

立法會

Legislative Council

LC Paper No. CB(4)184/14-15
(These minutes have been seen
by the Judiciary Administration
and the Administration)

Ref: CB4/SS/8/13

Subcommittee on Rules of the High Court (Amendment) (No. 2) Rules 2014 and Rules of the District Court (Amendment) Rules 2014

**Minutes of the first meeting held on
Tuesday, 30 September 2014, at 10:30 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Dennis KWOK (Chairman)
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP

Member absent : Hon Albert HO Chun-yan

**Public Officers
attending** : **Agenda item II**

Judiciary Administration

Mr Esmond LEE
Deputy Judiciary Administrator (Development)

Department of Justice

Mr Newton CHAN
Senior Assistant Law Officer (Civil Law)

Ms Carmen CHAN
Acting Senior Government Counsel

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Shirley TAM
Senior Council Secretary (4)5

Miss Mandy NG
Council Secretary (4)3

Ms Carmen HO
Senior Legislative Assistant (4)2

Action

I. Election of Chairman

Mr Dennis KWOK was elected Chairman of the Subcommittee.

II. Meeting with the Judiciary Administration and the Administration

- | | |
|-------------------------|--|
| (L.N. 99 of 2014 | - Rules of the High Court (Amendment) (No. 2) Rules 2014 |
| L.N. 100 of 2014 | - Rules of the District Court (Amendment) Rules 2014 |
| File Ref: SC 261/1/2/2 | - Legislative Council Brief on Rules of the High Court (Amendment) (No. 2) Rules 2014 and Rules of the District Court (Amendment) Rules 2014 |
| LC Paper No. LS71/13-14 | - Legal Service Division Report on Subsidiary Legislation Gazetted on 27 June 2014 |

LC Paper No. CB(4)1045/13-14(01) - Marked-up copy of the Rules of the High Court (Amendment) (No. 2) Rules 2014 and the Rules of the District Court (Amendment) Rules 2014 (Restricted to members))

2. The Subcommittee deliberated (Index of proceedings attached at the **Annex**).

3. The Subcommittee had scrutinized the subsidiary legislation and agreed to invite submissions on it. Subject to the response, a further meeting might be held to receive public views.

(Post-meeting note: By the deadline of 7 October 2014, the Subcommittee did not receive any submission on the subject.)

4. Members further agreed that the Chairman would move a motion at the first Council meeting of the 2014-2015 session on 8 October 2014 to extend the scrutiny period of the subsidiary legislation to 5 November 2014.

(Post-meeting note: In the light of the President's decision to change the date of the first LegCo meeting of the 2014-2015 session from 8 October 2014 to 15 October 2014 pursuant to Rule 14(3) of the Rules of Procedure of LegCo, the two Amendment Rules may be amended by LegCo, in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), by LegCo meeting of 22 October 2014. (or by that of 12 November 2014 if extended by resolution). The said motion was not moved at the Council meeting of 15 October 2014 before its adjournment and hence was carried forward to the next meeting. However, the motion to extend the scrutiny period was not dealt with at the Council meeting of 22 October 2014 at which the scrutiny period lapsed.)

III. Any other business

5. There being no other business, the meeting ended at 11:10 am.

**Proceedings of the first meeting of
the Subcommittee on Rules of the High Court (Amendment) (No. 2) Rules 2014 and
Rules of the District Court (Amendment) Rules 2014 on Tuesday, 30 September 2014, at 10:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000929 – 001030	Ms Cyd HO Mr Dennis KWOK Mr Paul TSE	Election of Chairman	
Agenda item II – Meeting with the Judiciary Administration and the Administration			
001031 – 001353	Chairman Judiciary Administration ("JA")	Briefing by JA on the Rules of the High Court (Amendment) (No.2) Rules 2014 and Rules of the District Court (Amendment) Rules 2014 ("the Amendment Rules").	
001354 – 001538	Chairman Clerk	Extension of the scrutiny period. Invitation of written submissions.	Clerk
001539 – 002810	Mr Paul TSE JA Administration	<p>Mr Paul TSE supported the Amendment Rules in principle. He enquired about -</p> <p>(a) the rationale for and background of the difference in appealing against a master's decision after a full trial of an interpleader issue had been conducted with or without the parties' consent; and</p> <p>(b) the pros and cons for the litigants under the existing and new arrangements for appeal against a master's determination of an interpleader issue after trial.</p> <p>In reply, the JA explained that the amendments aimed at addressing the concern that after a full trial of the interpleader issue before a master (without the consent of the parties), the rights of appeal would take the parties not to the Court of Appeal, but only to a Court of First Instance ("CFI") judge, where the appeal would be heard <i>de novo</i> (i.e. as a fresh hearing). In this connection, witnesses would have to be called and cross-examined again. Such an appeal procedure would cause unnecessary duplication of efforts and costs.</p> <p>In view of this, the JA had proposed to make uniform the appeal mechanism after full trials by a master of interpleader issues, whether with or without consent of parties, the appeal should lie to the Court of Appeal.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that –</p> <p>(a) in the United Kingdom ("UK"), the interpleader proceedings were governed by the Interpleader Act (1831) of the UK, which was later on superseded by the Rules of Supreme Court (1883). Order 11 of the Rules of Supreme Court stipulated that -</p> <p><i>"except where otherwise provided by statute, the judgement in an action or any issue ordered to be tried, or stated in an interpleader proceedings and the decision of the Court or Judge in a summary way under Rule 8 of this Order shall be final and conclusive against the claimants and all persons claiming under them unless by special leave of the Court or Judge as the case may be or of the Court of Appeal";</i></p> <p>(b) In Hong Kong, Order 17, rule 11(2) of the Rules of the High Court (Cap. 4A) and of the Rules of the District Court (Cap. 336H) stipulated that -</p> <p><i>"The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings."</i></p> <p>The Administration considered a master could determine an interpleader issue with or without consent of the parties. As such, it was a waste of time and legal costs for an appeal going through a fresh hearing in CFI again after a full trial had been conducted by a master without consent of the parties.</p> <p><i>(Post-meeting note: On (a), the Administration has further advised that under section 38(1)(a) of the High Court Ordinance (Cap. 4), the Registrar should have and might exercise and perform "the same jurisdiction, powers and duties as the Masters, Registrars and like officers of the Supreme Court of England and Wales".)</i></p>	
002811 – 003035	Chairman Mr Paul TSE	Further to the Administration's response on the background for the existing arrangements, the Subcommittee noted that there might be a gap in the past between the quality of trials conducted by a judge and a master. As such, the decision of a master should be backed by a judge at the same court level of CFI through the appeal mechanism. However, with	

Time marker	Speaker	Subject(s)	Action required
		<p>professional advancement over time, a master is practically equivalent to a judge under the present judicial structure. The Subcommittee also noted the comments made by the Chief Judge Andrew Cheung in the Court of Appeal case <i>Chun Sang Plastics Company Limited v. The Commissioner of Police and Ors</i> (CACV No. 37 of 2011) that the existing Cap. 4A in respect of the right of appeal from a master's determination after full trial without parties' consent to a judge of the CFI gave rise to unnecessary duplication of efforts and costs (paragraphs 35 to 38 of the judgment).</p>	
003036 – 003830	<p>Chairman Mr Paul TSE JA Administration</p>	<p>Discussion on matters other than interpleader issue that could be heard by masters by way of full trial.</p> <p>The Administration advised that the following matters stipulated in Cap. 4A could be heard by a master in an open court according to paragraph 6 of Practice Direction 14.2 of the High Court–</p> <ul style="list-style-type: none"> (a) trials pursuant to Order 14, rule 6(2); (b) trials pursuant to Order 17, rule 11; (c) trials pursuant to Order 36, rule 1; (d) assessments of damages pursuant to Order 37, rule 1; (e) examinations under Orders 48 and 49B; and (f) the making of an order for imprisonment of a judgment debtor under Order 49B, rule 1B(1). <p>The Administration elaborated that an appeal against a master's decision in assessments of damages cases under Order 37, rule 1 of Cap. 4A could be made to the Court of Appeal rather than to the CFI regardless of the consent of the parties.</p>	
003831 – 004017	<p>Chairman JA Administration Mr Paul TSE</p>	<p>Members examined the provisions of the Amendment Rules.</p>	
Agenda item III – Any other business			
004018 – 004053	<p>Chairman</p>	<p>Closing remarks</p>	