

## **Panel on Administration of Justice and Legal Services**

**Meeting on Tuesday, 27 May 2014**

### **Implementation of the recommendations made by the Law Reform Commission (“LRC”)**

#### **Background**

1. The reporting mechanism introduced by this Panel in 2012 aims to facilitate members of this Panel, as well as other Panels of the Legislative Council (“LegCo”), to follow up on progress of implementation of the LRC's recommendations by the relevant bureaux and departments.

2. At the Panel meeting discussing the Secretary for Justice (“SJ”)’s first report made last year pursuant to this mechanism, Members of this Panel suggested that the table annexed to the SJ's annual report should be categorised into different groups for easier understanding. Following this suggestion, the table annexed to this second report contains different categories according to their implementation status, ie:

- (a) proposals implemented fully;
- (b) proposals implemented partially;
- (c) proposals being considered or implemented;
- (d) proposals rejected by the Administration;
- (e) the Administration has no intention to implement the proposals at this juncture.

#### **Progress made since SJ's last annual report to this Panel**

3. The following paragraphs seek to highlight the more significant progress since SJ's last annual report to this Panel as set out in the table annexed to this second report:

- (a) Arrest (November 1992)

The Security Bureau is reviewing some of the proposals in the light of the changes in the Police and Criminal Evidence Act 1984 (in England) and local enforcement experiences with a view to determining the way forward.

- (b) Insolvency – Part 3: Winding-up provisions of the Companies Ordinance (July 1999)

The Financial Services and Treasury Bureau (“FSTB”) completed a public consultation on a package of legislative proposals in July 2013. Taking into account the consultation feedback, the FSTB is preparing detailed legislative proposals. The FSTB plans to brief the LegCo Panel on Financial Affairs on the consultation conclusions in around mid-2014, and will continue with the necessary work with a view to introducing an amendment bill into LegCo in the 2014-15 legislative session.

- (c) Insolvency – Part 2: Corporate rescue and insolvent trading (October 1996)

The FSTB is now in the process of engaging stakeholders on the detailed proposals. It plans to consult the LegCo Panel on Financial Affairs on the detailed proposals in around mid-2014.

- (d) Privacy – Part 3: Stalking (October 2000)

In the light of the concerns and divergent views expressed over the implications that the LRC's recommendations would have on constitutional rights including freedom of the media and freedom of expression, the Constitutional and Mainland Affairs Bureau (“CMAB”) commissioned a study on the experience of overseas jurisdictions in implementing their anti-stalking legislation. The study has been completed and the CMAB is considering the issues involved with a view to formulating the way forward.

- (e) Contracts for the supply of goods (February 2002)

The Commerce and Economic Development Bureau will work on this report, with a view to undertaking a comprehensive examination of the recommendations and researching into the relevant legislative and institutional arrangements adopted in other jurisdictions. The current intention is that such work will be completed before the end of 2014.

- (f) Guardianship & custody – Part 2: International parental child abduction (April 2002)

The Child Abduction Legislation (Miscellaneous Amendments) Bill 2013 was introduced into LegCo in July 2013 to take forward LRC's recommendations. It is now under the scrutiny of the Bills Committee.

- (g) Guardianship and custody – Part 4: Child custody and access (March 2005)

The Labour and Welfare Bureau launched a public consultation and reported the results of the public consultation to the LegCo Panel on Welfare Service in July 2013 and set out the way forward. Upon working out the detailed legislative and implementation proposals, the Bureau will further engage the stakeholders and interested parties before embarking on legislation.

- (h) Privity of contract (October 2005)

The Contracts (Rights of Third Parties) Bill was introduced to the LegCo on 26 March 2014. A Bills Committee has been formed to study the Bill and the second Bills Committee meeting took place on 7 May 2014.

(i) Class actions (May 2012)

The Department of Justice has established a cross-sector Working Group to study and consider the proposals of the report. In addition, a sub-committee of the Working Group ("Sub-Committee") has been formed to assist the Working Group on technical issues that might arise during its deliberations of the subject matter. The Sub-Committee has held its first meeting on 29 April 2014. The sixth meeting of the Working Group was held on 12 May 2014. The Administration will map out the way forward in the light of the recommendations to be made by the Working Group.

**Concluding remarks**

4. SJ and the LRC are conscious of the need to follow up closely on the implementation of proposals made by LRC. Indeed, progress of implementation of LRC proposals is now made a regular item of the LRC meetings so that members of the LRC can monitor the situation. SJ will continue to closely follow up the progress with all relevant bureaux and departments.

Law Reform Commission Secretariat  
May 2014

# LAW REFORM COMMISSION OF HONG KONG

## COMPLETE LIST OF REPORTS TABULATED ACCORDING TO IMPLEMENTATION STATUS

A total of 63 reports have been published since 1 January 1982. With one report recommending no change to the law,<sup>1</sup> the remaining 62 reports are tabulated into the following categories according to their implementation status:

- (a) proposals implemented fully (32 reports, 51.6% of the 62 reports);
- (b) proposals implemented partially (7 reports, 11.3% of the 62 reports);
- (c) proposals being considered or implemented (18 reports, 29% of the 62 reports);
- (d) proposals rejected by the Administration; (3 reports, 4.8% of the 62 reports); and
- (e) the Administration has no intention to implement the proposals at this juncture (2 reports, 3.2% of the 62 reports).

### (a) Proposals implemented fully

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
1	<b>Commercial arbitration (January 1982)</b>	Implemented by Arbitration (Amendment) Ordinance (10 of 1982) (March 1982) amending Cap 341 <sup>2</sup>
2	<b>Bills of exchange (December 1982)</b>	Implemented by Bills of Exchange (Amendment) Ordinance (16 of 1983) (April 1983) amending Cap 19
3	<b>Laws governing homosexual conduct</b>	Implemented by Crimes (Amendment) Ordinance (90 of 1991) (July 1991) amending Cap 200

<sup>1</sup> Report on *The procedure governing the admissibility of confession statements in criminal proceedings* (July 2000).

<sup>2</sup> Cap 341 has since 1 June 2011 been replaced by the Arbitration Ordinance (Cap 609) (17 of 2010), which came into operation on the same day.

	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
	<b>(June 1983)</b>	
4	<b>Community service orders (June 1983)</b>	Implemented by Community Service Orders Ordinance (Cap 378) (78 of 1984) (November 1984)
5	<b>The law relating to contribution between wrongdoers (April 1984)</b>	Implemented by Civil Liability (Contribution) Ordinance (Cap 377) (77 of 1984) (November 1984)
6	<b>Damages for personal injury and death (February 1985)</b>	Implemented by Fatal Accidents Ordinance (Cap 22) (41 of 1986) (July 1986); and Law Amendment and Reform (Consolidation) (Amendment) Ordinance (40 of 1986) (July 1986) amending Cap 23
7	<b>Laws on insurance (January 1986)</b>	Implemented by Insurance Companies (Amendment) (No. 3) Ordinance (76 of 1994) (July 1994) amending Cap 41
8	<b>Young persons - Effects of age in civil law (April 1986)</b>	Implemented by Age of Majority (Related Provisions) Ordinance (Cap 410) (32 of 1990) (May 1990); Marriage and Children (Miscellaneous Amendments) Ordinance (69 of 1997) (June 1997); and Law Reform (Miscellaneous Provisions and Minor Amendments) Ordinance (80 of 1997) (June 1997)
9	<b>The control of exemption clauses (December 1986)</b>	Implemented by Control of Exemption Clauses Ordinance (Cap 71) (59 of 1989) (November 1989)
10	<b>Coroners (August 1987)</b>	Implemented by Coroners Ordinance (Cap 504) (27 of 1997) (May 1997)
11	<b>The adoption of the UNCITRAL model law of arbitration (September 1987)</b>	Implemented by Arbitration (Amendment) (No. 2) Ordinance (64 of 1989) (November 1989) amending Cap 341 <sup>3</sup>

<sup>3</sup> Cap 341 has since 1 June 2011 been replaced by the Arbitration Ordinance (Cap 609) (17 of 2010), which came into operation on the same day.

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
12	<b>Competence and compellability of spouses in criminal proceedings (December 1988)</b>	Implemented by Evidence (Miscellaneous Amendments) Ordinance (23 of 2003) (July 2003) amending Cap 8
13	<b>Bail in criminal proceedings (December 1989)</b>	Implemented by Criminal Procedure (Amendment) Ordinance (56 of 1994) (June 1994) amending Cap 221
14	<b>Sale of goods and supply of services (April 1990)</b>	Implemented by Sale of Goods (Amendment) Ordinance (85 of 1994) (October 1994) amending Cap 26; Supply of Services (Implied Terms) Ordinance (Cap 457) (86 of 1994) (October 1994); and Unconscionable Contracts Ordinance (Cap 458) (87 of 1994) (October 1994)
15	<b>Law of wills, intestate succession and provision for deceased persons' families and dependants (May 1990)</b>	Implemented by Wills (Amendment) Ordinance (56 of 1995) (July 1995) amending Cap 30; Intestates' Estates (Amendment) Ordinance (57 of 1995) (July 1995) amending Cap 73; Inheritance (Provision for Family and Dependants) Ordinance (Cap 481) (58 of 1995) (July 1995); and Law Amendment and Reform (Consolidation) (Amendment) Ordinance (16 of 1996) (May 1996) amending Cap 23
16	<b>Loitering (July 1990)</b>	Implemented by Crimes (Amendment) (No 2) Ordinance (74 of 1992) (July 1992) amending Cap 200
17	<b>Illegitimacy (December 1991)</b>	Implemented by Parent and Child Ordinance (Cap 429) (17 of 1993) (March 1993)
18	<b>Grounds for divorce and the time restriction on petitions for divorce within three years of marriage (November 1992)</b>	Implemented by Matrimonial Causes (Amendment) Ordinance (29 of 1995) (May 1995) amending Cap 179

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
19	<b>Reform of the law relating to copyright (January 1994)</b>	Implemented by Copyright Ordinance (Cap 528) (92 of 1997) (June 1997)
20	<b>Codification: the preliminary offences of incitement, conspiracy and attempt (May 1994)</b>	Implemented by Crimes (Amendment) Ordinance (49 of 1996) (July 1996) amending Cap 200
21	<b>Privacy – Part 1: Reform of the law relating to the protection of personal data (August 1994)</b>	Implemented by Personal Data (Privacy) Ordinance (Cap 486) (81 of 1995) (August 1995)
22	<b>Description of flats on sale – Part 1: Local uncompleted residential properties: Sales descriptions and pre-contractual matters (April 1995)</b>	Implemented by Residential Properties (First-hand Sales) Ordinance (Cap 621) (19 of 2012) (July 2012)
23	<b>Insolvency: Part I: Bankruptcy (May 1995)</b>	Implemented by Bankruptcy (Amendment) Ordinance (76 of 1996) (December 1996) amending Cap 6
24	<b>The hearsay rule in civil proceedings (July 1996)</b>	Implemented by Evidence (Amendment) Ordinance (2 of 1999) (January 1999) amending Cap 8
25	<b>Creation of a substantive offence of fraud (July 1996)</b>	Implemented by Theft (Amendment) Ordinance (45 of 1999) (July 1999) amending Cap 210
26	<b>The year and a day rule in homicide (June 1997)</b>	Implemented by Statute Law (Miscellaneous Provisions) Ordinance 2000 (32 of 2000) (June 2000)
27	<b>The age of criminal responsibility in Hong Kong (May 2000)</b>	Implemented by Juvenile Offenders (Amendment) Ordinance (6 of 2003) (March 2003) amending Cap 226

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
28	<b>Guardianship &amp; custody – Part 1: Guardianship of children (January 2002)</b>	Implemented by Guardianship of Minors (Amendment) Ordinance 2012 (1 of 2012) (January 2012) amending Cap 13
29	<b>Rules for determining domicile (April 2005)</b>	Implemented by Domicile Ordinance (Cap 596) (4 of 2008) (February 2008)
30	<b>Enduring powers of attorney (March 2008)</b>	Implemented by Enduring Powers of Attorney (Amendment) Ordinance (25 of 2011) (December 2011) amending Cap. 501
31	<b>Sexual offences records checks for child-related work: interim proposals (February 2010)</b>	On 28 November, 2011, the Security Bureau announced the implementation, with effect from 1 December 2011, of a scheme based on the LRC's proposals enabling employers to check the sexual offence conviction records of prospective employees for work that requires frequent contact with children or mentally incapacitated persons.
32	<b>The common law presumption that a boy under 14 is incapable of sexual intercourse (December 2010)</b>	Implemented by Statute Law (Miscellaneous Provisions) Ordinance 2012 (26 of 2012) (July 2012)

**(b) Proposals implemented partially**

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
33	<b>Arrest (November 1992)</b> <b><i>Security Bureau</i></b>	More than half of the endorsed recommendations have been implemented. The Bureau is still reviewing some of the proposals in the light of the changes in UK's Police and Criminal Evidence Act 1984 and local enforcement experiences with a view to determining the way forward.



	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
34	<b>Insolvency - Part 3: Winding-up provisions of the Companies Ordinance (July 1999) <i>Financial Services and the Treasury Bureau</i></b>	<p>Some technical aspects were implemented by the Companies (Amendment) Ordinance (28 of 2003) enacted in July 2003 amending Cap 32.</p> <p>Having reviewed the key issues addressed in the report and taking into account the sector's latest developments, the Bureau has concluded:</p> <ul style="list-style-type: none"> <li>● not to pursue the recommendation to merge corporate insolvency legislation with personal bankruptcy legislation as there is no clear benefit or market demand for such a change;</li> <li>● to continue to rely on established professional sectors to deliver private sector insolvency services, rather than establishing and upkeeping a statutory licensing system at this time, as the latter is considered to be not cost-effective;</li> <li>● on remuneration (fees) of office-holders, the market has operated smoothly in determining the fee level of private sector insolvency services, with disputes settled by the Court's Taxing Masters, and there is no need to establish an adjudication panel arrangement to determine fees;</li> <li>● the concern that Official Receiver's Office (ORO) should be adequately funded is noted. ORO's funding bids, including additional resources as and when necessary, will continue to be processed in accordance with the Administration's well-established policies and procedures.</li> </ul> <p>With respect to the other technical amendments recommended in the subject LRC Report, they are being addressed under the Bureau's current exercise to improve Hong Kong's corporate insolvency legislation.</p> <p>In this regard, the Bureau completed a public consultation on a package of legislative proposals in July 2013. Taking into account the consultation feedback, the Bureau is preparing the detailed legislative proposals. The Bureau plans to brief</p>

	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
		<p>the LegCo Panel on Financial Affairs on the consultation conclusions in mid-2014, and will continue with the necessary work with a view to introducing an amendment bill into LegCo in the 2014-15 legislative session.</p>
35	<b>The regulation of debt collection practices (July 2002)</b>	<p>The recommended review of the then limitations imposed on the collection and use of 'positive credit data' was implemented without legislation by the Privacy Commissioner for Personal Data in the Code of Practice on Consumer Credit Data 2002.</p> <p>The Report's other recommendations were rejected by the Administration in September 2005.</p>
36	<b>Description of flats on sale – Part 3: Local completed residential properties: Sales descriptions and pre-contractual matters (September 2002)</b>  <i>Transport and Housing Bureau</i>	<p>Implemented by Residential Properties (First-hand Sales) Ordinance (Cap 621) (19 of 2012) (July 2012).</p> <p>The Residential Properties (First-hand Sales) Ordinance regulates the sales of completed and uncompleted first-hand residential properties.</p> <p>The regulation of the sales of second-hand local residential properties is strengthened with the assistance of the Estate Agents Authority (EAA). The EAA has required, among other things, that estate agents must provide information on the saleable area of second-hand residential properties to prospective purchasers with effect from 1 January 2013.</p>
37	<b>Guardianship and custody – Part 3: The family dispute resolution process (March 2003)</b>  <i>Home Affairs Bureau</i>	<p>With the implementation of the Civil Justice Reform, legal aid has been extended to cover mediation since 2009. Between 2 April 2009 and 31 March 2014, the Legal Aid Department has approved funding for appointment of mediators in 502 matrimonial cases. In May 2012, the Judiciary issued a Practice Direction on Family Mediation which also sets out the duty of the parties and their legal representatives to assist the Court in encouraging the parties to use mediation as an alternative dispute resolution procedure. Furthermore, a Practice Direction on Children's Dispute Resolution Pilot Scheme has come into effect since October 2012. Parents wishing to</p>

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
		seek mediation may also approach the Mediation Co-ordinator's Office set up by the Judiciary for assistance. In addition, the Family Council launched a two-year pilot scheme to provide sponsorship for interested organization on family mediation service in May 2012. The Bureau will continue to co-ordinate efforts and input from relevant bureaux and stakeholders in further pursuing the recommendations of the report.
38	<b>Privacy – Part 6: The regulation of covert surveillance (March 2006)</b>  <b><i>Constitutional and Mainland Affairs Bureau</i></b>	See items 41 and 43 below;  The Interception of Communications and Surveillance Bill (subsequently Ordinance 20 of 2006) was introduced prior to publication of the LRC report but mirrored some of the LRC's recommendations.
39	<b>Conditional fees (July 2007)</b>	The Report recommended, <i>inter alia</i> , the expansion of the Supplementary Legal Aid Scheme by raising the financial eligibility limits, and increasing the types of cases covered by the Scheme. The financial eligibility limits were raised in May, 2011, and the types of cases were expanded in November 2012.  Report's other recommendations were rejected by the Administration in October 2010.

**(c) Proposals being considered or implemented**

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
40	<b>Insolvency - Part 2: Corporate rescue and insolvent trading (October 1996)</b>  <b><i>Financial Services and</i></b>	Having reviewed the proposals put to the Legislative Council in 2000 and 2001 (which lapsed on both occasions), the Bureau conducted a public consultation in late 2009 on the conceptual framework and a number of specific issues relating to the corporate rescue procedure

	Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i>	Implementing legislation/ or other relevant information, including response from the relevant bureau or department
	<i>the Treasury Bureau</i>	and insolvent trading provisions, and issued consultation conclusions in July 2010. Since the last public consultation, the Bureau has been reviewing some of the more contentious issues of the proposals and considering in detail other key issues which were not discussed in that consultation exercise. The Bureau is now in the process of engaging stakeholders on the detailed proposals. The Bureau plans to consult the LegCo Panel on Financial Affairs on the detailed proposals in mid-2014.
41	<b>Privacy - Part 2: Interception of communications (December 1996)</b>  <i>Constitutional and Mainland Affairs Bureau</i>	<p>The Bureau considered the LRC report on this topic, together with 4 others on Stalking; Privacy and media intrusion; Civil liability for invasion of privacy; and Regulation of covert surveillance.</p> <p>These 5 reports touch on the sensitive and controversial issue of how to strike a balance between protection of individual privacy rights and freedom of the media. There were mixed responses and very divergent views from different sectors of the community. Given the complexity and sensitivity of the issues involved, the Bureau would handle the 5 reports in stages and map out the way forward in consultation with relevant parties.</p> <p>The first stage was to deal with the LRC report on Stalking. See item 43 below.</p>
42	<b>Extrinsic materials as an aid to statutory interpretation (March 1997)</b>  <i>Department of Justice</i>	<p>Bill introduced into LegCo in March 1999 but lapsed in view of Bills Committee's and the Bar's opposition and suggestion to wait and see how this area of law may develop. The Department of Justice is reviewing the developments and considering the way forward, in collaboration with the LRC Secretariat's further research as well as responses from the relevant stakeholders.</p>
43	<b>Privacy – Part 3: Stalking (October 2000)</b>  <i>Constitutional and Mainland Affairs Bureau</i>	<p>The Bureau decided to deal with the LRC report on Stalking first and launched a public consultation on the recommendations from December 2011 to March 2012. In the light of the concerns and divergent views expressed over the implications</p>

	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
		<p>that the LRC's recommendations would have on constitutional rights including freedom of the media and freedom of expression, the Bureau commissioned a study on the experience of overseas jurisdictions in implementing their anti-stalking legislation. The study has been completed and the Bureau is considering the issues involved with a view to formulating the way forward.</p>
44	<p><b>Contracts for the supply of goods (February 2002)</b> <b>Commerce and Economic Development Bureau</b></p>	<p>The Commerce and Economic Development Bureau agrees that the implied undertakings for all types of contracts for the supply of goods should be standardized and that legislative amendments should be introduced to extend to contracts for the supply of goods the implied undertakings which currently apply in respect of contracts for the sale of goods.</p> <p>To enhance consumer protection, the Bureau completed the legislative exercises in 2012 to tighten the prohibition against pyramid schemes and to amend the Trade Descriptions Ordinance (Cap 362) to tackle unfair trade practices. The amended Cap. 362 came into full operation in July 2013.</p> <p>With the above legislative exercises largely completed, the Bureau will work on the report on Contracts for the Supply of Goods, with a view to undertaking a comprehensive examination of the recommendations and researching into the relevant legislative and institutional arrangements adopted in other jurisdictions. It is intended that such work will be completed before the end of 2014. Based on such examination and research, and subject to other prevailing competing policy priorities, the Bureau will further consider how legislative proposals should be formulated and the timing of public consultation.</p>
45	<p><b>Guardianship &amp; custody – Part 2: International parental child abduction (April</b></p>	<p>The Labour &amp; Welfare Bureau informed LegCo Panel on Welfare Services in February 2010 that it had accepted in principle all the recommendations in the report and intended to take them forward in</p>

	Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i>	Implementing legislation/ or other relevant information, including response from the relevant bureau or department
	2002) <i>Labour and Welfare Bureau</i>	full, except one which will be taken forward in a modified form. The Child Abduction Legislation (Miscellaneous Amendments) Bill 2013 was introduced into LegCo in July 2013 to take forward LRC's recommendations. It is now under the scrutiny of the Bills Committee.
46	<b>Privacy – Part 4: Privacy and media intrusion (December 2004)</b> <i>Constitutional and Mainland Affairs Bureau</i>	See items 41 and 43 above
47	<b>Privacy – Part 5: Civil liability for invasion of privacy (December 2004)</b> <i>Constitutional and Mainland Affairs Bureau</i>	See items 41 and 43 above
48	<b>Guardianship and custody – Part 4: Child custody and access (March 2005)</b> <i>Labour and Welfare Bureau</i>	<p>A total of 72 recommendations were made on the arrangements in relation to child custody and access, including that Hong Kong should follow jurisdictions such as England &amp; Wales and Australia in applying the parental responsibility model to family law. Some of the recommendations of the report will fundamentally change the concept of "custody" underpinning the existing family law and have far-reaching implications.</p> <p>After conducting a public consultation on implementing the parental responsibility model by legislative means, the Labour and Welfare Bureau reported results of the consultation to LegCo Panel on Welfare Service in July 2013 and set out the way forward.</p> <p>In conjunction with the Department of Justice (DoJ), the Bureau has considered the latest developments in overseas jurisdictions. The Bureau is conscious that Recommendation 71 of the LRC Report has recommended that, as far as possible, the provisions dealing with disputes</p>

	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
		<p>relating to children, arrangements on divorce, guardianship, disputes with third parties, or disputes between parents without accompanying divorce proceedings should be consolidated into one existing Ordinance. The Bureau is now examining the feasibility of consolidating relevant existing provisions including those in the Separation and Maintenance Orders Ordinance (Cap.16), the Matrimonial Causes Ordinance (Cap.179) and the Matrimonial Proceedings and Property Ordinance (Cap.192) and incorporating new provisions resulting from LRC's recommendations into one existing Ordinance which is the Guardianship of Minors Ordinance (Cap.13).</p> <p>In tandem, the Bureau is considering the implementation arrangements having regard to the experience of other jurisdictions as well as local circumstances.</p> <p>Upon working out the detailed legislative and implementation proposals, the Bureau will further engage the stakeholders and interested parties before embarking on legislation.</p>
49	<b>Privity of contract (October 2005)</b> <i>Department of Justice</i>	<p>A consultation paper (with a working draft of the Contracts (Rights of Third Parties) Bill) was issued on 31 October 2012. The consultation exercise ended on 31 December 2012. The Department of Justice has consolidated comments received through consultation and the Bill was introduced to the LegCo on 26 March 2014. A Bills Committee has been formed to study the Bill and the second Bills Committee meeting took place on 7 May 2014.</p>
50	<b>Substitute decision-making and advance directives in relation to medical treatment (August 2006)</b> <i>Food and Health Bureau</i>	<p>The outcome of the public consultation launched in 2009 indicates that while the respondents generally are not opposed to introducing the concept of advance directives as a personal decision, there is no clear consensus or public support for promoting the concept by way of legislation. In 2010, the Hospital Authority has issued the Guidance for HA Clinicians on Advance</p>

	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
		<p>Directives in Adults which provides guidelines to HA frontline staff to deal with terminal care in an amicable manner under relevant circumstances. While there appears to be more receptiveness toward the information provided and more willingness among the patients and the community to discuss terminal care and the concept of advance directives, there is no substantial change in attitude in the community towards promoting advance directives through legal means. The Bureau considers it more advisable to implement advance directives by way of legislation when there is a greater degree of awareness and consensus over the use of advance directives and that the community is ready for it.</p> <p>The Review Committee on Mental Health has just been set up to examine the existing policy on mental health with a view to mapping out the future direction for development of mental health services. It will also consider necessary changes to the Mental Health Ordinance including the LRC's recommendations in relation to the definition of "mentally incapacitated persons". The Bureau will publish the recommendations of the Review Committee upon completion of the review.</p>
51	<b>Hearsay in criminal proceedings (August 2009)</b> <i>Department of Justice</i>	<p>The Department of Justice consulted the LegCo Panel on Administration of Justice and Legal Services in April 2012 and organised a (small-scale) forum in May 2012 for the purposes of consulting the representatives of the Bar, the Law Society and the Judiciary on the way forward. In the light of the above consultations, a working draft bill is being prepared by the Department of Justice, with a view to seeking the views of the legal professional bodies, the Judiciary and stakeholders in 2014. Subject to the result of the consultation, it is planned that proposed legislation will be introduced into LegCo in 2014/15 legislative session.</p>
52	<b>Criteria for service as</b>	<p>The Department of Justice is preparing drafting</p>



	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
	<b>jurors (June 2010)</b> <i>Department of Justice</i>	instructions and making preparation for a working draft bill, with a view to seeking the views of the legal professional bodies, the Judiciary and stakeholders in 2014. Subject to the result of the consultation, it is planned that proposed legislation will be introduced into LegCo in 2014/15 legislative session.
53	<b>Enduring powers of attorney: personal care (July 2011)</b> <i>Department of Justice</i>	The Department of Justice has convened meetings of an inter-departmental working group to examine the recommendations in the report and is now preparing drafting instructions after incorporating comments of the working group and making preparation for a working draft bill, with a view to seeking the views of the legal professional bodies, the Judiciary and stakeholders in 2014. Subject to the result of the consultation, it is planned that proposed legislation will be introduced into LegCo in 2014/15 legislative session.
54	<b>Double jeopardy (February 2012)</b> <i>Department of Justice</i>	The Department of Justice is prepared to take forward all the recommendations and will work out details of the legislative amendments in consultation with the stakeholders in 2014. Subject to the result of the consultation, it is planned that proposed legislation will be introduced into LegCo in 2014/15 legislative session.
55	<b>Class actions (May 2012)</b> <i>Department of Justice</i>	The Department of Justice has established a cross-sector Working Group to study and consider the proposals of the report, comprising members representing stakeholders in the private sector, the relevant Government bureaux and departments, the two legal professional bodies and the Consumer Council, and a representative from the Judiciary whose role is confined to providing input to the deliberations from the perspective of interface with court operations.  The first five meetings of the Working Group were held on 26 February 2013, 3 May 2013, 3 July 2013, 13 November 2013 and 28 February 2014 respectively. In addition, a sub-committee of the Working Group ("Sub-Committee") has been

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
		formed to assist the Working Group on technical issues that might arise during its deliberations of the subject matter. The Sub-Committee has held its first meeting on 29 April 2014. The sixth meeting of the Working Group was held on 12 May 2014. The Administration will map out the way forward in light of the recommendations to be made by the Working Group.
56	<b>Charities (December 2013)</b> <i>Home Affairs Bureau</i>	The recommendations of the LRC Report on Charities are relevant to various bureaux and departments. The Bureau is seeking their input and views with a view to formulating Government's responses to the LRC Report.
57	<b>Excepted Offences under Schedule 3 to the Criminal Procedure Ordinance (Cap 221) (February 2014)</b>	The principal recommendation is to remove the restriction on the court's sentencing discretion by repealing the list of excepted offences in Schedule 3 in its entirety so that the court will have the full discretion to impose an appropriate and adequate sentence, immediate or suspended included, having regard to the gravity of the offence and the circumstances of the convicted person.

**(d) Proposals rejected by the Administration**

	<b>Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i></b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
58	<b>Confession statements and their admissibility in criminal proceedings (October 1985)</b>	Rejected by the Administration in September 1987
59	<b>Contempt of court (July 1987)</b>	Rejected by the Administration in January 1994
60	<b>Interest on debt and damages</b>	Rejected by the Administration in May 1994

	Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i>	Implementing legislation/ or other relevant information, including response from the relevant bureau or department
	(July 1990)	

(e) The Administration has no intention to implement the proposals at this juncture

	Report (month and year of publication) - <i>Responsible Bureau, where report not yet implemented</i>	Implementing legislation/ or other relevant information, including response from the relevant bureau or department
61	<p><b>Description of flats on sale - Part 2: Overseas uncompleted residential properties (September 1997)</b></p> <p><i>Transport and Housing Bureau</i></p>	<p>The relevant policy bureau at the time carefully studied the LRC report in consultation with the Estate Agents Authority (EAA) after the report was published in 1997. As part of that exercise, the EAA conducted research into the law and practices of residential property sales in various jurisdictions (including New South Wales in Australia, British Columbia in Canada, England &amp; Wales in the United Kingdom, and Mainland China). The conclusion was that the proposed regulatory scheme would not be effective, as it would apply to estate agents only, not the vendors of overseas residential properties.</p> <p>The LRC report was prepared at a time when there was a surge in the volume of sales of non-local residential properties in Hong Kong, most prominently the sales of uncompleted residential properties situated in the Mainland. Malpractices, insufficient information available to purchasers and projects where construction works were not completed were common at the time. Given the outcome of the EAA's research on the effectiveness of the proposed regulatory scheme, instead of implementing the recommendations as set out in the LRC report, the relevant policy bureau at the time decided to take an alternative approach, under which the EAA and the Consumer Council stepped up their public education efforts to raise the awareness of the public on the risks of purchasing uncompleted residential properties</p>

	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
		<p>situated outside Hong Kong. The result has been encouraging. Complaints about the sales of uncompleted residential properties situated outside Hong Kong have significantly diminished over the years. While transactions of non-Hong Kong properties are generally outside the EAA's purview, the EAA is always concerned about licensees' conduct in the course of estate agency work and will follow up to investigate if licensees' misconduct is involved in handling transactions of non-Hong Kong properties. The need for legislation to regulate the sales of non-local residential properties in Hong Kong does not therefore seem imminent.</p> <p>Regulating the sales of non-local residential properties conducted in Hong Kong involves complicated issues and requires careful consideration. In particular, given the advancement of information technology since the publication of the LRC report, vendors of residential properties situated outside Hong Kong can directly carry out their sales and promotional activities in Hong Kong through the internet over which the question of legal jurisdiction is not easy to resolve.</p> <p>In the circumstances, the Transport and Housing Bureau (the Bureau) is inclined not to pursue the specific recommendations of the report.</p> <p>However, the Bureau will continue to monitor the situation and if in future, there is a rise of complaints and hence the need to regulate the sales of non-local residential properties by legislation, the Bureau will look at the issue afresh and identify a suitable regulatory framework. Meanwhile, the Bureau has invited EAA and the Consumer Council to provide regular feedback on any complaints relating to sales of non-local residential properties in Hong Kong. Also, the Bureau remains open to any new ideas from LRC.</p>
62	<b>Civil liability for unsafe products</b>	A 'strict liability' regime is recommended to give an additional basis for aggrieved parties to seek

	<b>Report (month and year of publication) - Responsible Bureau, where report not yet implemented</b>	<b>Implementing legislation/ or other relevant information, including response from the relevant bureau or department</b>
	<b>(February 1998)</b>  <b>Commerce and Economic Development Bureau</b>	<p>compensation for injuries and damages arising from unsafe products. The then Trade and Industry Panel of the LegCo being consulted in 1999, strong objection to the proposal was raised from trade representatives. Some considered it unfair to hold a party, such as an importer, liable if that party did not have full control over the safety of the product, while others were concerned about the likely increase in litigation and compliance costs.</p> <p>As the community is unlikely to reach any consensus on this matter in the near future, the Bureau does not intend to take forward the LRC's proposal at this juncture.</p>

**E N D**

Law Reform Commission Secretariat  
May 2014

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