

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

	<b>Comments of the Bills Committee</b>	<b>Responses</b>
(1)	<u>Clause 14 (section 26) Officers illegally demanding fees</u> – to consider the need to retain the section as conduct described in the section should be covered by the Prevention of Bribery Ordinance and referred to ICAC for investigation	We are seeking legal advice on the matter and shall revert to the Bills Committee as soon as possible.
(2)	<u>Clauses 17-19 (sections 29-31) Rescuing goods/ Assaulting officers/ Revocation of committal orders</u> – to explain the need for and the effect of the proposed amendments	<p>The power of the judge to commit an offender under these sections to prison is replaced by the procedure of conviction on indictment to imprisonment. The power of the bailiff (with or without warrant) to take an offender into custody and bring him before a judge is abolished. It is noted that the bailiff’s power under the existing sections serves as a deterrent to potential offenders and the power is rarely exercised.</p> <p>Under the new sections, an officer of the court will report the offences to the police and the offender will be subject to prosecution either on summary conviction brought in the Magistrate’s courts or on conviction on indictment brought in the District Court or the Court of First Instance, depending on the seriousness of the offence. The intended deterrent effect to be achieved would therefore not be affected under the new sections. The advantage of the arrangement under the new sections is that the term of imprisonment for the offender can be decided in accordance with the seriousness of the offence when the case is heard before the court. The abolition of the bailiff’s power to take a person into custody (with or without warrant) is an improvement over the existing one from the human right perspective.</p>

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		<p>It should be noted that the court’s powers to commit a person to prison for contempt of court (section 20 of the Ordinance) or for failing to comply with a court order to repay debts (new Order 49B modelled on the same order in the Rules of the High Court) are preserved, where the seriousness of the offence is known to the judge concerned.</p> <p>Changes to section 31 are consequential amendments arising from the changes to proposed section 29 and 30.</p>
(3)	<p><u>Clause 22 (section 44(1)) Transfer to the Court from the Court of First Instance of proceedings within the jurisdiction of the Court</u> – to reconsider whether the word “likely” should be retained in the section</p>	<p>The wording “appear to the Court (to be) likely” also appears in new sections 47A(1), 47B and 47E (concerning the Court’s power to order disclosure of documents) which are modelled on sections 41, 42 and 45 of the HCO. The intention is to give the court greater discretion in determining the issues in question.</p>
(4)	<p><u>Clause 23 (section 48(3)-(5)) General ancillary jurisdiction</u> – to explain the purpose of proposed section 48(3)-(5)</p>	<p>Proposed section 48(3) and 48(4) are modelled on section 16(2) of the High Court Ordinance (HCO) which explicitly provides that the Court has to give the same effect as in the past to the equitable rights and liabilities, etc and avoid multiplicity of proceedings.</p> <p>Proposed section 48(5) is modelled on section 16(3) of the HCO which gives the Court an explicit power to stay the proceedings as it thinks fit to do so.</p>

	<b>Comments of the Bills Committee</b>	<b>Remarks</b>
(5)	<p><u>Clause 23 (section 49(5) &amp; (7)) Interest on claims for debt and damages</u> – to consider replacing the word “cannot” in subsection (5) and (7) with “shall not” and to explain the proposed section 49(5) by way of an example</p>	<p>We agree that the wording in section 48(4) and (6) of HCO should be followed and that “cannot” should be replaced by “shall not”. We shall move a CSA to this effect.</p> <p>Proposed section 49(5) is based on section 48(4) of the HCO which provides that there should be no power to award interest on a debt in respect of a period during which interest was already payable by contract, statute or otherwise.</p>
(6)	<p><u>Clauses 25 (sections 52A) Power of Court to impose charging order</u> – to explain the operation of proposed section 52A by way of an example</p>	<p>Proposed section 52A is modelled on section 20 of the HCO.</p> <p>The purpose of proposed section 52(A)(2) is to emphasize the discretionary nature of the jurisdiction. Bearing in mind that a charging order will make a judgment creditor a secured creditor, so that he would have priority over unsecured creditors in the event of the debtor becoming bankrupt, the court is required to consider, among other things, whether it would be unfair to other creditors to give the applicant this degree of security pending satisfaction of the judgment.</p> <p>The purpose of proposed section 52(A)(3) is to extend the power to make charging orders to judgments which are enforceable by virtue of other statutes as if they were District Court judgments. Under section 38 of the Labour Tribunal Ordinance and section 32 of the Small Claims Tribunal Ordinance, the awards made by these Tribunals are enforceable as if they were made in the District Court. By virtue of section 9(1) of the Maintenance Orders (Reciprocal Enforcement Ordinance), a maintenance order registered in the District Court under this ordinance may be enforced in Hong Kong as if it had been made by the District Court and as if that Court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of any such order may be taken accordingly.</p>

	<b>Comments of the Bills Committee</b>	<b>Responses</b>
(7)	<p><u>Clause 30 (section 59A) Production of documents to other courts</u> – to explain the purpose and ambit of proposed section 59A(1)</p>	<p>Our intention is to model proposed section 59A on section 54(2)(k) of the HCO. Nevertheless, we agree that, as the relevant section in the HCO is subsumed under the section on “Rules of Court”, it only provides a power to the Rules Committee to make relevant rules, whereas proposed section 59A expressly provides for the power of production. In the light of Members’ comments and our original policy intention, we agree that section 59A of the Bill should be moved to section 72(2)(f) of the Bill dealing with the Rules of Court so that it will have exactly the same effect as section 54(2)(k) of HCO. We shall move a CSA to that effect.</p> <p>As regards the ambit of the proposed section 59A(1), according to the experience in the High Court Registry, section 54(2)(k) of HCO is intended for production of documents to courts and tribunals in Hong Kong. The word “court” means “any court of the Hong Kong Special Administrative Region of competent jurisdiction” in Cap.1.</p>