

**Legislative Council Panel on
Administration of Justice and Legal Services (“AJLS”)**

**Consultation Paper on Proposed Legislative Amendments
for the Implementation of the Civil Justice Reform**

Purpose

This paper informs Members of –

- (a) the outcome of the consultation exercise on the proposed legislative amendments for the implementation of the Civil Justice Reform (“CJR”); and
- (b) the way forward for the legislative amendment exercise to implement the recommendations in the CJR Final Report.

Background

2. On 12 April 2006, the Steering Committee on CJR (“the Steering Committee”) released the “Consultation Paper on Proposed Legislative Amendments for the Implementation of the CJR” (“the Consultation Paper”) for a 3-month consultation. At the AJLS Panel meeting on 26 June 2006, the Judiciary Administration briefed Members on the proposed legislative amendments therein. Members were informed, amongst other things, that -

- (a) Of the 150 recommendations in the CJR Final Report, 21 required amendments to primary legislation, and 84 required amendments to subsidiary legislation;
- (b) As the practice and procedure in civil proceedings in the District Court (“DC”) largely mirrored those in the High Court (“HC”), similar amendments were proposed to be introduced to the Rules of the District Court (“RDC”); and
- (c) The Steering Committee had proposed certain legislative amendments for the application of CJR to Lands Tribunal and Employees’ Compensation (“EC”) proceedings.

Present Position

3. The Steering Committee received 30 responses to the Consultation Paper, commenting mostly on technical and drafting details. There is general support to most of the proposals.

4. It is noted that the Bar Association and the Law Society, apart from giving support to most proposals and making comments on drafting matters, have raised some concerns about certain proposed amendments in their responses. The Steering Committee held separate meetings with representatives of the two legal professional bodies. After the useful exchanges at these meetings, the concerns of the two legal professional bodies have largely been addressed. In summary, the major comments of the two legal professional bodies and the Steering Committee's responses are set out below:

Comments from the Bar Association

Wasted Costs

5. The Bar Association accepts that it is right in principle for barristers to be made subject to liability for wasted costs. The comments relate to how this would work in practice and the possibility of abuse.

6. The Steering Committee has responded that there is already a useful body of case law that will assist the courts in this context. This, together with the provisions in the draft legislation, will provide adequate safeguards against possible abuse. At the invitation of the Steering Committee, the Bar Association submitted in mid-November proposed additional safeguards for incorporation in the draft legislation. The Steering Committee is considering the matter, and will revert to the Bar Association in due course.

Application of CJR to the DC

7. The Bar Association initially expressed concern that the wholesale application of CJR to the DC may not cater for the variety of cases and the predominance of unrepresented cases with low-end claims at the DC, and suggested that certain existing features in the RDC be retained.

8. The Steering Committee examined the Bar Association's comments and re-affirmed the importance of the application of the CJR to the DC –

- (a) The objectives of CJR are to improve the cost-effectiveness of our system, make it less complex and reduce delays, while keeping in mind the fundamental requirement of doing justice between the parties. These objectives and the case management powers under CJR are equally applicable to the DC;
- (b) It is also in line with the established policy for the practice and procedure in civil proceedings in the DC to follow those in the HC, save for special considerations justifying differences; and
- (c) It would therefore be highly undesirable if CJR were not to be extended to the DC, as this would result in having three separate systems of civil procedure, i.e. the CJR system in the HC, the non-CJR system in the DC, and the system appropriate for the Small Claims Tribunal. This would create confusion and practical difficulties for judges, court staff, legal practitioners and litigants alike.

9. The Judiciary is therefore strongly of the view that CJR should be applied to the DC, save for special considerations justifying differences. In line with this approach, the Steering Committee accepted a number of the Bar's comments and decided not to pursue certain proposed legislative changes for the DC. The Bar Association was informed of the revised proposals and made no further comments.

10. With the revised proposals, it is expected that the CJR reforms will make improvements in the DC, while at the same time allowing it to retain certain existing features to give the DC flexibility to deal with cases even more effectively and efficiently. The Steering Committee is pleased that the Bar Association appreciates this approach, and has made no further comments on the proposed application of CJR to the DC.

EC Proceedings

11. On the application of CJR to EC proceedings, the Bar Association commented that the Employees' Compensation (Rules of

Court) Rules are in need of a review to minimize the scope of potential incompatibility or conflict, and to avoid burdensome litigation trail as happened in a number of cases. Otherwise, the application of certain CJR recommendations to EC cases may produce uncertainty.

12. In view of the Bar Association's comments, the Steering Committee has decided not to pursue the introduction of the leave to appeal for EC proceedings at present.

Comments from the Law Society

Single Joint Expert ("SJE")

13. On this issue, whilst the Law Society has accepted that the appointment of an SJE in suitable cases would save costs, it is concerned that in the present draft of the proposed amendments to Order 38, (i) the Court does not have the power to appoint an SJE on its own motion; and (ii) the factors which the Court has to take into account in deciding whether or not to appoint an SJE are not spelt out.

14. Taking into consideration the Law Society's views, the Steering Committee will make further amendments to Order 38, so that (i) the Court will have the power to appoint an SJE on its own motion where appropriate; and (ii) the factors to be taken into account in deciding whether or not to appoint an SJE will be set out in the Rules.

Case Management Powers and Docket System

15. Whilst the Law Society supports the proposals on active case management, it has concerns about the application of such powers, the possibility of front-loaded costs, and the limited benefits without adopting a docket system.

16. The Steering Committee has explained that the proposals on case management powers aim to foster a new culture for the conduct of cases, so that at an earlier stage than is the case now, parties will have to be better prepared and be in a better position to know the other side's case; there will also be greater judicial control over proceedings. This may well mean more work at the early stages of a case than at present, but the whole process is expected to be more cost-efficient in the long run. While a docket system will not be adopted for managing cases across the

board, in appropriate cases, suitable listing arrangements will be made. As noted in the CJR Final Report, the existing specialist lists already operate very much along the objectives of a docket system, and applications may be made under Practice Direction 5.7 on “Long Cases” for cases to be given treatment similar to that under a docket system. These practices will continue.

Scale of Costs

17. In response to the Consultation Paper’s invitation for views on the scale of costs laid down in Order 62, the Law Society has made proposals, which suggest important changes with significant impact on solicitors and their clients. Given the wide implications of these proposals, the Steering Committee considers it desirable first for the Law Society to conduct wider consultation with all the relevant stakeholders concerned, for example, relevant Government Departments in the Administration, the Consumer Council, and the Legislative Council AJLS Panel. The Law Society undertook to further consider the issue.

Way Forward

18. The Steering Committee is refining the draft legislation in the light of the comments received. The High Court Rules Committee and the District Court Rules Committee will be consulted in due course. The Judiciary Administration will liaise with the Administration, with a view to introducing the necessary amendments into LegCo in the second half of the 2006-07 legislative session.

Judiciary Administration
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