

立法會
Legislative Council

LC Paper No. CB(4)17/14-15
(These minutes have been seen
by the Administration and the
Judiciary Administration)

Ref : CB4/BC/4/13

Bills Committee on Administration of Justice
(Miscellaneous Provisions) Bill 2014

Minutes of the second meeting
held on Thursday, 24 July 2014, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Dennis KWOK (Chairman)
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon YIU Si-wing
Hon TANG Ka-piu, JP

Members absent : Hon James TO Kun-sun
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP

Public officers : Agenda item II
Attending

Miss Ingrid YU
Assistant Director of Administration (3)
(Acting)

Mr Esmond LEE
Deputy Judiciary Administrator (Development)

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Miss Elaine NG
Senior Government Counsel

Ms Angie LI
Senior Government Counsel

Mr Henry CHAN
Government Counsel

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (4)3

Action

I. Confirmation of minutes of meeting

LC Paper No. CB(4)955/13-14 -- Minutes of meeting held on 3
June 2014

The minutes of the meeting held on 3 June 2014 were confirmed.

II. Meeting with the Administration and the Judiciary Administration

(LC Paper No. CB(4)828/13-14(01) -- List of follow-up actions arising
from the discussion at the
meeting on 3 June 2014

LC Paper No. CB(4)947/13-14(01) -- Submission from the Law
Society of Hong Kong dated 3
July 2014 (English version only)

Action

- LC Paper No. CB(4)947/13-14(02) -- Submission from the Labour Advisory Board dated 14 July 2014 (Chinese version only)
- LC Paper No. CB(4)960/13-14(01) -- Administration's response to submission from the Labour Advisory Board dated 14 July 2014 as set out in LC Paper No. CB(4)947/13-14(02)
- LC Paper No. CB(4)947/13-14(03) -- Submission from the Hong Kong Bar Association dated 18 July 2014 (English version only)
- LC Paper No. CB(3)582/13-14 -- The Bill
- File Ref.: SC/CR/2/1/65 PT11 -- Legislative Council Brief issued by the Administration Wing of the Chief Secretary for Administration's Office and Judiciary Administration
- LC Paper No. LS51/13-14 -- Legal Service Division Report
- LC Paper No. CB(4)690/13-14(02) -- Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)690/13-14(04) -- Assistant Legal Adviser's letter dated 23 May 2014 to the Administration
- LC Paper No. CB(4)818/13-14(01) -- Administration's reply dated 13 June 2014 to Assistant Legal Adviser's letter dated 23 May 2014
- LC Paper No. CB(4)690/13-14(03) -- Paper on Administration of Justice (Miscellaneous Provisions) Bill 2014 prepared by the Legislative Council Secretariat (Background brief)

Action

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration and the Judiciary Administration

3. The Judiciary Administration was requested to provide the following information:
 - (a) whether the proposed amendment to rule 12(2) of the Labour Tribunal (General) Rules (Cap. 25 sub. leg. A) to remove the 12-month limitation on registration of awards or orders in the District Court (Clause 17 of the Bill) would enable an employee to claim wage in arrears from an employer who had served out a bankruptcy order after four years; and
 - (b) the circumstances and precedent cases the Labour Tribunal would make/made an order for security for the payment of an award or order against an employee.
4. The Judiciary Administration was also requested to:
 - (a) reconsider the drafting of the proposed revised definition of "live television link" in section 79A of the Criminal Procedure Ordinance ("CPO") (Cap. 221) to the effect that the Criminal Court Users' Committee's consent should be obtained before any facilities, regardless of the technology used, could be introduced by the Judiciary in the evidence-taking process by live television links for criminal proceedings;
 - (b) consider aligning the two different renditions of the conjunction "and", namely "和" and "並", in the Chinese version of the proposed amendments to paragraphs (a)(i) and (ii) of the definition of "live television link" in section 79A of the CPO;
 - (c) consider aligning the textual difference between the Chinese version and the English version of paragraph (a)(ii) in the proposed revised definition of "live television link" in section 79A of the CPO, in that the conjunction "及" was used between paragraphs (a)(ii) and (b) in the Chinese version but "and" was not used in the English version, and review the Chinese and

Action

English versions of the whole revised definition of "live television link" in section 79A for any similar textual inconsistencies;

- (d) consider setting out by way of a Practice Direction the relevant factors that should be considered by District Judges when deciding whether they should deliver the reasons for the verdict orally or in writing under the proposed amendment to section 80(2) of the District Court Ordinance ("DCO") (Cap. 336); and
- (e) consider stipulating in the proposed section 80(6) of the DCO that the Court must make a copy of the reasons delivered in writing available for public inspection on the website of the Judiciary, and that the requirements under the proposed section 80(6) (a) to (c) (together with that relating to publication on the Judiciary's website) should also apply to the reasons delivered orally and reduced to writing within 21 days after the hearing or trial under the proposed section 80(4).

III. Any other business

- 5. There being no other business, the meeting ended at 4:00 pm.

Council Business Division 4
Legislative Council Secretariat
9 October 2014

**Proceedings of the second meeting of
Bills Committee on Administration of Justice (Miscellaneous Provisions) Bill 2014
on Thursday, 24 July 2014, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes of meeting			
001145 – 001155	Chairman	Confirmation of minutes of the meeting held on 3 June 2014	
Agenda item II – Meeting with the Administration and the Judiciary Administration			
001156 – 001600	Chairman Judiciary Administration Mr TANG Ka-piu	<p>Discussion on the submissions received from the Law Society of Hong Kong ("LawSo"), Hong Kong Bar Association ("HKBA") and the Labour Advisory Board.</p> <p>The Chairman suggested and the Bills Committee agreed that as the Judiciary Administration had yet to provide the information on appeals to the Court of Final Appeal ("CFA") requested by the Bills Committee at the meeting on 3 June 2014 and the "or otherwise" provision in section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance ("HKCFAO") (Cap. 484), the Bill might be scrutinized part by part, except for Part 5 (i.e. abolition of the category of appeal as of right in civil appeals) which needed to be further discussed at the next meeting when the information provided by the Judiciary Administration would be available.</p> <p>The Judiciary Administration advised that as the Panel on Administration of Justice and Legal Services would follow up the issue of the proposal of incorporating amendments to the Criminal Procedure Ordinance (Cap. 221) to strengthen privacy protection for victims and witnesses in fear in sexual offence cases, the Judiciary Administration did not consider it necessary to pursue the matter in the context of the Bill. At the request of the Chairman, the Judiciary Administration would provide a written response in this respect.</p> <p style="text-align: center;"><i>(Post-meeting note: The response provided by the Judiciary Administration was issued vide LC Paper No. CB(4)982/13-14(01) on 31 July 2014.)</i></p> <p>Noting the proposed amendment to rule 12(2) of the</p>	The Judiciary

Time marker	Speaker	Subject(s)	Action required
		<p>Labour Tribunal (General) Rules (Cap. 25 sub. leg. A) to remove the 12-month limitation on registration of awards or orders in the District Court, Mr TANG Ka-piu enquired if such an amendment would enable an employee to claim wage in arrears from an employer who had served out a bankruptcy order after four years. Mr TANG also noted that the proposed amendment to section 30 of the Labour Tribunal Ordinance (Cap. 25) ("LTO") appeared to suggest that the Labour Tribunal might make an order for security for the payment of an award or order against an employee. He enquired about the circumstances and precedent cases where an employee would be/was ordered by the Labour Tribunal to give such security.</p>	<p>Administration to follow up as per paragraph 3(a) and (b) of the minutes.</p>
<p>001601– 004100</p>	<p>Chairman Judiciary Administration Administration Mr Alan LEONG Mr YIU Si-wing</p>	<p><u>Clause-by-clause examination of the Bill</u></p> <p>Marked-up version (LC Paper No. CB(4)690/13-14(02))</p> <p><u>Part 1 – Preliminary</u></p> <p><u>Part 2 – Amendment to Criminal Procedure Ordinance (Cap. 221)</u></p> <p><u>Clause 3 – Section 79A amended (interpretation)</u></p> <p>Discussion on the HKBA's concern about the security issue arising from replacing the expression "closed circuit television system" with "live television link".</p> <p>The Judiciary Administration advised that it would not be advisable to prescribe in the definition of "live television link" in section 79A or by subsidiary legislation the endorsed technologies that were considered suitable. The HKBA's concern should more appropriately be dealt with administratively through the consultation mechanism with the Criminal Court Users' Committee, which was chaired by the Hon Mr Justice Louis TONG, Judge of the Court of First Instance of the High Court, and consisted of representatives of the HKBA and LawSo among others.</p> <p>In response to Mr Alan LEONG's request, the Judiciary Administration agreed to reconsider the drafting of the proposed definition of "live</p>	<p>The Judiciary Administration to follow up as</p>

Time marker	Speaker	Subject(s)	Action required
		<p>television link" in section 79A to the effect that the Criminal Court Users' Committee's consent should be obtained before any facilities, regardless of the technology used, could be introduced by the Judiciary in the evidence-taking process by live television links for criminal proceedings.</p> <p>Mr YIU Si-wing's enquiry about the different renditions of the conjunction "and", namely "和" and "並", in the Chinese version of the proposed amendments to paragraphs (a)(i) and (ii) of the definition of "live television link" in the existing section 79A.</p> <p>Mr Alan LEONG's enquiry about the textual difference between the Chinese version and the English version of paragraph (a)(ii) of the proposed definition of "live television link" in section 79A, in that the conjunction "及" was used between paragraphs (a)(ii) and (b) in the Chinese version but "and" was not so used in the English version.</p> <p>The Chairman suggested that the Chinese and English versions of the whole revised definition of "live television link" in section 79A be reviewed for any similar textual inconsistencies.</p>	<p>per paragraph 4(a) of the minutes.</p> <p>The Judiciary Administration and the Administration to follow up as per paragraph 4(b) of the minutes.</p> <p>The Judiciary Administration and the Administration to follow up as per paragraph 4(c) of the minutes.</p>
004101 – 004700	Chairman Judiciary Administration	<p><u>Part 3 – Amendments to Magistrates Ordinance (Cap. 227)</u></p> <p><u>Clause 4 – Section 5AA amended (professional qualifications of permanent magistrates)</u></p> <p>The Chairman's enquiry and the Judiciary Administration's response regarding whether a legal officer in the Mainland or other non-common law jurisdictions would become eligible to be appointed as a permanent magistrate if the relevant requirements under section 5AA were satisfied.</p>	
004701 – 011200	Chairman Mr WONG Yuk-man Mr YIU Si-wing Judiciary Administration Assistant Legal Adviser 3 ("ALA3")	<p><u>Part 4 – Amendment to District Court Ordinance (Cap. 336)</u></p> <p><u>Clause 5 – Section 80 amended (verdict)</u></p> <p>Discussion as to whether amending section 80 of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the District Court Ordinance ("DCO") to allow District Judges the flexibility to hand down the reasons for verdicts and sentences in criminal proceedings in writing direct would prejudice the legal rights of the litigants.</p> <p>Mr WONG Yuk-man opined that in criminal proceedings, open hearing was a basic human right, and the handing down of verdict orally was an integral part of open hearing. He also opined that the Judiciary Administration should consider setting out in section 80 of DCO the relevant factors that should be considered by District Judges when deciding whether they should deliver the reasons for the verdict orally or in writing under the proposed amendment to section 80.</p> <p>The Judiciary Administration advised that the circumstances of each case might vary and each case should be considered on its own merits. It would be difficult to list all the relevant factors that the court might consider in exercising the discretion. The Judiciary Administration therefore did not consider it appropriate to set out the factors in the Bill as this would reduce the flexibility for a District Judge to consider the best arrangements in the light of all the circumstances of each case. Nevertheless, the Judiciary Administration would consider the feasibility of setting out the factors by way of a Practice Direction.</p> <p>Mr YIU Si-wing's enquiry and the Judiciary Administration's response regarding whether the will of the litigants would be taken into account in the District Judge's decision on whether the reasons for the verdict should be delivered orally or in writing.</p> <p>The Chairman's enquiry and the Judiciary Administration's response regarding the requirement to lodge a copy of the reasons for the verdict in the High Court Library and the Registry of the Court rather than uploading it onto the website of the Judiciary.</p> <p>ALA3's enquiry and the Judiciary Administration's response regarding whether the proposed requirements under the proposed section 80(6) should also apply to those reasons delivered orally and reduced to writing under the proposed section</p>	<p>The Judiciary Administration to follow up as per paragraph 4(d) of the minutes.</p> <p>The Judiciary Administration to follow up as per paragraph 4(e) of the minutes.</p> <p>The Judiciary Administration to follow up as per paragraph 4(e) of the</p>

Time marker	Speaker	Subject(s)	Action required
		80(4). The Chairman opined that it was necessary to stipulate in section 80(6) the requirement for uploading onto the website of the Judiciary a copy of the reasons delivered in writing and reduced to writing.	minutes.
011201 – 011230		<p><u>Part 5 – Amendments to Hong Kong Court of Final Appeal Ordinance (Cap. 484)</u></p> <p>The Bills Committee agreed to defer the scrutiny of Part 5 of the Bill (i.e. abolition of the category of appeal as of right in civil appeals) which needed to be further discussed at the next meeting when the information provided by Judiciary Administration became available.</p>	
011231 – 011830	Chairman Judiciary Administration	<p><u>Part 6 – Amendments Relating to Jurisdiction and Powers of Labour Tribunal</u></p> <p><u>Division 1 – Labour Tribunal Ordinance (Cap. 25)</u></p> <p><u>Clause 10 – Section 12 amended (contents of claims)</u></p> <p>Members raised no query.</p> <p><u>Clause 11 – Section 15 amended (conciliation certificate to be filed)</u></p> <p>Members raised no query.</p> <p><u>Clause 12 – Section 30 substituted</u></p> <p>Members raised no query.</p> <p><u>Clause 13 – Section 31 amended (review of awards and orders)</u></p> <p>Members raised no query.</p> <p><u>Clause 14 – Section 38 substituted</u></p> <p>Members raised no query.</p> <p><u>Clause 15 – Section 48 added (Proceedings to which amendments made by Administration of Justice (Miscellaneous Provisions) Ordinance 2014 apply)</u></p> <p>Members raised no query.</p>	

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		<p><u>Clause 16 – Schedule amended</u></p> <p>Members raised no query.</p> <p><u>Division 2 – Labour Tribunal (General) Rules (Cap. 25 sub. leg. A)</u></p> <p><u>Clause 17 – Rule 12 amended (registration of award or order in District Court)</u></p> <p>Members raised no query.</p> <p><u>Division 3 – Labour Tribunal (Forms) Rules (Cap. 25 sub. leg. C)</u></p> <p><u>Clause 18 – Schedule amended</u></p> <p>Members raised no query.</p> <p><u>Division 4 – Labour Tribunal (Suitors Funds) Rules (Cap. 25 sub. leg. D)</u></p> <p><u>Clause 19 – Rule 4 amended (registrar to give receipt)</u></p> <p>Members raised no query.</p> <p><u>Clause 20 – Schedule amended</u></p> <p>Members raised no query.</p>	
011831 – 012400	Chairman Judiciary Administration ALA3	<p><u>Part 7 – Amendments Relating to Suitors' Funds</u></p> <p><u>Division 1 – High Court Ordinance (Cap. 4)</u></p> <p><u>Clause 21 – Section 20A amended (property which may be charged)</u></p> <p>Members raised no query.</p> <p><u>Clause 22 – Section 57 amended (rules concerning deposit, etc. of moneys, etc. in High Court)</u></p> <p>Members raised no query.</p> <p>ALA3's enquiry and the Judiciary Administration's response regarding the arrangements for the preservation of securities and movable properties in the first-instance courts (e.g. the Court of First</p>	

Time marker	Speaker	Subject(s)	Action required
		Instance) for cases brought before the Court of Final Appeal.	
012401 – 012900	Chairman Judiciary Administration ALA3	<p><u>Division 3 – Lands Tribunal Ordinance (Cap. 25)</u></p> <p><u>Clauses 23 and 28 – Section 10AA and Section 40A added (Suitors' Funds Rules)</u></p> <p>Members raised no query.</p> <p>ALA3's enquiry and the Judiciary Administration's response regarding whether the execution of orders referred to in the new section 40A(1)(c) of the HKCFAO and section 10AA(1)(c) of the LTO was intended to be confined to that affecting or relating to the suitor's fund.</p>	
012901 – 012939	Chairman Judiciary Administration	<p><u>Clause 24 – Section 45 amended (Chief Justice may make rules)</u></p> <p>Members raised no query.</p> <p><u>Division 4 – District Court Ordinance (Cap. 336)</u></p> <p><u>Clause 25 – Section 52AA amended (property which may be charged)</u></p> <p>Members raised no query.</p> <p><u>Clause 26 – Section 73 amended (Suitors' Funds Rules)</u></p> <p>Members raised no query.</p> <p><u>Division 5 – Small Claims Tribunal (Cap. 338)</u></p> <p><u>Clause 27 – Section 36 amended (Chief Justice may make rules)</u></p> <p>Members raised no query.</p> <p><u>Division 6 – Hong Kong Court of Final Appeal Ordinance (cap. 484)</u></p> <p><u>Clause 28 – Section 40A added (Suitors' Funds Rules)</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
012940 – 013015	Chairman Administration Judiciary Administration	Meeting arrangements	

Council Business Division 4
Legislative Council Secretariat
9 October 2014