

立法會
Legislative Council

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LC Paper No. CB(2)2404/07-08
(These minutes have been seen
by the Administration)

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Minutes of the seventh meeting
held on Friday, 18 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 Miriam LAU Kin-yee, GBS, JP
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC
- Public Officers attending** : Item I
Judiciary Administration
Miss Vega WONG
Assistant Judiciary Administrator (Development)
The 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

Action

I. Meeting with the Administration/Judiciary Administration

(LC Paper No. CB(2)1661/07-08(01) - Paper entitled "Procedure under New Order 22 - Offers to Settle and Payments into Court" provided by the Judiciary Administration

LC Paper No. CB(2)1000/07-08(01) - Proposed amendments to RHC together with the following Annexes -

Annex A - a summary table setting out the RHC Orders affected and the relevant Amendment Rules in the Draft RHC

Annex B - the Draft RHC

Annex C - the marked-up version of the provisions affected by the amendments in the Draft RHC

LC Paper No. CB(2)1129/07-08(01) - Policy aspects of the proposed amendments to RHC

LC Paper No. CB(2)1152/07-08(01) - Summary of views received on the Draft RHC during the public consultations in April 2006 and October 2007 and the response of the Steering Committee on Civil Justice Reform

LC Paper No. CB(2)1373/07-08(02) - Judiciary's response to the first round of submissions from deputations)

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

Scrutiny of the proposed amendments to the Rules of the High Court (RHC)

2. The Subcommittee had completed scrutiny of Parts 8 and 9 of the proposed amendments to RHC.

3. The Judiciary Administration was requested to –

Judiciary
Admin

Part 8 - Sanctioned Offers and Payments

- (a) explain, with relevant case law, the criteria for the court's determination as to whether a judgment was better/more advantageous than the sanctioned offer or payment under the new Order 22 rules 19 and 20;
- (b) explain whether, and if so what, penalty would be imposed against a party who had disclosed a sanctioned offer or payment to the trial judge in breach of Order 22 rule 21(2);
- (c) clarify whether a plaintiff could make a sanctioned offer to one or more, but not all defendants where the defendants were sued jointly;

Action

- (d) explain the arrangements for staying part of a claim as provided under the new Order 22A rule 18(3), and address the concern that the partial settlement of a claim allowed under the regime of sanctioned offers and payments would prejudice the outcome of the trial on the remaining parts of the claim, with information, where available, on the relevant experience of UK under the Civil Procedure Rules;
- (e) consider the need to draw to the attention of unrepresented litigants that an offer for settlement which did not qualify as a sanctioned offer/payment would still be taken into account in the court's exercise of its general discretion as to costs under Order 62 rule (5);
- (f) consider, in relation to the new Order 22 rule 23(2) -
 - (i) replacing the word "appropriate" which gave the impression that a defendant was actually paying money into court rather than changing the nature of the money already paid into court;
 - (ii) specifying clearly when the money appropriated in accordance with rule 23(2) would deem to be a sanctioned payment, in view of the proposed time limit for the acceptance of a sanctioned payment; and
 - (iii) the need for prescribing a standard form for giving notice under rule 23(2)(a).

**Judiciary
Admin**

4. The Judiciary Administration informed members that the following amendments would be made -

- (a) a provision similar to Order 20 rule 20(2) would be made to Order 20 rule 19 so that a plaintiff and defendant would be subject to the same financial sanctions for non-acceptance of a sanctioned offer/payment;
- (b) the new Order 22 rule 5(6)(b) would be deleted, pursuant to the decision of the Steering Committee on Civil Justice Reform that it was unnecessary to require the offeror of a sanctioned offer to file with the Court a certificate of service of the offer as provided under the rule; and
- (c) references to pre-action protocol would be deleted from the new Order 22 rule 6(2) to (4), in the light of the Judiciary's revised proposal to confine the proposed sanctions for non-compliance to a rule or a court order at this stage.

Action

II. Any other business

5. The Chairman reminded members that the next meeting would be held on Thursday, 24 April 2008 at 8:30 am.

6. The meeting ended at 10:24 am.

Council Business Division 2
Legislative Council Secretariat
24 June 2008

**Proceedings of the seventh meeting of the
Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform
on Friday, 18 April 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000006 - 000201	Chairman	Opening Remarks	
000202 - 001718	Judiciary Administration Chairman	<u>Part 8 – Sanctioned Offers and Payments</u> (Division 1 – Recommendations 38 to 43) Briefing by the Judiciary Administration (JA) on its paper on the new Order 22 [CB(2)1661/07-08(01)]	
001719 - 001813	Chairman Judiciary Administration	Order 1 rule 4	
001814 - 002320	Chairman Mr James TO Judiciary Administration Administration	New Order 22 In response to Mr James TO's enquiry, JA was requested to explain in writing whether, and if so what, penalty would be imposed against a party who had disclosed a sanctioned offer or payment to the trial judge in breach of Order 22 rule 21(2)	JA to follow up
002321 - 002938	Mr James TO Chairman Administration Judiciary Administration	Members noted that it was proposed under the new Order 22 rule 18(3) that if a sanctioned offer or payment of a defendant relating only to part of the claim or an issue arising from the claim was accepted, the claim was stayed as to that part or issue. As there was no procedure for partial settlement of a claim under the existing arrangements, Mr James TO sought information on the arrangements for staying part of the claim. Mr TO also expressed concern that the partial settlement of a claim allowed under the regime of sanctioned offers and payments would prejudice the outcome of the trial on the remaining parts of the claim. JA was requested to provide a written response to the concern and enquiry raised by Mr TO, with information, where available, on the relevant experience of UK under the Civil Procedure Rules	JA to follow up
002939 - 003503	Mr James TO Chairman Administration Judiciary Administration	With reference to rules 19(1) and 20(1) of the new Order 22 relating to the consequences of non-acceptance of a sanctioned offer or payment, JA was requested to explain, with relevant case law, the criteria for the court's determination as to whether a judgment was better/more advantageous than the sanctioned offer or payment	JA to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
003504 - 003824	Mr Ronny TONG Administration Chairman	Mr Ronny TONG expressed concern that unrepresented litigants might not abide by the restriction on disclosure of a sanctioned offer or payment under Order 22 rule 21(2)	
003825 - 004053	Ms Miriam LAU Administration Mr Ronny TONG Chairman Judiciary Administration	<p>In response to Ms Miriam LAU's enquiry on whether there were any safeguards to ensure that a sanctioned payment would not be communicated to the trial judge, JA's response that -</p> <p>(a) the Court Registry and the master of the case concerned would ensure that information pertaining to the sanctioned payment did not appear in the file for the trial judge, as was the practice under the existing arrangements for payment into court; and</p> <p>(b) the Judiciary would strengthen training of Registry staff in this regard upon implementation of the new rules</p>	
004054 - 005533	Ms Miriam LAU Chairman Administration Judiciary Administration Mr Ronny TONG	Discussion on how Order 22 rules 19 and 20 worked in relation to the consequences for the offeree for non-acceptance of a sanctioned offer or payment	
005534 - 010607	Mr Ronny TONG Chairman Judiciary Administration Administration	<p>JA's confirmation that if a party had made an offer to settle which did not fall under the regime of sanctioned offers and payments under the new Order 22, he could still draw such offer to the court's attention during its determination on costs under Order 62 rule 5, as was the case at present. Mr Ronny TONG considered it necessary to draw such information to the attention of unrepresented litigants who were not conversant with civil litigation rules and procedures</p> <p>JA's response that it would take into account Mr TONG's views when updating the information pamphlet on taxation of costs for unrepresented litigants</p>	JA to follow up
010608 - 010643	Chairman	<u>New Order 22</u> rule 1 - Interpretation	
010644 - 010717	Chairman Judiciary Administration	rule 2 - Offer to settle with specified consequences	
010718 - 010731	Chairman	rule 3 - Defendant's offer to settle	
010732 - 010734	Chairman	rule 4 - Plaintiff's offer to settle	

Time Marker	Speaker(s)	Subject(s)	Action required
010735 - 010929	Chairman Judiciary Administration	rule 5 - Form and content of a sanctioned offer JA informed members that the Steering Committee considered it unnecessary to require the offeror of a sanctioned offer to file with the court a certificate of service of the offer under rule 5(6)(b) and would accordingly delete the rule	JA to follow up
010930 - 010959	Chairman Judiciary Administration	rule 6 - Sanctioned offer to be made after commencement of proceedings JA informed members that references to pre-action protocol would be deleted from rule 6(2) to (4), in the light of the Judiciary's revised proposal to confine the proposed sanctions for non-compliance to a rule or a court order at this stage	JA to follow up
011000 - 011022	Chairman Judiciary Administration	rule 7 - Notice of a sanctioned payment	
011023 - 011150	Chairman Judiciary Administration	rule 8 - Offer to settle a claim for provisional damages	
011151 - 011201	Chairman Judiciary Administration	rule 9 - Time when a sanctioned offer or a sanctioned payment is made and accepted	
011202 - 011223	Chairman	rule 11 - Time for acceptance of a defendant's sanctioned offer or sanctioned payment	
011224 - 011316	Judiciary Administration Chairman	rule 10 - Clarification of a sanctioned offer or a sanctioned payment notice	
011317 - 011331	Chairman Judiciary Administration	rule 12 - Time for acceptance of a plaintiff's sanctioned offer	
011332 - 011340	Chairman	rule 13 - Payment out of a sum in court on the acceptance of a sanctioned payment	
011341 - 011901	Chairman Judiciary Administration Mr Ronny TONG Administration	rule 14 - Acceptance of a sanctioned offer or a sanctioned payment made by one or more, but not all, defendants Members noted that under rule 14, where the defendants were sued jointly, it was possible for one or more, but not all, defendants to make a sanctioned offer or payment to the plaintiff. JA was requested to clarify whether the same also applied to the plaintiff, i.e. whether a plaintiff could make a sanctioned offer to one or more, but not all, defendants	JA to follow up
011902 - 011942	Chairman Judiciary Administration Administration	rule 15 - Other cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment	

Time Marker	Speaker(s)	Subject(s)	Action required
011943 - 012050	Chairman Administration	rule 16 - Costs consequences of acceptance of a defendant's sanctioned offer or sanctioned payment	
012051 - 012102	Chairman	rule 17 - Costs consequences of acceptance of a plaintiff's sanctioned offer	
012103 - 012131	Chairman Judiciary Administration	rule 18 - Other consequences of acceptance of a sanctioned offer or a sanctioned payment	
012132 - 012404	Chairman Judiciary Administration Administration Mr Ronny TONG	rule 19 - Costs consequences where a plaintiff fails to do better than a sanctioned offer or a sanctioned payment rule 20 - Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer JA informed members that a provision similar to rule 20(2) would be made to rule 19 so that a plaintiff and defendant would be subject to the same financial sanctions for non-acceptance of a sanctioned offer/payment	JA to follow up
012405 - 012412	Chairman	rule 21 - Restriction on disclosure of a sanctioned offer or a sanctioned payment	
012413 - 012444	Chairman Judiciary Administration	rule 22 - Interest	
012445 - 012640	Chairman Judiciary Administration Administration	rule 23 - Money paid into court under order	
012608 - 012640	Chairman Judiciary Administration	rule 24 - Transitional provision	
012641 - 012736	Chairman Judiciary Administration	Form No. 23 - Notice of sanctioned payment	
012737 - 013155	Mr Ronny TONG Chairman Judiciary Administration Administration	rule 23 JA was requested to - (a) consider replacing the word "appropriate" in rule 23(2) which gave the impression that a defendant was actually paying money into court rather than changing the nature of the money already paid into court; and (b) specify clearly when the money appropriated in accordance with rule 23(2) would deem to be a sanctioned payment, in view of the proposed time limit for the acceptance of a sanctioned payment	JA to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
013156 - 013208	Chairman	Form No. 24 - Notice of acceptance of sanctioned payment	
013209 - 013552	Chairman Mr Ronny TONG Administration Judiciary Administration	Form No. 25 - Notice of request for payment Form No. 25A - Notice of payment into court under order or certificate JA was requested to consider the need for prescribing a standard form for giving notice under Order 22 rule 23(2)(a)	JA to follow up
013553 - 013624	Chairman Judiciary Administration	Form No. 51 - the form was to be repealed	
013625 - 014104	Chairman Judiciary Administration	JA advised that the proposed amendments to the following rules were consequential amendments <ul style="list-style-type: none"> - Order 29 rule 16 - Order 34 rule 8(3) - Order 59 rule 12A - Order 62 rule 3(8) - Order 75 rule 24(1) - Order 80 rule 15 - Order 82 rule 4 - Order 92 rule 5 - New Order 22A 	
014105 - 014421	Chairman Mr Ronny TONG Judiciary Administration Administration	<u>Part 8: Division 2 - Recommendation 132</u> New Order 62A JA informed members that the new Order 62A was proposed to enable offers and payments similar to those contained in the new Order 22 be made in the context of the taxation of costs	
014422 - 014443	Chairman Judiciary Administration	Form No. 93A - Notice of acceptance of sanctioned payment	
014444 - 014505	Chairman Judiciary Administration	Form No. 93B - Notice of request for payment	
014506 - 014729	Chairman Mr Ronny TONG	<u>Part 9 - Interim Remedies and Mareva Injunctions in aid of Proceedings outside Hong Kong</u> (Recommendation 49)	
014730 - 014816	Judiciary Administration Chairman	Order 11 rule 1(oc)	
014817 - 014907	Judiciary Administration Chairman Mr Ronny TONG	Order 29 rule 8A	

Time Marker	Speaker(s)	Subject(s)	Action required
014908 - 014944	Chairman Judiciary Administration	Order 30 rule 9	
014945 - 015029	Chairman Judiciary Administration	Order 73 rule 4	
015030 - 015423	Chairman Mr Ronny TONG Administration	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
24 June 2008