kong Bar Association and the Law Society since the publication of the Interim Report. Members may refer to the information about the consultation exercise as set out in paragraphs 25 to 27 of the LegCo Brief.

13. When the Panel on Administration of Justice and Legal Services was briefed on the way forward for implementing the recommendations of the CJR at its meeting on 12 December 2006, the Judiciary Administrator advised members that the two legal professional bodies had raised concerns on the proposed legislative amendments, and that their concerns had largely been addressed. At the meeting, the Hong Kong Bar Association held the view that it was necessary to consider the yet to be promulgated Practice Directions and Pre-action protocols, in addition to the proposed legislative amendments, as an integrated package.

Consultation with LegCo Panel

14. The Panel on Administration of Justice and Legal Services was briefed on the Interim Report (published in November 2001), the Final Report on Civil Justice Reform (published in March 2004) and the Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform (published in April 2006).

15. Members of the Panel raised a number of concerns including -

- (a) the interface between the existing and revised RHC, as certain amendments to RHC were modelled on UKCPR;

- (b) whether the proposed reforms would achieve the objectives of improving cost-effectiveness of the civil justice system and reducing litigation costs, as the experience in England and Wales revealed that the introduction of UKCPR had not been successful in reducing costs and had led to an increase in costs in some cases; and
- (c) the wholesale application of the reform proposal to the District Court, as the consultation exercises conducted on UKCJR in the past focused mainly on the review of civil rules and procedures of the High Court.

Conclusion

16. The Bill and the other proposed legislative reforms with respect to the Hong Kong civil justice system raise issues of important concerns, the Legal Service Division recommends a Bills Committee be formed.

Prepared by

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