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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 28 January 2014**

Administration of Justice (Miscellaneous Provisions) Bill

Purpose

This paper gives an account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the legislative proposals relating to court operations in the Administration of Justice (Miscellaneous Provisions) Bill ("the Bill").

Background

2. The Judiciary proposes the following legislative amendments to improve various court-related matters:
 - (a) amending the Hong Kong Court of Final Appeal Ordinance (Cap. 484) so that all appeals in civil matters, whether or not the matter in dispute amounts to or is worth more than \$1 million, should only lie at the discretion of the Court of Final Appeal ("CFA")/Court of Appeal;
 - (b) amending the Criminal Procedure Ordinance (Cap. 221) to enable other suitable audio-visual facilities, such as video conferencing facilities, to be adopted;
 - (c) amending section 80 of the District Court Ordinance (Cap. 336) to dispense with the requirement for a District Judge to orally deliver the reasons for the verdict and any sentence in criminal proceedings;
 - (d) amending the Magistrates Ordinance (Cap. 227) to allow a person's period(s) of experience as a Special Magistrate to be combined with

period(s) of other types of qualifying professional experience to fulfill the requisite minimum five-year period for the eligibility to be appointed as a Permanent Magistrate;

- (e) amending the Labour Tribunal Ordinance (Cap. 25) to improve its operation in a few areas, including clarifying its jurisdiction, enhancing its case management powers, encouraging parties' early disclosure of information and aligning the time limit for enforcing its awards or orders with other civil claims; and
- (f) amending the relevant legislation to include more specifically-worded rule-making powers in the administration of suitors' funds. Suitors' funds are administered in the CFA, High Court, District Court, Lands Tribunal, Labour Tribunal and Small Claims Tribunal on the basis of rules (subsidiary legislation), except for the CFA and Lands Tribunal (administratively).

Details of the legislative proposals are set out in LC Paper No. CB(4) 871/12-13(01).

Past discussions

3. The Panel discussed the legislative proposals relating to court operations in the Bill at its meeting held on 23 July 2013. The major concerns and views expressed by members are summarized in the ensuing paragraphs.

Appeals in civil matters to the CFA

4. According to sections 22(1)(a) and (b) of Cap. 484, an appeal lies to the CFA as of right where the matter in dispute amounts to or is worth \$1 million or more. For other cases, appeals to the CFA will only be allowed if the question involved is of great general or public importance, or otherwise.

5. The Panel noted the following reasons provided by the Judiciary for amending the law so that all appeals in civil matters to the CFA became subject to discretionary leave:

- (a) linking a right of appeal to an arbitrary financial limit was objectionable as a matter of principle, as this meant that litigants involved in litigation beyond the threshold limit in effect had more rights than other litigants with smaller claims, regardless of the merits of their cases;

- (b) allowing appeals to be lodged to the CFA as of right led to situations whereby unmeritorious appeals had to be heard by the CFA, which was not conducive to an effective system of appeals. Unmeritorious appeals did not benefit the appellants either, not to mention the respondents. Such appeals served only to saddle the litigating parties with more legal costs to pay;
- (c) unmeritorious appeals prevented the CFA from hearing in good time genuine and much more meritorious appeals; and
- (d) almost every other common law jurisdiction to which Hong Kong had the closest affinity required that "leave" be obtained before appeals could be made to their highest appellate court. These included appeals to the Australian High Court, the Supreme Court of New Zealand, and appeals from English and Wales to the Supreme Court of the United Kingdom. As for appeals to the Canadian Supreme Court, leave to appeal was required in most cases.

6. Mr Ronny TONG expressed opposition to the proposal of abolishing the as of right ground for civil appeals where the matter in dispute amounted to or was worth \$1 million or more, as this would suppress the rights of the persons disagreed with the decisions of the lower courts to request the CFA to re-hear their cases. Mr TONG pointed out that retaining the as of right appeals for civil matters should not create significant workload to the CFA, as the number of as of right appeals was small as compared with the number of other civil appeals and criminal appeals heard by the CFA. Furthermore, implementation of the proposal should not save a lot of judicial resources, as the persons disagreed with the decisions of the lower courts might still apply for leave to appeal to the CFA. Another reason for retaining the as of right appeals for civil matters was because the number of occasions whereby the CFA overturned the decisions of the lower courts was very high as compared with that in many common law jurisdictions. To reduce the number of as of right appeals which were unmeritorious, Mr TONG said that consideration could be given to raising the financial limit of the matter in dispute.

7. Whilst agreeing that all civil and criminal appeals should be subject to the discretionary leave granted by the CFA, Mr Albert HO urged that the CFA should (a) provide reasons for dismissing an application for leave to appeal; and (b) allow the appellants and/or their counsels to appear before the Appeal Committee of the CFA to explain their cases in person.

8. Mr Dennis KWOK considered that the factors for considering an application for leave to appeal by the CFA should be spelt out in Cap. 484, as practised in other common law jurisdictions such as Australia.

9. In response to Ms Emily LAU's enquiry as to whether Hong Kong was the only common law jurisdiction which retained the financial threshold for appeals which lay to the CFA as of right, the Judiciary Administration ("JA") advised that although there was in general an automatic right of appeal for civil matters in Singapore and Ireland, it should be noted that there was no equivalent intermediate court of appeal between the High Court and the highest appellate court.

10. To better facilitate members' consideration of the proposal, the JA was requested to provide the following information:

- (a) the number of as of right appeals heard by the CFA each year in the past five years;
- (b) in respect of (a) above, the number of appeals determined by the CFA to be unmeritorious and the number of occasions whereby the CFA overturned the decisions of the lower courts;
- (c) the number of applications for leave to appeal to the CFA for other civil cases and criminal cases respectively each year in the past five years;
- (d) in respect of (c) above, the number of applications for leave to appeal granted and dismissed by the CFA respectively each year in the past five years;
- (e) of the applications for leave to appeal granted by the CFA for other civil cases and criminal cases respectively each year in the past five years, the number of appeals which were successful; and
- (f) of the applications for leave to appeal dismissed by the CFA for other civil cases and criminal cases respectively each year in the past five years, the respective number of applications heard and not heard by oral hearing held by the CFA.

Delivery of reasons for verdicts and sentences in criminal proceedings in the District Court

11. The JA explained that the reason for amending section 80 of Cap. 336 was to enable the District Judges to have the flexibility to hand down the reasons for verdicts and sentences in criminal proceedings in writing direct in appropriate cases. Currently, there was no flexibility for a District Judge to directly hand down the reasons for the verdict and any sentence in writing. They had to deliver the reasons orally first. A District Judge was required to orally deliver the verdict and any sentence, as well as the reasons, in criminal proceedings. The Judge was also required to reduce the reasons to writing within 21 days after the hearing or the trial. This was unnecessary and represented a waste of legal costs and court resources in many cases.

12. Mr WONG Yuk-man suggested that:

- (a) similar arrangements be implemented in other levels of courts; and
- (b) the circumstances under which a District Judge would hand down the reasons for the verdict and any sentence in writing or orally should be clearly spelt out in the Bill.

13. The JA responded that:

- (a) similar arrangements were implemented in the High Court; and
- (b) it would be for the District Judge to decide on the appropriate mode of delivery, having regard to factors such as the complexity of the case in question, the time required for preparing the reasons in written form, whether there were legal representatives for the parties concerned and the language proficiency of the litigating parties.

14. Concern was raised about the lack of time limit in the Bill to require the District Judge to deliver the reasons for the verdict and any sentence, if the reasons were delivered in writing.

Calculation of qualifying experience for appointment as Permanent Magistrates

15. Whilst members generally did not object to the proposal to amend Cap. 227 to allow a person's period(s) of experience as a Special Magistrate to be combined with period(s) of other types of qualifying professional experience to fulfill the requisite minimum five-year period for appointment as a Permanent Magistrate, there was concern that some Special Magistrates did not practice law prior to their appointments as Special Magistrates.

16. Mr WONG Yuk-man suggested making similar amendments to section 5AB of Cap. 227 to allow a person's period(s) of experience as a Court Prosecutor, Court Interpreter or Judicial Clerk in the Government to be combined with period(s) of other types of qualifying professional experience to fulfill the requisite minimum five-year period for appointment as a Special Magistrate.

Improving the operation of the Labour Tribunal

17. The Panel noted that for the purpose of better case preparation and case management, the parties in the case considered by the Labour Tribunal should be encouraged to adopt an open and co-operative approach and make full disclosure of information at the beginning of the Tribunal process. With more transparent information, the issues at stake could be clearly identified at an early stage for the parties to properly assess their position. Early disclosure of all the necessary and relevant information would also obviate the need for pre-trial hearings. It would also enable the Tribunal to have a realistic estimate of the duration of the trial when listing the claim.

18. The Panel further noted that a party might be reluctant or might even refuse to provide copies of documents for the other party for fear that the documents might be misused by the latter. To address this concern, the Judiciary proposed that the receiving party should be imposed a general statutory duty not to use the documents and information disclosed for any purpose other than for the purpose of the Tribunal proceedings, unless the document had been put into the public domain. Moreover, similar to the other levels of court such as the High Court and the District Court, the Judiciary proposed that a breach of this statutory duty in the Labour Tribunal would give rise to a liability of contempt of court.

19. As a breach of the statutory duty not to use the documents and information disclosed for any purpose other than for the purpose of the Tribunal proceedings by the receiving party would give rise to a liability of contempt of court, concern was raised that such provisions would deter employees to seek claims from their employers through the Labour Tribunal. This was because in most instances, the employees would enlist the assistance of trade unions, and in so doing, the employees would invariably need to disclose the information received, including those not in the public domain, to the trade unions.

20. Whilst noting that the Labour Advisory Board was generally supportive of the proposals to regulate the disclosure of information in the Tribunal proceedings, Mr TANG Ka-piu said that he would not support the proposals unless it was made clear that the disclosure of information was extended to the officers of registered trade unions authorized by the employees to assist the employees in the Labour Tribunal proceedings.

21. Mr TANG Ka-piu further said that legal representation was not allowed in the Labour Tribunal proceedings. With the leave of the Tribunal, an officer of a registered trade union might appear as a party's authorized representative. Mr TANG however pointed out that the granting of leave by the Tribunal had become erratic in recent years. The JA was requested to look into ways to address the situation.

22. Mr Albert HO also urged the Judiciary to review the existing procedures of the Labour Tribunal to cater for the situation whereby a party, namely, the employer, was deceased, prior to the start of the proceedings.

Others

23. Mr Albert HO urged the Judiciary to include in the Bill amendments to the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) so that the sale of land under the Ordinance could be made through means other than by public auction. Mr HO said that should the Judiciary fail to accede to his request which was supported by many legal practitioners, he would consider introducing a private Member's bill to effect such.

Follow-up action

24. In view of the complexity of the Bill and the various views/concerns raised by Members on the Bill, the Panel agreed to further discuss the Bill with the JA in the next legislative session.

Latest position

25. The Panel will further discuss the Bill with the JA at its meeting scheduled for 28 January 2014.

26. According to the 2013-2014 legislative programme provided by the Administration, the Chief Secretary for Administration aims to introduce the Bill into the Legislative Council in the 2nd half of the 2013-2014 legislative session.