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**Paper for the House Committee meeting on 5 December 2014**

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

**Purpose**

This paper reports on the deliberations of the Bills Committee on Administration of Justice (Miscellaneous Provisions) Bill 2014 ("the Bills Committee").

**Background**

2. The Judiciary has proposed the following legislative amendments to improve various court-related matters:

- (a) amending the Criminal Procedure Ordinance (Cap. 221) ("the CPO") to enable other suitable audio-visual facilities, such as video conferencing facilities, to be adopted in the evidence-taking process for criminal proceedings;
- (b) amending the Magistrates Ordinance (Cap. 227) ("the MO") to allow a person's period(s) of experience as a Special Magistrate ("SM") to be combined with period(s) of other types of legal practice or service to fulfill the requisite minimum five-year period eligibility requirement to be appointed as a Permanent Magistrate ("PM");
- (c) amending the District Court Ordinance (Cap. 336) ("the DCO") to dispense with the requirement for a District Judge ("DJ") to orally deliver the reasons for the verdict in criminal proceedings;

- (d) amending the Hong Kong Court of Final Appeal Ordinance (Cap. 484) ("the HKCFAO") so that all appeals in civil matters, whether or not the matter in dispute amounts to or is of the value of \$1 million or more, should be subject to discretionary leave of the Court of Appeal ("the CA") or the Court of Final Appeal ("the CFA") or;
- (e) amending the Labour Tribunal Ordinance (Cap. 25) ("the LTO") to improve its operation in a few areas, including clarifying its jurisdiction, enhancing its case management powers, and aligning the time limit for enforcing its awards or orders with other civil claims; and
- (f) amending the relevant principal legislation to provide for specific rule-making powers concerning suitors' funds for the CFA, the Lands Tribunal and some other tribunals.

Detailed justifications for the above proposals are set out in paragraphs 3 to 19 of the Legislative Council ("LegCo") Brief (File Ref.: SC/CR/2/1/65 PT 11) issued by the Administration Wing, Chief Secretary for Administration's Office and the Judiciary Administration on 22 April 2014.

### **The Bill**

3. The Bill was introduced into LegCo on 25 April 2014. The Bill seeks to amend various pieces of legislation to implement the proposals in paragraph 2 above relating to the administration of justice. The Bill is divided into seven parts. Details of the provisions of the Bill are set out in paragraphs 3 to 19 of the Legal Service Division Report (LC Paper No. LS51/13-14).

### **The Bills Committee**

4. At the House Committee meeting on 9 May 2014, a Bills Committee was formed to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Hon Dennis KOWK, the Bills Committee has held four meetings with the Administration and the Judiciary Administration. The Bills Committee has also invited public views on the Bill. A list of organizations which have provided written submissions to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

### Evidence-taking by live television link for criminal proceedings

5. At present, Part IIIA of the CPO provides for special procedures for vulnerable witnesses in criminal proceedings. Section 79B in Part IIIA sets out the circumstances in which a child, a mentally incapacitated person or a witness in fear is permitted to give evidence or be examined by way of a "live television link", which is defined in section 79A in Part IIIA to be 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". Part 2 of the Bill amends the definition of "live television link" by replacing the reference to "a closed circuit television system" by "audio-visual facilities". With the advancement of technologies, the Judiciary considers that the effect of the amendment will enable other suitable audio-visual facilities, such as video conferencing facilities, to be adopted in the evidence-taking process for criminal proceedings.

6. Some members have relayed the concern of the Hong Kong Bar Association about the security issue that may arise from replacing the expression "closed circuit television system" by "audio-visual facilities". These members have suggested that the Judiciary should reconsider the drafting of the proposed amendment to the effect that the consent of the Criminal Court Users' Committee<sup>1</sup>("CCUC") should be sought 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.

7. The Judiciary Administration has advised that the Judiciary is mindful of the importance of ensuring security of any proposed audio-visual facilities and will ensure that any such facilities to be used will be equipped with security protection features, including encryption features recommended by internationally recognized telecommunication standard organizations. The Judiciary has also examined similar legislative provisions in other jurisdictions and considers that such a legislative approach would provide for maximum flexibility as technology may be evolving. As the CCUC is a

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<sup>1</sup> The Criminal Court Users' Committee is chaired by a Judge of the Court of First Instance of the High Court. The members include Judges and Judicial Officers of the High Court, District Court and Magistrates' Courts, a barrister and a solicitor nominated by their professional bodies, and representatives of the Duty Lawyer Service, the Department of Justice, the Legal Aid Department, the Independent Commission Against Corruption, the Police and the Correctional Services Department. Its terms of reference are to discuss matters of concern to users of the criminal courts, including the listing and the use of technology in the courts.

non-statutory committee, the Judiciary does not consider it appropriate to prescribe in the law CCUC's role relating to the choice of audio-visual facilities. To address members' concern, a Committee Stage amendment ("CSA") will be moved to the effect that any audio-visual facilities used in live television links for evidence-taking in criminal proceedings should be subject to the approval by the Chief Justice ("CJ"). Administratively, the Judiciary will seek views from the relevant parties, including the CCUC and others, for the CJ's consideration before he considers granting the approval under the new provision in the CPO.

8. The Bills Committee has discussed 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) and the textual inconsistencies between the Chinese version and the English version of the proposed amendments regarding the definition of "live television link" in section 79A of the CPO. Having reviewed the bilingual versions of the revised definition, the Administration has subsequently agreed to introduce CSAs to address the Bills Committee's concern and to refine the drafting of the legislative provisions having regard to members' comments.

#### Professional qualification for the appointment of Permanent Magistrates

9. Under the existing section 5AA(1) of the MO, a person is eligible to be appointed as a PM 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 the MO, for not less than five years. Alternatively, a legally qualified person is eligible to be appointed as a PM pursuant to section 5AA(2) if he has been a SM for a period of or periods totalling not less than five years. Section 5AA(3) provides that in calculating the five-year period of legal practice or service in the offices specified in section 5AA(1)(b), periods of less than five years of such practice or service may be combined. The legislation does not, however, allow period(s) of being a SM to be combined with other period(s) of legal practice or service.

10. According to the Judiciary Administration, the existing arrangement does not accord with the Judiciary's policy intent that periods of less than five years of all types of legal practice or service, be it the legal experience under section 5AA(1) or the judicial experience under section 5AA(2) of the MO, should be allowed to be combined. Part 3 of the Bill amends section 5AA of the MO to allow a person's period(s) of experience as a SM to be

combined with period(s) of other types of legal practice or service to fulfill the requisite minimum five-year period eligibility requirement to be appointed as a PM.

11. Some members have enquired whether a legal officer in the Mainland or other non-common law jurisdictions would become eligible to be appointed as a PM if the relevant requirements under section 5AA were satisfied. The Judiciary Administration has advised that under section 2 of the Legal Officers Ordinance (Cap. 87), a legal officer means an officer appointed to and serving in Hong Kong as a legal officer, or an officer lawfully performing the functions of any of the officers in the Department of Justice, Lands Department, Companies Registry and Land Registry designated in Schedule 1.

#### Mode of delivery of reasons for verdicts in criminal proceedings in the District Court

12. At present, section 80(1) of the DCO provides that the verdict and any sentence shall be delivered orally and be recorded in writing at the time of that delivery. Section 80(2) provides that the reasons for the verdict and any sentence shall be delivered orally and shall be reduced to writing within 21 days after the hearing or the trial.

13. According to the Judiciary Administration, there is currently no flexibility for a DJ to directly hand down the reasons for a verdict in writing. They have to deliver the reasons orally first. The Judiciary considers that such a requirement in many cases may cause wastage of legal costs of the litigating parties and court resources. Part 4 of the Bill amends section 80 of the DCO so that the reasons for the verdict may be delivered either orally or in writing, while the reasons for sentence will continue to be delivered orally before they are reduced to writing. Under the new section 80 of the DCO, the reasons for the verdict must be delivered, either orally or in writing, together with the verdict at the same time. It also provides that a copy of the reasons for the 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.

14. Some members opine that amending section 80 of the DCO to allow DJs the flexibility to hand down the reasons for verdicts in criminal proceedings in writing direct would prejudice the rights of the litigants. These members also opine that the Judiciary should consider setting out the relevant factors that should be considered by DJs when deciding whether they

should deliver the reasons for the verdict orally first or directly in writing under the proposed amendment.

15. As advised by the Judiciary Administration, the Judiciary is of the view that the proposed amendments would not in any way undermine the rights of the parties. DJs will give due consideration to such factors as the likely duration needed for the oral delivery, the complexity of a case, availability of legal representation and background of the parties concerned. The circumstances of each case may vary and each case should be considered on its own merits. It will be difficult to list all the relevant factors that the court may consider in exercising the discretion. The Judiciary therefore does not consider it appropriate to set out the factors in the Bill as this will reduce the flexibility for a DJ to consider the best arrangements in the light of all the circumstances of each case.

16. Given members' preference and after careful consideration, the Judiciary has agreed that it will set out by way of a Practice Direction the relevant factors that a DJ may consider when deciding whether the reasons for the verdict should be delivered orally first or directly in writing. The factors will only be for reference of DJs who should make a final decision on the most appropriate mode of delivery after taking into account all the relevant factors, including the parties' wishes.

17. The Bills Committee has suggested that the new section 80 of the DCO should be amended to provide that a copy of the reasons for the verdict delivered directly in writing should also be made available to the public through the Internet. In addition, the reasons for the verdict delivered orally and then reduced to writing under the new section 80(4) should be disseminated in similar ways as those directly delivered in writing under the new section 80(6)(a) to (c), and by way of making a copy of such reasons to the public through the Internet. Given the Bills Committee's suggestion and for the sake of consistency between the reasons delivered orally first and directly in writing, the Administration has agreed to move CSAs to amend the new section 80 accordingly.

#### Abolition of the as of right arrangements for civil appeals

18. Under section 22(1)(a) of the HKCFAO, an appeal from any final judgment of the CA in any civil cause or matter may lie to the 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 other cases, by

virtue of section 22 (1)(b), leave to appeal to the CFA will only be allowed if, in the opinion of the CA or the CFA, the question involved is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the CFA for decision.

19. According to the Judiciary, the present system is objectionable as a matter of principle. 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 rights than other litigants with smaller claims, regardless of the merits of their cases. The Judiciary considers it important and timely to amend the law so that all appeals in civil causes or matters to the CFA become subject to discretionary leave of the CA or the CFA. Part 5 of the Bill repeals section 22(1)(a) of the HKCFAO 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 the HKCFAO.

20. The Bills Committee notes that the Hong Kong Bar Association has raised no objection to the Judiciary's proposal. Some members have expressed reservation about the proposed abolition of the as of right arrangements for civil appeals. Some other members opine that the existing requirement under section 22(1)(b) of the HKCFAO poses a high threshold to appellants. These members also opine that if the as of right appeal mechanism is to be abolished, the factors that may be considered by the Judges under the "or otherwise" provision in section 22(1)(b) should be spelt out more clearly in the HKCFAO.

21. The Judiciary has advised that in other comparable common law jurisdictions, there is no automatic right of appeal. The abolition of the as of right appeal mechanism will not prevent litigants from applying for leave to appeal. If the Bill is passed, upon commencement of the Part 5, all appeals in civil matters to the CFA would be subject to discretionary leave. In several recent cases, the CFA has emphasized that its function is primarily to consider points of law of great general or public importance, and not to provide appellants with a platform to debate yet again factual findings made in the lower courts. The CFA has also clarified on numerous occasions that granting leave to appeal under the "or otherwise" ground is an exceptional course; it is only in "rare and exceptional circumstances" that leave to appeal would be granted thereunder. The same sentiment is shared by the CA, which has noted on various occasions that the granting of leave under the "or otherwise" ground is an exceptional course and would normally be a matter for decision by the CFA itself.

22. At the request of the Bills Committee, the Judiciary has provided the relevant statistics and figures on the civil substantive appeals disposal of and the civil leave applications disposed of in the CFA. According to the Judiciary, leave has been granted by the CFA and CA either solely under the "or otherwise" ground or in conjunction with other grounds. The Judiciary has also examined the relevant cases and summed up that the CFA or CA (as applicable) is likely to grant leave in cases where it is arguable that the lower court(s) made a legal error or errors causing grave injustice and the result would have been different had the error(s) not been made. Some cases suggest that the CFA and CA may be minded to grant leave to appeal to the CFA where the subject matter of the appeal is of considerable importance. Some other cases show that leave under the "or otherwise" ground has sometimes been granted as a logical consequence to other orders made by the court. The Judiciary has stressed that the decision to grant leave is typically fact-specific. On some occasions, leave has been granted by way of an oral decision without a written determination. As such, any categorization of the factors or circumstances under which leave was granted by the court can only be a broad guide.

#### Operation of the Labour Tribunal

23. The LTO makes provision for the establishment, jurisdiction and procedure of the Labour Tribunal ("LT") which has limited civil jurisdiction. Part 6 of the Bill provides for amendments relating to the jurisdiction and certain powers of the LT. According to the Judiciary Administration, 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.

24. The Bills Committee notes that the LT has power to order payment into the LT or the giving of security pursuant to sections 29A and 30 of the LTO. The new section 30 adds 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. The new section 30 is intended to apply to both a claimant and a defendant, who may be employees.

25. Some members have enquired how a case would be dealt with if the employer or the employee were unable to make the security payments as required by the LT. These members have also suggested that the Judiciary should consider setting up an arbitration mechanism to allow the parties involved to appeal against an order to give security. The Judiciary has



advised that the financial means of a party to meet an order for security is one of the relevant factors that the LT may have regard to in deciding whether to order security. 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. As with the other orders of the LT, an order requiring a party to give security under the new section 30 or 31(4) may be reviewed and/or appealed against. There is no need for any separate arbitration arrangements as suggested.

### Administration of suitors' funds

26. 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 tribunals which are subsidiary legislation<sup>2</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. Such suitors' funds have been operated administratively and guided by the rules of the other similar courts. Part 7 of the Bill adds new sections to the HKCFAO and the Lands Tribunal Ordinance (Cap. 17) to specifically empower the CJ to make suitors' funds rules for the CFA and the Lands Tribunal. Part 7 also amends the LTO and the Small Claims Tribunal Ordinance (Cap. 338) to expressly empower the CJ, in addition to his general rule-making powers under the two Ordinances, to make rules specifically for regulating suitors' funds administered in the LT and Small Claims Tribunal.

27. According to the Judiciary Administration, the new section 40A(1)(c) of the HKCFAO and the new section 10AA(1)(c) of the Lands Tribunal Ordinance provide for the rule-making powers for regulating the execution of the orders of the CFA and the Lands Tribunal respectively. In response to the enquiry raised by the Legal Adviser to the Bills Committee regarding the execution of the orders, the Administration has explained that while suitor's 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 above new sections should not be confined to

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<sup>2</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).

those relating to money, securities or movable property of suitors. This is also the existing practice for the High Court and the District Court.

### **Committee Stage amendments**

28. A full set of the CSAs to be moved by the Administration is in **Appendix III**. The Bills Committee has not proposed any CSAs in its name.

### **Resumption of the Second Reading debate**

29. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 17 December 2014.

### **Advice sought**

30. Members are invited to note the deliberations of the Bills Committee.

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

**Membership List**

<b>Chairman</b>	Hon Dennis KWOK
<b>Members</b>	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
	Hon Alan LEONG Kah-kit, SC
	Hon WONG Yuk-man
	Hon YIU Si-wing
	Hon TANG Ka-piu, JP
	 (Total : 11 members)
<b>Clerk</b>	Ms YUE Tin-po
<b>Legal Adviser</b>	Mr YICK Wing-kin

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

List of organizations which have provided written submissions to the Bills Committee

1. The Law Society of Hong Kong
2. The Labour Advisory Board
3. Hong Kong Bar Association

## Administration of Justice (Miscellaneous Provisions) Bill 2014

## Committee Stage

Amendments to be moved by the Chief Secretary for Administration

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>By deleting the clause and substituting—</p> <p><b>“3. Section 79A amended (interpretation)</b></p> <p>Section 79A—</p> <p style="text-align: center;"><b>Repeal the definition of <i>live television link</i></b></p> <p style="text-align: center;"><b>Substitute</b></p> <p><b><i>“live television link</i></b> (電視直播聯繫) means a system—</p> <ul style="list-style-type: none"> <li>(a) in which a courtroom and another room located in the same premises as the courtroom are equipped with, and linked by, audio-visual facilities that are capable of allowing— <ul style="list-style-type: none"> <li>(i) persons in the courtroom to see and hear persons in the other room; and</li> <li>(ii) persons in the other room to hear, or see and hear, persons in the courtroom; and</li> </ul> </li> <li>(b) installed for allowing persons in the other room to give evidence in the proceedings taking place in the courtroom,</li> </ul> <p>and includes a similar system linking a room in which a magistrate is taking a deposition in writing under section 79E with another room from which the person gives evidence for the purpose of the deposition;”.”.</p>

New

In Part 2, by adding—

**“3A. Section 79B amended (evidence by live television link)**

After section 79B(5)—

**Add**

“(6) The audio-visual facilities used in a live television link must be approved by the Chief Justice.”.

5

In the proposed section 80(6)—

- (a) by adding “or reasons reduced to writing under subsection (4)” after “subsection (2)”;
- (b) in paragraph (b), by deleting “and”;
- (c) in paragraph (c), by deleting the full stop and substituting “; and”;
- (d) by adding—
  - “(d) make a copy of the reasons available to the public through the Internet.”.