

**立法會**  
**Legislative Council**

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LC Paper No. CB(4)1440/14-15  
(These minutes have been seen by  
the Administration)

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

**Minutes of meeting**  
**held on Monday, 20 July 2015, at 4:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

- Members present** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)  
Hon Dennis KWOK (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon TANG Ka-piu, JP  
Dr Hon CHIANG Lai-wan, JP
- Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Alan LEONG Kah-kit, SC  
Dr Hon Elizabeth QUAT, JP  
Hon CHUNG Kwok-pan

**Public Officers  
attending** : Item II

Department of Justice

Mr Rimsky YUEN, SC, JP  
Secretary for Justice

Ms Christina CHEUNG  
Law Officer (Civil Law) (Acting)

Mr Herbert LI  
Deputy Law Officer (Civil Law)

Item IV

Department of Justice

Mr Gilbert MO  
Deputy Law Draftsman

Ms Adeline WAN  
Senior Assistant Solicitor General

Ms Phyllis POON  
Senior Government Counsel

Ms Anita NG  
Senior Government Counsel

**Attendance by  
invitation** : Item III

The Law Reform Commission of Hong Kong

Mr Rimsky YUEN, SC, JP  
Secretary for Justice and  
Chairman

Ms Michelle AINSWORTH  
Acting Secretary

Mr LEE Tin-yan  
Acting Deputy Secretary

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (4)2

**Staff in attendance** : Mr Stephen LAM  
Senior Assistant Legal Adviser 2

Mr Oscar WONG  
Senior Council Secretary (4)2

Ms Rebecca LEE  
Council Secretary (4)2

Miss Vivian YUEN  
Legislative Assistant (4)2

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**I. Information paper(s) issued since the last meeting**

Members noted that no information paper(s) was issued since the last meeting.

**II. The administration of the Estate of the late Mrs Nina WANG**

LC Paper No. CB(4)1313/14-15(01) -- Administration's paper on "The administration of the Estate of the late Mrs Nina WANG"

Briefing by the Administration

2. Secretary for Justice ("SJ") briefed members on the administration of the Estate of the late Mrs Nina WANG ("the Estate"), details of which were set out in the Administration's paper (LC Paper No. CB(4)1313/14-15(01)).

Discussion

3. Mr Albert HO urged SJ, as a protector of charities, to appoint government official(s) to sit on the Board of the Chinachem Charitable Foundation Limited ("Foundation") to ensure that the Estate, set out in the will made by the late Mrs Nina WANG on 28 July 2002 to bequeath all of her properties [including her shares in the Chinachem Group of companies] to the Foundation for charitable purposes ("2002 Will"), was properly preserved.

Action

Mr HO pointed out that numerous comments had been made from various quarters in the community that the Foundation, as a trustee of the Estate, had not exercised due diligence to protect the properties of the Estate. For instance, many relatives of the late Mrs WANG were employed by the Chinachem Group on high salaries and funds of the Chinachem Group were used by the Foundation to pay for legal costs relating to the administration of the Estate.

4. Mr Paul TSE declared that he had previously provided legal advice to some former employees of the Chinachem Group, and staff of the Chinachem Group and their children were also beneficiaries of the Estate. Mr TSE further said that SJ, as a protector of charities, should not merely rely on the interim administrators to manage and preserve the Estate. In view of the numerous complaints made against the Foundation for not exercising due diligence to protect the Estate and the acquiescence of the interim administrators in this regard presumably because of the large amount of money they received from the Foundation for their services, SJ should appoint staff of the Department of Justice ("DoJ") to sit on the Board of the Foundation so as to closely monitor the affairs of the Foundation. As the Court of Final Appeal ("CFA") had made the final determination on the proper construction of the 2002 Will on 18 May 2015 that the Foundation was to hold the Estate as a trustee and that SJ should prepare a scheme for the implementation of the 2002 Will, including the detailed working out of the Chinese prize mentioned in the 2002 Will, Mr TSE asked about the timetable for preparing the scheme.

5. SJ responded as follows:

- (a) to protect the interests of the Estate, DoJ had, at all times, paid attention to the administration of the Estate and kept close contact with the interim administrators, including considering the periodical reports provided by the interim administrators; obtaining further information from the interim administrators; requiring the interim administrators to take follow up actions and provide report as the circumstances required; assisting the Court in legal proceedings taken out by the interim administrators in the course of interim administration; and making applications to or seeking guidance from the Court on the interim administration of the Estate as might be required. In addition, DoJ had entered a caveat against a grant of probate or letter of administration in respect of the Estate so as to ensure that he would be informed if any such application was made;
- (b) whilst DoJ was well aware of the complaints made concerning the administration of the Estate, it would not be appropriate for DoJ to

Action

follow up on these complaints unless there was sufficient information or evidence which suggested a potential breach of charitable trust or administration on the part of the Foundation and/or the interim administrators;

- (c) the CFA judgment dated 18 May 2015 did not affect the current independent interim administrators' discharge of their duties to administer and preserve the Estate in accordance with the Court's appointment order until any further court order. Hence, it would not be appropriate to appoint a member of DoJ to sit on the Board of the Foundation in relation to the interim administration. It would also not be appropriate to comment at this stage whether or not to appoint a member of DoJ to sit on the Board of the Foundation when the Foundation was to be under the supervision of a managing organization mentioned in clause 3 of the 2002 Will; and
- (d) DoJ had been consulting independent senior counsel both in Hong Kong and in the United Kingdom ("UK") on the preparation of a draft scheme for implementing the 2002 Will in accordance with the CFA judgment. The first draft of the scheme was only just drawn up on 17 July 2015. DoJ planned to take one week's time to study the draft scheme before forwarding the draft scheme to the Foundation for consideration. In case of disagreement on the draft scheme with the Foundation's Board of Governors which could not be resolved within six months' time, DoJ would take follow up actions, including seeking guidance from the High Court, so as not to cause undue delay to the implementation of the scheme.

6. The Chairman declared that she had once attended a television show with two sisters of the late Mrs Nina WANG. Noting that several lawsuits filed by the interim administrators of the Estate were on-going, the Chairman asked whether this would delay the timing of implementing the scheme. SJ replied in the negative, as the lawsuits were isolated cases.

7. Mr MA Fung-kwok asked the following questions:

- (a) what was the total amount of the Estate to date;
- (b) how were the fees charged by the interim administrators of the Estate determined;

Action

- (c) what mechanism was put in place by DoJ to ensure the proper administration of the Estate by the interim administrators; and
- (d) what was the progress of inviting the Secretary General of the United Nations; the Premier of the Government of the People's Republic of China ("PRC") and the Chief Executive ("CE") of the Hong Kong Special Administrative Region ("HKSAR") to form an organizing committee to supervise the Estate under the 2002 Will.

8. SJ responded as follows:

- (a) the total amount of the Estate was some HK\$82 billion;
- (b) similar to the fees charged by provisional liquidators appointed in a court winding-up, the fees charged by interim administrators of an estate were under the supervision of the Court. Further, should the trustee or DoJ consider the fees charged by the interim administrators of an estate were too high, an application might be made to the Court for taxation of the fees;
- (c) to ensure the proper preservation of the Estate, a team was set up under the Civil Division of DoJ to, amongst others, carefully consider the periodical reports provided by the interim administrators; and
- (d) DoJ was currently studying the feasibility of engaging the Secretary General of the United Nations; the Premier of PRC Government and the CE of HKSAR to form an organizing committee to supervise the Estate. As regards the Secretary General of the United Nations, there were issues from a foreign affairs dimension which required careful consideration. If the proposed supervisory organization was not feasible, DoJ would seek the Court's approval for appointing professional trustees or inviting independent persons of high stature from Hong Kong and/or overseas to serve on the organizing committee to supervise the Estate. There were precedent cases of appointing professional trustees for charitable trusts in Hong Kong. A recent case was for the Tsing Shan Monastery.

9. Mr Albert HO queried whether for DoJ to consider the periodical reports provided by the interim administrators was adequate to ensure proper preservation of the Estate.

Action

10. SJ responded that the interim administrators, being "officers of the Court", owed a duty to the Court on matters relating to the interim administration of the Estate and the Court might give directions to the interim administrators if and when necessary. In discharge of their duties, the interim administrators should investigate and take follow-up actions against any irregularity known to them which might prejudice the proper preservation and management of the Estate. The interim administrators were also required to submit periodical reports to the Court, SJ and the Foundation on the conduct of the administration. Should DoJ consider that the interim administrators failed to carry out their duties ordered by the Court, consideration would be made for a Court order to replace the interim administrators. SJ further said that apart from the interim administrators, external managers were also hired to monitor the properties and affairs of the Estate. Relevant arrangement for corporate governance had been submitted and approved by the Court.

11. In view of the numerous complaints made against the administration of the Estate, Mr James TO requested SJ to immediately appoint several government officials to sit on the Board of the Foundation to safeguard public interest. Mr Paul TSE and Mr MA Fung-kwok expressed support.

12. SJ responded that as the existing arrangements of administering the Estate were approved by the Court, strong justifications were needed to convince the Court why changes to the arrangements were required. As the protector of charities, he, together with members of DoJ would continue to pay close attention to matters relating to the administration of the Estate and seek guidance from the Court on the interim administration of the Estate as and when required.

13. Mr Paul TSE queried whether the reason for engaging outside counsel to provide legal advice on the drafting of the scheme on establishing a managing organization to supervise the Foundation and working out the arrangements for the Chinese prize was due to lack of resources or interest of DoJ to do the job, as DoJ should have started to prepare the scheme following the High Court judgment in February 2013 that the Foundation was the trustee of the Estate by drawing reference from the Shaw Foundation and the Nobel Prize.

14. SJ disagreed that DoJ had no interest in preparing the scheme on establishing a managing organization to supervise the Foundation and working out the arrangements for the Chinese prize for the following reasons. First, establishing a managing organization to supervise the Foundation and the working out of the arrangements for the Chinese prize were two completely different matters which needed to be dealt with separately. Second, DoJ had been studying the management and administration of the Shaw Prize and the

Action

Nobel Prize to see how they could be adapted for implementing the Chinese prize. Third, it was necessary for DoJ to consult the advice of outside senior counsel on the establishment of a managing committee to supervise the Foundation as there were very few precedent cases in Hong Kong and in other common law jurisdictions. SJ further said that if DoJ was not interested in administering the Estate, he would not have commenced proceedings in May 2012 in his capacity as the protector of charities to seek guidance from the Court on the proper construction of the 2002 Will in order to determine the proper administration and eventual distribution of the Estate.

DoJ

15. To enhance transparency of the interim administration of the Estate, Mr Paul TSE requested SJ to provide information on the arrangements approved by the Court concerning the interim administration of the Estate as well as the background, qualification and remuneration of each Board director of the Chinachem Group. SJ undertook to provide information on the arrangements approved by the Court concerning the interim administration of the Estate insofar as the information could be disclosed.

DoJ

16. Mr MA Fung-kwok also requested SJ to provide a breakdown of the properties of the Estate. Mr James TO hoped that SJ could provide the breakdown within two weeks' time. SJ agreed to provide the requested information insofar as it was allowed under the law.

Conclusion

17. In closing, the Chairman hoped that SJ could provide the information requested by members as soon as practicable.

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

LC Paper No. CB(4)1313/14-15(02) -- Law Reform Commission Secretariat's paper on "Implementation of the recommendations made by the Law Reform Commission"

LC Paper No. CB(4)1313/14-15(03) -- Updated background brief on "Implementation of the recommendations made by the Law Reform Commission" prepared by the Legislative Council Secretariat



Action

Briefing by the Law Reform Commission of Hong Kong

18. SJ, in his capacity as Chairman of the Law Reform Commission ("LRC"), briefed members on the progress of the implementation of the recommendations by LRC, details of which were set out in the LRC's paper (LC Paper No. CB(4)1313/14-15(02)).

Discussion

19. Mr Dennis KWOK welcomed SJ's plan to consider how full-time commission members might be appointed, and more full-time professional staff could be engaged, to work at LRC and hoped that this could be taken forward as soon as practicable.

20. SJ responded that he hoped to come up with a report in the remaining term of his office looking into the proposal of making the LRC into a full-time body staffed with full-time commission members and professional staff, though the issue of available resources would need to be taken into account.

21. Noting that a cross-sector Working Group established by DoJ to study the proposals of the LRC Report on Class Actions had held 10 meetings since the Report was published in May 2012, Mr Martin LIAO asked when a decision would be made on whether to or not to implement the proposals on class actions.

22. SJ responded that the extensive scope of the issues under discussion by the Working Group included technical issues such as: the definition of "consumer"; what criteria the court should adopt to allow class actions; the court procedures which would be involved; and the consequences in a class action regime of adopting an opting-in or opting-out approach. SJ pointed out, however, that whether or not to introduce class actions in Hong Kong was not purely a legal question. There were other considerations to be taken into account, such as the impact of class actions on the business environment and competitiveness of Hong Kong. SJ further said that there was a need to strike a balance between protecting the interests of consumers and maintaining Hong Kong's competitive edge amongst other jurisdictions in the Asia-Pacific region. Another option to be considered was the introduction of alternative dispute mechanisms, instead of a class action regime, to resolve the relevant disputes.

Action

23. The Chairman noted from paragraph 5 of the updated background brief prepared by the Legislative Council ("LegCo") Secretariat (LC Paper No. CB(4)1313/14-15(03)) that six projects were currently being studied by LRC, namely, (a) Review of sexual offences; (b) Causing or allowing the death of a child; (c) Archives law; (d) Access to information; (e) Third party funding for arbitration; and (f) Periodical payments for future pecuniary loss in personal injury cases. The Chairman asked about the progress of work of these projects.

24. SJ responded that LRC strived to complete the projects as soon as possible. Due to the varying complexity of the projects being studied by LRC, some of these projects would take more time to complete. SJ further said that the study of third party funding for arbitration was at an advanced stage. A consultation paper on the subject matter would be published in the next few months.

25. Whilst noting that the Administration had implemented some of the recommendations made in the LRC Report on Conditional Fees as set out under item 41 of the table annexed to the LRC's paper, the Chairman suggested reviewing the existing limits on legal aid assignments and introducing a rotation system for solicitors and counsel in view of the comments made by some members of the legal sector that legal aid work was often distributed to the same solicitors and counsel on the Legal Aid Panel. SJ clarified that legal aid was outside the purview of the DoJ but he undertook to relay the Chairman's suggestion to the relevant bureau/department for consideration.

26. Mr TANG Ka-piu noted from item 53 of the table annexed to the LRC's paper that DoJ had convened meetings of an inter-departmental working group to examine the recommendations in the LRC Report on Enduring Powers of Attorney: Personal Care and was preparing a draft bill, with a view to seeking views of legal professional bodies, the Judiciary and other stakeholders in the third quarter of 2015. Subject to the result of the consultation, it was planned that proposed legislation would be introduced into LegCo in the 2015-2016 legislative session. In the light of this, Mr TANG asked whether the stakeholders would include organizations providing social services, what was the duration of the consultation, and whether different views received on the draft bill during the consultation would delay the introduction of the proposed legislation into LegCo in the next session.

27. SJ responded that consultation on the draft bill would include the social welfare sector. Regarding the duration of the consultation, SJ said that it would be for three months. Although different views on the draft bill would be reflected during the consultation exercise, SJ said that it was difficult to say at

Action

this stage whether the result of the consultation would delay the introduction of the proposed legislation into LegCo in the next session.

28. Mr TANG Ka-piu further noted from item 45 of the table annexed to the LRC's paper that the recommendations made in the LRC Report on Privacy – Part 3: Stalking were under consideration by the Constitutional and Mainland Affairs Bureau ("CMAB"). In the light of the concerns and divergent views expressed over the implications of the LRC's recommendations would have on constitutional rights including freedom of the media and freedom of expression and to protect individuals from harassment, Mr TANG asked whether consideration would be given to first implementing the recommendations to deal with specific problems, such as amending the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) to deal with harassment by ex-spouses and introducing legislation against abusive debt collectors.

29. SJ responded that CMAB had decided not to legislate against stalking as none of the various formulations (i.e., the respective formulation put forward by the LRC and the Consultant commissioned by CMAB to study the experience of overseas jurisdictions in implementing their anti-stalking legislation and the "specified relations" approach) was supported by members of the Panel on Constitutional Affairs, the major stakeholders or the public, as being able to achieve the objective of providing protection to all people alike against stalking, whilst at the same time avoiding interference with the freedoms of the press and expression. However, CMAB would closely monitor the need to introduce anti-stalking legislation to criminalize stalking in Hong Kong as well as the overseas experience of implementing anti-stalking legislation.

Conclusion

30. In closing, the Chairman said that the Panel would continue to follow up on the progress of the implementation of recommendations made in the LRC Reports in the next legislative session.

**IV. Procedure for the making of subsidiary legislation relating to the legal professional bodies**

LC Paper No. CB(4)1313/14-15(04) -- Administration's paper on "Procedure for the Making of Subsidiary Legislation Relating to the Legal Professional Bodies"

Action

LC Paper No. CB(4)1313/14-15(05) -- Letter dated 8 July 2015 from  
(English version only) The Law Society of Hong  
Kong enclosing a Protocol for  
processing subsidiary  
legislation promoted by The  
Law Society

Briefing by the Administration

31. Deputy Law Draftsman ("DLD") briefed members on the procedure for the making of subsidiary legislation relating to the legal professional bodies, the role of DoJ in the making of such subsidiary legislation, the measures that had been adopted by DoJ to assist the legal professional bodies in preparing their subsidiary legislation, and the specific measures adopted by the Law Society of Hong Kong ("the Law Society") in their making of subsidiary legislation, details of which were set out in the DoJ's paper (LC Paper No. CB(4)1313/14-15(04)).

Discussion

32. Mr Dennis KWOK noted that a non-Government body that was empowered by an ordinance to make subsidiary legislation was responsible for drafting the subsidiary legislation and then sending the draft subsidiary legislation to the Law Drafting Division ("LDD") of DoJ for vetting to make sure that the format and styles complied with the current drafting practice in Hong Kong and were consistent with those of Hong Kong legislation in general. To better enable the two legal professional bodies to expedite the preparation of their subsidiary legislation, Mr KWOK said that LDD should consider referring its retired staff who had law drafting experience to these bodies to provide drafting advice.

33. DLD responded that LDD had in the past recommended its former staff who had law drafting experience to the Law Society. To his understanding, the two legal professional bodies did engage some former LDD staff to assist them in drafting their subsidiary legislation.

34. Mr TANG Ka-piu noted from paragraph 7 of the DoJ's paper that Part VII of the Legal Practitioners Ordinance (Cap. 159) ("LPO") delegated the power to the legal professional bodies to make subsidiary legislation relating to legal professional practice. As the subsidiary legislation regulating legal professional practice would have an impact on users of legal services, Mr TANG asked whether the general public was engaged by the two legal professional bodies in making these subsidiary legislation.

Action

35. Senior Assistant Solicitor General ("SASG") responded that to her understanding, the two legal professional bodies generally did not engage the public in making their subsidiary legislation relating to legal professional practice. Whilst the rule-making power to regulate legal professional practice was delegated to the two legal professional bodies, LegCo retained ultimate control over subsidiary legislation made by these bodies through a combination of means, including control over the primary legislation (i.e. the LPO) and the procedures for scrutiny of subsidiary legislation as provided in section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). SASG further said that if the general public had any comments on the subsidiary legislation relating to legal professional practice, they could always convey their comments to the two legal professional bodies for consideration.

36. Noting that all the subsidiary legislation made by the two legal professional bodies were subject to the prior approval of the Chief Justice ("CJ"), Mr TANG Ka-piu asked whether CJ simply approved or not approved the subsidiary legislation or whether it was an interactive process in that CJ would request/suggest the two legal professional bodies to revise their subsidiary legislation before giving his approval to the subsidiary legislation. SASG responded that the approving procedure was an interactive process between CJ and the two legal professional bodies. Further, in deciding whether to grant approval for the subsidiary legislation submitted by the two legal professional bodies, CJ would invite views from SJ who would examine the subsidiary legislation from both the policy and public interest perspectives.

37. Responding to the Chairman's enquiry on the procedure for making a private Member's bill, SASG said that apart from submitting the private Member's bill to LDD for vetting to make sure that the format and styles complied with the current drafting practice in Hong Kong and were consistent with those of Hong Kong legislation in general, the President of LegCo would write to the relevant bureau/department ("B/D") to seek their views as to whether the private Member's bill was in compliance with Article 74 of the Basic Law ("BL") before deciding whether or not to allow the sponsoring Member to introduce the bill into LegCo. The relevant B/D would then seek the advice of the Basic Law Unit of the Legal Policy Division of DoJ as to whether the private Member's bill was in compliance with BL74. BL74 stipulated that "Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced".

Action

**V. Any other business**

38. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 4  
Legislative Council Secretariat  
7 September 2015