

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of the fifth meeting
held on Monday, 16 November 2009, at 5:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon IP Wai-ming, MH
- Members absent** : Hon LAU Kong-wah, JP
Hon Paul TSE Wai-chun
- Public Officers attending** : Item I
- Mr David LAU Kam-kuen
Principal Assistant Secretary for Security A
- Ms Veronica WONG Hoi-ye
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 Ted TSANG Cheung-tat
Acting 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(03) to (05), CB(2)172/09-10(01) to (02), CB(2)265/09-10(01) and LS11/09-10]

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

2. Mr James TO pointed out that rule 14 of the new Order 117A requiring authorised officers to lay an information on oath to the Court to apply for an order under section 12A(1) (to furnish information or produce material) or 12B(1) (to make material available) or for a warrant under section 12C(1) (for entry and search of premises) or 12G(1) (for entry and search of premises and seizure, removal and detention of terrorist property) of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance) was too simple in that it failed to make a distinction on the procedures for handling urgent and non-urgent applications and made no mention of whether the information on oath had to be made in written form. In view of the intrusive powers to be provided to the authorised officers, consideration should be given to making reference to the Interception of Communications and Surveillance Ordinance (Cap. 589) which contained detailed procedures for authorised officers to apply to the Court for similar powers under sections 12A(1), 12B(1), 12C(1) and 12G(1) of the Ordinance, instead of modelling rule 14 of the new Order 117A on the Rules of the High Court (Order 116), rule 4 relating to the Organized and Serious Crimes Ordinance (Cap. 455) (OSCO) which was

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enacted over 10 years ago.

3. Mr James TO expressed concern that the time limit for a person to make an application to the Court under rule 16(1)(a) of the new Order 117A within three days did not allow sufficient time for making the application, and should be prolonged, say, to within seven or 14 days. To model rule 16(1)(a) of the new Order 117A on rule 7 of Order 116 for OSCO might not be appropriate. It was also unclear as to whether non-judiciary members of the Rules Committee of the High Court have consulted the legal profession in deciding the time limit for a person to make an application under rule 16(1)(a) of the new Order 117A.

4. In view of the wide powers provided to the authorised officers in requiring any person(s) to furnish information and gaining access to material, the Chairman, Mr James TO and Ms Cyd HO considered that more time was needed to ascertain how such powers would be exercised. For example, rule 16(2) of the new Order 117A, in its present form, allowed an authorised officer securing the material, say, a computer in a sealed container for depositing with the Court, instead of only copying certain relevant files contained in the computer.

5. Mr James TO said that it was unclear how rule 18(3)(a) of the new Order 117A would operate in practice. The Administration was requested to provide information on how rule 18(3)(a) of the new Order 117A, which was based on rule 5(3)(a) of Order 116 of the Rules of the High Court for OSCO, would operate in practice.

6. The Chairman and Ms Miriam LAU queried why an application for continued detention of seized property under section 12H(2) of the Ordinance under rule 19(1) of the new Order 117A must be made by an ex parte originating summons. Although rule 19(1) of the new Order 117A was modelled on rule 24 of Order 115 for the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the latter did not stipulate that an application under the rule must be made ex parte. There was also no mention in Cap. 575 that an application under section 12H(2) must be made by an ex parte originating summons.

7. The Chairman and Ms Miriam LAU further queried why a person or an authorised officer had to apply to the Court under rule 21(1) or 21(3) of the new 117A Order to release the seized property, when the period for which the seized property could be detained had expired. The Chairman further asked why an application under rule 21(3) must be made ex parte, as the Court might not be able to direct the release of the seized property to affected persons who were not before the Court.

8. Ms Miriam LAU said that the various time limits in the new Order 117A, such as the expedited originating summons and a copy of the affidavit in support must be served on the subject person not less than seven clear days

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before the date fixed for the hearing of the application under rule 4(4), needed to be rationalised to make the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules) more user-friendly. The Administration was requested to provide a table setting out the precedents, if any, on which each of the time limits in the new Order 117A was based.

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9. At the request of the Subcommittee, the Administration undertook to provide a response to issues/information raised/requested by members in paragraphs 2 to 8 above.

II. Any other business

Clerk

10. The Chairman said that due to lack of timeslots and/or quorum, it was not possible for the Subcommittee to schedule another meeting before 20 November 2009, the date on which the Subcommittee had to report to the House Committee, to continue scrutiny of rules 23 to 27 of the new Order 117A and to discuss the Administration's responses to issues raised by members at the meetings held on 13 and 16 November 2009. In the light of this, the Chairman suggested and members agreed that members' view be sought on the Chairman giving notice, on behalf of the Subcommittee, to repeal the Amendment Rules at the Council meeting on 2 December 2009, should the Administration decline to give notice to repeal the same.

11. There being no other business, the meeting ended at 7:40 pm.

Council Business Division 2
Legislative Council Secretariat
2 December 2009

**Proceedings of the meeting of the
Subcommittee on Rules of the High Court (Amendment) Rules 2009
on Monday, 16 November 2009, at 5:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000151	Chairman	Opening Remarks	
000152 - 000505	Chairman Admin	Discussion on the way forward if the Subcommittee could not complete its work due to time constraint; whether the Administration would give notice to repeal the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules) or undertake to make amendments to the Amendment Rules in the light of members' concerns	
000506 - 000650	Chairman Admin	<u>Continued scrutiny of the new Order 117A</u> <i>Rule 14 - Application under section 12A, 12B, 12C or 12G</i>	
000651 - 001120	Admin Chairman Ms Miriam LAU	<i>Rule 15 - Revocation or variation of order made under section 12A or 12B</i>	
001121 - 002031	Chairman Admin	<i>Rule 16 - Claim of legal privilege in relation to order under section 12A or 12B</i> <i>Rule 17 - Claim of legal privilege in relation to warrant under section 12C or 12G</i>	
002032 - 002907	Ms Miriam LAU Chairman Admin	Ms Miriam LAU's enquiry on the reason(s) and basis for setting various time limits under the new Order 117A	Admin to provide a response
002908 - 004353	Mr James TO Admin Chairman ALA2	<i>Rules 14 and 15 of the new Order 117A</i> The requirement on authorised officers to lay an information on oath to the Court to apply for an order under section 12A, 12B, 12C or 12G of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) was too simple in that it failed to make a distinction on the procedures for handling urgent and non-urgent applications and made no mention of whether the information on oath had to be made in written form In view of the intrusive powers to be provided to authorised officers, the Administration should make reference to the Interception of Communications and Surveillance Ordinance (Cap. 589) which contained more detailed procedures for authorised officers to apply to the Court for similar powers, instead of modelling on the relevant rules for the Organized and Serious Crimes Ordinance (Cap 455) which was enacted over 10 years ago	Admin to provide a response

Time marker	Speaker	Subject	Action required
004354 - 005436	Mr James TO Chairman Admin Ms Audrey EU	<p><i>Rules 16 and 17 of the new Order 117A</i></p> <p>The time limit for a person to make an application to the Court under rule 16(1)(a) of the new Order 117A within three days did not allow sufficient time for making the application, and should be prolonged, say, to within seven or 14 days. To model rule 16(1)(a) of the new Order 117A on rule 7 of Order 116 for OSCO might not be appropriate. It was also unclear as to whether non-judiciary members of the Rules Committee of the High Court have consulted the legal profession in deciding the time limit for a person to make an application under rule 16(1)(a) of the new Order 117A</p>	Admin to provide a response
005437 - 011816	Chairman Mr James TO Clerk Mr IP Wai-ming Admin Ms Cyd HO Mr Ronny TONG ALA2	<p>Due to lack of timeslots and/or quorum, it was not possible for the Subcommittee to schedule another meeting before 20 November 2009, the date on which the Subcommittee had to report to the House Committee, to continue scrutiny of rules 23 to 27 of the new Order 117A and to discuss the Administration's responses to issues raised by members at the meetings held on 13 and 16 November 2009. In the light of this, the Chairman suggested and members agreed that members' view be sought on the Chairman giving notice, on behalf of the Subcommittee, to repeal the Amendment Rules at the Council meeting on 2 December 2009, should the Administration decline to give notice to repeal the same</p> <p>Consideration should be given to redrafting rules 16 and 17 of the new Order 117A to make it clear that authorised officers would not seize anything that was not related to the suspected crime. For instance, rule 16(2) of the new Order 117A, in its present form, allowed an authorised officer securing the material, say, a computer in a sealed container for depositing with the Court, instead of only copying certain relevant files contained in the computer</p>	Admin to provide a response
011817 - 012444	Chairman Admin Mr James TO ALA2	<p><i>Rule 18 - Application to be heard in camera</i></p> <p>The Administration was requested to provide information on how rule 18(3)(a) of the new Order 117A, which was based on rule 5(3)(a) of Order 116 of the Rules of the High Court for OSCO, would operate in practice</p>	Admin to provide a response
012445 - 013450	Admin Chairman Mr James TO Ms Miriam LAU ALA2	<p><i>Rule 19 - Application for continued detention of seized property under section 12H(2)</i></p> <p>It was questionable why an application for continued detention of seized property under section 12H(2) of the Ordinance under rule 19(1) of the new Order 117A must be made by an ex parte originating summons. Although rule 19(1) of the new Order 117A was modelled on rule 24 of Order 115 for the Drug Trafficking (Recovery</p>	Admin to provide a response

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013451 - 013737	Admin Chairman	<i>Rule 20 - Application for further detention of seized property under section 12H(3)</i>	
013738 - 014435	Admin Chairman Ms Miriam LAU	<i>Rule 21 - Application for release of seized property under section 12H(4)</i> It was questionable why a person or an authorised officer had to apply to the Court under rule 21(1) or 21(3) of the new 117A Order to release the seized property, when the period for which the seized property could be detained had expired It was questionable why an application under rule 21(3) must be made ex parte, as the Court might not be able to direct the release of the seized property to affected persons who were not before the Court	Admin to provide a response Admin to provide a response
014436 - 015430	Admin Chairman Ms Miriam LAU Ms Cyd HO	<i>Rule 22 - Release of seized property</i>	
015431 – 020501	Admin Chairman ALA2	<i>Rules 23 to 27 of the new Order 117A</i>	
020502 - 020812	Chairman	Concluding remarks	