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**Panel on Administration of Justice and Legal Services**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 21 December 2010**

**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 Panel on Administration of Justice and Legal Services ("the Panel") 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.

#### Legislative amendments for the implementation of 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 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 were appropriate.

5. The main package of CJR legislative amendments was enacted by the Legislative Council ("LegCo") under the Civil Justice (Miscellaneous Amendments) Ordinance 2008 and seven sets of subsidiary legislation in January and July 2008 respectively. A set of 24 Practice Directions ("PDs") has also been promulgated to regulate the conduct of court proceedings under the reformed system. CJR was implemented on 2 April 2009.

#### Major changes under CJR

6. The implementation of CJR has brought 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 on Draft Subsidiary Legislation Relating to CJR [LC Paper No. CB(2)2222/07-08] for details of the changes made under CJR.

### **Relevant discussions of the Panel**

#### Litigation costs

7. When the Judiciary Administration ("JA") briefed the Panel on the proposed legislative amendments relating to CJR at the meetings on 26 June and 12 December 2006, some members expressed concern whether the proposed reforms would achieve the objectives of improving cost-effectiveness of the civil justice system and reducing litigation costs. These members noted with concern

the experience of the United Kingdom ("UK") in reforming the civil justice system, which indicated that the problem of front-end loading of costs arising from introducing measures such as pre-action protocols had actually led to an increase in litigation costs in some cases. They pointed out that pre-action protocols, if implemented in Hong Kong, would mean that court proceedings would begin at a much earlier stage than otherwise and this would incur additional litigation costs.

8. JA advised the Panel that in deciding which reforms to recommend, the Working Party had taken into account the assessments on the impact of the reforms on the English civil justice system introduced by Lord Woolf in 1998. Unlike UK, pre-action protocols would not be prescribed for cases across the board in Hong Kong. The recommendations in the Final Report were inter-related and when implemented in its entirety, would enhance the cost effectiveness of the system of civil procedure.

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

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9. At its meeting on 13 January 2009, JA reported to the Panel on the progress on preparation made by the Judiciary and legal profession for the implementation of CJR scheduled for 2 April 2009. The Panel noted that the Judiciary had organized tailor-made courses on CJR to train Judges and Judicial Officers as well as support staff on CJR starting from September 2008. A set of detailed operation manuals on the reformed areas had also been prepared to provide guidance to support staff on implementation. The two legal professional bodies also informed the Panel that they had devised extensive training programmes for their members and had indicated their readiness for the implementation of CJR in April 2009.

#### Assistance to unrepresented litigants

10. Given the impact of the procedural changes in CJR on unrepresented litigants, the Panel received a briefing by JA at its meeting on 13 January 2009 on the enhancement of the services and facilities in the Resource Centre for Unrepresented Litigants ("Resource Centre") for the purpose of assessing the adequacy of its services. The Panel noted that in the light of the implementation of CJR and to facilitate the provision of services to unrepresented litigants, a revamped Steering Committee on Resource Centre for Unrepresented Litigants ("Steering Committee") was set up in the Judiciary to monitor matters relating to the Resource Centre to ensure that adequate and suitable assistance was provided.

11. Members considered that the growing number of unrepresented litigants had strained judicial time and resources, and were of the view that services to unrepresented litigants should be further enhanced by providing them with legal advice service. Members noted the Judiciary's position that in view of the fundamental principle of maintaining the independence and neutrality of the Judiciary, it would be inappropriate for the Resource Centre to offer legal advice to unrepresented litigants. On members' suggestion of establishing a free legal advice scheme with volunteer lawyers giving free preliminary legal advice to unrepresented litigants at an office located near the Resource Centre, JA advised that subject to the principle of maintaining the neutrality and impartiality of the Judiciary not being compromised, it was prepared to facilitate the initiatives of the Executive Authorities and/or pro bono service providers in rendering assistance to unrepresented litigants.

12. JA also advised the Panel that it had conveyed to the Steering Committee members' views on exploring possible collaboration with law students in providing assistance to unrepresented litigants in the Resource Centre. Members noted the Steering Committee's view that staff of the Resource Centre were well-equipped to provide assistance to litigants on procedural matters, and the existing manpower could cope with the workload. As regards the possibility of providing legal advice to litigants in the Resource Centre by law students, JA advised that the general subject of providing free legal advice to litigants had been thoroughly considered by a Subcommittee under the Consultative Committee on the Resource Centre in 2006. The Steering Committee noted that after considering the matter thoroughly with inputs from members of the legal profession and the universities, the Subcommittee and the Consultative Committee had concluded that the Resource Centre should not be a provider of free legal advice.

### Mediation

13. An objective of the reformed system is to facilitate the settlement of disputes and the court has the duty as part of active case management to further that objective by facilitating the use of an alternative resolution procedure, such as mediation, if the court considers that appropriate. Members noted that following consultation with the two legal professional bodies, the Practice Direction on Mediation had taken effect from 1 January 2010. Members were also advised by the Administration that under the reformed system, legal aid was available to fund the costs of mediation of a legally aided party as costs incidental to the legal proceedings.

### Monitoring mechanism

14. Members considered it important to rigorously monitor the reformed civil justice system and gauge feedback from relevant stakeholders after the implementation of CJR. In this regard, JA advised the Panel that CJ had set up a committee to monitor the working of the reformed civil justice system and to make suggestions to ensure its effective operation. The committee would be chaired by the Chief Judge of the High Court and would comprise judges, a barrister, a solicitor, a member of the Department of Justice and Legal Aid Department and an experienced mediator.

15. In response to the request of the Panel, JA would brief members on the feedback received on the effectiveness of the reformed system at the upcoming meeting on 21 December 2010.

### **Relevant papers**

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

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15 December 2010

**Major changes brought about by the implementation of  
Civil Justice Reform ("CJR")**

	<b>Major areas of changes</b>
<p><b>1.</b></p>	<p><b><u>Underlying objectives</u></b></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"> <li>(a) increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court;</li> <li>(b) ensure that a case is dealt with as expeditiously as is reasonably practicable;</li> <li>(c) promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;</li> <li>(d) ensure fairness between the parties;</li> <li>(e) facilitate settlement of disputes; and</li> <li>(f) ensure that the resources of the Court are distributed fairly.</li> </ul>
<p><b>2.</b></p>	<p><b><u>Case management powers of the court</u></b></p> <p>Judges have been 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 "summons for directions" procedure has been 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><b>3.</b></p>	<p><b><u>Pleadings to be verified by Statements of Truth</u></b></p> <p>A new requirement is introduced for pleadings to be verified by "statements of</p>

	<b>Major areas of changes</b>
	truths" and for substantive defences to be properly identified. This will enable the relevant issues in proceedings to be identified more easily at an early stage and discourage the raising of unmeritorious allegations or defence.
<b>4.</b>	<b><u>Discovery</u></b>  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.
<b>5.</b>	<b><u>Costs-only proceedings</u></b>  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. Before the implementation of CJR, where parties could not agree on the amount of costs even though the substantive dispute had been resolved, it was necessary to litigate the whole dispute in order to resolve the question of costs.
<b>6.</b>	<b><u>Admissions and default judgments</u></b>  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.
<b>7.</b>	<b><u>Sanctioned offers and sanctioned payments</u></b>  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 has substantially altered the system of payments into court and has considerably widened the ambit of offers to settle cases. For example, under the old rules, only a defendant might offer to settle claims by payments into court, thereby putting a plaintiff at risk as to costs. Under the reformed 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.
<b>8.</b>	<b><u>Interim relief in aid of proceedings outside Hong Kong</u></b>  Before the implementation of CJR, a plaintiff in proceedings outside Hong Kong involving a defendant with assets in Hong Kong could not seek interim relief from the Hong Kong courts. Only when substantive proceedings exist

	<b>Major areas of changes</b>
	<p>in Hong Kong could such interim relief be obtained. Under the reformed system, the Court of First Instance ("CFI") is empowered 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.</p>
<b>9.</b>	<p><b><u>Vexatious litigants</u></b></p> <p>Before the implementation of CJR, applications to restrict a vexatious litigant from issuing fresh proceedings except with the leave of the court, could 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 has been 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 has also been 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>
<b>10.</b>	<p><b><u>Costs</u></b></p> <p>(a) <u>Wasted costs order</u></p> <p>Under CJR, the court's power to make wasted costs orders against solicitors for any costs improperly incurred or wasted by undue delay or other misconduct has been extended to cover barristers.</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 has been empowered 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>



	<b>Major areas of changes</b>
<b>11.</b>	<p><b><u>Leave to appeal</u></b></p> <p>To screen out unmeritorious appeals on interlocutory matters which do not determine substantive rights, amendments have been made to the High Court Ordinance (Cap. 4) to introduce the requirement that an interlocutory appeal to the Court of Appeal ("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>

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Relevant documents on implementation of Civil Justice Reform

Meeting	Date of meeting	Paper
Panel on Administration of Justice and Legal Services	--	<p>Final Report and Executive Summary on Civil Justice Reform published on 3 March 2004</p> <p><a href="http://www.legco.gov.hk/yr06-07/english/bc/bc57/papers/bc570611cb2-1960-e.pdf">http://www.legco.gov.hk/yr06-07/english/bc/bc57/papers/bc570611cb2-1960-e.pdf</a></p> <p><a href="http://www.legco.gov.hk/yr03-04/english/panels/ajls/papers/aj0322cb1-1574e-scan.pdf">http://www.legco.gov.hk/yr03-04/english/panels/ajls/papers/aj0322cb1-1574e-scan.pdf</a></p>
	26 June 2006	<p>Background brief on "Civil Justice Reform" prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)2517/05-06(04)]</p> <p><a href="http://www.legco.gov.hk/yr05-06/english/panels/ajls/papers/aj0626cb2-2517-4e.pdf">http://www.legco.gov.hk/yr05-06/english/panels/ajls/papers/aj0626cb2-2517-4e.pdf</a></p> <p>Minutes of meeting [LC Paper No. CB(2)3001/05-06]</p> <p><a href="http://www.legco.gov.hk/yr05-06/english/panels/ajls/minutes/aj060626.pdf">http://www.legco.gov.hk/yr05-06/english/panels/ajls/minutes/aj060626.pdf</a></p>
	12 December 2006	<p>Background brief on "Civil Justice Reform" prepared by the LegCo Secretariat [LC Paper No. CB(2)568/06-07(05)]</p> <p><a href="http://www.legco.gov.hk/yr06-07/english/panels/ajls/papers/aj1212cb2-568-5-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ajls/papers/aj1212cb2-568-5-e.pdf</a></p> <p>Judiciary Administration's paper on "Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform" [LC Paper No. CB(2)568/06-07(06)]</p> <p><a href="http://www.legco.gov.hk/yr06-07/english/panels/ajls/papers/aj1212cb2-568-6-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ajls/papers/aj1212cb2-568-6-e.pdf</a></p> <p>Minutes of meeting [LC Paper No. CB(2)889/06-07]</p> <p><a href="http://www.legco.gov.hk/yr06-07/english/panels/ajls/minutes/aj061212.pdf">http://www.legco.gov.hk/yr06-07/english/panels/ajls/minutes/aj061212.pdf</a></p>

<b>Meeting</b>	<b>Date of meeting</b>	<b>Paper</b>
Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007	--	<p>Background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1837/06-07(02)] <a href="http://www.legco.gov.hk/yr06-07/english/bc/bc57/papers/bc570515cb2-1837-2-e.pdf">http://www.legco.gov.hk/yr06-07/english/bc/bc57/papers/bc570515cb2-1837-2-e.pdf</a></p> <p>Report of the Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007 to the Legislative Council on 30 January 2008 [LC Paper No. CB(2)920/07-08] <a href="http://www.legco.gov.hk/yr06-07/english/bc/bc57/reports/bc570130cb2-920-e.pdf">http://www.legco.gov.hk/yr06-07/english/bc/bc57/reports/bc570130cb2-920-e.pdf</a></p>
Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform	--	<p>Report of the Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform to the House Committee meeting on 13 June 2008 [LC Paper No. CB(2)2222/07-08] <a href="http://www.legco.gov.hk/yr07-08/english/hc/papers/hc0613cb2-2222-e.pdf">http://www.legco.gov.hk/yr07-08/english/hc/papers/hc0613cb2-2222-e.pdf</a></p>
Panel on Administration of Justice and Legal Services	13 January 2009	<p>Background brief on "Operation of the Resource Centre for Unrepresented Litigants" prepared by the LegCo Secretariat [LC Paper No. CB(2)601/08-09(05)] <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-5-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-5-e.pdf</a></p> <p>Judiciary Administration's paper on "Resource Centre for Unrepresented Litigants" [LC Paper No. CB(2)601/08-09(04)] <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-4-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-4-e.pdf</a></p> <p>Background brief on "Implementation of Civil Justice Reform" prepared by the LegCo Secretariat [LC Paper No. CB(2)601/08-09(07)] <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-7-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-7-e.pdf</a></p>

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		<p>Judiciary Administration's paper on "Implementation of Civil Justice Reform" [LC Paper No. CB(2)601/08-09(06)]  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-6-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-601-6-e.pdf</a></p> <p>Submission on "Civil Justice Reform Training Programme - October 2008 to March 2009" from the Law Society of Hong Kong  [LC Paper No. CB(2)620/08-09(01)]  <i>(English version only)</i>  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-620-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-620-1-e.pdf</a></p> <p>Letter dated 12 January 2009 from the Hong Kong Bar Association  [LC Paper No. CB(2)638/08-09(01)]  <i>(English version only)</i>  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-638-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-638-1-e.pdf</a></p> <p>Minutes of meeting  [LC Paper No. CB(2)1063/08-09]  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/minutes/aj20090113.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/minutes/aj20090113.pdf</a></p> <p><u>Follow-up papers</u></p> <p>Extract of the Chief Justice's speech at the Ceremonial Opening of the Legal Year 2009 on implementation of Civil Justice Reform  [LC Paper No. CB(2)673/08-09(01)]  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-673-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-673-1-e.pdf</a></p> <p>Judiciary Administration's paper on the terms of reference and membership of the committee established by the Chief Justice to monitor the implementation of Civil Justice Reform  [LC Paper No. CB(2)2561/08-09(01)]  <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-2561-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-2561-1-e.pdf</a></p>

<b>Meeting</b>	<b>Date of meeting</b>	<b>Paper</b>
		Judiciary Administration's response on issues relating to the operation of the Resource Centre for Unrepresented Litigants raised by members at the Panel meeting on 13 January 2009 [LC Paper No. CB(2)22/09-10(01)] <a href="http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-22-1-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0113cb2-22-1-e.pdf</a>

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