

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)1703/07-08  
(These minutes have been seen  
by the Administration)

**Subcommittee on Draft Subsidiary Legislation  
Relating to the Civil Justice Reform**

**Minutes of the fifth meeting  
held on Tuesday, 8 April 2008, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon James TO Kun-sun  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Ronny TONG Ka-wah, SC
- Member absent** : Hon LI Kwok-ying, MH, JP
- Public Officers attending** : Item I  
Judiciary Administration  
Miss Vega WONG  
Assistant Judiciary Administrator (Development)
- The Administration  
Department of Justice  
Mr Wesley WONG  
Senior Assistant Law Officer (Civil Law)
- Mr K F CHENG  
Senior Assistant Law Draftsman
- Clerk in attendance** : Mrs Percy MA  
Chief Council Secretary (2)3
- Staff in attendance** : Miss Kitty CHENG  
Assistant Legal Adviser 5  
Ms Amy YU  
Senior Council Secretary (2)3

Action

**I. Meeting with the Administration/Judiciary Administration**

(LC Paper No. CB(2)1455/07-08(01) - Joint submission dated 24 March 2008 from Prof LEE Jung-soo and Prof Swati Jhaveri of the School of Law, The Chinese University of Hong Kong in response to a number of issues raised by the Subcommittee at the meeting on 29 February 2008

LC Paper No. CB(2)1469/07-08(01) - Further submission dated 28 March 2008 from the Hong Kong Bar Association in response to a number of issues raised by the Subcommittee at the meeting on 29 February 2008

LC Paper No. CB(2)1000/07-08(01) - Proposed Amendments to the Rules of the High Court (Cap. 4A) (RHC) together with the following Annexes -

Annex A - a summary table setting out the RHC Orders affected and the relevant Amendment Rules in the Draft RHC (Amendment) Rules 2008 (Draft RHC)

Annex B - the Draft RHC

Annex C - the marked-up version of the provisions affected by the amendments in the Draft RHC

LC Paper No. CB(2)1129/07-08(01) - Policy aspects of the proposed amendments to RHC

LC Paper No. CB(2)1152/07-08(01) - Summary of views received on the Draft RHC during the public consultations in April 2006 and October 2007 and the response of the Steering Committee on Civil Justice Reform

LC Paper No. CB(2)1373/07-08(02) - Judiciary's response to the views of deputations expressed at the meeting on 29 February 2008)

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

Scrutiny of the proposed amendments to the Rules of the High Court

Judiciary  
Admin

2. The Judiciary Administration was requested to –

Part 4 - Commencement of proceedings

- (a) consider whether the reference to a specific amendment rule/part of amendment rules should be deleted from the transitional provisions such as Order 5 rule 7 and Order 8 rule 6, in view of the Judiciary's plan to implement all the legislative amendments in one go;
- (b) explain in writing why opportunity was not taken to amend the references to "Crown" in Order 77 in the current legislative exercise, the timeframe for making such amendments, and the interpretation of the word "Crown" before such amendments were made;

Action

- (c) explain in writing the impact of the proposed abolition of originating motions, which currently could be used for starting proceedings requiring fast-track procedures;
- (d) clarify the form to be used for commencing proceedings under Order 118 rule 4(1), having regard to the fact that Form No. 11 was expressly mentioned in Order 119 rule 4 but not in Order 118 rule 4(1), both of which were ex parte proceedings; and

Part 6 - Default judgments and admissions

- (e) explain in writing the procedure under the new Order 13A and the relevant forms to be used in the process.

Implementation schedule for the Civil Justice Reform (CJR)

3. Members noted the paper from the Judiciary Administration on the Judiciary's training plans and the feasibility for phased implementation of the Civil Justice Reform ("CJR") [LC Paper No. CB(2)1530/07-08(01)], and the letter from the Hong Kong Bar Association on preparation and training for the implementation of CJR [LC Paper No. CB(2)1530/07-08(02)]. In this regard, the Judiciary Administration was requested to consult the two legal professional bodies to ascertain their progress on preparation and training for the implementation of CJR in late 2008 and to report thereon to the Panel on Administration of Justice and Legal Services by early January 2009 before gazettal of the commencement notice which was a piece of subsidiary legislation subject to negative vetting of the Legislative Council.

Judiciary  
Admin  
and Clerk

**II. Any other business**

4. The Chairman reminded members that the next meeting would be held on Monday, 14 April 2008 at 10:45 am.

5. The meeting ended at 4:27 pm.

Council Business Division 2  
Legislative Council Secretariat  
23 April 2008

**Proceedings of the fifth meeting of the  
Subcommittee on Draft Subsidiary Legislation  
Relating to the Civil Justice Reform  
on Tuesday, 8 April 2008, at 2:30 pm  
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>
000025 - 000236	Chairman	Opening Remarks	
000237 - 000619	Judiciary Administration Chairman	Briefing by the Judiciary Administration (JA) on the Judiciary's training plans and the feasibility for phased implementation of the Civil Justice Reform (CJR) [LC Paper No. CB(2)1530/07-08(01)]	
000620 - 000640	Chairman	Letter from the Hong Kong Bar Association on preparation and training for the implementation of CJR [LC Paper No. CB(2)1530/07-08(02)]	
000641 - 000842	Chairman Judiciary Administration	<u>Scrutiny of the Draft High Court (Amendment) Rules 2008 (Amendment Rules 2008) (Annex C to LC Paper No. CB(2)1000/07-08(01)</u>  <u>Part 3 - Pre-action protocols and cost-only proceedings</u>  Order 10 rule 5(1) and New Form No. 15A	
000843 - 000955	Chairman Judiciary Administration	Order 11 rule 1(1)(ob)	
000956 - 001329	Chairman Judiciary Administration Mr Ronny TONG	Order 62 rule 5(2) and (3) - JA informed members that consequential amendments would be made to this rule to remove references to "pre-action protocol" in the light of the Judiciary's revised proposal to confine the proposed sanctions for non-compliance to a rule or a court order at this stage	<b>JA to follow up</b>
001330 - 001846	Chairman Judiciary Administration	Order 62 rule 11A and Forms No. 10, 11 and 15	
001847 - 002827	Chairman Ms Miriam LAU Judiciary Administration ALA5	<u>Implementation schedule for CJR</u>  JA was requested to consult the two legal professional bodies to ascertain their progress on preparation and training for the implementation of CJR in late 2008 and to report thereon to the Panel on Administration of Justice and Legal Services by early January 2009 before gazettal of the commencement notice which was a piece of subsidiary legislation subject to negative vetting of the Legislative Council	<b>JA and Clerk to follow up</b>

Time Marker	Speaker(s)	Subject(s)	Action required
002828 -003122	Chairman Judiciary Administration Ms Miriam LAU	<u>Part 4 - Commencement of Proceedings</u> Order 1 rules 2(5) and 4(1)	
003123 - 003335	Chairman Judiciary Administration Ms Miriam LAU	Order 2 rules 1(3) and 2(2)	
003336 - 003513	Chairman Judiciary Administration	Order 5 rules 1, 2, 3, 4(1), and 5	
003514 - 003906	Ms Miriam LAU Chairman Administration ALA5	Order 5 rule 7 - Transitional provision relating to rule 17 of the Amendment Rules 2008  In response to Ms Miriam LAU's enquiry on Order 5 rule 7, the Administration explained that upon the commencement of the Amendment Rules 2008, the Editor of the Loose-Leaf Edition of the Laws of Hong Kong could insert a footnote setting out the commencement date of rule 17 of the Amendment Rules 2008 under proposed Order 5 rule 7 for easy reference of readers  JA was requested to consider whether the reference to rule 17 should be deleted from Order 5 rule 7, in view of the Judiciary's plan to implement all the legislative amendments in one go	<b>JA to follow up</b>
003907 - 004046	Chairman Judiciary Administration	Order 7 rule 2 (1)(1A) to (1C), rule 2(3) and rule 7(1)	
004047 -004146	Chairman Judiciary Administration	Order 8 rules 1 and 6  As in the case of Order 5 rule 7, JA was requested to consider whether the reference to Part 4 should be deleted from Order 8 rule 6	<b>JA to follow up</b>
004147 - 004211	Chairman Judiciary Administration	Order 9 rule 1	
004212 - 004228	Chairman Judiciary Administration	Order14A rule 2	
004229 - 004254	Chairman Judiciary Administration	Order 16 rule 7(1)	
004255 - 004324	Chairman Judiciary Administration	Order 17 rule 3(1)	
004325 - 004342	Chairman Judiciary Administration	Order 19 rule 7(2) and (3)	
004343 - 004403	Chairman Judiciary Administration	Order 20 rule 11	

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004404 - 004415	Chairman Judiciary Administration	Order 21 rules 3 and 5	
004416 - 004420	Chairman Judiciary Administration	Order 27 rules 3(2) and 5(2)	
004421 - 004711	Judiciary Administration Chairman Administration Ms Miriam LAU	Order 28 rule 3A	
004712 - 004725	Chairman Judiciary Administration	Order 29 rule 1(2)	
004726 - 004801	Chairman Judiciary Administration	Order 30 rule 1(1)	
004802 - 004821	Chairman Judiciary Administration	Order 35 rule 13(1)	
004822 004847	Chairman Judiciary Administration	Order 46 rule 5(1) to (3)	
004848 - 004906	Chairman Judiciary Administration	Order 50 rule 15(2)	
004907 - 004938	Chairman Judiciary Administration	Order 52 rules 3 and 6(3)	
004939 - 005249	Chairman Judiciary Administration Administration Ms Miriam LAU	Order 53 rule 5(1) and (3) and rule 9, Form No. 86	
005250 - 005357	Chairman Judiciary Administration	Order 54 rule 2 and Form No. 87	
005358 - 005426	Chairman Judiciary Administration	Order 67 rule 5(2)	
005427 - 010655	Chairman Judiciary Administration Administration Ms Miriam LAU	Order 73 rules 2, 3, 5, 6A, 7(1) and (3), 9(3) and 10(2)  In response to Ms Miriam LAU's enquiry on the proposed amendments to Order 73 rules 9(3) and 10(2), JA's explanation that -  (a) the amendments sought to implement the recommendation in the Final Report to abolish the requirements in the RHC which made it mandatory to commence certain proceedings by writ or, as the case might be, by originating summons; and	

Time Marker	Speaker(s)	Subject(s)	Action required
		(b) it would continue to be the case that if the parties had chosen an inappropriate mode of commencement, the court should give suitable directions for the continuation of the proceedings in an appropriate manner rather than wholly setting aside the proceedings [Order 2 rule 1(3)]	
010656 - 010714	Chairman Judiciary Administration	Order 75 rule 3(1)	
010715 - 010844	Chairman Judiciary Administration Ms Miriam LAU Administration	Order 76 rules 2(1) and 11(3)	
010845 - 011128	Chairman Ms Miriam LAU Judiciary Administration	Order 77 rules 9(3) and 11(1)  In response to the Chairman's enquiry on why opportunity was not taken to remove the references to 'Crown" in Order 77 in the current legislative exercise, JA's response that such changes involved adaptation of law which was outside the remit of the Steering Committee on CJR  JA was requested to provide a written response to explain why opportunity was not taken to amend the references to "Crown" in Order 77, the timeframe for making such amendments and the interpretation of the word "Crown" before such amendments were made	<b>JA to follow up</b>
011129 - 011211	Chairman Judiciary Administration	Order 80 rule 11(1)	
011212 - 012013	Chairman Judiciary Administration Ms Miriam LAU Administration Mr Ronny TONG	Order 83A rule 2(1)  Mr Ronny TONG pointed out that under the existing procedures, an originating motion could be used for starting proceedings requiring fast-track procedures and sought clarification of the impact of the proposed abolition of originating motions as a mode of commencement of proceedings. JA was requested to provide a written response	<b>JA to follow up</b>
012014 - 012043	Chairman Judiciary Administration Mr Ronny TONG	Order 88 rule 7	
012044 - 012051	Chairman Judiciary Administration	Order 89 rules 1 and 2	
012052 - 012118	Chairman Judiciary Administration	Order 90 rules 3(1), 5 and 10	

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012119 - 012315	Chairman Judiciary Administration Ms Miriam LAU Administration	Order 100 rule 2	
012316 - 012425	Chairman Judiciary Administration	Order 102 rules 2, 3, 4 and 6	
012426 - 012450	Chairman Judiciary Administration	Order 103 rule 29	
012451 - 012549	Chairman Judiciary Administration	Order 115 rules 2, 2A, 3, 7 and 24	
012550 - 012614	Chairman Judiciary Administration	Order 115A rules 13 and 17	
012615 - 012637	Chairman Judiciary Administration	Order 117 rule 9	
012638 - 012703	Chairman Judiciary Administration	Order 118 rules 3 and 4	
012704 - 013151	Chairman Judiciary Administration Mr Ronny TONG Ms Miriam LAU	Order 119 rules 4 and 5  JA was requested to clarify the form to be used for commencing proceedings under Order 118 rule 4(1), having regard to the fact that Form No. 11 was expressly stated in Order 119 rule 4 but not in Order 118 rule 4(1), both of which were ex parte proceedings	<b>JA to follow up</b>
013152 - 013210	Chairman Judiciary Administration	Order 121 rule 2	
013211 - 013344	Chairman Judiciary Administration	Forms No. 81, 85, 107 and 109	
013345 - 013846	Chairman Ms Miriam LAU Judiciary Administration Administration	<u>Part 5 -Dispute as to jurisdiction</u>  Order 12 rules 8 and 11	
013847 - 013921	Chairman Judiciary Administration	Order 18	
013922 - 014103	Chairman Judiciary Administration	Form Nos. 14 and 15	
014104 - 014227	Chairman Judiciary Administration	<u>Part 6 - Default judgments and admissions</u>	
014228 - 014312	Judiciary Administration Chairman	Order 6 rule 2(1)	



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014313 - 015720	Chairman Judiciary Administration Administration Ms Miriam LAU Mr Ronny TONG	Order 13A rules 1 to 3, Forms No. 1 and 14  JA was requested to explain in writing the procedure under the new Order 13A and the relevant forms to be used in the process	<b>JA to follow up</b>
015721 - 015738	Chairman	Date of next meeting	

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23 April 2008