

立法會
Legislative Council

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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 28 June 2010**

Bailiff services

Purpose

This paper gives an account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on issues relating to Bailiff services since the First Legislative Council ("LegCo").

Background

2. The authority of the Bailiff services is derived from section 38A of the High Court Ordinance (Cap. 4) as follows -

"There shall be a Bailiff of the High Court together with such assistant Bailiffs as may be appointed, to effect, in accordance with rules of court, orders for committal and for service and execution of the process of the Court."

Obstruction to the discharge of duties by Bailiffs amounts to contempt of court and shall be liable on summary conviction to a fine at level five (currently \$50,000) and to imprisonment for 12 months; or on conviction on indictment to imprisonment for two years.

3. Bailiffs are deployed for two main areas of work: service of summonses and legal documents, and execution of court orders and judgments. The duty list of Bailiff, and the structure and strength of the Grade as provided by the Judiciary Administration ("JA") in January 2003 are in **Appendices I and II** respectively.

Relevant issues raised by the Panel

4. When the Panel discussed the work of Bailiffs at its meeting on 27 January 2003, members raised a number of issues relating to Bailiff services which are summarized in the following paragraphs.

Workload of Bailiffs

5. Some members expressed concern whether the manpower of the Bailiff Grade was adequate to cope with the increasing workload given that the relaxation of tenancy control for private rental housing would further increase the demand for Bailiff services and the Government had to reduce its expenditure to cope with budgetary constraints at that time. They also enquired about the number of court orders which had exceeded the average waiting time for execution.

6. JA advised that the Court Orders Section, following a review, had re-engineered the process of work assignment. Under the new arrangement, which was implemented in July 2002, each Bailiff was responsible for the planning and execution of the whole process of an enforcement order. The new arrangement had improved considerably the efficiency and morale of Bailiffs, resulting in an increase in the number of executed court orders and improvements in the average waiting time for execution of court orders. JA also assured members that it would continue to keep in view of legislative amendments having an impact on the work of Bailiffs and adopt appropriate measures to cope with any increase in workload. At the Panel's request, JA had provided a breakdown of court orders and the percentages of their execution within and outside the respective waiting times in 2003 (**Appendix III**).

Performance of Bailiff services

7. Members noted that in his written question on the execution of court orders by Bailiffs raised at the Council meeting on 11 December 2002, Hon Andrew CHENG asked about the assessment mechanism of the work of Bailiffs. In his reply, the Chief Secretary for Administration ("CS") advised that according to the Judiciary, the performance of Bailiffs was monitored both internally within the Judiciary and externally by judgment creditors and landlords. In JA, senior Bailiffs were responsible for monitoring the daily performance of Bailiffs. Regular reports on the performance of the Bailiff services was submitted to the management of JA for review and monitoring. As regards external monitoring, judgment creditors and landlords were encouraged to accompany Bailiffs in executing court orders. About 70% of the execution work was done in the presence of the judgment creditors or landlords who would have an interest in ensuring that the court orders were being carried out satisfactorily.

8. Members were of the view that in order to assess the performance of the Bailiff services, JA should consider obtaining feedback from service users including judgment creditors, judgment debtors and their legal representatives. A note provided by JA in February 2004 on recent measures taken to enhance the Bailiff services is in **Appendix IV**.

9. Members may wish to note that Hon CHAN Kin-por raised a written question on execution of court orders by Bailiffs at the Council meeting on 6 May 2009. In his reply, CS advised that according to the information and response of the Judiciary, the number of attempts made by bailiffs in executing court orders for the past three years and the outcome of such attempts were as follows -

	2006		2007		2008	
	<i>Attempts</i>	<i>Success Rates</i>	<i>Attempts</i>	<i>Success Rates</i>	<i>Attempts</i>	<i>Success Rates</i>
Warrant of Distress	6 261	40%	5 495	40%	5 528	36%
Writ of <i>Fieri Facias</i> , Magistrate's Warrants and others	9 001	13%	9 794	9%	9 370	12%
Writ of Possession	9216	92%	7 991	93%	7 378	93%

It should be noted that in the cases of Warrant of Distress and Writ of *Fieri Facias*, the execution was successful where there were sufficient goods and chattels on the premises to justify a seizure, or if the judgment debtor concerned settled the debt on the spot or made payment to the Bailiff Office. If the judgment debtor concerned was penniless, or had left on the premises goods and chattels of no or insufficient value to cover the execution expenses, or his whereabouts were unknown, the execution was classified as not successful. Whether the execution turned out to be successful or not depended on many factors which were beyond the control and responsibility of the Bailiff Office.

Protection of Bailiffs in execution of court orders and judgments

10. Members noted that Writs of *Fieri Facias* and Warrants of Distress quite often involved seizure of the judgment debtors' goods and chattels in satisfaction of the judgment debt. In the course of levying execution, a Bailiff sometimes faced a situation in which the judgment debtor denied ownership of certain goods on his premises and a third party might claim ownership of those goods. Executing Bailiffs under those circumstances might be accused of wrongful detention and conversion of the third parties' goods. JA informed the Panel that common law protection was available to executing Bailiffs if they had acted honestly without being insolent or oppressive in performing their duty. The execution of court orders required decisions to be made on the ground taking all the information available into consideration. A set of guidelines for executing officers had been drafted in consultation with staff. In addition, each of the regional operating units had started regular experience sharing sessions among staff so that the knowledge and experience gained in execution exercises were shared. JA further advised that according to legal advice, gazettal of the appointment of Bailiffs might provide prima facie evidence of such appointments. It would follow up on the proposal of making the appointment of Bailiffs by gazettal in order to establish their legal authority and status.

11. Members considered it essential that Bailiffs who executed court orders and judgments in good faith should be protected from the risk of being held liable to action for damages arising from wrongful seizures or breach of duties. They expressed support for a set of detailed guidelines to be prepared as soon as possible for the Bailiffs and considered that instant support to front-line Bailiffs should be enhanced.

12. Hon James TO, however, expressed concern that the common law defence cited in the Suffiad's judgment in *Fu Lok Man James v Chief Bailiff of the High Court [1998]* was that the Bailiff should be protected from an action for damage if he had made an honest mistake in execution of a court order which had caused no "real grievance" or "substantial grievance" to a claimant beyond the mere entry and seizure of the goods. As the terms "honest mistake", "real grievance" and "substantial grievance" were unclear, he considered that express statutory provisions should be provided instead. JA maintained its view that the same terms would likely be used if statutory provisions were introduced to protect Bailiffs. It did not envisage that legislation would afford Bailiffs any greater protection than that currently available under the common law.

13. JA subsequently informed the Panel that a Practical Manual for Bailiffs was issued in August 2003 and a working group of Bailiff Grade officers had been formed to monitor its usage with a view to updating and improving it where appropriate.

Recent development

14. During the examination of the Estimates of Expenditure 2010-11, Hon LI Fung-ying raised a written question relating to the workload of Bailiffs as well as the establishment and strength of the Bailiff Grade. The written question and the JA's reply are in **Appendix V**.

Relevant papers

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

Duty List of Bailiff

- (1) To arrest judgment debtors, absconding debtors and enforcement of committal Warrants under Criminal Jurisdiction;
- (2) To execute Magistrate Warrants and Distress Warrants, Writ of *Fieri Facias* under Civil Jurisdiction by seizure of property, preparation of inventories and valuation of property and duties in connection with the sale thereof;
- (3) To undertake eviction with a view to obtaining vacant possession of premises and land under the strength of Writ of Possession;
- (4) To attend Interpleader Proceedings in Court;
- (5) To collect judgment debts and cost in the course of execution of judgment and order;
- (6) To endorse or prepare affidavit on mode of execution;
- (7) To arrest ship and serve documents on ships under Admiralty Jurisdiction;
- (8) To serve foreign legal process;
- (9) To attend Courts;
- (10) To keep law and order in the Court Buildings;
- (11) To carry a pager in relation to the on-call system;
- (12) To investigate the cause of absent jurors under Court Order;
- (13) To execute Injunction Orders, Ward Orders etc.;
- (14) To arrange court hearing and act as interpreter when hearing is being conducted outside office hours and at Judge's residence;
- (15) To supervise Bailiff's Assistant in the course of execution;
- (16) To attend to the sale of deceased persons' property under Court Order; and
- (17) To undertake any other duties as may be assigned by Assistant Chief Bailiff/Senior Bailiff.

○ 司法機構 ○

(六) 執達主任

薪金：月薪由一萬四千九百零五元至二萬二千零三十五元

入職條件：①香港中學會考英文科（課程乙）考獲C級或以上及另外四科，包括中國語文科考獲E級或以上，或同等學歷；②在下列行業的其中一項或以上，有不少於五年的工作經驗——①法律界；②司法界；③盤點存貨；④物業估值及⑤體魄強壯。（註：申請人需在申請表上清楚述明在有關行業的工作經驗及表列該等工作的職責。）

職責：執達主任的主要工作是：①民事案件方面：拘捕裁判債務人及／或潛逃的債務人；負責查封財物、駐守物業、盤點存貨、物業估值以及售賣財物等工作，以便執行封租令／裁判官的令狀；收回樓宇，驅離佔用樓宇的人士，執行禁制令；在需要時，於執行判令期間，收取債務人的欠款；出席互爭權利的訴訟聆訊；及就執行命令的方式批註文件或準備誓章；②刑事案件方面：於動議頒布轉解令時，在法庭內候命，執行因藐視法庭而頒布的轉解令，將藐視法庭的被告人拘捕及送往懲教署，就執行命令的方式批註文件或準備誓章；及③在海事案件方面：向船舶執行拘禁令，在有需要時二十四小時當值；向船舶送達法律及法庭文書，以及就執行的方式批註文件或準備誓章。（註：執達主任或需不定時工作。凡持有有效的香港駕駛執照者，可能需要在當值時駕駛汽車。）

Bailiff Grade Structure and Strength
執達主任職系架構及實際員額

Rank 職級	Strength 實際員額
Chief Bailiff 總執達主任	2
Assistant Chief Bailiff 助理總執達主任	5
Senior Bailiff 高級執達主任	15
Bailiff 執達主任	
Civil Servant 公務員	30
Contract 合約	6

Appendix III

Percentages of Court Orders executed within/outside the target waiting times in 2003

<u>Nature of Court Order</u>	<u>Target Waiting Time</u>	<u>Execution within Target Waiting Time</u>	<u>Execution outside Target Waiting Time</u>
Writ of Fieri Facias	10 days	92%	8%
Distress Warrant	6 days	78%	22%
Writ of Possession	30 days	92%	8%

Measures to enhance the Bailiff Service

Re-engineering of business process

After a successful trial scheme to re-engineer the process of work assignment, the Court Orders Section fully implemented the re-engineered process in 2003. Each Bailiff is now responsible for planning and undertaking the whole process of executing a court order. The previous arrangements were that tasks were assigned to the Bailiffs by their senior officers and different Bailiffs might be involved in the same case. Improvements to the waiting times have been significant.

Setting up of a re-possession team

The Court Orders Section has deployed a special team of Bailiffs to the Lands Tribunal since April 2003. This service has enabled landlords and tenants attending the Lands Tribunal to know more timely and fully the procedure for executing Writs of Possession. The physical proximity of the team to the Lands Tribunal has also enabled staff to take earlier action to execute the Writs.

Liaison with estate management companies

The Court Orders Section has initiated a programme of visits to major estate management companies since early 2003 to brief their staff on execution of court orders in premises under their management. The briefings have facilitated the Bailiffs in accessing the premises concerned.

Plans are in hand to widen the scope of liaison to include owners' corporations.

Use of technology

The Court Orders Section handles a large volume of mailing of summonses. This is being done manually. After an in-house management review of the procedure for mailing such summonses, the Courts Orders Section will re-engineer the process to enable the folding machine at the Central Summons Processing Unit to be used for the mailing service to enhance the efficiency of the staff.

Recruitment of Bailiffs

A recruitment of Bailiff on non-civil service contract terms is underway to strengthen the number of front-line Bailiffs.

Examination of Estimates of Expenditure 2010-11

Reply Serial No.

**CONTROLLING OFFICER'S REPLY TO
INITIAL WRITTEN QUESTION**

JA010

Head: 80 JudiciarySubhead (No. & title):

Question Serial No.

1635

Programme: (2) Support Services for Courts' OperationControlling Officer: Judiciary AdministratorDirector of Bureau: Judiciary AdministratorQuestion:

In 2008 and 2009, the workload of bailiff services has been increasing. The executions attempted increased from 22 276 in 2008 to 24 277 in 2009, with an expected increase to reach 24 280 in 2010; while the summons services attempted increased from 84 416 in 2008 to 88 335 in 2009, with an expected increase to reach 88 340 in 2010.

- (i) Please provide information on the establishment and strength of Bailiffs for 2008 and 2009 respectively, and the projected establishment and strength for 2010.
- (ii) Please provide information on the establishment and strength of Bailiff's Assistants for 2008 and 2009 respectively, and the projected establishment and strength for 2010.

Asked by: Hon. LI Fung-yingReply:

- (i) The establishment and strength in respect of Bailiff for 2008, 2009 and the projected establishment and strength for 2010 are as follows –

Year	Establishment	Strength
2008	27	22
2009	27	26
2010*	27	24

- (ii) The establishment and strength in respect of Bailiff's Assistants for 2008, 2009 and the projected establishment and strength for 2010 are as follows –

Year	Establishment	Strength
2008	43	38
2009	43	37
2010*	43	35

* Recruitment exercises to enhance the manpower positions for both Bailiff and Bailiff's Assistant in 2010 are in progress.

Signature _____

Name in block letters _____

EMMA LAU

Post Title _____

Judiciary Administrator

Date _____

18.3.2010

Bailiff services

Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Panel on Administration of Justice and Legal Services	27 January 2003	<p>Judiciary Administration's paper on "Work of Bailiffs" [LC Paper No. CB(2)1013/02-03(01)] http://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/aj0127cb2-1013-1e.pdf</p> <p>Organisation chart of Court Orders Section [LC Paper No. CB(2)1039/02-03(01)] http://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/aj0127cb2-1039e01.pdf</p> <p>Structure and strength of Bailiff Grade [LC Paper No. CB(2)1039/02-03(02)] http://www.legco.gov.hk/yr02-03/chinese/panels/ajls/papers/aj0127cb2-1039ce02.pdf</p> <p>Duty list of Bailiff [LC Paper No. CB(2)1044/02-03(01)] http://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/aj0127cb2-1044-1ce-scan.pdf</p> <p>Bailiff Grade Union's letter dated 24 January 2003 [LC Paper No. CB(2)1044/02-03(02)] http://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/aj0127cb2-1044-2e.pdf</p> <p>Minutes of meeting [LC Paper No. CB(2)1248/02-03] http://www.legco.gov.hk/yr02-03/english/panels/ajls/minutes/aj030127.pdf</p>
	23 February 2004	<p>Judiciary Administrator's letter dated 9 February 2004 on performance of Bailiff Service and staffing of the Judiciary and modernisation programmes of the Judiciary [LC Paper No. CB(2)1342/03-04(01)] http://www.legco.gov.hk/yr03-04/english/panels/ajls/papers/aj0223cb2-1342-1e.pdf</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Legislative Council	6 May 2009	Official Record of Proceedings of a written question raised by Hon CHAN Kin-por on "Execution of court orders by Bailiffs" http://www.legco.gov.hk/yr08-09/english/counmtg/hansard/cm0506-translate-e.pdf
Finance Committee (Special meeting)	24 March 2010	Minutes of meeting

Council Business Division 2
Legislative Council Secretariat
22 June 2010