

立法會  
*Legislative Council*

LC Paper No. CB(2)2981/02-03  
(These minutes have been  
seen by the Administration)

Ref : CB2/SS/16/02

**Subcommittee on Rules of the High Court (Amendment) Rules 2003**

**Minutes of meeting  
held on Wednesday, 23 July 2003 at 2:30 pm  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan  
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Jasper TSANG Yok-sing, JP
- Public officers attending** : Miss Emma LAU  
Deputy Judiciary Administrator (Development)
- Miss Vega WONG  
Assistant Judiciary Administrator (Development)
- Ms Frances HUI  
Senior Government Counsel  
Department of Justice
- Clerk in attendance** : Mrs Percy MA  
Chief Assistant Secretary (2)3
- Staff in attendance** : Mr Kitty CHENG  
Assistant Legal Adviser 5
- Mr Paul WOO  
Senior Assistant Secretary (2)3
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**I. Election of Chairman**

Miss Margaret NG was elected Chairman of the Subcommittee.

**II. Meeting with the Administration**

(LC Paper Nos. CB(2)2877/02-03(02) and (03); LS140/02-03).

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Issues raised by members

3. Members expressed the following views on the new rule 11B of Order 24 of the Rules of the High Court -

- (a) rule 11B failed to achieve its intended purpose of encouraging the use of the services of professional simultaneous transcript providers because records or transcripts of proceedings prepared for a party's use could only be produced for the use of the Court and the other parties subject to two conditions, i.e. consent of all the parties to the proceedings (rule 11B(2)), and payment of reasonable charges (rule 11B(3)). A party might refuse to give consent to the production of such documents to the court, or, even if consent was given, refuse to pay for the charges for the documents. In addition, a party who was willing to give consent might not afford the charges. In such cases, the court and the parties to the proceedings would be denied the benefit of such records or transcripts. The requirement of consent "of all parties to the proceedings" in rule 11B(2) would restrict the use of the rule and should be relaxed;
- (b) the notes of proceedings taken by any party to the proceedings on its own should be treated differently from records or transcripts produced by professional simultaneous transcript providers. Rule 11B(2), which required consent of all parties for the production of records or transcripts, would restrict the use of the rule and should not apply to the latter type of records or transcripts;
- (c) charges for the records or transcripts under rule 11B should be treated as part of the litigation costs and dealt with at the taxation stage after the trial; and
- (d) rule 11B(1), in its present formulation, covered transcripts produced by the Judiciary's Digital Audio Recording and Transcript Production Services (DARTS) which were made available to a requesting party on payment of a fee, since those transcripts of proceedings were "prepared for the party's use". Hence, if it was the Judiciary's intention that rule 11B should not

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apply to transcripts produced by DARTS, the drafting of rule 11B should be suitably revised to reflect the legislative intent.

4. In response to the Chairman's enquiries, Deputy Judiciary Administrator (Development) said that -

- (a) the Judiciary agreed in principle that subsidiary legislation subject to the negative vetting procedure of Legislative Council (LegCo) should come into effect on an appointed day after the expiry of the scrutiny period. However, due to an administrative oversight, the Amendment Rules had come into effect on the day on which they were published in the Gazette, i.e. 20 June 2003, before LegCo had a chance to scrutinize them. The Judiciary would take steps to ensure non-recurrence of such incident; and
- (b) the Judiciary had consulted the Civil Court Users' Committee on the issues which were the subject of the Amendment Rules. The drafting of the Amendment Rules were subsequently considered by the High Court Rules Committee (HCRC). Both the Hong Kong Bar Association and the Law Society of Hong Kong had their representatives serving as members of the Civil Court Users' Committee and HCRC.

The way forward

5. Members were of the view that there were problems with the Amendment Rules which needed to be addressed. As the Rules had come into effect on 20 June 2003 and any amendments to the Amendment Rules could only be dealt with in the next LegCo session due to the summer recess, members considered the situation undesirable and requested the Judiciary Administration to consider the best approach to deal with the Amendment Rules during the interim, including the possibility of repealing the Rules and re-considering the whole matter in due course, and revert to the Subcommittee on its decision before the next meeting.

Clerk

6. Pending the response of the Judiciary Administration, members agreed to invite the Hong Kong Bar Association and the Law Society of Hong Kong to give views on the Amendment Rules.

**III. Date of next meeting**

7. The next meeting was scheduled for 30 July 2003 at 10:45 am.

*(Post-meeting note : The Judiciary Administrator informed the Subcommittee in writing on 28 July 2003 that having regard to the Subcommittee's concerns, HCRC had decided to repeal the Amendment Rules in the meantime, and re-consider the matter in due course. The Judiciary Administrator's letter was circulated to the Subcommittee vide LC Paper No. CB(2)2920/02-03(01). In*

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view of HCRC's decision, the Chairman agreed that the meeting scheduled for 30 July 2003 be cancelled.

The Rules of the High Court (Amendment) Rules 2003 (Repeal) Rules were gazetted on 1 August 2003 and come into effect on the same day. A report of the Subcommittee was issued to the House Committee on 11 August 2003 (LC Paper No. CB(2)2971/02-03))

Council Business Division 2  
Legislative Council Secretariat  
14 August 2003

**Proceedings of the meeting of the Subcommittee on  
Rules of the High Court (Amendment) Rules 2003  
on Wednesday, 23 July 2003 at 2:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000001 - 000034	Miss Margaret NG Mr Albert HO	Election of Chairman	
000035 - 000602	Chairman Jud Admin Mr Albert HO	Paper provided by Admin on Rules of the High Court (Amendment) Rules 2003 (LC Paper No. CB(2)2877/02-03(03)).	
000603 -002133	Ms Audrey EU Jud Admin Chairman	Consent of all parties to the production of records or transcripts of proceedings and payment of reasonable charges for such records or transcripts under rule 11B(2) and 11B(3) to Order 24 of the Rules of the High Court.  Discovery of transcripts prepared by a party in any earlier set of proceedings for the purpose of a later set of proceedings.	
002134 - 003509	Mr Albert HO Jud Admin Chairman	Meaning of "reasonable charges".  Failure of rule 11B to achieve its intended purpose where a party refused or was unable to pay the charges for the records or transcripts of proceedings. .	
003510 - 004213	Ms Audrey EU Jud Admin Chairman	Notes of proceedings taken by a party on its own and records or transcripts produced by professional transcript providers.  Proposal to include charges for records or transcripts of proceedings under rule 11B as part of the litigation costs, which should be dealt with at the taxation stage of the trial.	
004214 - 004854	Chairman Ms Audrey EU Mr Albert HO Jud Admin	Limitation imposed by the conditions under rule 11B(1) and 11B(2) on disclosure of records or transcription for use of the court and the parties, which defeated the purpose of rule 11B.	

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004855 - 005224	Ms Audrey EU Chairman Jud Admin Mr Albert HO	Application of rule 11B(2) to notes of proceedings prepared by a party vis-à-vis records or transcripts prepared by professional transcript providers.	
005225 - 010521	Chairman Jud Admin Ms Audrey EU ALA	Review of the formulation of rule 11B(1) as to whether it should cover hardcopies of records or transcripts produced by the Digital Audio Recording and Transcript Production Services (DARTS) of the Judiciary.	Admin to consider whether rule 11B should be amended in the light of legislative intent.
010522 - 010934	Chairman ALA Jud Admin	Commencement of the Rules of the High Court (Amendment) Rules 2003 (Amendment Rules).	
010935 - 011110	Ms Audrey EU Jud Admin Mr Albert HO Chairman ALA	Consultation on the Amendment Rules.	To invite views from the legal professional bodies.
011111 - 012017	Chairman ALA Mr Albert HO Ms Audrey EU	Admin to consider the best way with the present situation (including the possibility of repealing the Rules).	Admin to revert to the Subcommittee before the next meeting on 30 July 2003.
012018 - 012106	Chairman Mr Albert HO Ms Audrey EU	Date of next meeting.	

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