

LegCo Panel on Administration of Justice and Legal Services

**The Judiciary's Position on the Home Affairs Bureau's
Proposed Pilot Scheme To Provide Legal Advice for Litigants in Person**

Purpose

The purpose of this note is to set out the preliminary position of the Judiciary on the Home Affairs Bureau ("HAB") of the Administration's proposal to launch a pilot scheme ("the pilot scheme") to provide legal advice for litigants in person ("LIPs") who have commenced or are parties to civil proceedings in the District Court, the Court of First Instance and the Court of Appeal of the High Court, as well as the Court of Final Appeal.

2. In setting out its position, the Judiciary comments on the proposed pilot scheme from the administration of justice and court operation angles. The Judiciary will not comment on the policy matters associated with the proposed pilot scheme as these are primarily matters for the Administration.

LIPs in Civil Proceedings

3. First of all, it has to be recognized that the right to litigate, be the litigants represented or unrepresented, is a constitutional right.

4. In recent years, there has been a rising trend in the number of LIPs taking part in civil proceedings. In navigating through the civil justice system, these LIPs may need assistance and advice in both procedural and legal matters. The percentages of LIPs involving in civil proceedings^(Note) in the High Court and District Court during the past five years from 2007 to 2011 are set out as follows:

Year	2007	2008	2009	2010	2011
High Court (Civil Appeals & Trials)	38%	42%	41%	42%	36%
District Court (Civil Trials)	47%	51%	55%	53%	51%

^(Note) Any one of the parties not legally represented in the hearing will be counted as hearing involving LIPs

5. To address the need for assistance required by LIPs, a Resource Centre has been set up by the Judiciary inside the High Court Building since December 2003 to provide the necessary procedural assistance to LIPs involving in civil cases in the High Court and the District Court. In accordance with the principle of judicial independence, the Judiciary's Resource Centre will only provide assistance on procedural matters and must not give any legal advice on both the procedural aspects and merits of the case to any litigants in any judicial proceedings. If approached on matters of procedures which involve legal advice or matters relating to the substance of the case, staff of the Judiciary's Resource Centre can only refer the LIPs to seek legal assistance from sources outside the Judiciary.

6. Hence, while the Judiciary's Resource Centre has been providing useful assistance to LIPs, its scope of services (guided by the constitutional position of the Judiciary) is restricted, and cannot fully meet the needs of the LIPs. To many, they still require assistance in interpreting and applying the procedural and substantive law in relation to their case, and they often have difficulty in presenting their case in court in accordance with the procedural requirements. Users of our Resource Centre had commented, during the user satisfaction surveys conducted by the Judiciary in the past, that they needed and desired to have free assistance and advice on the procedural and substantive law involved in their cases.

7. Indeed, the phenomenon concerning the existence of a gap between the demand and supply of legal services has been confirmed by the findings of the Study on the Demand for and Supply of Legal and Related Services commissioned by the Administration under the Department of Justice earlier in 2008-09. This remains the case notwithstanding the availability of various forms of free legal advice and pro bono services offered by the legal profession and other organizations.

The Proposed Pilot Scheme by HAB

8. The Judiciary notes that in response to the prevailing needs of the LIPs, the Administration is now proposing to operate a pilot scheme to provide legal assistance to LIPs who have commenced or are parties to civil proceedings at the District Court and above, the proposals for which are set out in LC Paper No. CB(2) 380/11-12(04). Overall, the Judiciary welcomes the Administration's taking the initiative in operating the proposed pilot scheme, as one additional measure to respond to the needs of the LIPs.

9. The Judiciary notes that the Administration is now consulting the legal professional bodies on the proposed scheme, and we would like to offer some observations and comments on two aspects.

(a) Nature and scope of the Proposed Scheme

10. The Judiciary notes that the Administration intends to run such scheme on a pilot basis for a duration of two years and initially would like to restrict the scheme to providing legal assistance on procedural matters for LIPs in civil proceedings at the District Court and above. While it is noted that the proposed scheme may not be able to satisfy fully all the demands for legal assistance from LIPs (including the demand for legal advice on merits of the case and substantive law), the Judiciary considers the present approach by the Administration a prudent and acceptable one, having regard to the pilot nature and short duration of the scheme and the limited resources available for such purpose. The Judiciary believes that the proposed pilot scheme which initially focuses on the provision of legal advice on procedural matters would be able to provide constructive assistance to both the LIPs and the courts.

11. While it is accepted that sometimes the distinction between procedural and substantive legal advice is not easy to keep clear, it should also be recognized that it is viable to offer legal advice on procedural aspects of civil litigation, and such advice would certainly benefit the LIPs and assist the courts. Legal advice on procedural matters, for example, can include providing explanations on the applicable general principles/rules, the procedural requirements and the format for preparing documents such as an affidavit or a witness statement etc and for illustrative purpose, some examples of legal advice on procedural matters are set out at the Annex. Moreover, the usefulness of provision of legal advice on procedural matters in civil litigation has been proven by the experiences in some other jurisdictions, such as the Citizens' Advice Bureau in the United Kingdom.

Annex

12. The Judiciary therefore supports the proposed pilot scheme with regard to its initial scope, and would like to see how such pilot scheme would work to assist both the LIPs and the courts in practice. The Judiciary urges the Administration to put in place a monitoring and reviewing mechanism of the pilot scheme, with a view to assessing its effectiveness and considering whether both the scope and its mode of operation should be refined having regard to practical experiences after two years.

(b) The Element of Pro Bono Legal Advice

13. The Judiciary notes that there is an element of pro bono legal service to be included in the mode of operation of the proposed pilot scheme. As a matter of principle, the Judiciary strongly supports the promotion of the provision of pro bono legal assistance by the legal profession as this is in the public interest to do so. The Judiciary much appreciates that the legal profession has been making valuable and commendable contributions in this regard in the past, and would encourage them to continue to enhance their contributions in the future. The Judiciary urges the Administration to continue its discussion with the legal profession as to how they can contribute by way of providing pro bono services in the proposed pilot scheme.

Interface Between the Proposed Pilot Scheme and the Judiciary

14. In line with the Judiciary's in-principle support of the proposed pilot scheme and to enable the pilot scheme to operate in a location convenient to the LIPs, the Judiciary has agreed to let HAB make use of its space in the High Court Building to house the new office for its proposed pilot scheme.

15. The Judiciary will be happy to provide to the Administration information on matters relating to court operation which would impact on the planning and implementation of the proposed pilot scheme.

16. Once the pilot scheme is in operation, the Judiciary will also need to work out interface arrangements and referral procedures with the Administration, so that users of the Judiciary's Resource Centre may be referred to seek assistance from the proposed pilot scheme where appropriate. The Judiciary will also be happy to provide feedback to the Administration from the court operation perspective.

The Judiciary
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Common Examples of Procedural Enquiries Touching on Legal Issues

Set out below are some common examples of procedural enquiries by LIPs that would touch on legal issues:

(a) Commencement of Proceedings

- (i) A Litigant-In-Person (“LIP”) indicates that he wants to sue a person but cannot decide whether he shall commence the proceedings by way of a writ or an originating summons. He has read the related information leaflet but still does not know exactly which form is appropriate. He needs legal assistance.
- (ii) There are often enquiries on who should be sued: whether it is an individual or a company, and how the party should be described on the writ/ originating summons. Very often they need assistance in differentiating between a sole proprietor business, a partnership business and a limited company.
- (iii) An LIP wants to commence a Judicial Review proceedings. Whilst he has been provided with the relevant leaflet and prescribed form, he often asks who would be the ‘interested parties’ and what would happen if he has left out an ‘interested party’. This is an area where the pilot scheme will be of help.

(b) Service of writ/ originating summons

- (i) A party who wishes to sue may only know the name and contact telephone/ fax number of the intended defendant. In those circumstances, how he can go about finding out the proper address for service by, for example, conducting company or Business Registration or land searches and ascertaining the proper information from the search results, will be an area for legal advice.
- (ii) An LIP would like to know how a writ or originating summons should be served: by registered post, by insertion into the letter box, by personal service or by leaving at the registered office for a company etc.; and

also how an affidavit could be made to prove that the writ/ originating summons or other court documents have been duly served.

(c) Computation of time

- (i) Very often, LIPs would ask when the last day would be for the purpose of filing their pleadings, or for lodging an appeal / applying for leave to appeal. They are currently advised to consult the relevant information leaflets to find out how the time should be calculated. If, however, they want to be certain of the date, this would be an area where the pilot scheme will be able to assist.
- (ii) On the subject of Judicial Review, LIPs are normally advised to note that the relevant proceedings have to be brought promptly and in any case within three months of the date when grounds for the application first arose. An LIP often asks for the meaning of 'when grounds for the application first arose' and when the last day would be for the filing of the application. These questions touch on legal issues.

(d) Case Preparation

After the close of pleadings, a party has to prepare his own list of documents to inform the opposite party what documents relevant to the issues in the case are in his possession. One frequent question raised by an LIP is what kind of documents should be included in the list. This is another area that requires legal assistance.

(e) MIP Cases

A family member of a mentally incapacitated person (MIP) would like to assist with the management of the property of the patient. Applicants have to study the relevant Practice Direction, related judgments and regulations. They usually call for legal advice and assistance.

(f) Enforcement of judgment

At the moment, the Judiciary's staff can only inform the litigants of the available modes of enforcement. As to what are the differences between the various modes of enforcement and which is more appropriate to the litigant's case, this involves legal advice and will be an area for the pilot scheme.

2. Apart from the above, common procedural questions posed by LIPs that may call for legal assistance include (but are not limited to) the following:

- (a) what should be noted in the drafting of pleadings (e.g. Defence);
- (b) how to apply for default judgment and what is the procedure for setting aside a default judgment ;
- (c) how to complete a Time-tabling Questionnaire/Listing Questionnaire ;
- (d) what are the procedural requirements or the format for the preparation of an affidavit in support of or in opposition to a summons ;
- (e) what are the procedural requirements or the format for dealing with a particular application taken out by the other party such as specific discovery,
- (f) what are the procedural requirements or the format for the preparation of a witness statement ;
- (g) what are the procedural requirements or the format for dealing with expert evidence ;
- (h) how to prepare for the interlocutory hearings and for trial; how to prepare trial bundles especially when both parties are LIPs ;
- (i) what are the procedural requirements or the format for the preparation of a List of Objection for taxation of bills;

- (j) how to follow the procedural requirements made under the Court Orders concerned; and
- (k) what are the procedural requirements or the format for the preparation of the Notice of Appeal etc.
