立法會
Legislative Council

LC Paper No. CB(2)2590/99-00
(These minutes have been seen by the Administration and cleared with the Chairman)

Ref : CB2/BC/2/99

Legislative Council
Bills Committee on District Court (Amendment) Bill 1999

Minutes of 8th meeting
held on Monday, 13 March 2000 at 10:45 am
in Conference Room B of the Legislative Council Building

Members Present	:	Hon Margaret NG (Chairman) Hon Albert HO Chun-yan Hon Jasper TSANG Yok-sing, JP Hon Mrs Miriam LAU Kin-yee, JP
Members Absent	:	Hon Ambrose LAU Hon-chuen, JP Hon Ronald ARCULLI, JP
Public Officers Attending	:	Ms Emma LAU Deputy Judiciary Administrator Ms Miranda CHIU Deputy Director of Administration Mr David LEUNG Assistant Judiciary Administrator Ms Rosanna LAW Assistant Director of Administration

Mr J D SCOTT
Senior Assistant Law Draftsman

Miss Vivian FUNG
Senior Government Counsel

Mr Louie WONG
Government Counsel

Mr Ryan CHIU
Assistant Secretary (Administration)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Matters arising

Appeals from District Court
(LC Paper No. CB(2) 1314/99-00(03))

At the invitation of the Chairman, Deputy Judiciary Administration (DJA) briefed members on the existing mechanism of appeals from the District Court (DC), the proposed mechanism of appeal from DC under the Amendment Bill, and the possible changes to be introduced to the appeal mechanism from the DC as set out in the paper.

Application for leave to appeal

2. Mr Albert HO questioned the existing procedure requiring an application for leave to appeal against decisions of DC judges to be made to the trial judge first. He pointed out that given that the original judge trying the case had already ruled against

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the appellant, it was very unlikely for the same DC judge, except for cases which involved controversial legal issues, to grant leave to the appellant. The appellant going through this procedure would have to incur additional litigation costs as a result. Mr HO further pointed out that even for appeals against decisions of the High Court (HC), the Lands Tribunal or the Labour Tribunal, leave was not required. He suggested that the Administration should consult the legal profession, the judiciary and judges on this issue.

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3. Mrs Miriam LAU echoed the view of Mr HO and asked the Administration to provide information on the number of applications for leave to appeal against decisions of DC judges, leave to appeal granted by DC judges, leave to appeal refused by DC judges, application for leave to appeal to the Court of Appeal (CA) after refusal by DC judges, etc. Mrs LAU expressed concern that the procedure might deter people from lodging appeals, given that appellants did not have a choice but to seek leave from the trial judge first.

4. DJA said that the Administration had already held an in-depth discussion before arriving at the view that the existing system should be retained under the BIll. She would provide members with the relevant data if available. She said that the Administration considered that retaining the present requirement for leave to appeal had its merits. One of the purposes of the procedure was to ensure that an appeal was lodged on good cause. Without screening and vetting by DC judges, it was possible that the CA would be overburden with a lot of applications for leave against decisions, including decisions on interlocutory applications, from DC judges. Given that the judge trying the case was already familiar with the background of the case, he would be able to consider the application for leave to appeal more expeditiously and decide whether or not the appeal was justified.

5. Mrs Miraim LAU doubted whether the procedure could achieve the purpose of screening out unmeritorious applications for appeals. She said that all appellants felt that they had a justified cause to lodge appeals. If the DC judge refused leave, the appellant were almost bound to appeal against the refusal to the CA. She also pointed out that if both parties had put forward strong arguments and the DC judge had already ruled in favour of a party, it would be very difficult for the other party to be granted leave to appeal by the trial judge.

6. The Chairman opined that if an appellant put forward a new argument to substantiate his case, the chance of getting leave from the trial judge was even smaller, given that he should have provided such information in the original proceeding. While there were merits in the procedure, whether it could achieve the

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desired objective was another matter. She requested and the Administration undertook to elaborate on the merits of the procedure and to explain the appeal mechanism from the DC vis-à-vis appeals from other levels of courts.

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Leave periods and time for appeals

7. Noting that the period within which a person could appeal against the refusal of a DC judge to grant leave to appeal to the CA was proposed to be reduced from 14 days to 7 days (paragraph 13(c)(iii) of the paper refers), Mrs Miriam LAU asked for the reason for the change. She opined that an appellant should be given more time to prepare his case in order to lodge an appeal to the CA.

8. Assistant Judiciary Administrator (AJA) responded that given that the period was related to application for leave and not application to repeal against the decision of the judge of the DC, 7 days was considered to be adequate. DJA explained that the proposal sought to bring the leave period in line with that under Order 59 rule 14(3) of the Rules of the High Court (RHC). The relevant Rule provided that "where an ex parte application had been refused by the court below, an application for a similar purpose may be made to the CA ex parte within 7 days after the date of refusal". It was the provision governing the time for a party to renew his leave application to the CA where his first leave application was refused by the judge of the Court of First Instance (CFI).

9. Members considered that the reference to ex parte applications in setting the leave period for DC might not be appropriate. The Chairman said that reference to judicial review might be more appropriate. In response, DJA said that according to Order 53 rule 3 of the RHC, the time allowed for an appeal to be made to the CA against the refusal of a judge of the CFI to grant leave for judicial review was 10 days. She undertook to reconsider the matter having regard to members' views.

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DC master's decision

10. Referring to paragraph 13(a) of the paper, Mr Albert HO considered that the procedure for appeals from decisions of masters of the DC to lie to a DC judge as of right by way of rehearing was repetitive and inefficient. The Chairman said that this was the Administration's revised proposal made in response to the concerns raised by members at a previous meeting. Under the original proposal, an application for leave to appeal from the decision of a master of the DC was proposed to lie to the judge of the CA whereas that of a master of the HC to the judge of the HC. Members had raised queries about the proposal as the qualification of masters of the DC was

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lower than that of masters of the HC. The Chairman further said that since appeals could be lodged against the decisions of DC judges, there was no reason for the decisions of masters not to be appealable.

11. DJA said that the ranks of DC masters would be lower than those of the HC Master. In terms of practice direction, masters of the DC would handle non-controversial interlocutory applications. It was envisaged that appeals arising from the decisions of these cases would be very few and if any appeal was lodged at all, it should be screened and vetted by DC judges to ensure that the CA would not be overburdened with a lot of applications for leave against decisions of DC masters . The proposal was also in line with the relevant HC procedure.

12. Commenting on the HC procedure, Mr Albert HO said that given that masters and judges of the HC were about the same level, it did not serve any meaningful purpose for appeals from decisions of masters to be handled by way of rehearing by a HC judge. He considered that rehearing was a waste of resources and had the adverse effect of increasing litigation costs.

13. The Chairman responded that it was a common practice for appeals to be handled by way of rehearing by the relevant judge. She said that given that the qualification of a master and a judge of the DC was very different, it was appropriate for appeals from decisions of masters of the DC to lie to DC judges.

14. In response to Mr HO and the Chairman, AJA said that in some exceptions, the appeals from decisions of masters of the DC went to the CA with leave from the master. The exceptions were modelled on the RHC, which included -

(a) Order 14 rule 6(2) - Summary judgement: directions

(b) Order 36 rule 1 - Trials before, and inquiry by, master

(c) Order 37 - Damages: assessment after judgement and orders for provisional damages;

(d) Order 49B - Execution and enforcement of judgement for money by imprisonment; and

(e) Order 84A rule 3 - Actions arising out of hire-purchase or conditional sale agreements : judgement on failure to give notice of intention to defend or in default of defence.

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Responses to comments raised by the Bills Committee during clause-by-clause examination of the Bill
(LC Paper No. CB(2) 1314/99-00(04))

Item 1- Temporary deputy registrars and temporary assistant registrars

15. AJA said that having considered members' comments, the Administration would introduce Committee Stage amendments (CSAs) to provide for the appointment of temporary deputy registrars and temporary assistant registrars so that the arrangement for temporary appointment in the DC would be in line with that at other levels of courts. With these CSAs, the Administration considered it not necessary to include "temporary deputy registrar" and "temporary assistant registrar" in the definition of "registrar".

16. Mrs Miriam LAU asked that whether "temporary deputy registrars" and "temporary assistant registrars" would be conferred with the necessary powers to carry out their functions and duties if they were not covered in the definition.

17. AJA responded that the terms of "temporary deputy registrar" and "temporary assistant registrar" were also not defined in the HC Ordinance. However, sections 37A and 37B provided for the appointment of temporary deputy registrars and temporary assistant registrars respectively. Section 37A(4) provided that "a temporary deputy registrar may be called Master" and section 37B provided that "a temporary assistant registrar may be called Master".

18. The Chairman said that sections 37A and 37B did not set out the powers of a Master. The jurisdiction, powers and duties of registrar were provided in section 38(2) of the HC Ordinance which provided that all the jurisdiction, powers and duties conferred or imposed on the Registrar might be exercised or performed by a Master, subject to the rules of court.

19. Mrs Miriam LAU wondered whether a temporary deputy registrar or temporary assistant registrar who might be called Master under sections 37A and 37B would be conferred with the powers of a Master. The Chairman opined that when the law said that a specific person might be called Master, it was very unlikely that he did not have the powers of a Master.

20. Senior Assistant Law Draftsman (SALD) said that section 14(2) of the DC Ordinance provided the necessary powers to the deputy registrars and assistant

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registrars. The Chairman pointed out that the terms of "temporary deputy registrar" and "temporary assistant registrar" were not included in section 14(2), although proposed section 14(4) provided that in relation to the business and proceedings of the Court, it was lawful for a temporary deputy registrar and temporary assistant registrar of the HC to exercise any power or discharge any duty which they might respectively exercise or discharge under subsections (2) and (3) if they had been appointed or attached to the DC under subsection (1).

21. SALD explained that the powers of deputy registrars and assistant registrars were also conferred on temporary deputy registrars and temporary assistant registrars. The reason was that the word "temporary" only referred to the time rather than the actual powers or the creation of a particular office.

22. Mrs Miriam LAU said that the drafting was untidy, given that temporary deputy registrars and temporary assistant registrars were included in new section 14(4) but not in the existing section 14(2). She opined that for the avoidance of doubt, it was better to include the definition of "temporary deputy registrar" and "temporary assistant registrar" in the Bill. DJA undertook to reconsider the Administration's position.

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Items 2 - 4

23. Members did not raise any queries.

Item 5 - Combining section 32(1), (2) and (4)

24. AJA said that the Administration did not envisage any difficulty in combining section 32(1) and 32(2), given that the proposed jurisdictional limits for contract, quasi-contract or tort, and personal injuries were the same. The Administration also had no strong view for splitting the two subsections, in anticipation of separate jurisdictional limits proposed for personal injuries and other general monetary claims in future. He sought the views of members on the issue.

25. SALD added that the reason for having two subsections for contract, quasi-contract or tort; and personal injuries was that the original intention, as recommended by the Kemspter Working Party, was to introduce different financial limits for personal injury cases and other general monetary claims. The policy was to split the two subclauses and rely on the power conferred by section 73A to amend the limits by resolution of LegCo. If the two subclauses were combined, any amendment to the jurisdictional limits would have to be introduced in the form of an

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amendment bill in future.

26. In response to Mrs Miriam LAU, the Chairman advised that according to proposed section 73A, "the amounts mentioned in sections 32, 33, 35, 36, 37, 52 and 69B may be amended by resolution of the Legislative Council". Mrs Miriam LAU said that given that any proposals to change the jurisdictional limits would be controversial, it might not be appropriate for such proposals to go through the positive vetting procedure.

27. The Chairman said that the review of the DC's jurisdiction took years to complete and she was aware that a lot of negotiations had been going on behind the scene between the different departments and the legal profession. Eventually, all parties had agreed to have one limit for all cases. In the circumstances, she considered that there was no justification for separating section 32(1) and 32(2). She pointed out that while separating the two subsections would retain flexibility, it would also increase complexity. She also opined that in the event that there was a policy decision to have different jurisdictional limits for the cases under the two subsections, full consultation with LegCo and the relevant professional bodies should be made. Members supported the views of the Chairman.

28. As regards section 32(4), AJA said that the Administration considered that a standalone subsection for proceedings by way of interpleader had the benefit of greater clarity. SALD supplemented that one of the reasons for interpleader to be separately mentioned in new section 32(4) was that the existing sections 41 and 42 relating to interpleader were proposed to be repealed. Members did not raise any more queries.

Item 6 - Particulars of claim

29. AJA said that the way that new section 32(3) was drafted rendered the wording "in the particulars of his claim" unnecessary since "the amount the plaintiff claims" referred to the claim in the plaintiff's statement of claim.

30. Mrs Miriam LAU asked whether the situation of a plaintiff admitting the set-off in the middle of the proceeding would also be covered by new section 32(3). AJA explained that the new section only dealt with set off that the plaintiff admitted in the plaintiff's statement of claim.

31. The Chairman disagreed with the interpretation of AJA. She pointed out that the phrase "the set off …and contributory negligence …that the plaintiff admits"

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would imply that the admission could happen anytime. In fact, it was rare for a plaintiff to admit contributory negligence in the statement of his claim. She

Adm suggested and the Administration undertook to improve the drafting of the provision.

Item 7 - Rateable value of land

32. Members did not raise any queries.

Item 8 - Properties with a rateable value of $240,000

33. AJA briefed members on the item. Noting that about 92% of properties in the current valuation list had an annual rateable value up to $240,000, the Chairman expressed concern about the number of cases that might be transferred from the HC to the DC with the implementation of the new jurisdictional limit. She requested the Administration to review the situation from time to time.

Item 9 - Equity jurisdiction

34. AJA said that since the jurisdictional limits set out in sections 32, 33, 35 and 36 were not applicable to actions brought under section 37, deletion of sub-section 37(2)(ii) would render the DC's limits under equity jurisdiction unclear if a claim partly involving or relating to land, but the part not so involved and not so related was above $600,000. SALD supplemented that there were four elements in proposed section 37(2) and it was necessary to have four separate provisions to deal with them.

35. Mrs Miriam LAU considered that the proposed arrangements absurd. As she had pointed out at a previous meeting, the difference of a few dollars in the part of proceedings not involving land could result in a drastic difference in the jurisdictional limit from $600,000 to $3 million. The Chairman said that if a plaintiff wished to have his case tried in the DC, he might choose to recover in the action an amount not exceeding $600,000 so that the jurisdictional limit could be increased to $3 million for a claim partly involving or relating to land.

36. Mr Albert HO asked whether compensation resulting from recovery of land fell under proposed section 37(2). SALD responded that he was not familiar with this area of law. He advised that proposed section 37(2) only dealt with equity jurisdiction whereas proposed section 37(4) set out that the DC had no jurisdiction in proceedings for recovery of land or relating to the title to land if the rateable value

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exceeded $240,000.

37. The Chairman said that where compensation for recovery of land was concerned, it should be under the jurisdiction of the Lands Tribunal.

II. Date of next meeting

38. Members agreed that the next meeting should be held on 28 March 2000 at 8:30 am.

39. The meeting ended at 12:55 pm.

Legislative Council Secretariat
20 September 2000