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Paper for the House Committee on 1 March 2002

**Report of the Panel on Administration of Justice and Legal Services
concerning Government's policy on
legislation and administrative measures**

Background

In November 2001, issues relating to the 2001-2002 legislative programme were discussed by the House Committee. To follow up the matter, the Panel decided to invite the Chief Secretary for Administration (CS) to brief the Panel on the Government's policy on legislation and administrative measures. CS agreed to attend a Panel meeting on a date to be fixed.

2. On 7 February 2002, CS wrote to the Chairman of the Panel suggesting that it was more appropriate to have an exchange of views with Members at his next regular meeting with the House Committee as Members other than members of the Panel may also be interested in the Administration's view on the subject. A copy of the letter from CS is attached.

3. The Chairman consulted the Panel at its meeting on 25 February 2002. The Panel agreed to the suggestion of CS and to recommend to the House Committee that -

- (a) the matter be included as a separate agenda item for CS's next regular meeting with the House Committee; and
- (b) adequate time should be provided for discussion of the matter.

Advice sought

4. Members are invited to endorse the recommendation of the Panel.

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Legislative Council Secretariat
28 February 2002

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7 February 2002

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LegCo Panel on
Administration of Justice and Legal Services (AJLS Panel)

Thank you for your note of 25 January 2002, and your invitation for me to attend an AJLS Panel meeting to discuss the Administration's policy on legislation and related matters.

I am sorry to hear that we have yet to agree on a meeting date. It is through no fault of my Administrative Assistant that a date has not been fixed. He is in parallel arranging a number of overseas duty trips which the CS is required to undertake in the first part of the year. As the situation with those trips remains fluid, it would be remiss of him to seek to commit you and Panel members to a date that I might just not be able to make eventually.

Allow me to make up for this by outlining here the Administration's thoughts on the issues that are of interest to the Panel in this regard, viz. our policy on legislation and our policy on administrative measures. The two matters are intertwined. I would deal with them together.

The Basic Law sets out the powers and functions of the executive and legislature in respect of law-making in Hong Kong. It stipulates that it is the executive which drafts and introduces bills and implements laws passed by the legislature; and the legislature which enacts, amends or repeals laws. My colleagues, the Bureau Secretaries, and I accept without question the constitutional role of the legislature on law-making. We also take our constitutional responsibility of preparing bills seriously.

Contrary to some earlier media reports, it has never been our intention in this regard to substitute administrative measures for legislation, or to bypass LegCo. No one is above the law in Hong Kong. The Administration cannot be an exception. That we must abide by the law is clearly stipulated in the Basic Law. If there is a genuine need to legislate in order to implement a new policy proposal, there is no question of our resorting to administrative measures to achieve that objective. If existing legislation already provides sufficient basis for us to implement a new policy proposal, we will use the powers already enshrined in existing laws.

I believe I have impressed upon the Chairman of the LegCo House Committee, the Honourable Mrs Selina Chow, these very important considerations on various occasions. I will not hesitate to restate them here again, to put to bed any lingering doubts some might still harbour on the matter.

So, what is the principle we follow in making new legislation? The answer is this. We believe that law-making is a sacred and serious responsibility. It imposes new duties, requires compliance and enforcement. And, in almost all circumstances, it imposes additional costs on society. Our underlying principle is that we will legislate only if there is a genuine need to do so. During this process, the Administration will take into account the views of the community, including those expressed by the relevant Panels of the Legislative Council.

On that premise, in considering whether to introduce new or amend existing legislation, a Bureau Secretary, guided by the advice of the Department of Justice where appropriate, critically examines her proposal by asking herself three sets of questions.

First, is legislation necessary in the public interest, and what is the appropriate form? Are there other options, such as voluntary

agreements, non-statutory schemes or codes of practices that can achieve the same policy intent?

Second, what are the full implications of the policy proposal? This should include a comprehensive analysis of the social, political and economic impact of the proposal on the community and the Government. As much as possible, these costs and impact should be identified, quantified and properly balanced. Would the assessed impact become more onerous or more palatable to the public, if the policy were underpinned by legislation?

Third, the question on enforcement. Are we satisfied that we are able to enforce the new legislation fully and effectively? Put simply, we should not be putting a bill to LegCo that we are not able to enforce.

An internal Committee I chair, with the Secretary for Justice as a member, determines our legislative programme and priorities. The Committee adopts these very same criteria when we vet legislative proposals to formulate our annual Legislative Programme. In screening a bid for legislation, the Committee also takes into account the current legislative commitments of LegCo, how urgent the proposed legislation is, and whether undesirable consequences may ensue if it is not enacted within the current legislative session. These considerations enable us to prioritise better our legislative work by introducing only the most essential bills into LegCo.

I hope you would find the foregoing useful. On reflection, I believe that Members, as well as those on the AJLS Panel, may also be interested in the Administration's view on this subject. I therefore suggest that instead of appearing before the AJLS Panel, it is probably more appropriate to have an exchange of views with Members at my next regular meeting with the House Committee. For this reason, I am copying this letter to the Chairman of the House Committee.

(Donald Tsang)
Chief Secretary for Administration

c.c. Hon Mrs Selina Chow Liang Shuk-ye, JP