

**立法會**  
*Legislative Council*

LC Paper No. LS51/13-14

**Paper for the House Committee Meeting  
on 9 May 2014**

**Legal Service Division Report on  
Administration of Justice (Miscellaneous Provisions) Bill 2014**

**I. SUMMARY**

- 1. The Bill**                      The Bill seeks to amend various legislation relating to the administration of justice by making provisions concerning use of audio-visual facilities in criminal proceedings, calculation of qualifying experience for appointment of permanent magistrates, delivery of reasons for verdicts in writing in criminal proceedings in the District Court, abolition of the existing as-of-right appeal mechanism for civil causes or matters to the Hong Kong Court of Final Appeal (CFA), expansion of the Labour Tribunal's case management powers, and empowering the Chief Justice to make rules for the administration of suitors' funds in certain courts and tribunals.
- 2. Public Consultation**              The Judiciary has consulted various stakeholders, including the Hong Kong Bar Association, the Law Society of Hong Kong and the Labour Advisory Board. They are generally supportive of the proposed legislative amendments.
- 3. Consultation with LegCo Panel**              The Panel on Administration of Justice and Legal Services (the Panel) was consulted on the legislative proposals on 23 July 2013 and 28 January 2014. The Panel did not raise objection to the Administration introducing the Bill into the Council, but had expressed various concerns including the impact of the proposed abolition of the as-of-right appeal mechanism to the CFA on litigants.
- 4. Conclusion**                      In the light of the concerns raised at the above Panel meetings, Members may consider whether to set up a Bills Committee to study the Bill in detail.

## II. REPORT

The date of First Reading of the Bill is 7 May 2014. Members may refer to the LegCo Brief (File Ref.: SC/CR/2/1/65 PT 11) issued by the Administration Wing, Chief Secretary for Administration's Office and Judiciary Administration on 22 April 2014 for further details.

### Object of the Bill

2. The Bill seeks to amend various legislation relating to the administration of justice by making provisions concerning use of audio-visual facilities in criminal proceedings, calculation of qualifying experience for appointment of permanent magistrates, delivery of reasons for verdicts in writing in criminal proceedings in the District Court, abolition of the existing as-of-right appeal mechanism for civil causes or matters to the Hong Kong Court of Final Appeal (CFA), expansion of the Labour Tribunal's case management powers, and empowering the Chief Justice to make rules for the administration of suitors' funds in certain courts and tribunals.

### Provisions of the Bill

3. The Bill is divided into seven parts. Part 1 sets out the short title and provides for commencement of the Bill. Part 2 to Part 7 contain amendments relating to various aspects of the administration of justice in Hong Kong. These amendments are summarized in the following paragraphs.

#### Part 2 - Amendments to the Criminal Procedure Ordinance (Cap. 221) relating to evidence-taking by live television link for criminal proceedings

4. Section 79B of the Criminal Procedure Ordinance (Cap. 221) sets out the circumstances in which a child, a mentally incapacitated person or a witness in fear<sup>1</sup> is permitted to give evidence or be examined by way of a live television link. The term "live television link" is defined in section 79A of Cap. 221<sup>2</sup>.

5. Part 2 of the Bill amends the definition of "live television link" by substituting the reference to "a closed circuit television system" by "audio-visual

---

<sup>1</sup> Under section 79B of Cap. 221, "witness in fear" means a witness whom the court hearing the evidence is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence.

<sup>2</sup> Under section 79A of Cap. 221, "live television link" means a system in which a courtroom and another room located in the same premises as the courtroom are equipped with, and linked by, a closed circuit television system - (a) that is capable of allowing persons in the courtroom to see and hear persons in the other room and persons in the other room to hear, or see and hear, persons in the courtroom; (b) for the purpose of persons in the other room giving evidence in the proceedings taking place in the courtroom.

facilities". The effect of the amendment is that in addition to a closed circuit television system, other suitable audio-visual facilities may be adopted in the evidence-taking process under section 79B of Cap. 221.

**Part 3 - Amendments to the Magistrates Ordinance (Cap. 227) relating to professional qualification for the appointment of permanent magistrates**

6. Under section 5AA(1) of the Magistrates Ordinance (Cap. 227), a person is eligible to be appointed as a permanent magistrate if he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters (legally qualified person) and has practised as a barrister, solicitor, or advocate, or has served as a legal officer or taking up the offices specified in section 5AA(1)(b)(iii) to (v) of Cap. 227, for not less than five years. Alternatively, a legally qualified person is eligible to be appointed as a permanent magistrate pursuant to section 5AA(2) of Cap. 227 if he has been a special magistrate for a period of or periods totalling not less than five years.

7. By virtue of section 5AA(3) of Cap. 227, in calculating the five-year period of legal practice or service for the purpose of section 5AA(1)(b), periods of less than five years of such practice or service may be combined. However, there is no provision under Cap. 227 allowing period(s) of being a special magistrate to be combined with other period(s) of legal practice or service.

8. Part 3 of the Bill amends section 5AA of Cap. 227 to the effect that a person's period(s) of experience as a special magistrate may be combined with period(s) of other types of legal practice or service for calculating the five-year experience requirement for appointment as a permanent magistrate under Cap. 227.

**Part 4 - Amendments to the District Court Ordinance (Cap. 336) relating to mode of delivery of reasons for verdicts in criminal proceedings in the District Court**

9. Section 80(1) of the District Court Ordinance (Cap. 336) provides that the verdict and any sentence shall be delivered orally and be recorded in writing at the time of that delivery. As regards the reasons for the verdict and any sentence, section 80(2) provides that such reasons shall be delivered orally and shall be reduced in writing within 21 days after the hearing or the trial. The effect of section 80(2) is that District Judges may not directly hand down the reasons for a verdict in writing. According to paragraph 6 of the LegCo Brief, the Judiciary considers that the requirement of oral delivery of reasons for verdicts, in some cases, may cause wastage of legal costs of the parties and court resources.

10. Part 4 of the Bill amends section 80 of Cap. 336 so that the reasons for verdict may be delivered either orally or in writing, while the reasons for

sentence will continue to be delivered orally before reducing them to writing. Under the new section 80 of Cap. 336, the reasons for the verdict must be delivered together with the verdict at the same time. The new section 80 also provides that a copy of the reasons for verdict delivered in writing must be (a) delivered to each of the parties, (b) lodged in the High Court Library and (c) made available for public inspection in the Registry of the District Court.

**Part 5 - Amendments to the Hong Kong Court of Final Appeal Ordinance (Cap. 484) - abolition of civil appeals as of right to the Court of Final Appeal**

11. Under section 22(1)(a) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), an appeal from any final judgment of the Court of Appeal in any civil cause or matter may lie to the Court of Final Appeal (CFA) as of right where the matter in dispute on the appeal amounts to or is of the value of \$1 million or more, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$1 million or more. For any other civil appeal from a final or interlocutory judgment of the Court of Appeal, by virtue of section 22(1)(b) of Cap. 484, leave to appeal to the CFA will only be allowed if, in the opinion of the Court of Appeal or the CFA, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision.

12. Part 5 of the Bill repeals section 22(1)(a) of Cap. 484 to abolish the existing as-of-right appeal mechanism for civil causes or matters to the CFA and makes certain consequential amendments to other provisions in Cap. 484. Clause 6 of the Bill provides that Part 5 would apply in relation to a final judgment of the Court of Appeal if the date of the final judgment falls on or after the commencement date of Part 5. If the Bill is passed, upon commencement of the Part 5, all civil appeals to the CFA would become subject to discretionary leave of the Court of Appeal or the CFA.

13. According to paragraph 4 of the LegCo Brief, the Judiciary considers that the present system under section 22(1)(a) of Cap. 484 is objectionable as a matter of principle. According to the Judiciary, linking a right of appeal to the CFA by reference to an arbitrary financial limit means that litigants involved in litigation with a claim of monetary value of or beyond the threshold limit in effect have more right than other litigants with smaller claims, regardless of the merits of their cases. The Judiciary's detailed justifications for the proposed amendment are set out at Annex B to the LegCo Brief.

14. It is noted that the current version of section 22(1)(a) of Cap. 484 is basically modelled on rule 2(a) of the relevant Order in Council providing for appeals from the Supreme Court or Court of Appeal of Hong Kong to the Privy Council. The Hong Kong Court of Final Appeal Bill was enacted by the former

Legislative Council (LegCo) of Hong Kong in 1995 (the 1995 Bill). In his speech in response to a Committee Stage Amendment (CSA) to repeal clause 22(1)(a) of the 1995 Bill proposed by a member of the former LegCo, the then Attorney General (AG) stated that clause 22 of the 1995 Bill (i.e. now section 22 of Cap. 484) reflected the current system of appeal to the Judicial Committee of the Privy Council by providing for appeals as of right and appeals at the discretion of the CFA or the Court of Appeal and that the only change was to raise the threshold for appeals as of right from the figure of \$500,000 to \$1 million in order to reflect inflation. The Administration at that time opposed the CSA to abolish appeals as of right, as they considered that such abolition would mark radical departure from the existing system of appeals to the Privy Council at that time and would restrict existing rights of appeal. The then AG also said that the Administration had been at pains to ensure that as far as possible the existing system of appeal should continue unchanged and the existing approach had the advantage of continuity and familiarity.<sup>3</sup> The CSA to the 1995 Bill was voted down at the Committee Stage at the Council meeting held on 26 July 1995.<sup>4</sup>

**Part 6 - Amendments to the Labour Tribunal Ordinance (Cap. 25) relating to the jurisdiction and powers of Labour Tribunal**

15. The Labour Tribunal Ordinance (Cap. 25) makes provision for the establishment, jurisdiction and procedure of the Labour Tribunal (LT) which has limited civil jurisdiction. Part 6 provides for amendments relating to the jurisdiction and certain powers of the LT. According to paragraph 13 of the LegCo Brief, these amendments seek to improve the LT's operation, enhance the LT's case management powers and align the time limit for enforcing the LT's awards or order with other civil claims. The amendments are summarized in the following paragraphs.

16. Under section 30 of Cap. 25, the LT may order a party to give security for the payment of an award upon granting an adjournment of hearing at the LT. Part 6 amends section 30 of Cap. 25 to add new grounds for the LT to require security for payment of an award if the LT considers it just and expedient to do so. The new grounds include the defendant removing assets from Hong Kong and any party abusing the process of the LT or failing to comply with an award, order or direction of the LT. Under the new section 30, a party who fails to give security as ordered may result in the party's claim being dismissed, the proceedings being stayed or judgment being entered against the party concerned. Part 6 further amends section 31(4) of Cap. 25 to provide for a general power of a presiding officer of the LT to require for security for the payment of an award or order from the party who applies for a review of an award or order made by the LT and a

---

<sup>3</sup> See p. 6020 of Hansard on Council meeting of 26 July 1995.

<sup>4</sup> See p. 6021 and p. 6022 of Hansard on Council meeting of 26 July 1995.

power to dismiss the application for such review if the party fails to comply with an order for security for payment.

17. A new section 38 is proposed to be added to Cap. 25 to make it clear that a final award or order of the LT, on its registration in the District Court, becomes a judgment of the District Court made on the date of the final award or order and may be enforced accordingly. Part 6 also amends the Labour Tribunal (General Rules) (Cap. 25A) to remove the 12-month time limitation on the registration of the LT's award or order in the District Court.

### **Part 7 - Amendments relating to rule-making powers for the administration of suitors' funds in various courts or tribunals**

18. At present, suitors' funds administered in the High Court, the District Court, the LT and the Small Claims Tribunal are regulated by rules of the relevant courts or tribunal which are subsidiary legislation<sup>5</sup> subject to section 34 of the Interpretation and General Clauses Ordinance (Cap.1). Such rules govern how suitors' funds are lodged in and paid out of court, investment of the funds, provision of interest for individual suitors' account and preparation of annual audited financial statements for the funds. There are however no dedicated rules for suitors' funds administered in the CFA and the Lands Tribunal. According to paragraph 15 of the LegCo Brief, such suitors' funds have been operated administratively and guided by the rules of the other similar courts.

19. Part 7 of the Bill adds new sections to Cap. 484 and the Lands Tribunal Ordinance (Cap. 17) to empower the Chief Justice to make suitors' funds rules for the CFA and the Lands Tribunal. Part 7 also amends the Labour Tribunal Ordinance (Cap. 25) and the Small Claims Tribunal Ordinance (Cap. 338) to expressly empower the Chief Justice, in addition to his general rule-making powers under the two Ordinances, to make rules specifically for regulating suitors' funds administered in the Labour Tribunal and Small Claims Tribunal.

### **Commencement**

20. If passed, the Bill (except for part 7) would come into operation on the day on which it is published in the Gazette. Part 7 of the Bill (relating to rule-making powers concerning suitors' funds) would come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette.

---

<sup>5</sup> The relevant rules are :

- (a) the High Court Suitors' Funds Rules (Cap. 4B);
- (b) the District Court Suitors' Funds Rules (Cap. 336E);
- (c) the Labour Tribunal (Suitor's Funds) Rules (Cap. 25D); and
- (d) the Small Claims Tribunal (Suitors' Funds) Rules (Cap. 338D).

## **Public Consultation**

21. According to paragraph 24 of the LegCo Brief, the Judiciary has consulted various stakeholders, including the Hong Kong Bar Association, the Law Society of Hong Kong and the Labour Advisory Board. The two legal professional bodies together with other stakeholders were generally supportive of the proposed legislative amendments.

## **Consultation with LegCo Panel**

22. The Clerk to the Panel on Administration of Justice and Legal Services (the Panel) has advised that the Judiciary Administration consulted the Panel on the legislative proposals relating to court operations in the Bill at the meetings of the Panel held on 23 July 2013 and 28 January 2014. The Panel did not object to the Administration introducing the Bill into the Council, subject to the Administration agreeing to take out from the Bill the part relating to the proposed restriction or prohibition on the receiving party to use documents and information disclosed in the Labour Tribunal proceedings. Members may wish to note that in the Bill now presented to LegCo, no such restriction or prohibition has been proposed. Other major views or concerns expressed by members of the Panel are summarized as follows:

- (a) the proposed abolition of the appeals as of right in civil matters to the CFA would suppress the rights of the aggrieved persons to request the CFA to re-hear their cases;
- (b) the CFA should provide reasons for dismissing applications for leave to appeal to the CFA. Consideration should also be given to specifying in the relevant legislation the reasons/considerations for considering such leave applications as practised in other common law jurisdictions such as Australia; and
- (c) the circumstances under which a District Judge would deliver the reasons for the verdict in writing or orally should be clearly spelt out in the Bill. Apart from District Judges, judges of other levels of courts should also have the flexibility to hand down the reasons for verdicts and sentences in criminal proceedings in writing direct in appropriate cases.

## **Conclusion**

23. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the above concerns expressed by members of the

Panel on the legislative proposals in the Bill, Members may wish to consider whether to set up a Bills Committee to study the Bill in detail.

Prepared by

YICK Wing-kin  
Assistant Legal Adviser  
Legislative Council Secretariat  
2 May 2014

LS/B/21/13-14