

香港司法機構
司法機構政務處



JUDICIARY ADMINISTRATION
JUDICIARY
HONG KONG

本函檔號 OUR REF: SC/CR/2/1/65 (Pt. 12)

來函檔號 YOUR REF: LS/B/21/13-14

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13 June 2014


Assistant Legal Advisor
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Mr YICK Wing-kin)

Dear Mr YICK,

Administration of Justice (Miscellaneous Provisions) Bill 2014

Thank you for your letter of 23 May 2014 seeking clarification on various matters relating to the captioned Bill. The responses to the issues raised in your letter are set out in the attached paper. The Chinese version of the paper will follow shortly.

Yours sincerely,


(Miss Stella CHANG)
for Judiciary Administrator

c.c. Director of Administration - (Attn: Mr Howard Lee)
Secretary for Justice – (Attn: Miss Elaine Ng
Mr Henry Chan)

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

**Responses to the Issues raised by
the Assistant Legal Adviser**

PURPOSE

This paper sets out the responses from the Administration and the Judiciary Administration to the issues raised by the Assistant Legal Advisor in his letter of 23 May 2014.

RESPONSES

Part 2 - While arrangements might have been made to protect the existing closed circuit television system used in courtrooms from external interference to or interception of the signals transmitted in the system, what security arrangements would be put in place for the audio-visual facilities to be introduced by the Judiciary in the evidence-taking process for criminal proceedings?

2. We are well aware of the importance of ensuring security in the process of giving evidence by vulnerable witnesses in criminal proceedings for the proper protection of the witnesses concerned. The Judiciary will ensure that any video-conferencing facilities to be used will be equipped with security protection features, including encryption features recommended by internationally recognized telecommunication standard organizations. One such feature is called H.235, which is promulgated by the International Telecommunication Union, which provides end-to-end protection to the transmission of audio-visual signals, including prevention against interception.

Part 4 - Regarding the new section 80(2) of the District Court Ordinance (Cap. 336) introduced under Part 4 of the Bill, what would be 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 new section 80(2)? Will the

Administration consider setting out such factors in section 80 of Cap. 336?

3. The proposed amendments to section 80 of Cap. 336 seek to address the undesirable situation where substantial legal costs are unnecessarily incurred when legal representatives have to listen to very long reasons for the verdict orally delivered in court. The proposal to allow the reasons to be delivered directly in writing will not undermine the legal rights of the parties and it is more about the court regulating its own process. This is because the reasons of the verdict, whether delivered orally first or directly in writing, will all be uploaded onto the Judiciary's website for the public's information.

4. When deciding whether to deliver the reasons for the verdict orally or in writing, a District Judge would give due consideration to various relevant factors such as the likely duration needed for the oral delivery, the complexity of a case, availability of legal representation, background of the parties concerned (e.g. language fluency and any other special needs) and wishes of the parties. The circumstances of each case may vary and each case should be considered on its own merits. It is difficult to list out all the relevant factors that the court may consider in exercising the discretion. We therefore do not consider it appropriate to set out the factors in the law as this will reduce the flexibility for a District Judge to consider the best arrangements in the light of all the circumstances of each case.

Part 5 - Amendments contained in Part 5 of the Bill relate to the abolition of the existing as-of-right appeal mechanism for civil causes or matters to the Hong Kong Court of Final Appeal ("the CFA"). Clause 6 of the Bill provides for the scope of application of Part 5 to the Hong Kong Court of Final Appeal Ordinance (Cap. 484). However, as clause 6 does not form part of Cap. 484, after the Bill is enacted, how could the public be able to know the scope of application of Part 5 by reading Cap. 484? For example, if a final judgment of the Court of Appeal falls on a date just before the commencement of Part 5, how would the appellant be able to know that before the expiration of the relevant appeal period, he still has the right to appeal under the repealed section 22(1)(a) of Cap. 484? It is noted that a new section is added to the Labour Tribunal Ordinance (Cap. 25) by clause 15 of the Bill to provide for

the application of the Bill to Cap. 25. Should a similar approach be adopted in Part 5?

5. The amendments in Part 5 of the Bill remove civil appeals as of right from Cap. 484. These amendments may be contrasted with those made to Cap. 25 by the Bill, which mainly involve introducing new provisions. Taking account of the nature of the amendments in Part 5, and the fact that the relevance of clause 6 reduces with time, we have been advised that it would be more appropriate not to incorporate the application provision into Cap. 484. However, in line with the usual practice of the Department of Justice, an editorial note will be added to both the loose-leaf version and the electronic version in its Bilingual Laws Information System to draw readers' attention to the scope of application of Part 5.

Part 6 - It appears that the Labour Tribunal's orders made under the existing section 30 of Cap. 25, which relate to security for the payment of the amount of any award, are usually made against the defendants, because this section only concerns the risk of disposal or loss of control of assets by a defendant. However, the new section 30 of Cap. 25 as drafted appears to suggest that the Labour Tribunal may make an order for security for the payment of an award or order against any party before the Tribunal which would include employees. What is the reason for the extension of the application of section 30? Does this reflect the Administration's intention? If so, under what circumstances would an employee (as a claimant) be ordered by the Labour Tribunal to give security for the payment of an award or order?

6. The proposed new section 30 of Cap. 25 is intended to apply to both a claimant and defendant. An employee can be a claimant or a defendant, and an employer can also be a claimant or a defendant. For instance, an employer may bring a claim against an employee for wages in lieu of notice or damages for breach of employment contract (such as breach of the duty of confidentiality, or breach of a restrictive covenant prohibiting the employee to work in the same trade or to work for the employer's competitors for a certain period upon leaving employment). In addition, a claimant employee may also be subject to a counterclaim by the defendant employer.

7. The circumstances under which the Labour Tribunal may order security be provided are those set out in the proposed new section 30(4). The award or order for which the Tribunal may order a claimant employee to provide security includes an order for costs.

Part 7(a) - Under the existing section 57(2)(f) of the High Court Ordinance (Cap. 4) and section 73(2)(f) of Cap. 336, the Chief Judge of the High Court may makes rules to provide for disposing of (a) money, other than the balance of an intestate estate, remaining unclaimed in the High Court or the District Court or (b) money remaining unclaimed in the Bankruptcy Estate Account established under section 128 of the Bankruptcy Ordinance (Cap. 6). It is noted that the proposed section 57(2)(f) of Cap. 4 and section 73(2)(f) of Cap. 336 under the Bill simply refer to disposing of money remaining unclaimed in court without specific reference to the balance of an intestate estate and the money remaining unclaimed in the Bankruptcy Estate Account. Kindly clarify the reason(s) for such amendments.

8. As the Probate and Administration Ordinance (Cap. 10) governs how the Official Administrator should deal with the unclaimed balance of the intestate estate, the reference to “other than the balance of an intestate estate” in section 57(2)(f) of Cap. 4 and section 73(2)(f) of Cap. 336 is no longer necessary. We have therefore suggested deletion.

9. Separately, we also suggest deleting the obsolete reference to “money remaining unclaimed in the Bankruptcy Estate Account established under section 128 of Cap. 6” as this account is now under the control of the Official Receiver, not the Judiciary.

Part 7(b) - In the new section 40A(1)(c) of Cap. 484 and the new section 10AA(1)(c) of the Lands Tribunal Ordinance (Cap. 17), if it is intended that the orders referred to in the sections are confined to those relating to money, securities or movable property of suitors, should this be stipulated clearly in the same way as in other subparagraphs of section 40A(1) of Cap. 484 and section 10AA(1) of Cap. 17?

10. The proposed new section 40A(1)(c) of Cap. 484 and section 10AA(1)(c) of Cap. 17 provide for the rule-making powers for regulating the execution of the orders of the CFA and the Lands Tribunal respectively. According to the Department of Justice, the word “execution” in its widest sense means the process for enforcing or giving effect to the judgment of the court. While suitors’ funds will be in the form of money, securities or movable property, this does not mean that the orders of the court will only take such form and the execution of which will necessarily touch upon suitors’ funds. Therefore, the orders referred to in the new section 40A(1)(c) of Cap. 484 and section 10AA(1)(c) of Cap. 17 should not be confined to those relating to money, securities or movable property of suitors. This is also the existing practice for the High Court and the District Court.

**Administration Wing
Chief Secretary for Administration’s Office**

**Judiciary Administration
June 2014**