

立法會

Legislative Council

LC Paper No. LS92/19-20

Further Report by Legal Service Division on Court Proceedings (Electronic Technology) Bill

Members may recall from LC Paper No. LS39/19-20 issued to Members on 16 January 2020 that the Legal Service Division ("LSD") was scrutinizing the legal and drafting aspects of the Bill.

2. As Members may recall, one of the objects of the Bill is to provide for the use of electronic technology ("e-technology") in relation to proceedings in courts (including specified tribunals) as an alternative to conventional paper-based methods. This would be implemented through an electronic information system ("e-system") designated by the Chief Justice ("CJ"). LSD has sought clarifications from the Judiciary Administration ("JA") on certain legal and drafting aspects of the Bill. Details of LSD's enquiries and JA's response at **Annex** are summarized below.

Measures to protect personal data and confidential information on the e-system

3. Since the Bill does not provide for any penal measures to deal with unlawful or unauthorized access to the e-system, LSD has sought information from JA on the security and other measures to be employed to protect personal data and confidential information transmitted through or stored in the e-system from being unlawfully accessed or disclosed. In response, JA has explained that there are internal guidelines for information technology ("IT") security measures formulated with reference to the IT security guidelines or arrangements adopted by the Office of the Government Chief Information Officer. JA will also review and refine the guidelines for handling court documents throughout the implementation of the e-system in question to ensure that only registered users would be able to access information stored in the e-system. Further, there are existing statutory and common law offences to tackle computer crimes¹ and clause 24 of the Bill, if enacted, would empower the court to disallow a user from using the e-system having regard to factors such as the user's conduct. As such, JA considers that there is no need to provide for a separate offence under the Bill to deter unlawful or unauthorized access to the e-system.

¹ According to JA, these offences include criminal damage and access to computer with criminal or dishonest intent provided under sections 60 and 161 of the Crimes Ordinance (Cap. 200) respectively, as well as the common law offence of perverting the course of justice by making improper access to the e-system or by dealing with the information stored therein improperly.

Means to designate the e-system and to publicize such designation

4. Upon LSD's enquiry on whether and how CJ may designate an e-system so that court users would know about the designation, JA has explained that CJ would designate the e-system at a certain website. The website address and the e-system would also be specified in the e-practice directions issued by CJ for the use of e-technology. These directions would be uploaded onto the Judiciary's website and sent to all relevant stakeholders.

Certain notices and instructions not to be subsidiary legislation

5. In response to LSD's enquiry on the nature of certain notices issued by CJ for the phased implementation of the use of e-technology, and the instructions relating to the use of an e-system issued by the Judiciary Administrator and the consequences of non-compliance,² JA has replied as follows:

- (a) the relevant notices and instructions would be made administratively instead of by way of subsidiary legislation because they are straightforward and operational in nature, and are not intended to contain matters of a legal nature;
- (b) the arrangement would allow the Judiciary more flexibility as it can refine detailed arrangements set out in the notices and instructions in the future without frequent legislative changes; and
- (c) if a court user fails to comply with any administrative instructions, the user's submission may be rejected by the e-system.

6. Subject to Members' views on the above matters, no difficulties have been identified in relation to the legal and drafting aspects of the Bill.

Encl

Prepared by

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Assistant Legal Adviser
Legislative Council Secretariat
11 June 2020

² These notices and instructions are referred to in clauses 32, 35 and 33 of the Bill respectively.



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



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By Fax (2501 4636)

14 May 2020

Ms Winnie WONG
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High Block,
Queensway Government Offices
66 Queensway
Hong Kong

Dear Ms WONG,

Court Proceedings (Electronic Technology) Bill

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. We would be grateful if you would provide the following information.

Measures employed to protect personal data and maintain confidentiality

2. It is noted that one of the objects of the Bill as stated in its long title is to provide for the use of electronic technology in relation to proceedings in courts (including specified tribunals) and other court-related purposes. It is also anticipated that litigants would use such technology and the electronic information system which may be designated by the Chief Justice under clause 7 of the Bill ("e-system") for conducting their cases. In this regard, please provide information on the security or other measures which would be employed to protect the information (such as the personal data of a court user or certain confidential information provided for the purposes of certain court proceedings) processed by or stored in the e-system from being unlawfully accessed or disclosed.

3. Please also explain why the Bill does not seek to provide for any sanctions (such as penal measures) to deal with unlawful or unauthorized access to the e-system.

Designation of e-system under clause 7 of the Bill

4. Please clarify the manner in which the Chief Justice may designate or cease to designate an e-system under clause 7 of the Bill so that court users will know whether a certain information system is an e-system, and consider making appropriate provisions in the Bill.

Reasons for providing that certain items would not be subsidiary legislation

5. Please explain why the Bill provides that the following notices are not subsidiary legislation and the consequences, if any, of not complying with such notices:

- (a) the implementation notices which may be made by the Chief Justice in accordance with clause 32(1) of the Bill for the provision of the phased implementation of the use of electronic technology in e-Courts and court offices as defined under the Bill (see clause 32(6)); and
- (b) the notices which may be made by the Chief Justice under clause 35(3) of the Bill for the purposes of specifying a date after which an existing system is not to be used for a certain purpose specified under clause 8 of the Bill (see clause 35(4)(b)).

Instructions which may be issued under clause 33(1) of the Bill

6. Please confirm whether the instructions which may be issued by the Judiciary Administrator in accordance with clause 33(1) of the Bill relating to the use of an e-system (such as the eligibility to register as a user of the e-system) would be subsidiary legislation. If these instructions would not be subsidiary legislation, please explain the consequences, if any, of contravening such instructions.

As the House Committee has decided to form a Bills Committee to study the Bill in detail and the first meeting of the Bills Committee is scheduled for 18 May 2020, please let us have your reply in both Chinese and English as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Evelyn Lee', written in a cursive style.

(Evelyn LEE)
Assistant Legal Adviser

c.c. Department of Justice

(Attn: Ms. Nilmini DISSANAYAKE, Consultant Counsel (Fax: 3918 4613))

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Clerk to the Bills Committee



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本函檔號 Our Ref.: JUD CR 6-15/4/2 PT 7

來函檔號 Your Ref.: LS/B/8/19-20

3 June 2020

Miss Evelyn LEE
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Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss LEE,

Court Proceedings (Electronic Technology) Bill

Thank you for your letter of 14 May 2020. I write to provide the following information in relation to the Court Proceedings (Electronic Technology) Bill (“the Bill”).

Measures employed to protect personal data and maintain confidentiality

2. The Judiciary attaches utmost importance to maintaining the confidentiality of court documents, including electronic documents. The Judiciary is vigilant on Information Technology (“IT”) security matters and has internal guidelines for Judges and Judicial Officers and the Judiciary’s staff. We have made reference to the IT security guidelines/arrangements adopted by the Office of the Government Chief Information Officer and will review and refine the guidelines for handling court documents throughout the implementation of the Information Technology Strategic Plan (“ITSP”). Some examples of IT security safeguards include the encryption of court documents when they are stored in systems of the Judiciary or during communication between the Judiciary and other authorized users, and the use of firewall systems and

protection mechanisms to detect and deter illegitimate access. Moreover, in general, only registered users would be able to gain access to case documents stored in the e-system (i.e. the integrated court case management system “iCMS”).

3. On the unlawful or unauthorized access to the iCMS, we note that there are existing statutory criminal offences and common law offences that tackle computer crimes committed against the iCMS, such as hacking. Moreover, there are specific provisions in the Bill (clause 24) which empower the court to disallow the use of the e-system by a person, having regard to factors the court considers relevant, such as the conduct of a party. Hence, the court can use clause 24 to prohibit those who abuse the e-system from using it in court proceedings. With these existing sanctions in place, we believe it is not necessary to introduce any specific provisions in the Bill to provide a penalty for unlawful and unauthorized access to the iCMS.

Designation of e-system under clause 7 of the Bill

4. We intend to invite the Chief Justice (“CJ”) to designate the iCMS as the “e-system” at a certain website address when its implementation is ready. We will specify the e-system and the website address in the e-PDs for court users and stakeholders’ reference. The e-PDs, like all the other PDs issued by the Judiciary, will be sent to all relevant stakeholders and uploaded onto the Judiciary’s website. Stakeholders and members of the public can therefore get easy access to the relevant information.

Notices issued by CJ and administrative instructions issued by the Judiciary Administrator

5. With reference to paragraphs 5 and 6 of your letter, implementation notices made by the CJ under clause 32(1) of the Bill, notices made by CJ under clause 35(3) of the Bill, and administrative instructions issued by the Judiciary Administrator under clause 33(1) of the Bill will not be made by way of subsidiary legislation. Justifications for such arrangement are set out below.

6. The carrying out of court business in electronic mode is a new initiative. The use of new procedures and arrangements will mean substantive operational changes on all fronts. In particular, pursuant to

clauses 33(2)(a) and (b) of the Bill, the administrative instructions do not intend to contain matters of a legal nature, but technical and operational details such as user registration and computer hardware requirements for using the iCMS. They may be subject to changes from time to time, having regard to the operational experience and any future development such as technological advancement. At the same time, the notices and administrative instructions mentioned above are rather straightforward and operational in nature. Hence, the Judiciary considers it more desirable to allow for more flexibility in the Bill and specify such notices and administrative instructions by administrative means, such that we may work with stakeholders as necessary to refine the detailed arrangements without the need to effect frequent legislative changes.

7. The Bill seeks to provide an alternative option for court users to transact court businesses by electronic means on a voluntary basis. If court users do not follow the arrangements as listed in such notices and administrative instructions, they will not be able to communicate with the court in an electronic way successfully as a matter of practicality, and will have to interact with the court by conventional means.

8. For implementation notices made by CJ under clause 32(1) of the Bill, CJ may specify different implementation dates for the e-Courts in respect of different types of proceedings and/or different venues. For notices made by CJ under clause 35(3) of the Bill, CJ may specify a date after which an existing system will cease to be used for a certain purpose specified under clause 8 of the Bill, such that the iCMS can take over the functions performed by the old system. For these two types of notices, there is no issue of non-compliance, since they serve to inform court users on the implementation dates for e-Courts/the iCMS.

9. As for administrative instructions, if the court users do not comply with relevant requirements such as technical requirements prescribed in the instructions, their submission to the court may be rejected by the e-system. They aim at facilitating the implementation of iCMS rather than ensuring compliance and deterring contraventions. We therefore do not see the need to turn them into subsidiary legislation.

10. Thank you for your kind attention.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Winnie Wong', with a small mark above the 'i'.

(Miss Winnie WONG)
for Judiciary Administrator

c.c. Chief Secretary for Administration's Office
(Attn: Ms Vivian CHEUNG, Asst Dir of Adm 3)

Department of Justice
(Attn: Ms Nilmini Dissanayake, Consultant Counsel &
Miss Emma WONG, Sr Asst Law Draftsman)