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Panel on Administration of Justice and Legal Services

Background brief for the meeting on 13 January 2009

Implementation of Civil Justice Reform

Purpose

This paper provides background information on the Civil Justice Reform (CJR) and a brief account of past discussions of the former Subcommittee on Draft Subsidiary Legislation Relating to CJR (the Subcommittee) on issues concerning the implementation of CJR.

Background

Objectives of CJR

2. In February 2000, the Chief Justice (CJ) appointed the Working Party on CJR (the Working Party) to review the rules and procedure of the High Court in civil proceedings and to recommend changes thereto, with a view to ensuring and improving access to justice at reasonable cost and speed.
3. The objectives of the CJR are to –
 - (a) preserve the best features of the adversarial system but curtailing its excesses. One of the primary ways to achieve this is by giving even greater case management powers to the courts. This would prevent tactical manipulation of the rules to delay proceedings and also ensure that court and judicial resources are fairly distributed;
 - (b) streamline and improve the civil procedures; and
 - (c) facilitate early settlement by parties, cut out unnecessary applications and, if necessary, penalize such applications.

In consequence, civil proceedings would become more efficient, expeditious and promote a sense of reasonable proportion and economy. There would also be greater equality between parties to proceedings and settlements would be both encouraged and facilitated.

Amendments to primary and subsidiary legislation under CJR

4. The Working Party submitted its recommendations to CJ in its Final Report in March 2004, making a total of 150 recommendations. CJ in the same month accepted the Working Party's Final Report and set up the Steering Committee on CJR (the Steering Committee) to oversee the implementation of the recommendations therein relating to the Judiciary. CJ subsequently decided that the proposed changes should be implemented not just in the High Court, but also in the District Court and the Lands Tribunal where such changes are appropriate. After two rounds of consultation in April 2006 and October 2007, the Steering Committee has decided on a package of proposed amendments to both primary and subsidiary legislation. The primary legislation¹ for implementing CJR, *viz.*, the Civil Justice (Miscellaneous Amendments) Ordinance 2008 (CJO) was enacted on 30 January 2008.

5. Given the complexity and volume of subsidiary legislation² relating to CJR, the Subcommittee was appointed under the House Committee in January 2008 to study the seven sets of subsidiary legislation in draft form before they were formally tabled before the Legislative Council (LegCo). As a result, amendments have been made to the draft and are reflected in the final text. The seven sets of Amendments Rules were gazetted on 6 June 2008 and tabled in the Council on 11 June 2008.

Major changes under CJR

6. The implementation of CJR will bring about significant changes in the landscape of civil proceedings in Hong Kong. Some of the major changes are summarized in **Appendix I**. Members may refer to the report of the Bills Committee on the Civil Justice (Miscellaneous Amendments) Bill [LC Paper No. CB(2)920/07-08] and that of the Subcommittee [LC Paper No. CB(2)2222/07-08] for details of the changes made under CJR.

¹ Legislative amendments have been made to six Ordinances, namely, the High Court Ordinance (Cap. 4), Lands Tribunal Ordinance (Cap. 17), Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), District Court Ordinance (Cap. 336), Small Claims Tribunal Ordinance (Cap. 338) and Arbitration Ordinance (Cap. 341).

² Amendments have been made to three main sets of subsidiary legislation, *viz.* Rules of the High Court (Cap. 4A), Rules of the District Court (Cap. 336H); and Lands Tribunal Rules (Cap. 17A). In addition, consequential amendments have been made to four sets of subsidiary legislation, *viz.* the High Court Fees Rules (Cap. 4D), District Court Civil Procedure (Fees) Rules (Cap. 336C), High Court Suitors' Funds Rules (Cap. 4B) and District Court Suitors' Funds Rules (Cap. 336E).

Issues referred to the Panel on Administration of Justice and Legal Services (AJLS Panel) for follow up

Preparation of the Judiciary and the two legal professional bodies for the implementation of CJR

7. Section 2 of CJO provides that it shall come into operation on a day to be appointed by CJ by notice published in the Gazette. The seven sets of Amendment Rules shall come into operation on the day appointed for the commencement of CJO.

8. The Subcommittee was informed that the Judiciary intended to bring the relevant legislation, both primary and subsidiary legislation, into force on 2 April 2009 in one go. In view of the substantial changes brought about by CJR, members expressed concern as to whether there would be sufficient time for the Judiciary and the legal profession to undertake the necessary preparation and training for the implementation of CJR, and requested the Judiciary to consider the feasibility of implementing the legislative amendments by phases.

9. The Judiciary Administration (JA) advised the Subcommittee that the Judiciary had comprehensive plans for training programmes for Judges and Judicial Officers at all levels of court and support staff starting from late 2008 to early 2009. Operation and training manuals were being developed for staff reference. Specifically, staff at the Resource Centre for Unrepresented Litigants would be equipped with updated information to respond to frequently asked questions raised by unrepresented litigants. JA further advised that both the Hong Kong Bar Association and the Law Society of Hong Kong had confirmed that they had training programmes in the pipeline, and had indicated their readiness for the implementation of CJR in April 2009. It was the Judiciary's view that as many of the changes to be made in CJR were inter-related and in order to achieve the overall objectives of CJR, all the legislative amendments should be implemented as an integrated package at the same time. To implement them by phases would be highly undesirable as it might create uncertainty and confusion and affect the training plans in hand. With the training programmes in place, the Judiciary believed that judges and support staff of the Judiciary as well as the legal profession would be ready for the implementation of CJR by the target date of 2 April 2009.

10. The Subcommittee requested JA to ascertain the progress on preparation and training of the two legal professional bodies for the implementation of CJR in late 2008 and report the matter to the AJLS Panel by early January 2009, before gazettal of the commencement notice for CJO which would be subject to the negative vetting procedure of LegCo.

Time frame for the perfection of an order

11. During its discussion on the proposed amendments to the Rules of the High Court (Cap. 4A) relating to appeals, the Subcommittee queried 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 the date of the perfection of an order as at present), would affect the operation of the proposed Order 59 rule 5(1)(a) of the draft Rules of the High Court. According to the proposed Rule, the appellant would be required to lodge with the Registrar a copy of the sealed judgment or order within seven days after the service of the notice of appeal. Members expressed concern that as there was often a significant time lag between the date of the order and that of perfection of the order, the proposed amendments might shorten the time for making an application for leave to appeal or appeal.

12. JA advised the Subcommittee that in the majority of cases, the absence of a perfected order would not hold up the appeal process, since the losing party would have obtained the result and the reasons for it (if the reasons were unavailable, this would often be a good reason for an extension of time to appeal to be given). Order 59 rule 5(1)(a) required the appealing party to lodge with the Registrar a sealed judgment within seven days after the date of service of the notice of appeal. A notice of appeal could be filed either 28 days from the date of judgment if no leave to appeal was required, or seven days from the grant of leave if leave to appeal was required. There would be ample time in between to seal the order if a party acted promptly.

13. Members suggested that the Judiciary should consider drawing up a performance pledge on the time frame for the perfection of an order. JA advised that the Judiciary would try its best to ensure that draft orders of the Court of First Instance would normally be approved within seven working days after receipt of the draft from the party concerned. As members remained concerned about the lead time required for the perfection of an order, the Subcommittee agreed that the issue be referred to the AJLS Panel for follow up.

Relevant papers

14. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

Major changes brought about by the implementation of Civil Justice Reform

	Major areas of changes
<p>1.</p>	<p><u>Underlying objectives</u></p> <p>Under the new rules, the courts are required to exercise their powers with regard to the following underlying objectives -</p> <ul style="list-style-type: none"> (a) increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court; (b) ensure that a case is dealt with as expeditiously as is reasonably practicable; (c) promote a sense of reasonable proportion and procedural economy in the conduct of proceedings; (d) ensure fairness between the parties; (e) facilitate settlement of disputes; and (f) ensure that the resources of the Court are distributed fairly.
<p>2.</p>	<p><u>Case management powers of the court</u></p> <p>Judges will be given case management powers to further the underlying objectives by actively managing cases. The court will at a relatively early stage of proceedings adopt a "hands-on" approach to ensure that proceedings are court controlled rather than party driven. Case management can be applied to require identification of issues at an early stage, to restrain excessive discovery, deter undue prolixity of witness statements and evidence, and to cut down unmeritorious and unnecessary interlocutory applications.</p> <p>The existing "summons for directions" procedure will be replaced by a "case management summons" or "case management conference". Within 28 days after close of pleadings, the parties will be required to complete a questionnaire providing detailed information to map out the intended progress of their action. Upon receipt of the questionnaire, the Court will then fix a timetable with firm milestone dates, which may only be changed in exceptional circumstances.</p>
<p>3.</p>	<p><u>Pleadings to be verified by Statements of Truth</u></p> <p>A new requirement is introduced for pleadings to be verified by "statements of truths" and for substantive defences to be properly identified. This will</p>

	Major areas of changes
	enable the relevant issues in proceedings to be identified more easily at an early stage and discourage the raising of unmeritorious allegations or defence.
4.	<u>Discovery</u> To promote greater transparency between the parties at an earlier stage with a view to facilitating settlement, pre-action discovery will be extended to all civil claims, instead of death and personal injuries as at present.
5.	<u>Costs-only proceedings</u> A new cause of action called "costs-only proceedings" is introduced to enable parties who have reached settlement on a substantive dispute and have agreed who should pay the costs, but who cannot agree on the amount of costs of the dispute, to apply for such costs to be taxed by court. At present, where parties cannot agree on the amount of costs even though the substantive dispute has been resolved, it is necessary to litigate the whole dispute in order to resolve the question of costs.
6.	<u>Admissions and default judgments</u> To facilitate settlement in money claims, a new procedure is introduced for a defendant in a money claim to make admission and propose payment terms as to time and instalments to satisfy the claim.
7.	<u>Sanctioned offers and sanctioned payments</u> A system of "sanctioned offers and sanctioned payments" is introduced so that offers to settle any type of dispute (not just money ones) may be made, thereby bringing the whole action or a part of it to an end. The proposal will substantially alter the existing system of payments into court and will considerably widen the ambit of offers to settle cases. For example, under the existing rules, only a defendant may offer to settle claims by payments into court, thereby putting a plaintiff at risk as to costs. Under the proposed system, a plaintiff, by making an offer to the defendant, can put the defendant at such risk. This will act as a significant incentive for parties to settle disputes at an earlier stage than at present.
8.	<u>Interim relief in aid of proceedings outside Hong Kong</u> Currently, a plaintiff in proceedings outside Hong Kong involving a defendant with assets in Hong Kong cannot seek interim relief from the Hong Kong courts. Only when substantive proceedings exist in Hong Kong can such interim relief be obtained. The High Court Ordinance (Cap. 4) (HCO) and

	Major areas of changes
	the Arbitration Ordinance (Cap. 341) have been amended to empower the Court of First Instance (CFI) to grant interim relief, including granting an interlocutory injunction to restrain the defendant from dealing with his assets in Hong Kong or appointing a receiver, in aid of proceedings outside Hong Kong which are capable of being enforced in Hong Kong.
9.	<p><u>Vexatious litigants</u></p> <p>At present, applications to restrict a vexatious litigant from issuing fresh proceedings except with the leave of the court, can only be made by the Secretary for Justice (SJ) under very narrow circumstances. To help screen out vexatious litigation, thereby enabling fairer distribution of the court's resources for genuine disputes, the court will be allowed to make a vexatious litigant order not only on the application of SJ, but also on the application of an "affected person".</p> <p>The threshold for granting leave to a vexatious litigant to institute fresh proceedings will also be raised, requiring CFI to be satisfied that the proceedings are not an abuse of the process and that there are reasonable, not just prima facie, grounds for the proceedings.</p>
10.	<p><u>Costs</u></p> <p>(a) <u>Wasted costs order</u></p> <p>Currently, the court may make wasted costs orders against solicitors whom it considers to be responsible for any costs improperly incurred or wasted by undue delay or other misconduct. Amendments have been introduced to make barristers also subject to the same liability for wasted costs.</p> <p>(b) <u>Costs against a non-party</u></p> <p>To allow the court to order costs to fall where they are appropriate, the court will be able to make a costs order against a person who is not a party to the relevant proceedings.</p> <p>(c) <u>Procedures for costs assessment</u></p> <p>Changes have been made to provide for the summary assessment of costs, whereby the court can assess the amount of costs payable and then order payment to be made within a certain period of time, and to empower Masters to do provisional taxation on paper without hearing.</p>

	Major areas of changes
11.	<p><u>Leave to appeal</u></p> <p>Currently, appeals from CFI to the Court of Appeal (CA) are as of right, i.e. leave is not required. To screen out unmeritorious appeals on interlocutory matters which do not determine substantive rights, amendments have been made to HCO to introduce the requirement that an interlocutory appeal to CA can only be brought with leave of CFI or CA. Leave would only be granted where there is a real prospect of success or some other reason in the interests of justice why the appeal should be heard. Refusal of leave by CA is final. The District Court Ordinance (Cap. 336) has also been amended to similarly improve the procedures for applications for leave to appeal to CA.</p>

Council Business Division 2
Legislative Council Secretariat
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Relevant documents

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform	26 March 2008	Minutes of meeting [LC Paper No. CB(2)1579/07-08]
	8 April 2008	Judiciary Administration's response to issues raised at the Subcommittee meeting on 26 March 2008 [LC Paper No. CB(2)1530/07-08(01)]
		Submission from the Hong Kong Bar Association dated 8 April 2008 concerning preparation and training for the implementation of the Civil Justice Reform [LC Paper No. CB(2)1530/07-08(02)]
		Submission from the Law Society of Hong Kong dated 8 April 2008 concerning preparation and training for the implementation of the Civil Justice Reform [LC Paper No. CB(2)1581/07-08(02)]
		Minutes of meeting [LC Paper No. CB(2)1703/07-08]
	5 May 2008	Minutes of meeting [LC Paper No. CB(2)2628/07-08]
	15 May 2008	Judiciary Administration's response to issues raised at previous Subcommittee meetings (paragraphs 19 to 20) [LC Paper No. CB(2)1928/07-08(02)]
		Minutes of meeting [LC Paper No. CB(2)2683/07-08]

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
	--	Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007's report to Council [LC Paper No. CB(2)920/07-08]
	--	Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform 's report to House Committee [LC Paper No. CB(2)2222/07-08]

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