

Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007

**A check list of follow-up actions required of
the Judiciary Administration and the Administration
(Position as at 26 October 2007)**

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
I. The Bill			
Long title, and Parts 2 & 4 of the Bill	N/A	Provide a response to Assistant Legal Adviser's letter dated 21 May 2007 concerning the long title, and Parts 2 and 4 of the Bill [LC Paper No. CB(2)1995/06-07(05)]	LC Paper No. CB(2)2217/06-07(03)
Part 2 – Costs-only proceedings (clauses 3 - 6)	15 May 2007	<u>Proposed section 52B(3)(b) and (c) of the High Court Ordinance (HCO)</u> (a) Provide a paper to explain the reasons for granting the court with the power to make an order awarding costs to or against any party to the costs-only proceedings, or against a person who is not a party to the costs-only proceedings; and (b) provide information on circumstances under which it is envisaged that such powers may be invoked by the court	LC Paper No. CB(2)1995/06-07(01)
	30 May 2007	Review the drafting of the proposed section 52(B)(3)(b) and (c) of HCO to reflect the policy intent that the reference to "costs" referred to the costs of and incidental to the costs-only proceedings, and not the costs of and incidental to the substantive dispute	The Administration/Judiciary Administration have undertaken to propose Committee Stage amendments to clause 3 (the proposed section 52B(3)(b) and (c) of HCO) and clause 5 (the proposed section 53A(3)(b) and (c) of the District Court Ordinance)
Part 4 – Interim relief in aid of proceedings outside Hong Kong (clauses 9 -12)	15 May 2007	<u>Proposed section 21M of HCO</u> Provide information on – (a) circumstances under which judgments made by courts outside Hong Kong may be enforceable in Hong Kong at common law (i.e. the proposed clause 21M(1)(b)); and	LC Paper No. CB(2)1995/06-07(01)

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		(b) considerations which will be taken into account by the court in determining applications for grant of interim relief in proceedings outside Hong Kong 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	
	N/A	Confirm whether Part 4 of the Bill will apply to enforcement of Mainland judgments in civil or commercial matters in Hong Kong after the enactment of this Bill and the Mainland Judgments (Reciprocal Enforcement) Bill	LC Paper No. CB(2)27/07-08(05)
Part 5 – Vexatious litigants (clause 13)	N/A	Provide a response to Assistant Legal Adviser's letter dated 12 June 2007 on Part 5 of the Bill [LC Paper No. CB(2)2217/06-07(02)] which sought information on the following - (a) the legislation on prevention of vexatious litigation in other common law jurisdictions; and (b) whether there is any safeguard to prevent unmeritorious applications under the proposed section 27	LC Paper No. CB(2) 27/07-08(04)
	21 June 2007	<u>Proposed section 27 (2)(a) of HCO</u> (a) Consider changing the conjunctive phrase "habitually and persistently" to a disjunctive phrase "habitually <u>or</u> persistently"; (b) review the Chinese rendition for the phrase "habitually and persistently"; (c) provide information on the meaning of "vexatious legal proceedings", with case law where appropriate; <u>Proposed section 27 (5)(b)</u> (d) provide examples and case law to illustrate the meaning of "affected person" in relation to non-parties;	LC Paper No. CB(2) 27/07-08(05)

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		<u>Proposed section 27 A</u> (e) explain the rationale for raising the threshold for granting a vexatious litigant leave to institute or continue proceedings under the proposed section 27A(1)(b), requiring that there are reasonable - not just prima facie - grounds for the proceedings; (f) consider providing for a mechanism for a person subject to a vexatious litigant order to apply to set aside the order even though he has no intention to issue any legal proceedings; and (g) clarify as to whether under the proposed section 27A(2), application for leave to appeal concerning the same legal proceedings can be re-submitted after being previously refused	
	N/A	Provide a response to Assistant Legal Adviser's further letter dated 11 October 2007 on Part 5 of the Bill [LC Paper No. CB(2)93/07-08(01)] asking the following questions - (a) whether the Administration has any view on the question of legal representation as a safeguard in balancing the right of access to court and fairer distribution of the court's resources for genuine disputes; (b) whether the Administration will consider making a provision for variation/rescission/revocation of a vexatious litigant order similar to that found in other common law jurisdictions including Canada and Australia; and (c) whether the Administration considers the Secretary for Justice's consent to vexatious litigant applications or his participation in those proceedings useful for preventing unmeritorious applications under the proposed section 27	Response awaited

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Part 6 - Discovery (clauses 14 -17)	6 July 2007	<u>Section 41(1) of HCO</u> (a) Provide information on the scope and definition of the term "professional adviser" in section 41(1)(b) of HCO after the court's jurisdiction is broadened to cover pre-action disclosure in all types of civil cases; and (b) consider whether, from a drafting point of view, the proposed amendments to section 41(1) (which now applies to orders for pre-action disclosure in cases involving personal injury and death claims) are appropriate for the purpose of broadening the court's jurisdiction to order pre-action disclosure in all types of civil cases	LC Paper No. CB(2) 27/07-08(05)
	N/A	Provide a written response to Assistant Legal Adviser's letter dated 17 July 2007	LC Paper No. CB(2) 27/07-08(04)
	N/A	Provide a written response to Assistant Legal Adviser's letter dated 28 September 2007 asking the following questions - (a) whether Part 6 of the Bill intends to restrict potential personal injuries (PI) claimants' right of access to "train of enquiry" documents without which they do not know whether they have a valid claim; and (b) given that potential PI claimants' right to pre-action discovery under Part 6 of the Bill will be substantially affected, whether the Administration has sought the views of the parties likely to be affected	LC Paper No. CB(2) 47/07-08(01)
	12 October 2007	Consult the two legal professional bodies on the proposed application of the new stricter test of "direct relevance" to pre-action discovery of personal injuries (PI) cases which will restrict potential PI claimants' right of access to "train of inquiry" documents, and revert to the Bills Committee on the outcome	Response awaited
Part 7 – Wasted costs (clauses 18 -19)	11 June 2007	Provide a written response to the Bar Association's suggestion that public funds be made available to meet a legal representative's costs in successfully defending or appealing against a wasted costs	LC Paper No. CB(2) 27/07-08(06)

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		order made on the court's own motion	
Part 8 Leave to appeal (clauses 20 -25)	6 July 2007	Provide information on the success rate of interlocutory appeals	LC Paper No. CB(2) 27/07-08(05)
	12 October 2007	Advise whether the proposed section 14AB of HCO will contravene the Basic Law which stipulates that the power of final adjudication is vested in the Court of Final Appeal	Response awaited
Part 10 - Costs against non-party (clauses 27 - 28)	6 July 2007	<u>Proposed section 52A(2) of HCO</u> (a) Provide a response to the concern expressed by the Law Society of Hong Kong in paragraph 2(b) of its submission dated 22 June 2007 [LC paper No. CB(2)2260/06-07(01)]. The Law Society expresses the view that as the provision can have a serious financial impact against a person who is not a party to the proceedings, the rule must clearly provide standing and procedures for a review or appeal by the non-party concerned against such an order; (b) provide background information on the proposed amendments in Part 10 of the Bill, including reference to practice and experience in UK; and	LC Paper No. CB(2) 27/07-08(05)
Part 12 - Lands Tribunal (clauses 30 -38)	6 July 2007	Provide background information on the proposed amendments in Part 12 of the Bill, including information on consultation conducted and comments received thereon	LC Paper No. CB(2) 27/07-08(05)
II. Other issues			
Summary of views on the Consultation Paper issued in April 2006	N/A	Provide a summary of the views received on the "Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform" published in April 2006, as requested by the Assistant Legal Adviser in her letter dated 9 May 2007 [LC Paper No. CB(2)1995/06-07(03)]	LC Paper No. CB(2)1995/06-07 (04)
Resource Centre for Unrepresented Litigants	15 May 2007	Provide the following information concerning the Resource Centre for Unrepresented Litigants - (a) results of the user satisfaction survey	LC Paper No. CB(2)1995/06-07 (02)

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		conducted by the Judiciary Administration on the Resource Centre; and (b) nature of questions/information frequently asked/sought by users of the Resource Centre	
Attendance at Bills Committee meetings	30 May 2007	Provide a written response to explain the Judiciary's position on the matter and suggest practicable arrangements for the Judiciary to discuss the Bill with members	LC Paper No. CB(2)2240/06-07(01)
	21 June 2007	Consider the proposed arrangement for the Administration to instruct counsel to attend meetings of the Bills Committee to answer members' concerns and questions	A representative from the Department of Justice specializing in civil law will attend meetings of the Bills Committee
Draft subsidiary legislation	11 June 2007	Provide a written response to the new points raised by the Hong Kong Law Costs Draftsmen Association in relation to the draft Orders 62 and 62A of the Rules of the High Court in its submission to the Bills Committee [LC Paper No. CB(2)2111/06-07(03)]	LC Paper No. CB(2) 27/07-08(06) Having considered all comments received, including the new points raised by the Hong Kong Law Costs Draftsmen Association in relation to the draft Orders 62 and 62A, the Steering Committee on Civil Justice Reform has issued the "Revised Proposals for Amendments to Subsidiary Legislation under the Civil Justice Reform" on 18 October 2007
	6 July 2007	(a) Advise when the finalized draft subsidiary legislation will be available for members' reference; (b) provide a response to the views expressed by the deputations on the parts of the draft subsidiary legislation which should be examined by the Bills Committee [LC Paper Nos. CB(2)2260/06-07(01), CB(2)2393/06-07(01) & (02), and	LC Paper Nos. CB(2) 27/07-08(06) and CB(2)137/07-08 The Judiciary Administration has provided the latest draft of the relevant parts of the subsidiary legislation (issued to members vide

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		CB(2)2429/06-07 (02)]. The draft subsidiary legislation suggested by the deputations include - (i) the draft subsidiary legislation relevant to Part 7 (wasted costs) and Part 10 (costs against non-parties) of the Bill; and (ii) draft Orders 1A and 1B (case management powers of the court), draft Order 35 rule 3A (court's power to curtail the time allowed for cross-examining witnesses, for making oral submissions, etc) and draft Orders 62 and 62A (matters relating to costs such as costs assessments and wasted costs orders) of the Rules of the High Court as set out in the Consultation Paper issued by the Judiciary in April 2006; and (c) provide for members' reference a copy of the draft subsidiary legislation relevant to Parts 5 and 10 of the Bill	LC Paper No. CB(2) 137/07-08 on 24 October 2007)