

立法會
Legislative Council

LC Paper No. CB(2)1169/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/99

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

**Minutes of 2nd meeting
held on Tuesday, 21 December 1999 at 2:30 am
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP
- Members Absent** : Hon Ronald ARCULLI, JP
Hon Mrs Miriam LAU Kin-ye, JP
Hon Andrew CHENG Kar-foo
- Public Officers Attending** : Ms Emma LAU
Deputy Judiciary Administrator
- 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
- Mr Ryan CHIU
Assistant Secretary (Administration)

Clerk in Attendance : Mrs Justina LAM
Assistant Secretary General 2

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

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

Action
Column

I. Administration's response to points raised by the Bills Committee on 22 November 1999

(LC Paper Nos. CB(2) 672/99-00(01) and 699/99-00(01))

The Chairman said that the Administration had provided a paper (LC Paper No. CB(2) 672/99-00(01)) on the new procedural framework for the District Court (DC) to address one of the concerns raised by members at the last meeting. She asked the Administration when it would be able to respond to other issues such as the caseload situation and manpower implications as a result of the increase in financial jurisdictional limits of DC. Deputy Judiciary Administrator (DJA) responded that information relating to the other issues, which the Administration was compiling, should be ready in a month's time.

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New procedural framework for DC
(LC Paper No. CB(2) 672/99-00(01))

2. DJA said that the existing procedure in DC was somewhat hybrid. On the one hand it applied a simple procedure to deal with trial without pleadings and interlocutory applications. On the other hand, it also applied the existing High Court (HC) rules with suitable modifications for represented cases. At the invitation of the Chairman, DJA took members through the paper which highlighted the main differences between the rules of DC and HC as well as the major changes proposed under the new set of DC rules.

Paragraphs 5(a)&(h) and 7(a)&(c)

3. DJA said that under the existing procedure, after the defendant was served with a writ, there was no requirement for the filing of an Acknowledgement of Service in DC. If liability was disputed, the defendant was required to file the Defence and/or Counterclaim. In HC, there was a requirement to file an Acknowledgement of Service. Under the new DC procedure, the defendant was required to file an Acknowledgement of Service. The implication of the new procedure was that summary judgment procedure

could be invoked by the plaintiff after the filing of Acknowledgement of Service and before filing of Defence by the defendant.

4. The Chairman asked what would happen if the defendant did not file a Defence or an Acknowledgement of Service. Assistant Judiciary Administrator (AJA) said that the Court would give a judgment in default.

5. The Chairman said that with the implementation of the new rules, the summary judgment procedure (Order 14 of the of HC rules) would be available in DC. She said that one of the reasons for many cases going to HC was that summary judgment procedure was very attractive. A plaintiff who had a good case could invoke summary judgment procedure if the defendant did not file a Defence, hence saving a lot of time and money. Otherwise, under the existing procedure in DC the plaintiff would get a default judgment which was easy to dislodge.

Paragraphs 5(b) and 7(b)

6. DJA said that under the existing DC procedure, litigants might apply to set down a case for hearing after filing of Defence or Counterclaim, without summons for directions. In HC, litigants need to take out summons for directions upon close of pleadings. The new DC rules followed broadly the existing HC rules and required litigants to take out summons for directions before they could apply for setting down of a case for hearing.

Paragraph 5(c)

7. Responding to Mr Albert HO's question on the difference between the existing and new procedures for making DC application for striking out, DJA explained that under the existing procedure, the Registrar of DC should strike out the action if no application to fix date was made within three months of filing of Defence or Counterclaim. There was no equivalent rule in HC because litigants were required to take out summons for directions before they could apply for setting down for hearing. In future, the provision for striking out would be deleted from the existing DC rules. The new DC rules would follow existing HC rules in this respect.

Paragraph 5(d)

8. DJA said that under the existing procedure, formal pleadings from litigants were not required as of course but were only necessary when ordered by DC. If so ordered, the practice in HC would be followed. In practice, because of the increase in jurisdiction of DC over the years and the increasing number of represented cases by legal professionals, most actions in DC now began with formal pleadings as of course without order. The new DC rules

would follow Order 18 of the HC rules.

Paragraphs 5(e) and 7(d)

9. DJA said that under existing DC rules, discovery and inspection of documents might be informal, although the relevant rules did not prevent the adoption by any party of the formal procedure prescribed by the HC rules. In HC, parties had the obligation to make available discovery of all relevant documents. Relevant documents included three main categories -

- (a) documents on which a party relied;
- (b) documents which were either supportive of or adversely affected his own and another party's case; and
- (c) all relevant documents which might lead to a train of enquiries in respect of documents in (a) and (b) above.

10. DJA said that the first two categories would be regarded as standard discovery of relevant documents. Unlike the existing HC procedure, the new DC procedure would restrict discovery to standard discovery, subject to the right of the parties to show good cause to extend discovery to the third category of discovery of relevant documents.

Paragraph 5(f)&(g)

11. DJA said that under the existing procedure in HC, interlocutory applications or opposition had to be supported by affidavit. In DC, interlocutory applications or opposition might be made orally without preliminary formality or supporting affidavit. The new procedural framework in DC would adopt the same standard as that adopted by HC.

12. Mr Albert HO asked why the existing DC procedure would accept interlocutory applications or opposition to be made orally without preliminary formality. DJA explained that the rule had been drafted at a time before the Small Claims Tribunal was established where litigants might be unrepresented and District judges might need to frame the issues in disputes for the parties where there was no or insufficient pleadings, and order the production of the necessary documents. Under the new procedural framework in DC, the rule would be retained because although the financial jurisdictional limit would be increased by a few folds, it would not preclude cases of modest claims whereby litigants might make interlocutory applications or opposition in person in DC. Therefore, it would be desirable to retain the flexibility and discretion in the hands of the District Court judge to deal with the modest cases.

Paragraph 5(i)

13. DJA said that the existing DC adopted more relaxed rules on the admissibility of evidence, whereas Order 38 of the HC rules had a more elaborated procedure on the admissibility of hearsay evidence. With the increase in financial jurisdictional limit, the new DC rules would follow similar provisions of the HC rules. The Chairman advised that because of the amendment to the Evidence Ordinance to abolish the rule of hearsay some months ago, the rule on admissibility of evidence in HC had already been simplified.

Paragraph 6

14. DJA drew members' attention to two new procedures proposed in the Bill -

- (a) At present, DC did not have exclusive jurisdiction. Litigants were at liberty to choose the type of court to start the case. Section 44(3) (Clause 22) of the Bill proposed that cases within DC jurisdiction were required to be transferred to DC, subject to the power of the judge of HC to retain the matter in HC for good cause; and
- (b) Section 72(6) (Clause 40) of the Bill proposed that a judge might, in the exercise of his discretion, excuse a party from compliance with any rule. This provision served to retain the necessary flexibility for the court to deal with modest claims where parties were unrepresented.

15. Mr TSANG Yok-sing said that the main reason for increasing the financial jurisdictional limit of DC was to allow the large number of cases which used to be handled by HC to go to DC. Hopefully, with less formality, cases handled by DC would be less costly. He expressed concern that by following the formal rules of HC in DC, this purpose could be defeated. He also questioned the rationale for DC to adopt some and not all HC rules, given that the existing HC rules must have been made with good reasons.

16. DJA responded that the new set of DC rules sought to provide a broad procedural framework so that there would be more comprehensive formal procedures for litigants to follow. Although the new procedural framework of DC followed that of the existing HC rules, there were still differences between them. In the new DC rules, there were areas which provided for greater flexibility, for instance, allowing judges to exercise the discretion to dispense with some of the rules. In addition, new proposals such as introducing standard discovery to DC would lead to cost savings. She added that the new DC rules

Action
Column

would serve as a testing ground. If they were proved to be successful, a number of reforms which went further than the existing provisions in the HC rules could be considered for wider application with a view to achieving further cost saving.

Adm

17. The Chairman said that the idea of reforming HC rules was a serious matter. She urged the Administration to take a gradual approach. She also requested the Judiciary to prepare a paper setting out the plan for reforms and proposed changes to HC rules for consideration by the Panel on AJLS and the legal profession in due course.

18. DJA responded that as far as the new DC rules were concerned, they would be discussed in the DC Rules Committee. Through that Committee, views of the legal profession would be gauged. She said that the Administration would take a cautious approach in any new reform. As DC was an intermediate court, it was the appropriate forum to test out new ideas and reforms.

19. Referring to paragraph 6 of the paper, the Chairman expressed concern about the proposal that cases within the DC jurisdiction were required to be transferred to DC subject to the power of the judge to retain the matter in HC for good cause. She opined that the proposed arrangement was inflexible. She pointed out that sometimes the complexity of a case was not dictated by the amount of money involved, and the parties might well prefer the more formal procedure of HC rather than DC. If both parties were happy to pay the higher cost for the advantages of HC, they should be allowed to do so. Since the Judiciary was meant to be a service, it must serve the litigating parties. She said that one should not put case management before the interest of the parties concerned.

20. Mr TSANG Yok-sing pointed out that according to section 44(2) (Clause 22) of the Bill, it appeared that the Court of First Instance might order the transfer of cases at any stage of the proceedings of the Court of First Instance itself or on the application of any party. The Chairman sought clarification from the Administration as to whether section 44(3) (Clause 22) of the Bill as drafted had the meaning and intention of making it obligatory for a case within DC jurisdiction to be transferred to DC unless the parties could convince HC judges that the matter should remain in HC.

21. Senior Assistant Law Draftsman (SALD) said that the word used in section 44(1) (Claus 22) of the Bill was "may" and not "shall". It appeared to him that the Court of First Instance had the discretion to make or not to make the order to transfer a case to DC taking into account the views of the parties concerned. Section 44(3) (Clause 22) had also left it to the Court of First Instance to decide whether or not to make such an order "by reason of the

importance or complexity of any issue arising in the action or proceeding". He opined that paragraph 6 of the paper was written in broad general terms.

22. DJA said that the origin of this provision was in line with the recommendation of the Kempster Report. She said that at present quite a number of applicants actually used HC even the claim amount was under \$120,000. With the Order 14 procedure being made available to DC, it was hoped that applicants would choose to commence their proceedings in the courts in accordance with their respective jurisdictional limits.

Clerk

23. The Chairman said that in any event the spirit of the requirement about case transfer was not compatible with the idea of the Judiciary as a service to the community. She requested the Administration to explain in writing the need for section 44 (Clause 22) of the Bill and the effect of section 44(3) (Clause 22). She said that the Bills Committee would consider further the provisions when it came to clause by the clause examination of the Bill. She also suggested that the legal profession be invited to give views on the proposed provisions.

Paragraph 8(a)

24. DJA said that a number of reforms which aimed at cost saving would be introduced under the new DC procedural framework. The major proposals were set out in paragraph 8 of the paper. One of the proposals was automatic standard directions in default of agreed directions where parties were represented would apply to all cases. Moreover, where at least one party was unrepresented, a directions hearing would be conducted so that the parties were advised of the future conduct of the case. At present, automatic directions only applied in personal injuries cases in HC.

25. Mr TSANG Yok-sing asked about the implications of introducing automatic standard directions in default of agreed directions to all kinds of cases. DJA responded that the new procedure would be less costly as they would follow the standard directions in default of agreed directions between the two parties.

Paragraph 8(b)

26. DJA said that as explained earlier (paragraph 10 above), discovery in DC would be restricted to standard discovery of relevant documents, unless a party could provide a good cause to extend to the third category of discovery. In response to the Chairman, DJA clarified that the proposed provisions would only be included in the new DC rules and not in the Bill.

Action
Column

27. Mr Albert HO said that whether a document should be produced for discovery was governed by the rule of relevancy. If the document was relevant, it ought to be subject to discovery. He opined that the new procedure had the effect of classifying documents as marginally relevant or directly relevant.

Clerk

28. Noting that the proposal was modelled on part 31 of the new English Civil Procedural Rules, the Chairman pointed out that the provision was wholly untested. She said that discovery was one of the most troublesome areas of litigation. It could break a case even though the case was meritorious. As the rule of discovery was extremely difficult to understand and relevancy was hardly a bounded concept, she suggested that the legal profession be invited to give views on the new procedure.

Paragraph 8(c)

29. DJA said that under the existing rules of DC and HC, interim payment of costs needed to go through interim taxation. Under the new procedure, interim payment of costs forthwith without going through interim taxation would be introduced in DC and HC. In this regard, if the judge or master considered that interim payment forthwith was justified, the litigating parties would be required to pay a provisional sum without going through taxation. At the end it still had to go through taxation. If the amount after taxation exceeded the provisional sum, the litigating parties would need to pay the difference. Similar amendment would also be made to HC rules.

Clerk

30. Mr Albert HO said that he had reservation about the proposal. In complex litigation, the proposal could be a deterrent to the less resourceful party. The Chairman said that she also had reservation. She suggested that the legal profession be invited to give views on this new rule.

Paragraph 9

31. DJA briefed members on the paragraph and members did not raise any queries.

Paragraph 10

Adm

32. DJA said that the Court of First Instance would continue to exercise exclusive jurisdiction on a number of areas and accordingly, the orders set out in Annex B to the paper would remain to be excluded from the new DC rules. Mr Albert HO asked and the Administration undertook to provide more information on why Order 76 of the existing HC rules relating to contentious probate proceedings was excluded from the new rules of DC.

Action
Column

Paragraphs 11-13

33. DJA briefed members on the paragraphs and members did not raise any queries.

(Post-meeting note : The Hong Kong Bar Association and the Law Society of Hong Kong's submissions on the proposed rules of DC were issued to members vide LC paper No. CB(2)930/99-00(02) and (03) respectively.)

Legislative timetable for the implementation of the Bill
(LC Paper No. CB(2) 699/99-00(01))

34. DJA said that the timetable tabled at the meeting outlined the major milestones for implementing the legislative proposal. The Administration would provide a more detailed timetable after the paper relating to caseload situation and manpower arrangements was prepared. She said that the Bill and the new rules would need to be passed before the end of this LegCo session and to take effect by August 2000.

35. Assistant General Secretary 2 pointed out that members should be allowed sufficient time to scrutinize the new rules of DC after gazettal, given that the LegCo term would end on 30 June 2000. The Chairman said that the Administration might need to consider advancing the legislative timetable, in particular the schedule for enactment of the Bill and submission of the new rules of DC to LegCo for negative vetting. The Administration undertook to consider the Chairman's suggestion.

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II. Administration's response to submissions
(LC Paper Nos. CB(2) 420/99-00(03) & (04), 672/99-00(02) and 694/99-00(01) & (02))

36. The Chairman said that the Administration's replies to the Hong Kong Bar Association and the Law Society of Hong Kong were issued to members vide LC Paper Nos. 694/99-00(01) and (02). She suggested that the issues raised by the two bodies and the Administration's replies be dealt with at a later stage, after the Administration had provided further information on the outstanding issues raised at the meeting on 22 November 1999. Members agreed. On the submission from the Munro Claypole & Reeves Solicitors & Notaries Public Agents for Trade Marks & Patents (LC Paper No. CB(2) 672/99-00(02)), DJA said that the Administration was still considering the matters raised and would give a formal reply in due course.

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III. Comparison between the provisions of the Bill and the DC Ordinance (Cap. 336)
(LC Paper No. CB(2) 672/99-00(03))

37. At the invitation of the Chairman, Assistant Legal Adviser briefed members on the layout of the comparison table which set out the differences between the provisions of the Bill and the DC Ordinance (Cap. 336). He said that the table was divided into four parts, namely -

- Part I - Newly added provisions;
- Part II - Provisions repealed and substituted by new provisions;
- Part III - Provisions repealed without substitution; and
- Part IV - Provisions amended.

38. The Chairman suggested that the content of the comparison table should be studied in conjunction with the provisions of the Bill at the clause by clause examination stage. Members agreed.

IV. Date of next meeting

39. Members agreed that the next meeting would be held on 21 January 2000 at 8:30 am, as the Administration needed a month's time to provide a written response to the outstanding issues raised at the last meeting.

40. The meeting ended at 4:00 pm.

Legislative Council Secretariat
22 January 2000