

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1477/07-08  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/8/06

**Bills Committee on Statute Law**  
**(Miscellaneous Provisions) Bill 2007**

**Minutes of the 7<sup>th</sup> meeting**  
**held on Tuesday, 18 March 2008, at 8:30 am**  
**in Conference Room B of the Legislative Council Building**

**Members present** : Hon Margaret NG (Chairman)  
Hon Emily LAU Wai-hing, JP  
Hon Ronny TONG Ka-wah, SC

**Members absent** : Hon James TO Kun-sun  
Hon LI Kwok-ying, MH, JP  
Hon LEUNG Kwok-hung

**Public Officers attending** : Item I

Department of Justice

Mr Ian Wingfield  
Solicitor General

Mr Michael Scott  
Senior Assistant Solicitor General

Ms Rayne CHAI  
Senior Government Counsel  
Law Drafting Division

Ms Carmen CHU  
Senior Government Counsel  
Law Drafting Division

Ms Stella CHAN  
Senior Government Counsel (Ag.)  
Legal Policy Division

**Clerk in attendance** : Miss Betty MA  
Chief Council Secretary (2) 4

**Staff in attendance** : Mr Timothy TSO  
Assistant Legal Adviser 2

Mr Chris LAI  
Senior Council Secretary (2) 7

Action

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The Bills Committee deliberated (index of proceedings attached at **Annex**).

**I. Meeting with the Administration**

[The Bill, LC Paper Nos. CB(2)1759/06-07(01), CB(2)2737/06-07(01), CB(2)55/07-08(01), CB(2)92/07-08(01), CB(2)868/07-08(01), CB(2)1254/07-08(01) to (05), CB(2)1298/07-08(01) and CB(2)1383/07-08(01)]

Part 3 of the Bill concerning amendments to references to "*ordre public*" in the Societies Ordinance (Cap. 151) and the Public Order Ordinance (Cap. 245)

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2. Members noted the Administration's paper responding to the Bills Committee's proposal of not passing the proposed amendments in Part 3 of the Bill.

3. The Chairman put the proposal of deleting Part 3 from the Bill to vote. Members present at the meeting voted in favour of the proposal unanimously.

Part 7 of the Bill concerning wasted costs in criminal proceedings

4. Solicitor General, Department of Justice (SG/DoJ) briefed members on the Administration's response (LC Paper No. CB(2)1254/07-08(02)) to the submission of The Hong Kong Bar Association (The Bar Association). SG/DoJ advised that the Administration's proposed amendments were made upon the recommendation of the Court of Appeal, and the wording of the proposed provisions was modelled largely on the Prosecution of Offences Act 1985 in the United Kingdom (UK).

Action

For reasons set out in its paper, the Administration could not accept The Bar Association's proposals.

5. Mr Ronny TONG was unconvinced of the Administration's justifications for not accepting The Bar Association's proposals. Having regard to the strong opposition raised by the two legal professional bodies and the fact that they had put in place respective codes of conduct and disciplinary mechanisms to deal with professional misconduct, Mr TONG questioned the need for the proposed provisions.

6. The Chairman said that the two legal professional bodies had pointed out that there were distinct differences between civil proceedings and criminal proceedings, and equating criminal wasted costs with the regime for civil proceedings was not appropriate. The Chairman was concerned that the proposed amendments would deter legal practitioners, especially the less experienced who usually appeared in the magistrates court, from fearlessly presenting the case in ways which they considered to be in the best interests of their clients. The opposition against the wasted costs provisions should not be seen as for protecting the interests of the legal profession. The Chairman reserved her support for the proposed provisions.

Admin 7. Ms Emily LAU requested and the Administration agreed to provide information, if any, on whether there were wasted costs provisions in other jurisdictions similar to those in Part 7 of the Bill.

8. Assistant Legal Adviser 2 (ALA2) referred members to section 19A of the Prosecution of Offences Act 1985 and advised that negligent act or omission was included in the definition of "wasted costs" in the UK Act, but was not included in the definition of "wasted costs" in the proposed amendments under Part 7 of the Bill. On the other hand, "any undue delay or any other misconduct or default" (included in the definition of "wasted costs" in Part 7 of the Bill) was not included in the UK equivalent. SG/DoJ explained that negligent act was not included in the definition of "wasted costs" in Part 7 of the Bills upon the suggestion of the Bar Association, and the purpose of including "any undue delay or any other misconduct or default" in the definition of "wasted costs" was to maintain consistency with similar provisions in the Rules of High Court.

9. ALA2 pointed out that there was no appeal mechanism in respect of costs orders made by the Court of Appeal under section 19(3) of the Costs in Criminal Cases Ordinance (Cap. 492), and there was no express provision empowering the appellate court to make an order as to the costs of the appeal under section 19(4) of Cap. 492.

10. The Chairman proposed that the wasted costs provisions (Part 7 of the Bill) should be deleted. Members expressed support for the proposal.

Action

Division 5 of Part 13 of the Bill

11. Members noted the Administration's paper providing the background for introducing the proposed amendments in Division 5 of Part 13 of the Bill, and did not raise further questions on the proposed amendments.

Proposed Committee Stage amendments (CSAs) to be moved by the Administration

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12. Members examined the draft CSAs proposed by the Administration (LC Paper No. CB(2)1254/07-08(03)) and raised no questions on the CSAs.

Proposed CSAs to be moved by the Bills Committee

ALA2 13. Members agreed that the Chairman, on behalf of the Bills Committee, would move CSAs to delete Parts 3 and 7 from the Bill. The Chairman instructed the legal adviser to draft the CSAs and circulate them for members' consideration.

14. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. Members agreed that no further meeting would be held unless any member had further comments or queries on the draft CSAs to be moved by the Bills Committee. Members also agreed that subject to further comments from members, the Bills Committee would provide a report for the House Committee meeting on 11 April 2008.

**II. Any other business**

15. There being no other business, the meeting ended at 9:38 am.

Council Business Division 2  
Legislative Council Secretariat  
1 April 2008

**Proceedings of the 7<sup>th</sup> meeting of the  
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007  
on Tuesday, 18 March 2008, at 8:30 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000520	Chairman	Opening remarks	
<i>Part 7 of the Bill – proposed amendments relating to wasted costs in criminal proceedings</i>			
000521 - 001800	Chairman Admin	The Administration's response (LC Paper No. CB(2)1254/07-08(02)) to the submission of The Hong Kong Bar Association	
001801 - 002139	Chairman	The Chairman's concern that the proposed amendments would have adverse impact on fearless advocacy by legal practitioners in courts	
002140 - 002231	Chairman Mr Ronny TONG	Mr Ronny TONG's concern that the two legal professional bodies opposed to the proposed amendments	
002232 - 003019	Chairman Ms Emily LAU Admin	Whether similar provisions on criminal wasted costs orders were contained in legislation of other jurisdictions	<b>Admin</b>
003020 - 003516	Chairman Ms Emily LAU Mr Ronny TONG	Whether the Bills Committee should move amendments to delete Part 7	
003517 - 004600	Chairman ALA2 Admin	Appeal mechanism for wasted costs orders	
004601 - 005332	Mr Ronny TONG Ms Emily LAU Chairman Admin	Mr Ronny TONG's view that the two legal professional bodies had put in place disciplinary guidelines and mechanisms to deal with professional misconduct and the number of such cases was very limited	
<i>Division 5 of Part 13 of the Bill</i>			
005333 - 005714	Chairman Admin	The Administration's paper providing the background for introducing the proposed amendments (LC Paper No. CB(2)92/07-08(01))	
<i>Proposed Committee Stage amendments by the Administration</i>			
005715 - 010200	Chairman ALA2 Admin	Committee Stage amendments (CSAs) proposed by the Administration (LC Paper No. CB(2)1254/07-08(03))	
<i>Part 3 of the Bill – proposed amendments to the Public Order Ordinance (Cap. 245) and the Societies Ordinance (Cap. 151), and Part 7 of the Bill</i>			
010201 - 010600	Chairman Ms Emily LAU Mr Ronny TONG	Whether the Bills Committee should move CSAs to delete Parts 3 and 7 from the Bill	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
		Legal adviser to prepare draft CSAs to be moved by the Bills Committee	<b>ALA2</b>
<i>Any other business</i>			
010601 - 010825	Chairman Admin	Legislative timetable	

Council Business Division 2  
Legislative Council Secretariat  
1 April 2008