

CJRB 2/2007

**Bills Committee on
Civil Justice (Miscellaneous Amendments) Bill 2007**

**Response to Issues Raised
Parts 2 and 4 of the Bill**

Purpose

This paper sets out the Judiciary Administration's response to the questions on Parts 2 and 4 of Civil Justice (Miscellaneous Amendments) Bill 2007 ("the Bill") raised by the Bills Committee at the meeting on 15 May 2007.

Part 2 – Costs-only Proceedings

Reasons for granting to the court the powers under the proposed section 52B(3)(b) and (c) of the High Court Ordinance (clause 3) in respect of costs-only proceedings - Para. 6(a) of the minutes of meeting

2. In any costs-only proceedings commenced in the Court of First Instance ("CFI"), the court may make an order for the costs of and incidental to the dispute to be taxed or assessed (section 52B(3)(a)). There will be costs of and incidental to the costs-only proceedings just like any other court proceedings. Section 52B(3)(b) therefore provides that the court may "make an order awarding [such] costs to or against any party to the [costs-only] proceedings".

3. Section 52B(3)(c), which provides that the CFI may "make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so", is intended to apply to the costs of and incidental to the costs-only proceedings, so as to give maximum flexibility to the courts.

Circumstances under which it is envisaged that such powers might be invoked by the court - Para. 6(b) of the minutes of meeting

4. The power under the proposed section 52B(3)(b) is no different from the general rule in relation to other court proceedings that

the costs of and incidental to such proceedings are in the discretion of the court (see section 52A(1)).

5. As to the power under the proposed section 53B(3)(c), the court may find that the conduct of someone (e.g. a director or insurance company) behind one of the parties in the course of the costs-only proceedings is such that he should bear the costs of the costs-only proceedings. It may then invoke section 52B(3)(c) to order a non-party to pay such costs if it is in the interest of justice to do so.

Part 4 – Interim Remedies and Mareva Injunctions in Aid of Proceedings Outside Hong Kong

Circumstances under which judgments made by foreign courts might be enforceable in Hong Kong courts at common law (i.e. the proposed clause 21M(1)(b)) - Para. 7(a) of the minutes of meeting

6. The circumstances under which judgments made by foreign courts might be enforceable in Hong Kong Courts at common law include the following -

- (a) Essentially, the foreign judgment must be a final one for a debt or liquidated sum which is not due in respect of foreign taxes or as a penalty. A judgment may be final even though subject to an appeal; and
- (b) The foreign court must have had jurisdiction to give the judgment. Such jurisdiction will arise if (i) the judgment debtor was present in the foreign country; (ii) the debtor counterclaimed in the foreign court; (iii) the debtor submitted to the jurisdiction of the foreign court; or (iv) if the debtor had previously agreed to submit to the jurisdiction of the foreign court (for example, by an exclusive jurisdiction clause in a contract).

Considerations which would be taken into account by the court in determining applications for grant of interim relief in foreign proceedings under the proposed section 21M, and how such considerations compared with those taken into account by the court in considering applications for interim relief in local proceedings - Para. 7(b) of the minutes of meeting

7. In deciding whether to grant interim relief in support of a foreign judgment capable of enforcement in Hong Kong at common law, the Court is likely to apply the same criteria which it applies when deciding whether to grant interim relief in support of Hong Kong proceedings. Thus, for example -

- (a) Where a Mareva is sought, whether there is a real risk of dissipation of assets if relief is not granted;
- (b) Where an interim injunction is sought, whether the balance of convenience test in the *American Cyanamid* case points to the grant of relief; and
- (c) Where an interim receiver is sought, whether there is a need to get in and protect assets pending resolution of the relevant dispute.

8. Moreover, in deciding whether to grant interim relief for court proceedings outside Hong Kong, the court will take into account the fact that the proceedings here are only ancillary to the proceedings outside Hong Kong (see proposed new section 21N). Thus, where there is doubt as to whether relief should or should not be granted or whether relief would be effective, the court may decide not to grant relief as a matter of discretion.

9. As with relief in aid of local proceedings, the court's discretion is unfettered. The court has regard to guidelines in decided cases, but that does not rule out the possibility of further development of operative principles. It would not be appropriate to set out the Judiciary's views on the full extent of the applicable principles in relation to the granting of such interim relief. These principles should be developed on a case-by-case basis after hearing the arguments in court.