

立法會
Legislative Council

LC Paper No. CB(2)2586/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB2/BC/2/99

Legislative Council
Bills Committee on District Court (Amendment) Bill 1999

Minutes of 11th meeting
held on Wednesday, 19 April 2000 at 4:30 pm
in Conference Room B of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Mrs Miriam LAU Kin-ye, JP
Hon Jasper TSANG Yok-sing, JP

Members Absent : Hon Ronald ARCULLI, JP
Hon Ambrose LAU Hon-chuen, JP

Public Officers Attending : Ms Emma LAU
Deputy Judiciary Administrator

Ms Miranda CHIU
Deputy Director of Administration

Mr David LEUNG
Assistant Judiciary Administrator

Ms Rosanna LAW
Assistant Director of Administration

Mr J D SCOTT
Senior Assistant Law Draftsman

Ms Carmen CHU
Senior Government Counsel

Miss Vivian FUNG
Senior Government Counsel

Mr Louie WONG
Government Counsel

Mr Ryan CHIU
Assistant Secretary (Administration)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Matters arising

Applicability of the District Court Ordinance (LC Paper No. CB(2) 1716/99-00(03))

At the last meeting, members requested the Administration to explain the implications of adopting "the Government", instead of "the State" in proposed sections 72(4), 72(5) and 72D(6) of the Bill. These proposed sections were necessary for the District Court Rules Committee to be empowered properly to make rules to give effect to the proposed new financial jurisdictional limits of the District Court (DC), and to introduce a new civil procedural framework. Members also requested the Administration to advise on the timetable for the adaptation of the Crown Proceedings Ordinance (Cap. 300) (CPO), and its binding effect with regard

to Offices set up by the Central People's Government (CPG) in the Hong Kong Special Administrative Region pending adaptation.

2. On the timetable for the adaptation of the CPO, Senior Government Counsel (SGC) advised that there was no specific timetable for the adaptation of CPO at this stage, as priority was currently given to more straightforward adaptations. Pending adaptation, the application of CPO to CPG Offices would be a matter for the courts to decide in the circumstances of a particular case, having regard to the manner in which the Crown was affected by the CPO before reunification, the position of the CPG Offices under the Basic Law, the Garrison Law and the Reunification Ordinance.

3. As regards implications of adopting "the Government" in proposed new sections 72(4), 72(5) and 72D(6), SGC said that the Administration's explanation was set out in paragraphs 4 and 5 of the paper. In gist, the Administration did not consider that the reference to "the Government" in the existing or proposed rule-making powers as set out in section 72 had the effect of excluding from that court's jurisdiction claims by or against CPG Offices.

4. The Chairman said that paragraphs 4 and 5 had not addressed members' concerns. She pointed out proposed section 72(4) stipulated that the power to make rules under section 72 included power to make rules as to proceedings by or against "the Government". It did not make reference to "the State". Mr TSANG Yok-sing added that proposed section 72(5) further specified that the rules of court applied to all proceedings by or against the Government "insofar as they expressly purport so to do". It would appear that unless there was a provision to expressly state that the proceedings by or against "the State" could be instituted in the DC, the proposed rule-making powers as set out in section 72 could not bind the CPG Offices. Mrs Miriam LAU asked that if certain rules only applied to "the Government", what rules would apply to "the State".

5. SGC responded that there were usually two sets of rules, i.e. general rules that applied to all and special rules that applied to a specific body, e.g. the Government. If no special rules had been made for "the State", the general rules would apply.

6. To allay members' concern, SGC explained that under section 11(1) of the CPO, civil proceedings by or against "the Crown" might generally be instituted in the DC, provided that they were within the DC jurisdictional limits. Section 11(2) of the CPO further stated that any proceedings by or against "the Crown" in the DC should be instituted and proceeded with in accordance with "rules of court". "Rules of court" was defined in section 2 of the CPO as "rules made by the authority having

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for the time being power to make rules and orders regulating the practice and procedure of the Supreme Court or the District Court, as the case may be". SGC explained that to the extent that CPO now enabled proceedings to be brought against CPG Offices, section 11 of the CPO therefore provided the DC with jurisdiction over them. The Administration did not consider that adopting "the Government" would have the effect of excluding from DC's jurisdiction claims by or against CPG Offices that could be brought under the CPO.

7. The Chairman requested the Chief Secretary for Administration to explain the Administration's position, including the timetable for the adaptation of CPO and its binding effect pending adaptation, during the Second Reading debate on the Bill.

8. Mr TSANG Yok-sing asked whether civil proceedings could be instituted in the High Court (HC), like the DC, by or against "the Government". SGC explained that the term used in the relevant section of the High Court Ordinance was "the Crown". Given that "the Crown" might have a wider meaning, the rules made under that section of the High Court Ordinance might apply to civil proceedings by or against "the State" or "the Government". The Chairman said that there was inconsistency between the DC Ordinance and the HC Ordinance. However, whether "the Crown" referred to in the HC Ordinance would be adapted to "the State" or "the Government" would depend on the adaptation of the CPO.

9. On the application and interpretation of "proceedings by and against the Government", Assistant Legal Adviser (ALA) advised members that the details were set out in Order 77 rule 1 of the draft Rules of the DC.

Responses to issues raised by the Bills Committee during the clause-by-clause examination

(LC Paper No. CB(2) 1716/99-00(04))

10. Assistant Judiciary Administrator (AJA) took members through the paper and members did not raise any queries.

II. Committee Stage Amendments (CSAs) to the Bill

Proposed further CSAs

(LC Paper No. CB(2) 1749/99-00(01))

11. A paper setting out further CSAs to be proposed by the Administration was tabled at the meeting. Members noted the AJA's advice that a CSA would be

proposed to amend Clause 1(2).

12. On the proposal to delete proposed section 44A(3) (Clause 22, item (h)) and replace it with the CSA proposed in the paper, ALA expressed concern that the proposed version appeared to have indirectly conferred the power provided in proposed section 39 back to the DC. Section 39 provided that the DC had the jurisdiction to hear and determine an action or proceedings in section 32, 33, 35, 36, or 37(1)(c), (d) or (f) without regard to the monetary limits specified if all parties to the action or proceedings agreed for the DC to have jurisdiction in the action or proceedings by a memorandum signed by them or their representatives. He pointed out that the Administration had agreed to repeal section 39.

13. The Chairman said that members supported that proposed section 39 should be repealed because as a matter of principle, the DC should not confer upon itself unlimited jurisdiction with the agreement of parties. In addition, the proposal could raise technical difficulties in implementation. She pointed out that proposed section 44A(3) in the Bill was different from the newly proposed section 44A(3). The former should be deleted from the Bill because it required the Court of First Instance to make an order to transfer the case to the DC with the consent of the parties. However, the latter made it clear that the power of the DC to hear cases outside its jurisdictional limits was conferred by an order made by the Court of First Instance. The Chairman considered that the proposed CSA was acceptable.

14. Deputy Judiciary Administrator (DJA) explained that the proposed further amendment to section 44A(3) was to put beyond doubt the DC's power to hear those cases transferred to it under an order made by the Court of First Instance pursuant to proposed section 44A(1), albeit outside the monetary limit of its jurisdiction.

Clause by clause examination of the proposed CSAs
(Annex to LC Paper No. CB(2) 1716/99-00(05))

Clause 9 (section 14) - Officers of the Court

15. In response to ALA's question concerning "bailiffs" referred to in section 14(1), AJA explained that since the existing registrars of the DC were not judicial officers, direction had to be sought from the HC if a bailiff was to be attached to the DC. After the passage of the Bill, registrars of the DC would be filled by legally qualified judicial officers who could give direction to bailiffs.

16. Members did not raise queries on the rest of the CSAs. The Chairman requested ALA to go through the Chinese version of the CSAs and approach the

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Administration for clarification, if necessary.

17. On legislative timetable, Deputy Director of Administration advised members that the Administration intended to give notice to resume Second Reading debate on the Bill at the Council meeting on 17 May 2000. The proposed rules of the DC would be tabled at the Council meeting on 24 May 2000. In order to allow more time for the DC and the legal profession to prepare for the new working procedure, DJA said that the Administration would propose that the Bill and the Rules of the DC should come into operation in September 2000.

18. The meeting ended at 5:24 pm.

Legislative Council Secretariat

20 September 2000