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Panel on Administration of Justice and Legal Services

Meeting on 18 May 2015

Background brief on the implementation of Civil Justice Reform

Purpose

This paper provides background information on the implementation of Civil Justice Reform ("CJR") and a brief account of past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the subject.

Background

Objectives of CJR

- 2. In February 2000, the Chief Justice ("CJ") appointed the Working Party on CJR ("the Working Party") to review the rules and procedure of the High Court in civil proceedings and to recommend changes thereto, with a view to ensuring and improving access to justice at reasonable cost and speed.
- 3. The objectives of CJR are to -
 - (a) preserve the best features of the adversarial system but curtailing its excesses. One of the primary ways to achieve this is by giving even greater case management powers to the courts. This would prevent tactical manipulation of the rules to delay proceedings and also ensure that court and judicial resources are fairly distributed;
 - (b) streamline and improve the civil procedures; and
 - (c) facilitate early settlement by parties, cut out unnecessary applications and, if necessary, penalize such applications.

In consequence, civil proceedings would become more efficient, expeditious and promote a sense of reasonable proportion and economy. There would also be greater equality between parties to proceedings and settlements would be both encouraged and facilitated.

Legislative amendments for the implementation of CJR

- 4. The Working Group submitted its recommendations to CJ in its Final Report in March 2004, making a total of 150 recommendations. CJ in the same month accepted the Working Group's Final Report and set up the Steering Committee on CJR to oversee the implementation of the recommendations contained therein relating to the Judiciary. CJ subsequently decided that the proposed changes should be implemented not just in the High Court ("HC"), but also in the District Court ("DC") and the Lands Tribunal ("LT") where such changes were appropriate.
- 5. The main package of CJR legislative amendments was enacted by the Legislative Council under the Civil Justice (Miscellaneous Amendments) Ordinance 2008 and seven sets of subsidiary legislation in January and July 2008 respectively. A set of 24 Practice Directions ("PD") has also been promulgated to regulate the conduct of court proceedings under the reformed system. CJR was implemented on 2 April 2009.

Major changes under CJR

6. The implementation of CJR has brought about significant changes in the landscape of civil proceedings in Hong Kong. Some of the major changes are summarized in **Appendix I**. Members may refer to the report of the Bills Committee on the Civil Justice (Miscellaneous Amendments) Bill [LC Paper No. CB(2)920/07-08] and that of the Subcommittee on Draft Subsidiary Legislation Relating to CJR [LC Paper No. CB(2)2222/07-08] for details of the changes made under CJR.

Monitoring of the implementation of CJR

- 7. A CJR Monitoring Committee ("the Monitoring Committee") was established in April 2009 to monitor the working of the reformed civil justice system and to make suggestions to CJ to ensure its effective operation. The Monitoring Committee is chaired by the Chief Judge of the HC and comprises judges, the Judiciary Administrator, a barrister, a solicitor, a member of the Department of Justice and the Legal Aid Department and an experienced mediator.
- 8. The Monitoring Committee considered that the collection of relevant statistics would help monitor the implementation of CJR. It endorsed a list of

32 key indicators in six broad areas for assessment of the effectiveness of CJR. The six broad areas are, viz: (i) delay; (ii) settlement; (iii) mediation; (iv) costs matters; (v) litigants in person ("LIPs"); and (vi) how some individual changes (introduced by CJR) work out in practice.

Past discussions

- 9. At the meeting of the Panel held on 21 December 2010, members were briefed by the Judiciary Administration ("JA") on the implementation of CJR from 2 April 2009 to 31 March 2010. In gist, the implementation of CJR had on the whole been smooth in the first year. Whilst the reform was heading towards the right direction, it was still at an early stage of implementation and it would take at least two to three years before meaningful trends and conclusions could be drawn.
- 10. On how far CJR had achieved its objectives as set out in paragraph 3 above, JA advised that the key to success of the reforms was a change in culture in the conduct of court proceedings and of dispute resolution on the part of judges and the legal profession. Since the reforms were implemented, progress had been made in achieving the necessary change in culture. One of the key features of CJR was active case management by the court. At the Masters' level, Case Management Conferences ("CMCs"), an important tool of case management, had been conducted extensively. At Judges' level, priority had been given to long cases and specialist lists, and there was already effective case management in these cases. The percentages of milestone dates which were varied were low. Active case management by the court had assisted the parties to identify the true nature of the issues at an early stage leading to shorter trials. Nevertheless, in view of the small population of cases, it was pre-mature to draw any firm conclusions at this stage on whether CJR had achieved the objective of expediting civil proceedings.
- 11. As regards the number of interlocutory applications, JA advised that the first year of implementation of CJR did not see any reduction in the number of interlocutory applications, which was most likely due to the exceptional increase in caseload in the last three months prior to the implementation of CJR. A longer period of time would be required to evaluate the changes in this regard. On cost matters, there had been greater use of summary assessment of costs, which had helped to cut down unnecessary taxation hearings, thereby saving time and costs. As it was still in the early days of the implementation of CJR, the full impact of the reforms in terms of the saving of litigation costs had yet to be seen.
- 12. In respect of mediation, JA advised that PD 31 applicable to all relevant civil cases in the Court of First Instance ("CFI") of HC and DC came into effect on 1 January 2010. As statistics on mediation were available for three months

- only, a longer period of observation was required. The Judiciary's Working Party on Mediation would continue to monitor closely the use of mediation in civil cases in CFI, DC and LT. To facilitate evaluation on the effectiveness of mediation, the CJR Monitoring Committee had also been exploring how the legal practitioners might assist in collecting more data relating to mediation. Apart from mediation, the new mechanism of sanctioned offers and payments had also contributed to early settlement of disputes.
- 13. Both the Hong Kong Bar Association and the Law Society of Hong Kong ("the Law Society") agreed that it was too early to reach any firm conclusions on the effectiveness of CJR. The Law Society was further of the views that that there was also no real evidence as yet that the reforms were having a downward effect on costs. Anecdotal evidence suggested that the more active use of case management might have led to an increase in costs. It was, however, clear that the reforms would result in a reduction of unnecessary interlocutory applications. Whilst there had not been much reduction in the length of time to set to trial, it was probably because the courts had had to deal with a sizable backlog of cases, and progress might be seen on this front after the backlog had been cleared.
- 14. As to whether the Judiciary had encountered any problems since the implementation of CJR, JA advised that the implementation of CJR had on the whole been smooth. According to the feedback received, no major problems were identified; all issues raised were minor and operational in nature and were resolved quickly. JA further advised that before the implementation of CJR, the Steering Committee on CJR had organized a series of courses on CJR to train judges as well as support staff. In terms of infrastructural support, the computer systems had been enhanced and a set of detailed operational manuals on the reformed areas had also been prepared to provide guidance to support The two legal professional bodies had also devised staff on implementation. extensive training programmes for their members to prepare them for the implementation of CJR. All these preparation and training had contributed to the smooth implementation of the reforms.
- 15. Members noted that for some of the statistics on the implementation of CJR cited in the JA's paper, no pre-CJR statistics were presented, and hence comparison could not be made with the pre-CJR situation. Question was raised as to the usefulness of such statistics compiled by JA for assessing the effectiveness of CJR.
- 16. JA explained that where similar statistics were available prior to the implementation of CJR, they would be presented for comparison purpose. However, for statistics relating to new CJR initiatives, there would not be any pre-CJR data. In some cases, pre-CJR statistics were not available because they had not been captured in the database before the implementation of CJR.

Even though no pre-CJR statistics were available for some key indicators for comparison purpose, the post-CJR statistics could, in the course of time, help throw light on development trends. JA stressed that as CJR had only been in place for a year, a longer period of time would be required to build up the statistics for meaningful evaluation.

- 17. Concern was raised about the increasing number of LIPs involved in court proceedings, which had added burden to the operation of the courts. Members enquired about the Judiciary's views on how to tackle the problem.
- 18. JA advised that the increasing number of LIPs had indeed presented a challenge to the courts. The Judiciary would make its best efforts to provide assistance to LIPs on procedural matters through its Resource Centre for Unrepresented Litigants. However, in order not to compromise the courts' impartiality, assistance which the courts could give to LIPs would be limited. JA stressed the need for different parties to work together to address the issues arising from the increasingly large number of LIPs. The expansion in legal aid would contribute to the solution. Encouraging LIPs to attempt mediation in appropriate cases might also help. Further, it would be necessary for the legal profession to do its fair share to provide pro bono services.
- 19. At the Panel's request, JA undertook to provide a further written report on the progress of implementation of CJR and to include the views of the legal profession on CJR in its next report to the Panel. The relevant report entitled "First Two Years' Implementation of the Civil Justice Reform from 2 April 2009 to 31 March 2011" was issued to members vide LC Paper No. CB(2)713/11-12(01) on 3 January 2012.

Latest position

20. The Panel will discuss the issue of "Review on the implementation of CJR" at its meeting scheduled for 18 May 2015.

Relevant papers

21. A list of relevant papers is in **Appendix II**.

Council Business Division 4
<u>Legislative Council Secretariat</u>
15 May 2015

Major changes brought about by the implementation of Civil Justice Reform ("CJR")

Major areas of changes

1. Underlying objectives

Under the new rules, the courts are required to exercise their powers with regard to the following underlying objectives -

- (a) increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court;
- (b) ensure that a case is dealt with as expeditiously as is reasonably practicable;
- (c) promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) ensure fairness between the parties;
- (e) facilitate settlement of disputes; and
- (f) ensure that the resources of the Court are distributed fairly.

2. Case management powers of the court

Judges have been given case management powers to further the underlying objectives by actively managing cases. The court will at a relatively early stage of proceedings adopt a "hands-on" approach to ensure that proceedings are court controlled rather than party driven. Case management can be applied to require identification of issues at an early stage, to restrain excessive discovery, deter undue prolixity of witness statements and evidence, and to cut down unmeritorious and unnecessary interlocutory applications.

The "summons for directions" procedure has been replaced by a "case management summons" or "case management conference". Within 28 days after close of pleadings, the parties will be required to complete a questionnaire providing detailed information to map out the intended progress of their action. Upon receipt of the questionnaire, the Court will then fix a timetable with firm milestone dates, which may only be changed in exceptional circumstances.

Major areas of changes

3. Pleadings to be verified by Statements of Truth

A new requirement is introduced for pleadings to be verified by "statements of truths" and for substantive defences to be properly identified. This will enable the relevant issues in proceedings to be identified more easily at an early stage and discourage the raising of unmeritorious allegations or defence.

4. Discovery

To promote greater transparency between the parties at an earlier stage with a view to facilitating settlement, pre-action discovery will be extended to all civil claims.

5. Costs-only proceedings

A new cause of action called "costs-only proceedings" is introduced to enable parties who have reached settlement on a substantive dispute and have agreed who should pay the costs, but who cannot agree on the amount of costs of the dispute, to apply for such costs to be taxed by court. Before the implementation of CJR, where parties could not agree on the amount of costs even though the substantive dispute had been resolved, it was necessary to litigate the whole dispute in order to resolve the question of costs.

6. Admissions and default judgments

To facilitate settlement in money claims, a new procedure is introduced for a defendant in a money claim to make admission and propose payment terms as to time and instalments to satisfy the claim.

7. Sanctioned offers and sanctioned payments

A system of "sanctioned offers and sanctioned payments" is introduced so that offers to settle any type of dispute (not just money ones) may be made, thereby bringing the whole action or a part of it to an end. The proposal has substantially altered the system of payments into court and has considerably widened the ambit of offers to settle cases. For example, under the old rules, only a defendant might offer to settle claims by payments into court, thereby putting a plaintiff at risk as to costs. Under the reformed system, a plaintiff, by making an offer to the defendant, can put the defendant at such risk. This will act as a significant incentive for parties to settle disputes at an earlier stage.

8. Interim relief in aid of proceedings outside Hong Kong

Before the implementation of CJR, a plaintiff in proceedings outside Hong

Major areas of changes

Kong involving a defendant with assets in Hong Kong could not seek interim relief from the Hong Kong courts. Only when substantive proceedings exist in Hong Kong could such interim relief be obtained. Under the reformed system, the Court of First Instance ("CFI") is empowered to grant interim relief, including granting an interlocutory injunction to restrain the defendant from dealing with his assets in Hong Kong or appointing a receiver, in aid of proceedings outside Hong Kong which are capable of being enforced in Hong Kong.

9. **Vexatious litigants**

Before the implementation of CJR, applications to restrict a vexatious litigant from issuing fresh proceedings except with the leave of the court, could only be made by the Secretary for Justice ("SJ") under very narrow circumstances. To help screen out vexatious litigation, thereby enabling fairer distribution of the court's resources for genuine disputes, the court has been allowed to make a vexatious litigant order not only on the application of SJ, but also on the application of an "affected person".

The threshold for granting leave to a vexatious litigant to institute fresh proceedings has also been raised, requiring CFI to be satisfied that the proceedings are not an abuse of the process and that there are reasonable, not just prima facie, grounds for the proceedings.

10. **Costs**

(a) Wasted costs order

Under CJR, the court's power to make wasted costs orders against solicitors for any costs improperly incurred or wasted by undue delay or other misconduct has been extended to cover barristers.

(b) Costs against a non-party

To allow the court to order costs to fall where they are appropriate, the court has been empowered to make a costs order against a person who is not a party to the relevant proceedings.

(c) Procedures for costs assessment

Changes have been made to provide for the summary assessment of costs, whereby the court can assess the amount of costs payable and then order payment to be made within a certain period of time, and to empower Masters to do provisional taxation on paper without hearing.

Major areas of changes

11. Leave to appeal

To screen out unmeritorious appeals on interlocutory matters which do not determine substantive rights, amendments have been made to the High Court Ordinance (Cap. 4) to introduce the requirement that an interlocutory appeal to the Court of Appeal ("CA") can only be brought with leave of CFI or CA. Leave would only be granted where there is a real prospect of success or some other reason in the interests of justice why the appeal should be heard. Refusal of leave by CA is final. The District Court Ordinance (Cap. 336) has also been amended to similarly improve the procedures for applications for leave to appeal to CA.

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15 May 2015

Appendix II

Relevant documents on implementation of Civil Justice Reform

Meeting	Date of meeting	Paper
Panel on Administration of Justice and Legal Services		Final Report and Executive Summary on Civil Justice Reform published on 3 March 2004 http://www.legco.gov.hk/yr06-07/english/bc/bc57/papers/bc570611cb2-1960-e.pdf http://www.legco.gov.hk/yr03-04/english/panels/ajls/papers/aj0322cb1-1574e-scan.pdf
	26 June 2006	Background brief on "Civil Justice Reform" prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)2517/05-06(04)] http://www.legco.gov.hk/yr05-06/english/panels/ajls/papers/aj0626cb2-2517-4e.pdf Minutes of meeting [LC Paper No. CB(2)3001/05-06] http://www.legco.gov.hk/yr05-06/english/panels/ajls/minutes/aj060626.pdf
	12 December 2006	Background brief on "Civil Justice Reform" prepared by the LegCo Secretariat [LC Paper No. CB(2)568/06-07(05)] http://www.legco.gov.hk/yr06-07/english/panels/ajls/papers/aj1212cb2-568-5-e.pdf Judiciary Administration's paper on "Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform" [LC Paper No. CB(2)568/06-07(06)] http://www.legco.gov.hk/yr06-07/english/panels/ajls/papers/aj1212cb2-568-6-e.pdf Minutes of meeting [LC Paper No. CB(2)889/06-07] http://www.legco.gov.hk/yr06-07/english/panels/ajls/minutes/aj061212.pdf

Meeting	Date of meeting	Paper
Panel on Administration of Justice and Legal Services	13 January 2009	Background brief on "Operation of the Resource Centre for Unrepresented Litigants" prepared by the LegCo Secretariat [LC Paper No. CB(2)601/08-09(05)] http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-5-e.pdf
		Judiciary Administration's paper on "Resource Centre for Unrepresented Litigants" [LC Paper No. CB(2)601/08-09(04)] http://www.legco.gov.hk/yr08-09/english/p anels/ajls/papers/aj0113cb2-601-4-e.pdf
		Background brief on "Implementation of Civil Justice Reform" prepared by the LegCo Secretariat [LC Paper No. CB(2)601/08-09(07)] http://www.legco.gov.hk/yr08-09/english/p anels/ajls/papers/aj0113cb2-601-7-e.pdf
		Judiciary Administration's paper on "Implementation of Civil Justice Reform" [LC Paper No. CB(2)601/08-09(06)] http://www.legco.gov.hk/yr08-09/english/p anels/ajls/papers/aj0113cb2-601-6-e.pdf
		Submission on "Civil Justice Reform Training Programme - October 2008 to March 2009" from the Law Society of Hong Kong [LC Paper No. CB(2)620/08-09(01)] (English version only) http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-620-1-e.pdf
		Letter dated 12 January 2009 from the Hong Kong Bar Association [LC Paper No. CB(2)638/08-09(01)] (English version only) http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-638-1-e.pdf

Meeting	Date of meeting	Paper
		Minutes of meeting [LC Paper No. CB(2)1063/08-09] http://www.legco.gov.hk/yr08-09/english/p anels/ajls/minutes/aj20090113.pdf
		Follow-up papers
		Extract of the Chief Justice's speech at the Ceremonial Opening of the Legal Year 2009 on implementation of Civil Justice Reform [LC Paper No. CB(2)673/08-09(01)] http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-673-1-e.pdf
		Judiciary Administration's paper on the terms of reference and membership of the committee established by the Chief Justice to monitor the implementation of Civil Justice Reform [LC Paper No. CB(2)2561/08-09(01)] http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-2561-1-e.pdf
		Judiciary Administration's response on issues relating to the operation of the Resource Centre for Unrepresented Litigants raised by members at the Panel meeting on 13 January 2009 [LC Paper No. CB(2)22/09-10(01)] http://www.legco.gov.hk/yr08-09/english/p anels/ajls/papers/aj0113cb2-22-1-e.pdf
Panel on Administration of Justice and Legal Services	21 December 2010	Judiciary Administration's paper on "The First Year's Implementation of the Civil Justice Reform from 2 April 2009 to 31 March 2010" [LC Paper No. CB(2)591/10-11(06)] http://www.legco.gov.hk/yr10-11/english/panels/ajls/papers/aj1221cb2-591-6-e.pdf
		Background brief on "Implementation of Civil Justice Reform" prepared by the LegCo Secretariat [LC Paper No. CB(2)591/10-11(07)] http://www.legco.gov.hk/yr10-11/english/panels/ajls/papers/aj1221cb2-591-7-e.pdf

Meeting	Date of meeting	Paper
		Follow-up paper Judiciary Administration's information paper dated 30 December 2011 informing the Panel of the findings of the implementation of the Civil Justice Reform for the first two years from 2 April 2009 to 31 March 2011. [LC Paper No. CB(2)713/11-12(01)] http://library.legco.gov.hk:1080/articles/1143005.207533/1.PDF
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007		Background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1837/06-07(02)] http://www.legco.gov.hk/yr06-07/english/bc/bc57/papers/bc570515cb2-1837-2-e.pdf Report of the Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007 to the Legislative Council on 30 January 2008 [LC Paper No. CB(2)920/07-08] http://www.legco.gov.hk/yr06-07/english/bc/bc57/reports/bc570130cb2-920-e.pdf
Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform		Report of the Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform to the House Committee meeting on 13 June 2008 [LC Paper No. CB(2)2222/07-08] http://www.legco.gov.hk/yr07-08/english/hc/papers/hc0613cb2-2222-e.pdf

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