

立法會
Legislative Council

Ref : CB4/SS/16/16

LC Paper No. CB(4)1601/16-17
(These minutes have been seen
by the Administration)

Subcommittee on Rules of the High Court (Amendment) Rules 2017

Minutes of the first meeting
held on Thursday, 20 July 2017, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon James TO Kun-sun (Chairman)
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding

Members absent : Dr Hon Junius HO Kwan-yiu, JP
Hon CHEUNG Kwok-kwan, JP

Public officers attending : Item II

Judiciary Administration

Ms Wendy CHEUNG
Assistant Judiciary Administrator
(Development)1

Miss Winki LAM
Senior Administrative Officer
(Development)1

Department of Justice

Mr Newton CHAN
Senior Assistant Law Officer
(Civil Law) (Civil Litigation)1

Miss Elaine NG
Senior Government Counsel

Mr Alex LAI
Government Counsel

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Miss Rachel DAI
Assistant Legal Adviser 2

Ms Joyce CHING
Senior Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Election of Chairman (and Deputy Chairman)

Mr James TO, the member who had the highest precedence in the Council among members present at the meeting, presided over the election of the Chairman. He invited nominations for the chairmanship of the Subcommittee.

2. Mr Holden CHOW nominated Mr James TO and the nomination was seconded by Mr Alvin YEUNG. Mr James TO accepted the nomination. There being no other nomination, Mr James TO was declared Chairman of the Subcommittee.

3. Members agreed that there was no need to elect a deputy chairman of the Subcommittee.

II. Meeting with the Administration and the Judiciary Administration

L.N. 122 of 2017	-- Rules of the High Court (Amendment) Rules 2017
LC Paper No. LS83/16-17	-- Legal Service Division Report
LC Paper No. CB(4)1429/16-17(01)	-- Marked-up copy of the Rules of the High Court (Amendment) Rules 2017 prepared by the Legal Service Division (Restricted to members)

Discussion

4. The Assistant Judiciary Administrator (Development) 1 briefed members on the Rules of the High Court (Amendment) Rules 2017 ("the Amendment Rules")

5. The Subcommittee deliberated (Index of proceedings attached at **Annex**) and completed the examination of the provisions of the Amendment Rules.

Follow-up actions to be taken by the Judiciary Administration

6. Members noted that the Judiciary proposed to amend Order 59, rule 7(1)(b) of the Rules of the High Court (Cap. 4A) ("RHC") by advancing the cut-off date of serving a supplementary notice to amend a notice of appeal or respondent's notice without the leave of the Court of Appeal to "the date on which a hearing date of the appeal was fixed in accordance with a direction referred to in rule 6A". In order to ascertain the efficacy of the proposed amendment, the Judiciary Administration ("JA") was requested to provide a written response on the following:

JA

- (a) the background/justifications and policy intent for setting the cut-off date of serving a supplementary notice to amend a notice of appeal or respondent's notice without the leave of the Court of Appeal as "not less than three weeks before the date fixed for the hearing of the appeal" under the existing rule 7(1)(b); and
- (b) the average time duration between the date when a hearing date of an appeal was fixed and the actual hearing date of the appeal.

JA

7. Members also noted that the Chinese rendition of "settle" was "擬備" in Section 227 of the Company Ordinance (Cap. 622) while the Chinese rendition of "settled" was "議定" in Order 102, rule 14 of the RHC. JA was requested to give consideration to the above discrepancy and inform the Subcommittee of its position.

8. The Subcommittee agreed that JA's response in respect of paragraphs 6 and 7 above should be circulated to members for their consideration of whether a further meeting should be held to discuss the issues therein. If no further views were raised by members, the scrutiny of the Amendment Rules would be deemed to have completed.

(Post-meeting note: JA's written response was issued vide LC Paper No. CB(4) 1523/16-17(01) on 25 August 2017. By the deadline of 4 pm on 1 September 2017, the Secretariat did not receive any request from members for holding a further meeting.)

Legislative Timetable

9. The Subcommittee noted that if no further meeting would be held, the Chairman would report the deliberations of the Subcommittee to the House Committee at its meeting scheduled for 6 October 2017. The Subcommittee also noted that the scrutiny period of the subsidiary legislation would expire on 18 October 2017, if not extended by resolution, and the Amendment Rules would come into operation on 1 December 2017.

III. Any other business

10. There being no other business, the meeting ended at 12:11 pm.

Council Business Division 4
Legislative Council Secretariat
21 September 2017

Subcommittee on Rules of the High Court (Amendment) Rules 2017

Proceedings of the first meeting held on Thursday, 20 July 2017, at 10:45 am in Conference Room 2B of the Legislative Council Complex

Time Marker	Speaker(s)	Subject(s)	Action required
Election of Chairman (and Deputy Chairman)			
000818-000935	Mr James TO Mr Holden CHOW Mr Alvin YEUNG	Election of Chairman Mr James TO was elected Chairman of the Subcommittee. Members agreed that there was no need to elect a deputy chairman of the Subcommittee.	
Meeting with the Administration and the Judiciary Administration			
000935-001044	Chairman	Opening remark	
001044-001920	Chairman JA	Briefing by the Judiciary Administration ("JA") on the content of the Rules of the High Court (Amendment) Rules 2017 ("the Amendment Rules").	
001920-002128	Mr Holden CHOW JA	Discussion on the proposed amendment to remove the present automatic anonymity requirements for appeals to Court of Appeal ("CA") relating to disciplinary proceedings of solicitors. JA confirmed that there was no similar anonymity restriction in respect of appeals from disciplinary tribunals of other professionals such as public accountants and medical practitioners.	
002128-002358	Chairman JA	JA explained the experience and the recent trend in the United Kingdom on the issue of	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>anonymity regarding similar appeals relating to disciplinary proceedings of solicitors.</p>	
<p>002358-002922</p>	<p>Mr Paul TSE JA Administration</p>	<p>Mr Paul TSE expressed support for the above proposed amendment relating to appeal against the decision of the Solicitors Disciplinary Tribunal in the interest of openness and transparency.</p> <p>Mr TSE then suggested amending the relevant Ordinance so that the proceedings under the Solicitors Disciplinary Tribunal could also be open to public upon request of the solicitor whose conduct was being inquired into. In response, JA advised that the amendment proposed by Mr TSE was a policy matter involving amendments to the principal legislation and therefore could not be taken forward by the Judiciary because of its constitutional position. This proposal would be relayed to the Administration for consideration.</p> <p>In response to the Chairman's enquiry, the Administration clarified that the proposed amendment to Order 106, rule 12 of RHC did not involve proceedings against barristers and that currently there was no non-disclosure arrangement for similar court proceedings for barristers.</p>	
<p>002922-003818</p>	<p>Chairman Mr Paul TSE Administration</p>	<p>The Chairman requested the JA to explain the justifications for the proposed amendment to Order 59, rules 2B and 15 of RHC which sought to empower the Court of First Instance ("CFI") to extend the time for civil appeals/applications or applications for leave to appeal to the CA even though the time limit for the related appeals/applications might have expired.</p> <p>JA explained the justifications as set out in</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>paragraphs 25 and 26 of LegCo Brief File Ref: SC 19/1/23.</p> <p>In response to the enquiry of Mr Paul TSE, JA advised that there would be no limitation on the duration of the extended period. The judge would be given the discretion to extend the period for making an application for leave to appeal before or after the expiry of the period for any duration which he/she considered appropriate.</p> <p>The Chairman and Mr Paul TSE enquired whether there would be safeguards to prevent applicants from making time extension application at the CFI and applying leave to appeal at CA at the same time. In response, the Administration advised that Order 59 rule 2B(2) of RHC had already provided such safeguard by stipulating that the application (for leave to appeal against interlocutory and other judgments or orders of Court) must be made to the judge or master against whose judgment or order leave was sought, so far as was practicable.</p>	
003818-004206	Chairman ALA2 Administration	In response to the enquiry made by Assistant Legal Adviser 2 ("ALA2"), the Administration confirmed that rule 13 of the Amendment Rules sought to repeal all the expression "(HK)" wherever appearing in the RHC, including those found in the headings and contents of the rules. The Administration further advised that this applied to the case as quoted by ALA2 on page 17 of the mark-up copy of the Amendment Rules (Chinese version).	

Time Marker	Speaker(s)	Subject(s)	Action required
<i>Examination of the provisions of the Amendment Rules</i>			
004206-004332	Chairman JA	<u>Examination of rules 3 to 5</u>	
004332-005226	Chairman JA Administration	<u>Examination of rule 6</u> The Chairman was concerned that the proposed amendments would result in an increase in workload of the CA since it was proposed that all changes in respect of the serving of notice of appeal and the respondent's notice would require the leave of the CA once a hearing date of the appeal was fixed. In response, JA advised that the existing arrangement was found to be unsatisfactory and could result in abuse. The proposed amendment sought to strike a balance between the need for flexibility and better/proper case management. This was also supported by the recently revised and implemented Practice Direction 4.1, directing that unless all proper preparation for the hearing of an appeal was done and the parties had so confirmed, no hearing date of the appeal would be fixed. In other words, the fixing of a hearing date would signify the parties' readiness for the hearing of the appeal.	
005226-005755	Chairman Mr Paul TSE JA Administration	Mr Paul TSE expressed concern on the implication on legal costs arising from the proposed amendments. The Administration advised that most applications for leave to appeal could be handled by "paper applications" in accordance with the procedures set out in Practice Direction 4.1 and thus the implication on legal costs should be minimal.	
005755-010705	Chairman Mr Paul TSE JA	In order to ascertain the efficacy of the proposed amendment to Order 59, rule 7(1)(b), JA was requested to provide a written response	JA (paragraph 6(a) of the

Time Marker	Speaker(s)	Subject(s)	Action required
		on the background/justifications and policy intent for setting the cut-off date of serving a supplementary notice to amend a notice of appeal or respondent's notice without the leave of the Court of Appeal as "not less than three weeks before the date fixed for the hearing of the appeal" under the existing rule 7(1)(b).	minutes)
010705-011219	Chairman Mr Holden CHOW Administration JA	In response to Mr Holden CHOW's enquiry, the Administration explained the process of setting down an appeal and the fixing of a hearing date of an appeal.	
011219-011611	Chairman Mr Paul TSE JA	JA was requested to provide a written response on the average time duration between the date when a hearing date of an appeal was fixed and the actual hearing date of the appeal.	JA (paragraph 6(b) of the minutes)
011611-011755	Chairman Administration JA	<u>Examination of rules 7 to 9</u>	
011755-011930	Chairman Mr Paul TSE JA	Referring to rule 9 of the Amendment Rules, Mr Paul TSE suggested to change the Chinese rendition of "if any", i.e. "如有的話", to "如有" or "如適用" under section 14(a) of Order 102 to improve the fluency of the Chinese language. The Chairman considered the change proposed by Mr TSE only involved the use of Chinese words and the proposed changes, if adopted, should also be made in other Ordinances for consistency purpose. The Administration was requested to give consideration to Mr TSE's suggestion as a general drafting issue.	
011930-012652	Chairman ALA2 JA	Also referring to rule 9 of the Amendment Rules, ALA2 pointed out that the Chinese rendition of "settle" was "擬備" in Section 227 of the Company Ordinance (Cap. 622) while	JA (paragraph 7 of the minutes)

Time Marker	Speaker(s)	Subject(s)	Action required
		the Chinese rendition of "settled" was "議定" in Order 102, rule 14 of the RHC. JA was requested to give consideration to the above discrepancy and inform the Subcommittee its position.	
012526-012652	Chairman ALA2 JA	<u>Examination of rules 10 to 12</u> <u>Examination of rule 13</u> JA explained the justifications as set out in paragraph 27 to 31 in LegCo Brief File Ref: SC 19/1/23 and confirmed that rule 13 which repealed all the expression "(HK)" in various provisions of the RHC was in order.	
012652-012952	Chairman Dr Priscilla LEUNG Administration	Legislative timetable	
Any other business			
012952-012953	Chairman	Closing remarks	