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Panel on Administration of Justice and Legal Services

Meeting on 27 May 2014

**Background brief on the implementation of the recommendations
made by the Law Reform Commission**

Purpose

This paper provides background information on the role and work of the Law Reform Commission ("LRC"), and summarizes the major views and concerns expressed by members of the Panel on Administration of Justice and Legal Services ("the Panel") on the implementation of the recommendations made by LRC in previous discussions.

Background

Role and work of LRC

2. LRC was formally established pursuant to a decision of the Executive Council made in 1980 as an independent body which would consider areas of the law that may merit consideration for reform. The Secretary for Justice ("SJ") chairs the LRC, whilst the Chief Justice ("CJ") and the Law Draftsman of the Department of Justice ("DoJ") are *ex officio* members. Other members of LRC are appointed by the Chief Executive, on the advice of SJ. They are not confined to members of the legal profession, but include non-lawyers, academics, professionals of different disciplines and prominent members of the community.

3. LRC considers for reform such aspects of the law as may be referred to it by SJ, CJ or jointly by SJ and CJ. Since July 2012 when the incumbent SJ took office, the practice is to have the potential topics discussed by members of the LRC before a decision is made as to whether such topics shall be made subject of study. In the event any topic is considered to be worthy of such study, a

subcommittee will normally be formed to examine the topic in details. To gauge the views of relevant stakeholders and the public on the preliminary findings and recommendations made by LRC, extensive public consultations will be conducted by way of publication of a consultation paper, before LRC reaches its conclusion. Relevant Panels of the Legislative Council ("LegCo") may also be briefed on the LRC proposals during the public consultation period. A final LRC report containing all LRC recommendations on the subject will be published and passed to the Administration for consideration.

4. LRC has published a total of 63 reports since 1982. A chronological list of 61 reports published is appended to LRC paper for the Panel's meeting on 25 June 2013 (LC Paper No. CB(4)794/12-13(03)). Two additional LRC reports were issued respectively in December 2013 and February 2014. For the latest implementation status of these reports, please refer to the LC Paper No. CB(4)692/13-14(03).

5. At present, there are six ongoing projects under study by LRC¹ –
- (a) Adverse possession;
 - (b) Causing or allowing the death of a child;
 - (c) Review of sexual offences;
 - (d) Archives law;
 - (e) Access to information; and
 - (f) Third party funding for arbitration.

It is anticipated that projects (a) and (b) above may be completed by the end of 2014.

Mechanism to monitor the implementation of LRC recommendations

6. Arising from the public concern about the delays in implementing LRC proposals, the Director of Administration issued a set of guidelines in October 2011 under which B/Ds having policy responsibility over any LRC report are required to provide at least an interim response within six months of publication of the report and a detailed public response within 12 months of its publication. The interim report should set out a clear timetable for completion of the detailed response and the steps taken so far. B/Ds are required to give full consideration to LRC recommendations and provide a detailed public response setting out which recommendations they accept, reject or intend to implement in modified form.

¹ Reply Serial No. SJ027 to the Controlling Officer's reply to initial written question for the Examination of Estimates of Expenditure 2014-2015.

7. The Panel was concerned that with long delay in implementation, the validity and relevance of LRC recommendations are likely to be diminished and the efforts wasted. To ensure that LRC recommendations would be implemented without undue delay, the House Committee endorsed at its meeting on 2 March 2012 an mechanism proposed by the Panel for monitoring the Government's progress in this regard -

- (a) SJ to submit to the Panel for discussion an annual report flagging up the progress in respect of the LRC reports which have not yet been implemented, say, after the Policy Address in each year;
- (b) the Panel to copy the annual report to the relevant Panel to facilitate their follow-up with the B/Ds having policy responsibility over the respective LRC reports; and
- (c) the relevant Panels to include the Administration's responses to the respective LRC reports in their list of outstanding items for discussion, and to invite members of the Panel and all other Members to join the future discussion.

Pursuant to the above mechanism, SJ submitted the report for the first time to the Panel for its consideration at the meeting on 25 June 2013.

Discussions of the Panel

8. The Panel discussed issues relating to the implementation of the recommendations made by LRC at its meetings on 20 December 2011 and 25 June 2013. Members also expressed concerns over the subject when it deliberated on the topic of "Review of family procedure rules" at the meeting on 22 April 2014. Major views and concerns expressed by Panel members and the Administration's responses are summarized below.

Progress of implementation of LRC recommendations

9. At the above meetings, members in general expressed dissatisfaction at the delay of the Administration in implementing LRC recommendations. They considered that the validity and relevance of LRC recommendations and the supporting research and consultation responses were likely to be diminished the longer the time the recommendations remained unimplemented. The Administration advised that the Government attached great importance to the recommendations made by LRC. However, as the subject matters for law reform usually carried a certain degree of controversy and would also involve policy

considerations, not all reports could be implemented within a short period of time.

10. Noting that the guidelines for consideration of LRC reports issued by the Director of Administration in October 2011 only applied to newly published reports, some members considered that a timeframe should be specified for B/Ds to respond for LRC reports published before the issuance of the guidelines. They also expressed concern that the guidelines could not address the problem if the recommendations were left unimplemented with little or no development for years after the detailed public response provided within the initial 12 months of its publication. Members expressed worries that the LRC recommendations would become outdated due to the lapse of time.

11. When the Panel discussed the consultation paper put forward by the CJ's Working Party on Family Procedure Rules at its meeting on 22 April 2014, some members took the opportunity to express their disappointment that the LRC Report No. 48 on "Guardianship and custody – Part 4: Child custody and access" published in March 2005 had not been taken forward by the Administration. They opined that, in tandem with the proposed reforms on the procedural rules in family justice system, the Administration should also consider the recommendations put forward in the LRC Report and propose changes to the substantive law in relation to child custody and access. A motion proposed by Hon Dennis KWOK urging the Administration to immediately follow up on the recommendations made by the aforesaid LRC Report was passed at the meeting.²

12. The Administration responded that the Labour and Welfare Bureau ("LWB") was actively considering the recommendations made by LRC in relation to child custody and access. As some of the recommendations involved policy considerations, the Administration needed to consider the proposals carefully. Nevertheless, LWB had launched a public consultation in January 2012 on this topic to draw views from different stakeholders, including the Panel on Welfare Services which was briefed the results of the consultation exercise, and its plan to prepare legislative proposals and implementation arrangements in July 2013. LWB is currently working out the legislative proposals in conjunction with DoJ, and also considering the implementation arrangements having regard to the experience of other jurisdictions as well as local circumstances. It is also liaising with the Judiciary and other relevant B/Ds to consider how to take forward some of the recommendations through administrative means, e.g. issue of guidelines and provision of training. The Administration's written response to the motion (CB(4)699/13-14(01)) has been issued to members on 22 May 2014.

² Wording of the motion was "That this Panel urges the Administration to immediately follow up on the recommendations made by the Law Reform Commission in its 2005 Report on Custody and Access".

Resources and the work of LRC

13. Noting that members of LRC worked on a volunteer basis, some members opined that the inadequacy in manpower resources in LRC might prolong the consultation process and the study of legislative proposals. In this regard, they suggested the Administration to consider seeking funding to employ more full-time staff to support the work of LRC. The Administration advised that discussions had been held with various parties on the resources and the efficiency of LRC with a view to formulating measures to expedite LRC's work. One of such measures was to invite representatives from relevant B/Ds to join LRC's subcommittees on law reform proposals so that any policy issues in relation to the implementation of the proposals could be discussed at an early stage.

14. Some members considered it a duplication of efforts for LRC and B/Ds to conduct separate public consultation exercises on the same subject matter and recommended that studies by LRC on areas which were considered controversial in nature in the light of overseas experience should be avoided in order not to waste resources or create unrealistic expectation.

15. The Administration explained that the LRC's remit was to consider for reform those aspects of the law which were referred to it by SJ or CJ in order to address inadequacy in existing legislation. When selecting topics for LRC's study, consideration would also be given to whether there were relevant studies by other organizations or whether it would be done more effectively by the bureaux. In addition to B/Ds, proposals for law reforms could also be generated by the LegCo, the academic sector and the public. Since proposals made by LRC might involve policy consideration and might draw different views from the stakeholders, bureaux might need to carry out detailed research and public consultation before introducing any bill into the legislature.

Implementation status of specific LRC projects

16. At the meeting on 25 June 2013, some members enquired about the work progress on law reform topics of archives law, access to information and class action. Noting that LRC had established two subcommittees to consider the topics of archives law and access to information, some members opined that the two topics should be studied together given their inter-relatedness.

17. The Administration advised that on the law reform topics of archives law and access to information, taken into account the practice of other common law jurisdictions and detailed deliberations among the LRC members, LRC had decided to conduct the relevant studies by two separate subcommittees.

Nevertheless, the Administration had conveyed the message to the chairmen of the two subcommittees that they might combine the two subcommittees into one if they considered it necessary to do so in the future. As regards the topic of class action, the Administration said that DoJ had established a cross-sector working group to study and consider the relevant proposals. As class action was a controversial issue which received diversified views from different sectors of the community, such as the concern about whether class action would lead to litigation abuse, the Administration would continue to gauge views from different parties in deciding the way forward, and to consider preventive measures to avoid litigation abuse if class action regime was to be adopted in Hong Kong.

Council question

18. Hon Paul TSE raised a written question on "Implementation of recommendations on law reform" at the Council meeting of 26 January 2011. Hyperlink to the relevant Hansard is provided in **Appendix**.

Recent development

19. LRC will provide its second annual report to the Panel to set out the latest progress at the meeting on 27 May 2014. At the request of Panel members when receiving the first report, the LRC Secretariat undertook to enhance the presentation format of the table annexed to its paper by grouping the items into categories for easier understanding.

Relevant papers

20. A list of relevant papers is in **Appendix**.

**Implementation of the recommendations made by
the Law Reform Commission**

List of relevant papers

Meeting	Date	Paper
Council meeting	26 January 2011	Official Record of Proceedings Pages 81-91 (Written question raised by Hon Paul Tse)
Panel on Administration of Justice and Legal Services	19 April 2011	Information note provided by LRC
Panel on Administration of Justice and Legal Services	20 December 2011 (Agenda item III)	Agenda Minutes of meeting
Panel on Administration of Justice and Legal Services	27 February 2012 (Agenda item III)	Agenda Draft letter to the Chairman of House Committee Minutes of meeting
House Committee	2 March 2012 (Agenda item VII)	Agenda Minutes of meeting
Panel on Administration of Justice and Legal Services	25 June 2013 (Agenda item III)	Agenda Minutes of meeting
Panel on Administration of Justice and Legal Services	27 May 2014 (Agenda item III)	Administration's paper Administration's response to the motion passed at the meeting on 22 April 2014