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Panel on Administration of Justice and Legal Services

Background brief for the meeting on 12 December 2006

Civil Justice Reform

Purpose

This paper provides background information on past discussions of the Legislative Council (LegCo) on the Civil Justice Reform (CJR).

Background

Interim Report and Consultative Paper on Civil Justice Reform

2. In February 2000, the Chief Justice appointed a Working Party to review the civil rules and procedures of the High Court, and to recommend changes thereto with a view to ensuring and improving access to justice at reasonable cost and speed. The Working Party was chaired by The Hon Mr Justice Chan, Permanent Judge of the Court of Final Appeal.

3. On 29 November 2001, the Working Party published the Interim Report and Consultative Paper on Civil Justice Reform (IRCP) for consultation. Members of the legal profession, court users, interested parties and organisations, and the general public were invited to give views on the 80 reform proposals contained in the Consultation Paper. The consultation period ended on 30 June 2002.

4. According to the IRCP, the civil justice system in Hong Kong as governed by the Rules of the High Court (RHC) basically follows the system in England and Wales before 1998, which has also been taken as a model in many common law jurisdictions. The RHC are substantially the same as the pre-1998 English Rules of Supreme Court. However, the civil justice system in England and Wales was completely revamped in 1998 as a result of the recommendations made by Lord Woolf after extensive studies into the former English system. The English Rules of Supreme Court have since been replaced by the Civil Procedure Rules (CPR) 1998.

5. The Working Party had identified the following problems with the Hong Kong civil justice system –

- (a) it is too expensive as legal costs sometimes outweigh the size of claims;
- (b) it takes too long to resolve claims;
- (c) the procedure is too complex; and
- (d) the number of unrepresented litigants has increased significantly.

6. In implementing any reforms as proposed, the Working Party had suggested a choice between the following two approaches-

- (a) recommended proposals should be implemented by adopting a new set of rules largely along the lines of the CPR 1998 of the English system and of relevant rules drawn from other jurisdictions (with any necessary modifications); or
- (b) recommended proposals should be implemented by amending the existing RHC.

7. On 28 January 2002, the Judiciary Administration briefed the Panel on the progress of consultation since the IRCP was issued. Some members expressed concern whether the wide range of reform proposals in the IRCP was necessary. They considered that some of the identified problems could be addressed by improving and simplifying certain existing rules and procedures.

8. The Panel held a special meeting on 14 March 2002 to receive views on the IRCP from the Consumer Council, the Hong Kong Bar Association, the Hong Kong Mediation Council and individual legal practitioners.

9. Hon Margaret NG, Panel Chairman, moved a motion urging Members to take note of the IRCP at the Council meeting on 8 May 2002. The motion was carried. The Judiciary advised the Panel that the Working Party would take into account comments expressed by Members during the motion debate in making recommendations.

Final Report on Civil Justice Reform and its implementation

10. The Final Report on Civil Justice Reform (Final Report) was published on 3 March 2004, with a total of 150 recommendations. The Working Party recommended that the proposed reforms should be implemented by way of amendment to the RHC rather than by adopting an entirely new procedural code along the lines of the CPR 1998. On 19 March 2004, the Chief Justice announced that he had accepted the recommendations made in the Final Report.

11. The Judiciary Administration informed the Panel of the implementation plan for the recommendations in the Final Report in March 2004. The Chief Justice was of the view that in order to achieve the overall objectives of the CJR, the recommendations which were to be implemented by the Judiciary should be taken forward together as one integrated package since most of them were related. The Chief Justice appointed a Steering Committee on the Civil Justice Reform (Steering Committee) to take overall charge of the implementation of the recommendations pertaining to the Judiciary. The Steering Committee was chaired by Mr Justice Ma, Chief Judge of the High Court.

12. The Judiciary Administration advised that as a considerable number of the recommendations involved amendments to the existing rules and practices in the High Court, the first and foremost task of the Steering Committee would be to work on the necessary amendments to the relevant primary and subsidiary legislation, and to introduce amendments to and draw up new Practice Directions. It was expected that it would take two to three years to implement the recommendations.

13. A number of recommendations in the Final Report required further study by bodies outside the Judiciary. The Judiciary Administration advised the Panel that the Chief Justice would discuss with the Secretary for Justice how the further study and consultation regarding the proposed scheme for multi-party litigation should be taken forward. The Chief Justice would also be writing to the Chief Secretary for Administration to invite the Administration to consider the proposal of empowering the Director of Legal Aid to fund mediation with legal aid in suitable cases.

Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform

The Consultation Paper

14. On 12 April 2006, the Steering Committee published a Consultation Paper to seek views from the legal profession and other interested parties on proposed legislative amendments for the implementation of the CJR. The consultation period ended on 12 July 2006.

15. The Steering Committee had identified that, of the 150 recommendations in the Final Report, 21 required amendments to primary legislation, and 84 required amendments to subsidiary legislation. These proposed amendments were contained in the draft Civil Justice (Miscellaneous Amendments) Bill, draft Rules of the High Court (Amendment) Rules 2007, and draft High Court Fees (Amendment) Rules 2007 annexed to the Consultation Paper. While the proposed amendments related primarily to the recommendations in the Final Report, they had also taken into account developments and various other matters deliberated on by the Steering Committee since the publication of the Final Report as highlighted in the Consultation Paper.

16. The Steering Committee had also identified the legislative amendments required for the extension of the CJR recommendations to the District Court, the Lands Tribunal and in Employees' Compensation proceedings. These were also set out in the Consultation Paper for comments.

17. In the light of the comments received during the consultation exercise, the Steering Committee will revise and refine the draft legislation as appropriate before their introduction into LegCo.

18. The Judiciary Administration briefed the Panel on the Consultation Paper at the meeting on 26 June 2006. The print-out materials for the power point presentation are in **Appendix I**.

Major issues raised at the Panel meeting on 26 June 2006

Amendments to the Rules of the District Court

19. Some members had raised concern about the proposal to introduce similar amendments to the Rules of the District Court (RDC) in the current legislative amendment exercise, as the consultation exercises conducted on the CJR in the past mainly focused on the review of civil rules and procedures of the High Court.

20. Representatives of the Bar Association considered that a review of the RDC could be conducted after the new RHC had been introduced and operated for a period of time. Any amendments to the RDC should be considered separately and could be introduced in a separate legislative exercise.

21. The Judiciary Administration had explained that when the District Court Ordinance was amended in 2000 to raise the financial limits of the civil jurisdiction of the District Court, it was decided that the provisions of the RDC should generally follow those in the RHC, unless special considerations justified differences. As the practice and procedure in civil proceedings in the District Court largely mirrored those in the High Court, the Chief Justice had directed in December 2005 that the legislative amendment exercise for the implementation of the CJR should apply to both the District Court and the High Court. Since most of the 84 recommendations in the Final Report requiring amendments to subsidiary legislation under the High Court Ordinance were applicable to the District Court, similar amendments were proposed to the RDC to implement the relevant CJR recommendations and achieve consistency with the RHC. Moreover, the objectives of improving cost-effectiveness, cutting delays and reducing complexity applied equally to the District Court.

Reduction in litigation costs

22. Some members had expressed concern whether the proposed reforms would achieve the objectives of improving cost-effectiveness of the civil justice system and

reducing litigation costs, and requested the Judiciary Administration to make an assessment.

23. The issue of reduction in litigation costs was mentioned in the Final Report. In deciding which reforms to recommend (as outlined in paragraph 6 above), the Working Party had taken into account the assessments on the impact of the CPR during the first 4½ years or so of their operation in England and Wales. The Working Party stated in the Final Report that *“from available assessments of the performance of the CPR, it appears that the CPR have been successful in some areas but disappointing in others..... However, there have been notable disappointments in relation to costs and complexity. There is also doubt as to whether greater equality between wealthy and less wealthy litigants has been achieved..... Of special concern has been the acknowledged failure, so far, to bring litigation costs down. Worse still, the problem of front-end loading of costs arising from introducing measures such as the pre-action protocols has actually led to an increase in costs in some cases.”*

24. In reaching the conclusion that the existing RHC should essentially be maintained with selective amendments grafted onto them, the Working Party explained in the Final Report that it had been guided by *“the objectives of improving the cost-effectiveness of our system of civil procedure, reducing its complexity and lessening the delays encountered in litigation; always subject to the fundamental requirements of procedural and substantive justice.”* The Working Party also stated that *“one cannot be assured that a reduction of litigation costs will necessarily follow from such reforms alone. Other factors are equally important. However, by improving cost effectiveness, cutting delays and reducing complexity, such reforms should help to achieve overall cost reductions and to make the system more responsive to the needs of individual cases.”*

25. The Judiciary Administration had advised the Panel that all the 150 recommendations in the Final Report were made with a view to achieving the objectives of the CJR, and the recommendations had been generally supported by those who responded in the consultation exercise, including the two legal professional bodies. The reforms had progressed to the implementation stage whereby the recommendations in the Final Report would be implemented through the legislative amendments proposed in the Consultation Paper.

Other concerns

26. Representatives of the Bar Association had also raised the following concerns –
- (a) as many of the proposed legislative amendments set out in the Consultation Paper were modelled upon the English CPR 1998, care should be taken to ensure that the terminology of the proposed amendments is consistent with that of the existing RHC;

- (b) the Consultation Paper only set out the proposed legislative amendments to the relevant primary and subsidiary legislation. In order to evaluate the effect of implementing the recommendations in the Final Report, it was necessary to consider the yet to be promulgated Practice Directions and Pre-action protocols, in addition to the proposed legislative amendments, as an integrated package; and
- (c) the proposal to enhance judges' powers in case management might lead to inconsistent decisions.

Other recommendations in the Final Report on CJR

27. As stated in paragraph 13 above, one of the recommendations in the Final Report is for the Legal Aid Department to have power in suitable cases, subject to further study by the Administration and consultation with all interested institutions and parties on the development of promulgation of the detailed rules for the implementation of the scheme, to limit its initial funding of persons who qualify for legal aid to the funding of mediation, alongside its power to fund court proceedings where mediation is inappropriate and where mediation has failed.

28. In the light of the recommendation in the Final Report on the CJR, a Pilot Scheme on Mediation of Legally Aid Matrimonial Cases has been launched on 15 March 2005 for a period of 12 months, with a view to assessing the cost-effectiveness and the implications of extending legal aid to mediation in matrimonial case. The issue is being followed up by the Panel as a separate agenda item.

Latest Position

29. The Judiciary Administration will brief the Panel on the outcome of the consultation on the Consultation Paper and the way forward at the coming meeting on 12 December 2006.

Relevant papers

30. A list of relevant documents available on the LegCo website is in **Appendix II**.

**Consultation Paper on
Proposed Legislative
Amendments for the
Implementation of the
Civil Justice Reform
("CJR")**

Introduction

- Implementation of recommendations in the CJR Final Report requires legislative amendments
- Consultation Paper invites comments on the proposed legislative amendments

CJR Final Report

- Published on 3 March 2004
- Most of the 150 recommendations involve amendments to the existing rules and practice of the High Court (“HC”)
- Some involve amendments to primary legislation

Steering Committee on the CJR

- Appointed by the Chief Justice in March 2004
- To oversee the implementation of the recommendations of the Final Report on CJR relating to the Judiciary

Steering Committee on the CJR

- Focused mainly on necessary amendments to –
 - primary legislation
 - subsidiary legislation
- Consulted the High Court Rules Committee

District Court (“DC”)

- Practice and procedure in civil proceedings in the DC largely mirror those in the HC
- Appropriate for the two levels of Court to have the same set of procedures consequent on the CJR
- In December 2005, the Chief Justice directed legislative amendment exercise should apply to both the DC and the HC

Lands Tribunal and Employees' Compensation ("EC") Proceedings

Assessment of the impact of legislative
amendments for CJR on the –

- Lands Tribunal proceedings
- EC Proceedings

Amendments to Primary Legislation

- 21 out of 150 recommendations in the
Final Report require amendments to
primary legislation –
 - High Court Ordinance ("HCO") (Cap.4);
 - Law Amendment and Reform (Consolidation)
Ordinance ("LARCO") (Cap.23); and
 - Arbitration Ordinance ("AO")(Cap.341)

Amendments to Primary Legislation

- Pre-action protocols with regard to costs-only proceedings
 - New cause of action: need amendments to HCO and DCO
 - in HC and DC only
 - Consequential amendments to Lands Tribunal Ordinance and Small Claims Tribunal Ordinance

Amendments to Primary Legislation

- Pleadings with regard to the defence of tender before action (also applicable to the DC)
- Interim Remedies and Mareva Injunctions in aid of foreign proceedings
- Vexatious litigants
- Discovery (also applicable to the DC)

Amendments to Primary Legislation

- Wasted Costs (also applicable to the DC, LT and EC proceedings)
- Costs Order against Non-parties
- Leave to Appeal (also applicable to the DC, LT and EC proceedings)
- Appeals

Amendments to Subsidiary Legislation

- 84 recommendations in the Final Report require amendments to subsidiary legislation under the HCO –
 - Rules of the High Court (“RHC”) (Cap.4A)
 - High Court Fees Rules (“HCFR”) (Cap.4D)

Amendments to Subsidiary Legislation and Matters Requiring Attention

- Order 15 : Allows costs order ,
against non-parties
- Order 22 : Offers to Settle and
Payments into Court
 - along the lines of CPR Part 36
 - make it clear that the new scheme would
apply to both claims and counterclaims

Amendments to Subsidiary Legislation and Matters Requiring Attention

- Order 62 – Costs
 - In line with the objective of the CJR Final
Report to improve access to justice at
reasonable cost and speed, the Steering
Committee has proposed a number of
amendments to Order 62

Amendments to Subsidiary Legislation and Matters Requiring Attention

- New Order 62A – Costs Offer and Payments into Court
 - present draft does not apply to and in relation to legally aided party
 - proposed that the Director of Legal Aid may consider accepting an offer in certain circumstances

District Court

Provisions in the Rules of the District Court (“RDC”) should follow those in the RHC, unless special considerations justifying differences

District Court

- RDC will differ from the RHC in the following aspects –
 - Director's right to represent a limited company is preserved
 - Leave generally required to appeal against any decision in the DC
 - For taxation proceedings, DC to continue to follow its existing requirements of counsel's certificates and the "two-third cap"

Lands Tribunal

- Has a general power to adopt all practices and procedures of the CFI as it thinks fit
- Changes under the CJR for the CFI can likewise be utilized in the LT, as it thinks fit
- Additional case management powers without prejudice to its general case management powers

EC Proceedings

- By virtue of section 21 of the Employees' Compensation Ordinance, amendments to RDC applicable to EC proceedings

Comments Sought

**End of Consultation Period –
12 July 2006**



Civil Justice Reform

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion</u>
Panel on Administration of Justice and Legal Services	28 January 2002	<p>Interim Report and Consultative Paper on Civil Justice Reform published on 29 November 2001</p> <p>Minutes of meeting (LC Paper No. CB(2)1155/01-02)</p>
	14 March 2002	<p>Paper on "Civil Justice Reform – Interim Report and Consultative Paper ('IRCP')" prepared by the Legal Service Division (LS66/01-02)</p> <p>Speaking notes and submissions of deputations (LC Paper No. CB(2)1307/01-02(01)) (<i>English version only</i>)</p> <p>(LC Paper No. CB(2)1307/01-02(02)) (LC Paper No. CB(2)1356/01-02(01))</p> <p>(LC Paper Nos. 1374/01-02(01) and (02)) (<i>English version only</i>)</p> <p>Minutes of meeting (LC Paper No. CB(2)1622/01-02)</p>
Legislative Council	8 May 2002	<p>Official Record of Proceedings of the Council on the motion moved by Hon Margaret NG on "Civil Justice Reform"</p>
Panel on Administration of Justice and Legal Services	22 March 2004	<p>Final Report and Executive Summary on Civil Justice Reform published on 3 March 2004</p> <p>Paper provided by the Judiciary Administration on the implementation of the Civil Justice Reform</p> <p>(LC Paper No. CB(2)1811/03-04(01))</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion</u>
	26 June 2006	<p>Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform published in April 2006 <i>(English version only)</i></p> <p>Background Brief on Civil Justice Reform (LC Paper No. CB(2)2517/05-06(04))</p> <p>Minutes of meeting (LC Paper No. CB(2)3001/05-06)</p>