

立法會
Legislative Council

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by the Administration)

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

**Minutes of the 10th meeting
held on Monday, 5 May 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon James TO Kun-sun
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)1786/07-08(01) - Paper entitled "Leave to appeal and interlocutory applications of pending appeals under Order 59" provided by the Judiciary Administration

LC Paper No. CB(2)1786/07-08(02) - Paper entitled "Order 62 - Costs" provided by the Judiciary Administration

LC Paper No. CB(2)1000/07-08(01) - Proposed amendments to 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

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 first round of submissions from deputations)

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

Scrutiny of the proposed amendments to the Rules of the High Court (RHC)

Judiciary
Admin

2. The Judiciary Administration was requested to –

Part 19 – Leave to appeal

- (a) provide statistics on leave applications to the Court of Appeal (CA) and renewal leave applications;
- (b) clarify whether the proposed amendments on the calculation of time for making an application for leave to appeal or appeal, i.e. from the date of an order (instead of from the date of the perfection of an order as at present), would affect the operation of the proposed Order 59 rule 5(1), which required the appellant to lodge with the Registrar a copy of the sealed judgment or order within 7 days after the service of the notice of appeal;
- (c) consider drawing up a performance pledge on the time frame for the perfection of an order;

Action

- (d) convey to the Judiciary members' views and reservation whether Order 59 rule 2A(8) was in the interests of justice as it might deprive the aggrieved party the right to an oral hearing, and provide a written response thereon (Rule 2A(8) provided that, where the CA determined an application for leave to appeal on the basis of written submissions only, it might, if it considered that the application was totally without merit, make an order that no party might request the determination to be reconsidered at an oral hearing inter partes); and

Part 22 - Taxing the Other Side's Costs

- (e) explain the proposed revisions to scale of costs and fixed costs in the Schedules to Order 62.

**Judiciary
Admin**

3. The Judiciary Administration informed members that the Steering Committee on Civil Justice Reform had taken on board the amendments proposed by Mr Eric CHEUNG in his submission dated 7 April 2008 [LC Paper No. CB(2)1529/07-08(01)] in relation to Order 59 (Appeals). The following changes would be made to the Order accordingly -

- (a) the words “by a summons” would be deleted from rule 2B(1); and
- (b) the words “in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits” would be deleted from rule 10(2).

**ALA5
Judiciary
Admin**

4. Members agreed to request the legal adviser to assist in the scrutiny of Part 25 (Miscellaneous) relating to technical amendments. To facilitate the Subcommittee's consideration, the Judiciary Administration was requested to provide information on the relevant rules under Part 25.

II. Any other business

5. The Chairman reminded members that the next meeting would be held on Thursday, 8 May 2008 at 2:30 pm.

6. The meeting ended at 10:35 am.

**Proceedings of the 10th meeting of the
Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform
on Monday, 5 May 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000000 - 000557	Chairman	Suggested work plan (as at 5 May 2008) prepared by the Judiciary Administration (JA) (LC Paper No. CB(2)1820/07-08(01))	
000558 - 001440	Chairman Judiciary Administration	<u>Part 19 (Leave to Appeal) and Part 20 (Appeals)</u> Briefing by JA on its paper entitled "Leave to Appeal and Interlocutory Applications of Pending Appeals under Order 59" (LC Paper No. CB(2)1786/07-08(01))	
001441 - 001900	Chairman Judiciary Administration Mr Ronny TONG	<u>All applications for leave to appeal to be made inter partes</u> The Chairman pointed out that some legal practitioners had expressed concern about the proposal that all applications to the Court of Appeal (CA) for leave to appeal had to be made inter partes, as it would make the application procedure more cumbersome and costly Mr Ronny TONG expressed support for the proposal that all applications for leave to appeal should be made inter partes JA was requested to provide statistics on leave applications to CA and renewal leave applications	JA to follow up
001901 - 002608	Ms Miriam LAU Chairman Judiciary Administration Administration Mr Ronny TONG	<u>Time for appealing</u> Members noted the proposed amendments on the calculation of time for making an application for leave to appeal or appeal. Under the proposal, such time would start to run from the date of the relevant judgment, order or decision appealed against, instead of from the date of perfection of the order as at present Members were concerned that the proposed amendments might shorten the time for making an application for appeal/leave to appeal, given that there was often a significant time lag between the date of the order and that of perfection of the order JA was requested to consider drawing up a performance pledge on the time frame for the perfection of an order	JA to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
002609 - 004745	Chairman Judiciary Administration Mr Ronny TONG Ms Miriam LAU	<p><u>Order 59</u></p> <p>Order 59 rule 2A(8) provided that, where the CA determined an application for leave to appeal on the basis of written submissions only, it might, if it considered that the application was totally without merit, make an order that no party might request the determination to be reconsidered at an oral hearing inter partes. All members present expressed reservation about the rule, as it might deprive the aggrieved party of the right to an oral hearing and might result in injustice in some cases</p> <p>JA stressed that the rule was only confined to cases which were totally without merit. JA also pointed out that notwithstanding rule 2A(8), it was provided under rule 2C(1) that where an application for leave to appeal was determined (with or without a hearing) by a single Justice of Appeal, the aggrieved party could make a fresh application to the CA</p> <p>JA was requested to convey to the Judiciary members' views and reservation about Order 59 rule 2A(8) and provide a written response thereon</p>	JA to follow up
004746 - 004928	Chairman Judiciary Administration	Order 59 rule 2B	
004929 - 005229	Chairman Judiciary Administration Mr Ronny TONG	Order 59 rule 2C	
005230 - 005452	Chairman Judiciary Administration Ms Miriam LAU Mr Ronny TONG	Order 59 rule 4	
005453 - 005724	Chairman Judiciary Administration Mr Ronny TONG Ms Miriam LAU	<p>Order 59 rule 5</p> <p>Members pointed out that an appellant would have practical difficulty in complying with the requirement under Order 59 rule 5(1)(a) which required an appellant to lodge with the Registrar a copy of the sealed judgment or order within 7 days after the service of the notice of appeal</p> <p>JA was requested to clarify whether the proposed amendments on the calculation of time for making an application for leave to appeal or appeal would affect the operation of the proposed Order 59 rule 5(1)(a)</p>	JA to follow up
005725 - 005740	Chairman Judiciary Administration	Order 59 rule 9	
005741 - 005751	Chairman Judiciary Administration	Order 59 rule 2A	

Time Marker	Speaker(s)	Subject(s)	Action required
005752 - 005842	Chairman Judiciary Administration	Order 58 rule 14 (3A) and (3B)	
005843 - 005957	Chairman Judiciary Administration	Order 59 rule 14 (7), (12) and (14A)	
005948 - 010015	Chairman Judiciary Administration	Order 59 rule 16 (1A)	
010016 - 010105	Mr Ronny TONG Chairman Administration	Order 59 rule 14 (14A)	
010106 - 010147	Chairman Judiciary Administration	Order 59 rule 19	
010148 - 011523	Chairman Judiciary Administration	<u>Part 21 - General Approach to Inter-party Costs</u> (Recommendation 122) <u>Part 22 - Taxing the Other Side's Costs</u> (Recommendations 131, 134, 135, and 136) Briefing by JA on its paper entitled "Order 62 - Costs" (LC Paper No. CB(2)1786/07-08(02))	
011524 - 011630	Chairman Judiciary Administration	<u>Order 62</u> rule 1	
011631 - 011640	Chairman Judiciary Administration	rule 2	
011641 - 011725	Chairman Judiciary Administration	rule 3(2A) (Part 21- General Approach to Inter-party Costs)	
011726 - 011738	Chairman Judiciary Administration	rule 4	
011739 - 011802	Judiciary Administration	rule 5(1)(a)	
011803 - 011842	Judiciary Administration Chairman	rule 7	
011843 - 011921	Chairman Judiciary Administration	rule 12(1A)	
011922 - 011959	Judiciary Administration Chairman	rule 13A	
012000 - 012232	Chairman Judiciary Administration	rules 17A , 17B and 33(1)	
012233 - 012431	Chairman Judiciary Administration	rule 21	

Time Marker	Speaker(s)	Subject(s)	Action required
012432 - 012501	Chairman Judiciary Administration	rule 21A	
012502 - 013654	Chairman Judiciary Administration Mr Ronny TONG Administration	rule 21B Mr Ronny TONG's view that the taxing master, in deciding whether to make an order on the costs of the taxation hearing under rule 21B(5), should also take into account the conduct of the parties in relation to the taxation. JA's response that it was already provided under Order 62 rule 32A(2)(a) that the court would take into account the conduct of all parties in making an order on the costs of taxation	
013655 - 013714	Chairman Judiciary Administration	Rule 21C	
013715 - 013745	Chairman	Rule 21D	
013746 - 014402	Chairman Judiciary Administration Mr Ronny TONG Administration	Rule 22	
014403 - 014457	Chairman Judiciary Administration	Rule 24	
014458 - 014510	Chairman Judiciary Administration	rules 25 and 26	
014511 - 014544	Chairman Judiciary Administration	Rule 28(6)	
014545 - 014638	Judiciary Administration Chairman	Rule 32A	
014639 - 014746	Chairman Judiciary Administration	Rule 32B	
014747 - 014939	Chairman Judiciary Administration	rule 32C JA informed members that the reference to pre-action protocol in rule 32C(2) would be deleted	
014940 - 015013	Chairman Judiciary Administration	rule 33	
015014 - 015025	Chairman Judiciary Administration	rule 35(1)	
015026 - 015242	Chairman Judiciary Administration	rule 37	

Time Marker	Speaker(s)	Subject(s)	Action required
015243 - 015327	Chairman Judiciary Administration Mr Ronny TONG	Part I (Scale of costs) of First Schedule to Order 62	
015328 - 015536	Chairman Judiciary Administration Mr Ronny TONG Administration	Part II (General) of First Schedule to Order 62	
015537 - 015632	Chairman Judiciary Administration	Part I of Second Schedule to Order 62	
015633 - 015831	Chairman Judiciary Administration	<p>Part II of Second Schedule to Order 62</p> <p>Members noted that in his submission dated 29 February 2008 [LC Paper No. CB(2)1255/07-08(01)], Mr Eric CHEUNG had expressed reservation about the proposed increase of the fixed costs for obtaining default judgment to \$10,000 for legally represented plaintiffs. Mr CHEUNG suggested (a) setting the fixed fee at \$5,000 instead, and (b) providing that a party might obtain a higher fixed fee of \$10,000 by filing a certificate confirming that the amount of actual legal costs was not less than \$10,000</p> <p>JA's response that -</p> <p>(a) the Steering Committee had adopted the Law Society's suggestion of setting the amount of fixed costs for obtaining default judgment at \$10,000; and</p> <p>(b) it was a well-established principle that solicitors should not ask for costs beyond what they charged their clients. If the costs for obtaining a default judgment was less than \$10,000 in any particular case, the solicitor should bring to the court's attention for a lesser amount. Solicitors would be reminded of their duty in this regard through practice direction</p>	
015832 - 020102	Chairman Judiciary Administration	<p>Part III (Miscellaneous) of Second Schedule to Order 62</p> <p>JA was requested to explain the proposed revisions to scale of costs and fixed costs in the Schedules to Order 62</p>	JA to follow up
020103 - 020241	Chairman Judiciary Administration	<p>Part 24 – Costs against Non-party (Steering Committee's recommendation)</p> <p>Order 11, Order 62 rule 6A</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
020242 - 020307	Chairman Judiciary Administration	<u>Part 25 - Miscellaneous</u> Members agreed to request the legal adviser to assist in the scrutiny of Part 25	ALA5 to follow up
020308 - 020418	Judiciary Administration Chairman	With reference to Mr Eric CHEUNG's submission dated 7 April 2008 [LC Paper No. CB(2)1529/07-08(01)] on Order 59 (Appeals), JA informed members that the Steering Committee agreed with the following amendments proposed by Mr CHEUNG – (a) deleting the words “by a summons” from rule 2B(1); and (b) deleting the words “in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits” from rule 10(2)	JA to follow up
020419 - 020538	Chairman Judiciary Administration ALA5	JA was requested to provide information on the relevant rules under Part 25 (Miscellaneous)	JA to follow up