

**立法會**  
**Legislative Council**

Ref : CB2/SS/1/09

LC Paper No. CB(2)437/09-10  
(These minutes have been seen by  
the Administration)

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

**Minutes of the sixth meeting  
held on Friday, 20 November 2009, at 10:45 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-ye, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Ronny TONG Ka-wah, SC  
Hon IP Wai-ming, MH
- Members absent** : Hon Cyd HO Sau-lan  
Hon Paul TSE Wai-chun
- Public Officers attending** : Item I  
  
Ms Carol YIP Man-kuen  
Deputy Secretary for Security 1  
  
Mr David LAU Kam-kuen  
Principal Assistant Secretary for Security A  
  
Ms Veronica WONG Hoi-ye  
Assistant Secretary for Security A2  
  
Mr Herbert LI Kam-yiu  
Senior Assistant Law Officer  
Department of Justice

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

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

Ms Daphne SIU Man-suen  
Senior Government Counsel  
Department of Justice

Mr Ted TSANG Cheung-tat  
Acting Chief Superintendent of Police (Narcotics Bureau)  
Hong Kong Police Force

Mr Bernard LAW Chiu-woon  
Chief Inspector (Financial Investigation 1)  
(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**

[LC Paper Nos. CB(2)316/09-10(01), CB(2)121/09-10(03), CB(2)172/09-10(02), CB(2)121/09-10(04), CB(2)121/09-10(05) and L.N. 186 of 2009]

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

2. The Administration briefed members on its response to issues raised by members at the meetings on 13 and 16 November 2009 (Paper No. CB(2)316/09-10(01)).

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3. The Chairman, Mr James TO and Mr Ronny TONG remained of the view that the Administration should amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Ordinance) to include the definition of "prescribed interest" in the Ordinance, instead of in the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules).

4. The Chairman did not accept the existing definition of "holder" in rule 1(1) of the new Order 117A. She considered it wrong to use a definition to distort the meaning of a word just for convenience sake.

5. Mr James TO remained of the view that the existing drafting of rules 7 and 8 of the new Order 117A could be further improved to make the procedures for applications to the Court by the Chief Executive (CE) to specify certain property as terrorist property more logical.

6. Members considered the Administration's explanation about not posting a notice at the property where CE intended to make an application to specify the property as terrorist property under section 5(1)(b) of the Ordinance and not posting a notice of intention to forfeit the property at the property address before forfeiture under section 13 of the same unacceptable. Mr James TO urged the Administration to at least consider posting a notice of intention to specify a property as terrorist property and a notice of intention to forfeit the property at the property address through administrative means.

7. Mr James TO maintained his view that the three-day time limit for a person to make an application to the Court under rule 16(1)(a) of the new Order 117A for a claim of legal privilege was far from adequate, as it could not be ruled out that the person concerned might be required to furnish information and/or produce the relevant material without prior discussion with authorised officers.

8. Noting that rule 18(3)(a) was modelled on rule 5(3)(a) of Order 116 for the Organized and Serious Crimes Ordinance (Cap. 455), the Chairman asked how the latter rule had operated in practice, including whether there was a room in the Judiciary for storing the confidential documents, as well as the circumstances under which the confidential documents would be opened under rule 18(3)(a) of the new Order 117A and the procedures involved. The Administration undertook to provide a response in writing.

9. Mr James TO and Ms Miriam LAU suggested that a notice should at least be served on the holder of the seized property of the intention of an authorised officer to apply to the Court for continued detention of the property under section 12H(2) of the Ordinance. Assistant Legal Adviser 2 advised that the Ordinance did not preclude the implementation of the suggestion. The Administration agreed to implement the suggestion by administrative means. The Chairman however held the view that applications for continued detention of seized property under section 12H(2) of the Ordinance must be

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made inter partes.

**II. Any other business**

10. The Chairman informed members of the survey results on the proposal for her to move a motion, on behalf of the Subcommittee, to repeal the Amendment Rules at the Council meeting on 2 December 2009, should the Administration refuse to move such a motion. Five members, namely, Mr James TO, Ms Audrey EU, Mr Ronny TONG, Ms Cyd HO and herself indicated support for the proposal, whereas three members, namely Mr LAU Kong-wah, Ms Miriam LAU and Mr IP Wai-ming indicated otherwise.

11. The Administration appealed to members not to repeal the Amendment Rules in order that Hong Kong could fulfil its international obligations to combat terrorist activities as early as possible.

12. The Chairman pointed out that where property and liberty interests of the public were touched, the Legislative Council (LegCo) was duty bound to apply careful scrutiny. She said that the Administration could have provided the Amendment Rules in draft form to LegCo earlier, so that a subcommittee could be formed under the House Committee to scrutinise the draft Rules in detail with less constraint of time before gazettal. Mr LAU Kong-wah however held the view that it was not appropriate to repeal the Amendment Rules, as the Administration had responded to all areas of concern raised by the Subcommittee, albeit not to the satisfaction of some members.

13. The Subcommittee agreed to next meet on 23 November 2009 at 10:45 am to continue scrutiny of the new Order 117A from rules 23 to 27.

14. There being no other business, the meeting ended at 1:05 pm.

**Proceedings of the meeting of the  
Subcommittee on Rules of the High Court (Amendment) Rules 2009  
on Friday, 20 November 2009, at 10:45 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000815	Chairman	Opening Remarks  Survey results on the proposal for the Subcommittee Chairman to move a motion, on behalf of the Subcommittee, to repeal the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules) at the Council meeting on 2 December 2009, should the Administration refuse to move such a motion	
000816 - 001210	Chairman Admin	Briefing on the Administration's response to issues raised by members at the meetings on 13 and 16 November 2009	
001211 - 003759	Admin Chairman ALA2 Mr James TO Mr LAU Kong-wah Mr Ronny TONG	Definition of "prescribed interest" in the Amendment Rules and delegation of legislative power (Paragraphs 2 and 3 of LC Paper No. CB(2)316/09-10(01))	
003800 - 003949	Admin Chairman	Procedures for the Chief Executive to specify persons and property as terrorists, terrorist associates or terrorist property (Paragraph 4 of LC Paper No. CB(2)316/09-10(01))	
003950 - 010829	Admin Chairman Mr James TO ALA2 Mr LAU Kong-wah	Definition of "holder" in rule 1(1) of the new Order 117A (Paragraphs 5 and 6 of LC Paper No. CB(2)316/09-10(01))	
010830 - 011256	Admin Chairman Mr James TO	Relationship between rules 7 and 8 (Paragraph 7 of LC Paper No. CB(2)316/09-10(01))	
011257 - 012951	Chairman Admin Mr James TO Mr LAU Kong-wah Mr IP Wai-ming	Notice under section 5(1)(b) (Paragraph 8 of LC Paper No. CB(2)316/09-10(01))	
012952 - 013031	Chairman Admin	Service of an order made under section 5(5) (Paragraph 9 of LC Paper No. CB(2)316/09-10(01))	
013032 - 013713	Chairman ALA2 Admin Mr James TO	Application under section 12A, 12B, 12C or 12G (Paragraph 10 of LC Paper No. CB(2)316/09-10(01))	

Time marker	Speaker	Subject	Action required
013714 - 014510	Chairman Admin Mr James TO	Application for a claim of legal privilege under rules 16 and 17 of the new Order 117A (Paragraphs 11 and 12 of LC Paper No. CB(2)316/09-10(01))	
014511 - 015327	Chairman Admin Mr James TO	<p>Making of an order by a judge for information/item under rule 18(3)(a) of the new Order 117A (Paragraph 13 of LC Paper No. CB(2)316/09-10(01))</p> <p>How Order 116 for the Organized and Serious Crimes Ordinance (Cap. 455) had operated in practice, including whether there was a room in the Judiciary for storing the confidential documents, as well as the circumstances under which the confidential documents would be opened under rule 18(3)(a) of the new Order 117A and the procedures involved</p>	<b>Admin to provide a response (Paragraph 8 of the minutes refers)</b>
015328 - 021050	Chairman Admin ALA2 Mr James TO Ms Miriam LAU	Ex parte applications under rule 19(1) of the new Order 117A (Paragraphs 14 and 15 of LC Paper No. CB(2)316/09-10(01))	
021051 - 021615	Chairman Admin Mr James TO Ms Audrey EU Ms Miriam LAU	<p>Application for release of seized property (Paragraphs 16 and 17 of LC Paper No. CB(2)316/09-10(01))</p> <p>Time limits in the new Order 117A (Paragraph 18 of LC Paper No. CB(2)316/09-10(01))</p>	
021616 - 022225	Chairman Mr James TO Mr LAU Kong-wah Admin	<p>Way forward</p> <p>Date of next meeting</p>	