

立法會
Legislative Council

Ref : CB2/SS/1/09

LC Paper No. CB(2)267/09-10
(These minutes have been seen
by the Administration)

**Subcommittee on Rules of the High Court
(Amendment) Rules 2009**

**Minutes of second meeting
held on Tuesday, 3 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Cyd HO Sau-lan
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun
- Member absent** : Hon Ronny TONG Ka-wah, SC
- Public Officers attending** : Item I
Mr David LAU Kam-kuen
Principal Assistant Secretary for Security A

Ms Veronica WONG Hoi-yee
Assistant Secretary for Security A2

Mr Sunny CHAN Yuen-sun
Senior Assistant Law Draftsman
Department of Justice

Miss Selina LAU Suet-ching
Senior Government Counsel
Department of Justice

Mr John RIBEIRO
Chief Superintendent of Police (Narcotics Bureau)
Hong Kong Police Force

Mr Nelson CHENG Yiu-mo
Superintendent (Financial Investigation Group)
(Narcotics Bureau)
Hong Kong Police Force

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2)5

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Miss Josephine SO
Senior Council Secretary (2)1

Ms Sandy HAU
Legislative Assistant (2)5

Action

I. Meeting with the Administration

[L.N. 186 of 2009, CB(2)121/09-10(02) to (05) and CB(2)172/09-10(01) to (02)]

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

Definition of "prescribed interest"

2. Members were of the view that in view of the wide powers given to the Chief Executive (CE) to apply for an order to specify persons and property as terrorists, terrorist associates or terrorist property, to the Secretary for Security to freeze property suspected to be terrorist property and to the law enforcement agencies to investigate and seize and detain property suspected to be terrorist property under sections 5, 6 and 12A-J of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance) respectively, adequate safeguard should be provided to all persons affected to apply to the Court of First Instance (the Court) for an order to revoke a specification order, to release the property being frozen, and to seek compensation from the Government. Mr Paul TSE and Mr James TO also urged the Administration to amend the Ordinance, as the existing construction of the Ordinance for the affected persons to take legal action was convoluted and failed to strike a proper balance between the wide powers of the Government and the rights of the affected

Action

persons.

3. Whilst noting that the coverage of persons under the definition of "prescribed interested" in rule 1(4) of the new Order 117A was very wide, as stated by the Administration in paragraphs 19 to 21 of LC Paper No. CB(2)172/09-10(01), the Chairman pointed out that the definition would inevitably delimit certain categories of persons who had an interest in the property, not to mention that the scope of persons covered by the definition might be narrower than under section 2(4) of the Ordinance which provided that "a person who has a prescribed interest in any property shall be deemed to be a person by, for or on behalf of whom the property is held". Moreover, the definition of "prescribed interest" might not be easily comprehended by members of the general public as to whether they were eligible to apply to the Court to have the relevant order or notice revoked, to release the property being frozen and to seek compensation from the Government.

Admin

4. The Chairman further pointed out that section 2(1) of the Ordinance provided that "prescribed interest" (訂明權益), in relation to any property, meant an interest in the property prescribed by rules of court as an interest for the purposes of the Ordinance. Section 2(1) did not stipulate that there must be a definition of "prescribed interest" as such. The Chairman requested the Administration to provide a response in writing on the following before the next meeting -

- (a) the necessity for providing a definition of "prescribed interest" in the new Order 117A, as well as the pros and cons of providing and not providing such definition; and
- (b) instead of providing a definition of "prescribed interest" in the new Order 117A, to allow the Court to determine on a case-by-case basis in accordance with the facts of each case as to whether the persons had a prescribed interest.

5. The Administration responded that section 20(1)(e) of the Ordinance stipulated that provision might be made by rules of court prescribing interests for the purposes of the definition of "prescribed interest". Accordingly, rule 1(4) of the new Order 117A provided for a definition of "prescribed interest". Nevertheless, the Administration agreed to provide a response in writing on the issues raised by the Chairman in paragraph 4 above. The Administration however pointed out that it might be more appropriate for the Rules Committee of the High Court (the Rules Committee) to amend the new Order 117A.

6. Mr James TO expressed concern that some categories of persons, e.g. beneficiaries under a discretionary trust and licensees, might fall outside the scope of persons who had a "prescribed interest" as defined under rule 1(4) of the new Order 117A.

Action

7. The Administration responded that any person who considered that he/she was affected by an application specified under section 2(6) of the Ordinance, but fell outside the scope of persons who had a "prescribed interest" as defined under rule 1(4) of the new Order 117A, might apply to the court under section 2(6) of the Ordinance to be joined as a party to the proceedings.

Admin

8. Mr James TO suggested adding a catch-all provision to the definition of "prescribed interest" to allow the Court to determine whether a person had an interest in relation to a property.

9. Ms Miriam LAU asked whether any person who considered that he/she was affected by an application under section 5, 13, 17 or 18 of the Ordinance could only join as a party to the proceedings after the subject person had made an application to the Court.

10. The Administration advised that in the case of an application to specify certain property as terrorist property under section 5, the applicant would be CE and in the case of an application to forfeit terrorist property under section 13, the applicant would be the Secretary for Justice. A person who considered that he/she was affected by those applications might be ordered by the Court to be joined as a party to those proceedings under section 2(6) after CE or the Secretary for Justice (as the case might be) had made those applications. Assistant Legal Adviser 2 also advised that any person affected by an order made under section 5 or by a notice made under section 6 might at any time apply to the Court to revoke the order under section 17(1)(a)(ii) or the notice under section 17(1)(b). Although section 18 did not appear to cover affected persons who did not have a prescribed interest in the property concerned for seeking compensation to be paid by the Government, section 2(6) of the Ordinance provided that the Court might order that any person who might be affected by an application under section 18 be joined as a party to the proceedings.

Other issues

Admin

11. Mr James TO requested the Administration to provide a response in writing on the following issues before the next meeting -

- (a) whether persons joined as a party to the proceedings under section 2(6) of the Ordinance to an application under section 18 of the same could be awarded compensation to be paid by the Government; and
- (b) whether the scope of "prescribed interest" covered adverse possessory title to a property.

The Administration undertook to do so.

Action

II. Any other business

12. The Chairman reminded members that the next meeting of the Subcommittee was scheduled for 9 November 2009 at 4:30 pm to continue discussion on LC Paper No. CB(2) 172/09-10(01).

13. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
12 November 2009

**Proceedings of the meeting of the
Subcommittee on Rules of the High Court (Amendment) Rules 2009
on Tuesday, 3 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000313	Chairman	Opening remarks	
000314 - 001327	Admin Chairman	Briefing by the Administration on LC Paper No. CB(2)172/09-10(01)	
001328 - 002515	Admin Chairman	The Chairman's concern on providing a definition of "prescribed interest" in rule 1(4) of the new Order 117A	
002516 - 003604	Mr James TO Admin Chairman	Mr James TO's views that the scope of "prescribed interest" in the new Order 117A must be as wide as possible	
003605 - 005105	Mr Paul TSE Chairman Admin	Mr Paul TSE's views that the existing construction of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) for affected persons to take legal action was convoluted. He urged the Administration to consider amending Cap. 575 to address such deficiencies. The term "property" in Cap. 575 was defined under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) The term "funds" in Cap. 575 was defined to include funds mentioned in Schedule 1 to Cap. 575	
005106 - 010810	Ms Miriam LAU Admin Chairman Mr James TO ALA2	Ms Miriam LAU's enquiry on whether any person who considered that he/she was affected by an application under section 5, 13, 17 or 18 of Cap. 575 could only join as a party to the proceedings after the subject person had made an application to the Court of First Instance	
010811 - 011847	Ms Cyd HO Admin Chairman ALA2	The Administration was requested to provide a response in writing on the following - (a) the necessity for providing a definition of "prescribed interest" in the new Order 117A, as well as the pros and cons of providing and not providing such definition; and (b) instead of providing a definition of "prescribed interest" in the new Order 117A, to allow the Court to determine on a case-by-case basis in accordance with the facts of each case as to whether the persons had a prescribed interest	Admin to provide a response (paragraph 4 of the minutes refers)

Time marker	Speaker	Subject	Action required
011848 - 013801	Mr James TO Chairman Admin	Mr James TO's suggestion of adding a catch-all provision to the definition of "prescribed interest" to allow the Court to determine whether a person had an interest in a property Appropriateness of the Rules Committee of the High Court (the Rules Committee) to make the new Order 117A	Admin to provide a response (paragraph 8 of the minutes refers)
013802 - 014701	Chairman ALA2 Admin Mr James TO	The Administration was requested to consider the views and concerns expressed by members on the definition of "prescribed interest" in the new Order 117A and the possible way forward	
014702 - 015940	Chairman Mr James TO Admin ALA2 Ms Miriam LAU	Whether persons joined as a party to the proceedings under section 2(6) of Cap. 575 to an application under section 18 of the same could be awarded compensation to be paid by the Government Date of next meeting	Admin to provide a written response (paragraph 11(a) of the minutes refers)
015941 - 020012	Mr James TO Chairman	Whether the scope of "prescribed interest" covered adverse possessory title to a property	Admin to provide a written response (paragraph 11(b) of the minutes refers)