

**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

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**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 freezed, 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

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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 freezeed and to seek compensation from the Government.

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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.

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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

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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.

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**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<br>Chairman   | Briefing by the Administration on LC Paper No. CB(2)172/09-10(01)  |  |
| 001328 - 002515 | Admin<br>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<br>Admin<br>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<br>Chairman<br>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.<br><br>The term "property" in Cap. 575 was defined under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1)<br><br>The term "funds" in Cap. 575 was defined to include funds mentioned in Schedule 1 to Cap. 575               |  |
| 005106 - 010810 | Ms Miriam LAU<br>Admin<br>Chairman<br>Mr James TO<br>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<br>Admin<br>Chairman<br>ALA2                    | The Administration was requested to provide a response in writing on the following -<br><br>(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<br><br>(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 | <b>Admin to provide a response (paragraph 4 of the minutes refers)</b> |

| <b>Time marker</b> | <b>Speaker</b>  | <b>Subject</b>  | <b>Action required</b>   |
|--------------------|---|---|--|
| 011848 - 013801    | Mr James TO<br>Chairman<br>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<br><br>Appropriateness of the Rules Committee of the High Court (the Rules Committee) to make the new Order 117A | <b>Admin to provide a response (paragraph 8 of the minutes refers)</b>             |
| 013802 - 014701    | Chairman<br>ALA2<br>Admin<br>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<br>Mr James TO<br>Admin<br>ALA2<br>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<br><br>Date of next meeting   | <b>Admin to provide a written response (paragraph 11(a) of the minutes refers)</b> |
| 015941 - 020012    | Mr James TO<br>Chairman                                   | Whether the scope of "prescribed interest" covered adverse possessory title to a property   | <b>Admin to provide a written response (paragraph 11(b) of the minutes refers)</b> |