

立法會
Legislative Council

Ref : CB2/SS/1/09

LC Paper No. CB(2)438/09-10
(These minutes have been seen by
the Administration)

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

**Minutes of the seventh meeting
held on Monday, 23 November 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon Audrey EU Yuet-mee, SC, JP
Hon Cyd HO Sau-lan
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun

Members absent : Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Ronny TONG Ka-wah, SC

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

Action

I. Meeting with the Administration
[LC Paper Nos. CB(2)121/09-10(03) and CB(2)172/09-10(02)]

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

Continued scrutiny of the new Order 117A

Rule 25 - Application for compensation

2. Ms Cyd HO asked whether the Chief Executive and the Secretary for Security would be covered by rule 25(2)(b) of the new Order 117A which specified that the summons or expedited originating summons must also be served on "any other person on whose part, it is alleged, there has been default".

Action

3. The Administration explained that rule 25(2)(b) of the new Order 117A was not restricted to any particular class of person who might have been alleged to have made a mistake in connection with specifying persons and property as terrorists, terrorist associates or terrorist property or with the exercise of powers under a warrant issued under section 12G of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575).

4. Ms Cyd HO and Mr IP Wai-ming expressed concern that an applicant under rule 25 of the new Order 117A might not know the person who might have been at fault in carrying out the seizure order or detention order under the Ordinance. To enable the applicant to initiate court proceedings to seek compensation to be paid by the Government under section 18 of the Ordinance, Ms HO suggested lowering the requirements that the summons or expedited originating summons, and affidavit in support, could either be served on the Secretary for Justice or any other person on whose part, it was alleged, there had been default. Ms Audrey EU also suggested adding "if known" to rule 25(2)(b). The Administration undertook to provide a response in writing.

Others

5. The Administration also undertook to provide a response in writing on the issue of how the courts handled documents that needed to be treated confidentially, which was raised at the meetings on 16 and 20 November 2009.

(Post-meeting note: The Administration's responses were issued to members vide LC Paper No. CB(2)351/09-10(01) on 24 November 2009.)

II. Any other business

6. The Chairman concluded that the Subcommittee had completed scrutiny of the Rules of the High Court (Amendment) Rules 2009 (the Amendment Rules). A written report of the Subcommittee would be issued to all members of the House Committee on 24 November 2009. The Chairman further said that she would move a motion, on behalf of the Subcommittee, to repeal the Amendment Rules at the Council meeting on 2 December 2009, as the majority of members had maintained their support for her to do so.

7. There being no other business, the meeting ended at 11:45 am.

**Proceedings of the meeting of the
Subcommittee on Rules of the High Court (Amendment) Rules 2009
on Monday, 23 November 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000439	Chairman	Opening remarks	
000440 - 000703	Chairman Admin	<u>Continued scrutiny of the new Order 117A</u> <i>Rule 23 - Application to Court to revoke order made under section 5(2) or notice given under section 6(1)</i>	
000704 - 001224	Admin Chairman	<i>Rule 24 - Application concerning direction mentioned in section 6(10) or licence mentioned in section 6(1) or 8</i>	
001225 - 004931	Admin Chairman Ms Cyd HO Mr IP Wai-ming ALA2 Mr Paul TSE Ms Audrey EU	<i>Rule 25 - Application for compensation</i> Members' concern about the difficulty for an applicant under rule 25 to seek compensation to be paid by the Government when the applicant did not know the person who might have been at fault in making the specification order and/or in the process of carrying out the seizure order or detention order	Admin to provide a response (Paragraph 4 of the minutes refers)
004932 - 005057	Admin Chairman	<i>Rule 26 - Affidavits containing statements of information or belief</i>	
005058 - 005121	Admin	<i>Rule 27 - Service out of jurisdiction</i>	
005122 - 005429	Chairman Admin ALA2	The Administration was requested to provide a response in writing on how the courts handled documents that needed to be treated confidentially Closing remarks	Admin to provide a response (Paragraph 5 of the minutes refers)