

立法會
Legislative Council

Ref : CB4/PL/AJLS

LC Paper No. CB(4)976/15-16
(These minutes have been seen
by the Judiciary Administration
and the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 21 March 2016, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

- Members present** : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Starry LEE Wai-king, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
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
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Alvin YEUNG Ngok-kiu
- Non-Member attending** : Hon Paul TSE Wai-chun, JP
- Members absent** : Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon TANG Ka-piu, JP

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Public officers attending : Item III

Judiciary Administration

Ms Emma LAU
Judiciary Administrator

Miss Patricia SO
Deputy Judiciary Administrator (Development)

Item IV

Department of Justice

Mr Alan SIU, JP
Director of Administration and Development

Mr Wesley WONG, SC
Solicitor General (Acting)

Mr Peter WONG
Deputy Solicitor General (General)

Mr Byron LEUNG
Assistant Solicitor General

Attendance by invitation : Items III and IV

Hong Kong Bar Association

Mr Osmond LAM

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

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

Miss Joyce CHING
Senior Council Secretary (4)2

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Ms Jacqueline LAW
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

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

Members noted that no information paper had been issued since the last meeting.

II. Items for discussion at the next meeting

LC Paper No. CB(4)717/15-16(01) -- List of outstanding items for discussion

LC Paper No. CB(4)717/15-16(02) -- List of follow-up actions

2. Members agreed to discuss the following items at the next regular meeting scheduled for 25 April 2016 at 4:30 pm:

- (a) The Law Society's proposal to introduce a common entrance examination in Hong Kong; and
- (b) Renovation works for the West Wing of the former Central Government Offices for office use by the Department of Justice and law-related organizations.

3. Mr Dennis KWOK suggested to invite the deans and student bodies of the three local law schools to give views on the issue of "The Law Society's proposal to introduce a common entrance examination in Hong Kong". Members agreed. Members also agreed to invite representatives from the Standing Committee on Legal Education and Training to give views on the subject.

4. Mr Dennis KWOK further suggested to invite law-related organizations ("LROs") in Hong Kong to give views on the issue of "Renovation works for the West Wing of the former Central Government Offices for office use by the Department of Justice and law-related organizations". The Chairman requested members to provide him with a list of LROs to be invited for consideration. Members did not raise any queries.

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III. Mechanism for handling complaints against judicial conduct

LC Paper No. CB(4)717/15-16(03) -- The Judiciary's paper on "Mechanism for Handling Complaints Against Judicial Conduct"

LC Paper No. CB(4)717/15-16(04) -- Updated background brief on "Mechanism for handling complaints against judicial conduct" prepared by the Legislative Council Secretariat

Briefing by the Judiciary Administration

5. At the invitation of the Chairman, Judiciary Administrator ("JA") briefed members on the outcome of the review on the mechanism for handling complaints against judicial conduct ("complaint handling mechanism") and the improvement measures to be introduced with effect from 1 April 2016, details of which were set out in the Judiciary's paper (LC Paper No. CB(4)717/15-16(03)).

Views of the Hong Kong Bar Association ("the Bar Association")

6. Mr Osmond LAM said that the Bar Association supported the improvement measures to be introduced by the Judiciary to enhance the existing complaint handling mechanism. Mr LAM further said that according to his own observations, the attitude of some Deputy Special Magistrates in court was undesirable, which was probably attributed to the heavy caseload. Mr LAM urged the Judiciary to come up with measures to address this situation, as most of the parties to proceedings at the Magistrates' Courts were unrepresented by lawyers.

Discussion

7. Mr WONG Yuk-man said that although there was no dispute that judicial independence should be maintained, such principle had denied public monitoring of judicial conduct and judicial decisions, not to mention that the public was generally unaware of the complaint handling mechanism or how to lodge such complaints with the Judiciary.

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8. JA responded that to ensure that judges and judicial officers ("JJOs") would discharge their judicial responsibilities independently and impartially, all JJOs were appointed by the Chief Executive ("CE") on the recommendations from the independent Judicial Officers Recommendation Commission ("JORC"). Moreover, all JJOs had to take the Judicial Oath requiring them to discharge their duties "honestly and with integrity..... without fear or favour, self-interest or deceit". JA further said that judicial conduct and judicial decision were two different matters which had to be dealt with differently. Any party aggrieved by a JJO's decision could only appeal (where this was available) through the existing legal provisions, whereas all proper complaints against judicial conduct were handled by the Chief Justice of the Court of Final Appeal ("CJ") and the respective Court Leaders under the existing complaint handling mechanism. The mechanism was set out in a pamphlet which had been posted on the Judiciary's website and was for release to the public. To enhance the transparency of the mechanism, the Judiciary would also release statistics and details on justified and partially justified complaints against judicial conduct to the public, as appropriate, on an annual basis starting from 2016.

9. Whilst welcoming the Judiciary's plan to introduce a standard form to make it easier for complainants to provide the necessary information for complaints against the judicial conduct of JJOs, Dr CHIANG Lai-wan asked whether the Judiciary would further consider deploying staff to assist complainants to fill in the form if the complainants had difficulties to do so by themselves.

10. JA responded that to ensure fairness and impartiality in the processing of complaints against judicial conduct, it would not be appropriate for staff of the Judiciary to be involved in any way in preparing the complaints on behalf of the complainants.

11. Dr CHIANG Lai-wan noted that section 8 of the Judicial Officers (Tenure of Office) Ordinance (Cap. 433) provided a list of sanctions, ranging from dismissal to severe reprimand, which the JORC could recommend to CE if a tribunal, appointed by CJ and consisted of two Judges of the High Court and a public officer, considered that the judicial officer in question was unable to discharge his duties or had misbehaved. Dr CHIANG enquired whether any judicial officer had been sanctioned under section 8 of Cap. 433 in the past.

12. JA replied in the negative. JA pointed out that there had been one case in which CJ exercised his powers under section 3 of Cap. 433 and appointed a tribunal to investigate the representations that had been made to him to the effect that a judicial officer had misbehaved. The nature of the alleged

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misbehaviour was conduct not directly related to court work. In that case, after considering the tribunal's report, the JORC agreed to accept the tribunal's conclusions, i.e. the tribunal did not find the allegation that the judicial officer concerned had misbehaved proved; and, in its opinion, the judicial officer concerned was able to discharge his duties as a judicial officer properly. No further subsequent action was required to be taken by the JORC.

13. Noting that a substantial proportion (slightly more than half) of the complaints received through the mechanism for dealing with complaints regarding judicial conduct in the past five years from 2011 to 2015 were related to judicial decisions, Mr Alvin YEUNG said that the Judiciary should step up efforts in making clear to the public that complaints against judicial decisions could only be dealt with through appropriate legal procedures such as lodging an appeal. Mr YEUNG also suggested that the Judiciary should put up notices, prominently in the courts, that members of the public had the right to lodge their complaints against judicial conduct with the Judiciary.

14. JA agreed to relay Mr Alvin YEUNG's suggestion to the Working Group on Review on the Mechanism for Dealing with Complaints against Judicial Conduct ("the Working Group") for consideration.

15. Mr Alvin YEUNG asked whether the Judiciary had information on the numbers of complaints against judicial conduct lodged by members of the public alone and with the assistance of lawyers respectively.

16. JA responded that she did not have the information requested by Mr Alvin YEUNG on hand. Nevertheless, to her understanding, most of the complaints received under the complaint handling mechanism were from members of the public without the assistance of lawyers. Some of these members of the public were litigants, whilst others were people observing the court proceedings. The alleged improper behaviour of a judicial officer might happen inside or outside the court.

17. Noting that some complaints received involved both judicial conduct and judicial decisions, the Chairman asked about the procedures for handling such complaints.

18. JA responded that whether a complaint received involved judicial conduct or judicial decision or both was decided by the Court Leader concerned. If the complaint was decided by the Court Leader concerned to involve both judicial conduct and judicial decision, the Court Leader would, in accordance with the principle of judicial independence, only investigate the part of the complaint against judicial conduct upon completion of the judicial proceedings

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of the relevant case. JA further said that the complainant would also be informed that the part of his complaint involving judicial decision could not and would not be handled through the complaint handling mechanism and should be pursued through the appropriate legal procedures such as lodging an appeal.

19. Whilst expressing support that the handling of complaints against judicial conduct should comprise judges and judges only to ensure judicial independence, Mr Dennis KWOK said that it was important that the complaint handling mechanism was effective in disposing the complaints in a fair and timely manner. As the complaint handling mechanism would not handle the issue of the long time taken by the courts to hand down judgments, Mr KWOK asked whether the lawyer representing a party to a hearing already concluded could request the Court Leader to approach the judge concerned to enquire when a judgment would be handed down and the reason(s) for the long time required without disclosing the identity of the party making the enquiries.

20. JA responded that the Chief Judge of the High Court ("CJHC") had recently promulgated a set of guidelines on notifying parties to court proceedings of the estimated time for handing down reserved judgments. Notably, when a judgment was outstanding for 90 days or more, an estimated handing down date ("EHDD") would be given by the court to the parties. The EHDD was intended to be a realistic one and adhered to by the court. Only exceptionally would the EHDD be revised in which event the parties would be notified of the revised EHDD. In case of serious departure from the EHDD (or revised EHDD), the parties might bring the matter to the attention of CJHC. If for any reason no EHDD was given by the court, the parties might write to the court for an EHDD, and the parties were entitled to expect a reply from the court supplying one or, exceptionally, an explanation as to why an EHDD could not be given for the time being. If for any reason no such reply was received, the parties might bring the matter to the attention of CJHC. JA further said that the aforesaid guidelines had also been issued to the legal sector.

21. Mr Dennis KWOK said that due to heavy caseload, some judges had to write judgments on weekends and/or public holidays. In the light of this, Mr KWOK asked whether the Judiciary would allow a judge to devote one to two weeks' time to write judgment and not undertaking any other judicial duties, upon request of the judge.

22. JA responded that presently, a judge could apply to his Court Leader for setting aside certain time period to write judgment. JA further said that CJHC, who was responsible for ensuring that HC judges would have reasonable time to prepare for cases and write judgments and who held regular meetings with the listing officers to receive reports on the listing position, would also take

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the initiative to make instructions to relieve the heavy caseload of certain HC judges.

23. Whilst agreeing that the exercising of judicial power by JJOs to resolve legal disputes should be safeguarded and respected in order to ensure judicial independence, Ms Starry LEE queried the appropriateness of restricting the handling of complaints against the conduct of judges, such as rudeness and excessive intervention in court, to judges only. Ms LEE pointed out that it was the practice of professional bodies, such as the Hong Kong Institute of Certified Public Accountants, to engage persons who had no connection in any way with the practice of their professions to take part in the handling of complaints against the professional conduct of their members so as to ensure that the investigations would be seen/perceived by the public to have been conducted in a fair and proper manner.

24. JA referred members to paragraph 54 of the Judiciary's paper which set out the justifications, notably, the constitutional responsibility of JJOs to discharge their responsibilities independently and impartially; the separation of roles and responsibilities amongst the Government, the Legislative Council ("LegCo") and the Judiciary in dealing with their respective internal affairs; the potential high risk that the processing of complaints would be politicized if outside parties were involved in the process; the Judicial Oath taken by all JJOs, as well as Articles 89 and 91 of the Basic Law ("BL") and relevant provisions of Cap. 433 dealing with complaints against the judicial conduct of JJOs, that the Judiciary should continue to be allowed to handle complaints against judicial conduct without outside influences or interference. JA pointed out that even if a complaint against the conduct of a judge was found to be justified, the judge concerned might only be removed by CE on the recommendation of a tribunal appointed by CJ and consisting of not fewer than three local judges under BL89. JA assured members that in order to maintain public confidence in the Judiciary and in all JJOs, each of the complaints against judicial conduct received had been and would continue to be handled by the Judiciary in a fair, proper and cautious manner. If a complaint was found justified or partially justified, the Judiciary would send a reply to the complainant informing him of the follow up action(s) taken/to be taken. To enhance the transparency of the mechanism, statistics and details on justified and partially justified complaints against judicial conduct would be released to the public, as appropriate, on an annual basis starting from 2016.

25. Ms Starry LEE remained unconvinced that the complaint handling mechanism should comprise judges and judges only.

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26. Noting from paragraph 15 of the Judiciary's paper that all complaints against the judicial conduct of JJOs were handled by CJ and/or the Court Leaders of the relevant level of courts, Dr Priscilla LEUNG asked who would handle the complaints against the judicial conduct of CJ.

27. JA responded that complaints against the judicial conduct of CJ would be handled by more than one Permanent Judge of the Court of Final Appeal.

28. Dr Priscilla LEUNG further noted from paragraphs 40 to 45 of the Judiciary's paper that the follow up actions taken for justified or partially justified complaints were making apologies to the complainants and giving advice or counsel to the JJOs concerned. Dr LEUNG queried whether such follow up actions were too lenient to address a complaint where the judge concerned failed to disclose his relationship with a defendant or where the improper behaviour or conduct of the judge in court, such as excessive intervention and inappropriate comments, had undermined the fairness of the trial to the detriment of the complainant.

29. JA responded that the Judiciary considered that as the investigation of complaints against judicial conduct was not a disciplinary procedure, the action to be taken following the findings of a justified or partially justified complaint should not be more serious than those sanctions as laid down in the formal disciplinary procedures as a matter of principle. The Judiciary also took the view that it would be more appropriate to take a positive attitude towards lessons learnt in dealing with complaints against judicial conduct. In handling the various complaints, CJ and the Court Leaders would come to know about the problems and difficulties which might be encountered by the JJOs in their daily work, and hence, any room for improvements could be suitably addressed by the provision of judicial training under the Judicial Institute. As to the two hypothetical cases cited by Dr Priscilla LEUNG in paragraph 28 above, JA said that she was not in a position to respond to them.

30. Whilst expressing support for the setting up of a new Secretariat for Complaints against Judicial Conduct ("SCJC") for coordinating the handling of complaints against judicial conduct, Mr Paul TSE said that he had reservation about the Judiciary's view that the complaint handling mechanism should only involve judges so as to maintain judicial independence. Mr TSE disagreed with the views taken by the Judiciary mentioned in paragraph 82 of its paper that the Judiciary did not consider it appropriate to write on the workings of another jurisdiction's system just based on the materials posted on the Internet for not drawing reference from practices in overseas jurisdictions in enhancing the transparency of the complaint handling mechanism. For instance, no consideration on the setting up in Hong Kong of a body similar to the Judicial

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Conduct and Investigations Office ("JCIO") in the United Kingdom ("UK") by the Working Group was a case in point.

31. JA responded that the Working Group had studied the practices of dealing with complaints against judicial conduct in overseas jurisdictions in the course of the review of the complaint handling mechanism and had made reference to these practices where applicable, such as enhancing the transparency of the complaint handling mechanism by compiling statistics and details on justified and partially justified complaints for release to the public, the creation of the SCJC and the adoption of a standard form for complaints. JA further said that the suggestion of setting up an external body similar to JCIO would not be appropriate for Hong Kong as the constitutional frameworks were different.

32. Noting the actions to be taken following from justified or partially justified, Mr Paul TSE criticized that such actions were too lenient and at variance with the practices of professional bodies in handling complaints against the professional conduct of their members.

33. JA responded that the complaints processed under the complaint handling mechanism would be minor in nature, or substantial in nature but not serious enough to trigger BL89 or Cap. 433. Also, there were complaints which were frivolous and vexatious. Hence, the Judiciary considered that the action to be taken following from a justified or partially justified complaint should not be more serious than those sanctions as laid down in the formal disciplinary procedures. JA further said that if a complaint against the conduct of a JJO appeared to have any substance and was serious, it would be dealt with either under BL89 or Cap. 433. Under BL89, a judge might be removed for misbehaviour proved, whereas a JJO might be subject to one of the sanctions under section 8 of Cap. 433 for misbehaviour proved.

34. Mr Paul TSE urged the Judiciary to at least consider inviting retired senior judges to give advice or take part in the handling of complaints against judicial conduct so to enhance the transparency and impartiality of the complaint handling mechanism. Dr Priscilla LEUNG concurred with Mr TSE, as appointing Permanent Judges of the Court of Final Appeal to handle complaints against the conduct of CJ would still give rise to the criticism about judges investigating their own peer, not to mention that Permanent Judges of the Court of Final Appeal were subordinates of CJ. BL89 also had the same drawback in that the tribunal appointed by CE to investigate the alleged misbehaviour of CJ or his inability to discharge duties only comprised local judges. Dr LEUNG further suggested appointing external stakeholders to

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observe the handling of complaints against judicial conduct by CJ and the Court Leaders at all levels of the court.

35. JA reiterated that allowing the Judiciary to handle complaints against judicial conduct without any outside influence or intervention was consistent with the principles and matters set out in sections A.1 and A.2 and paragraph 54 of the Judiciary's paper.

36. Responding to Mr Paul TSE's enquiry about how the Judiciary would handle a complaint made by a judge against the judicial conduct of another judge, JA said that such a complaint would not be dealt with under the existing complaint handling mechanism as the mechanism only handled complaints lodged by external stakeholders. Complaints made by judges against other judges were extremely rare. If they occurred, they would be handled by CJ personally together with relevant Court Leaders.

Conclusion

37. The Chairman said that the Panel would continue to closely monitor the mechanism for handling complaints against judicial conduct.

IV. Creation of one permanent post of Deputy Principal Government Counsel in the Legal Policy Division of the Department of Justice

LC Paper No. CB(4)717/15-16(05) -- Administration's paper on "Proposed Creation of one Permanent Post of Deputy Principal Government Counsel in the Legal Policy Division of the Department of Justice"

Briefing by the Administration

38. Director of Administration and Development ("D of AD") briefed members on the proposal to create one permanent post of Deputy Principal Government Counsel ("DPGC")(DL2) in the Legal Policy Division ("LPD") of the Department of Justice ("DoJ") with effect from 30 May 2016 or upon approval by the LegCo Finance Committee, whichever the later, to head a dedicated unit in LPD to take up the arbitration portfolio from the General Legal Policy Unit 2 of LPD ("GLPU2"), including taking forward measures for promoting and developing Hong Kong's arbitration services in the increasingly

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competitive regional environment, details of which were set out in the Administration's paper (LC Paper No. CB(4) 717/15-16(05)). Subject to members' views, the Administration would seek the recommendation of the LegCo Establishment Subcommittee and approval from the LegCo Finance Committee.

Views of the Bar Association

39. Mr Osmond LAM said that the Bar Association supported the Administration's proposal to create the above proposed post with a view to strengthening the promotion of Hong Kong's arbitration services.

Discussion

Portfolio and workload of the new post and the new dedicated team

40. Noting that one of the duties of GLPU2 was to handle judicial reviews against determinations made by the Torture Claims Appeal Board and that such cases had recently caused wide public concern, Ms Emily LAU enquired about whether there was an increase in the workload arising from such cases in recent years.

41. Solicitor General (Acting) ("SG(Atg)") advised that it was one of the duties of GLPU2 to provide legal advice to the Torture Claims Appeal Board regarding the judicial reviews against its decisions. The number of pieces of advice given by GLPU2 had increased from 85 in 2014 to 140 in 2015. SG(Atg) further advised that in addition to the above mentioned duty, the original portfolio of GLPU2 included legal work related to various types of petitions and statutory appeals, *ex gratia* payment applications (made by persons who had spent time in custody following a wrongful conviction or charge), petitions under section 83P of the Criminal Procedures Ordinance (Cap. 221) as well as the promotion and development of Hong Kong's arbitration services, etc. The Administration's proposal was to create one permanent post of DPGC to take up the arbitration portfolio so as to allow the existing team to re-focus on the remaining substantial and heavy load of legal work.

42. Ms Emily LAU further asked whether the workload arising from the arbitration portfolio justified the creation of a new directorate post together with a new dedicated team. SG(Atg) explained that in addition to the duty of promoting and developing arbitration policies, the new team would also be responsible for the monitoring of the operation of the Arbitration Ordinance (Cap. 609), the development of specialized areas of arbitration and the

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cooperation with the United Nations Commission on International Trade Law, and the arbitration-related work arising from the Belt and Road Initiative.

43. Whilst expressing support for the Administration's proposal to create a permanent post of DPGC to take up the arbitration portfolio, Mr Alvin YEUNG was concerned that the workload arising from the arbitration portfolio might be too heavy for a DPGC. SG(Atg) said that the DPGC would lead a new dedicated team, i.e. the Arbitration Unit, comprising the proposed DPGC, two Senior Government Counsel, one Law Clerk and one Personal Secretary I, to take up the arbitration portfolio.

44. Given that lawyers might not be adept at organizing promotion work, Mr Alvin YEUNG asked whether the Administration would consider using layman who had more relevant experience to promote Hong Kong's arbitration services. SG(Atg) advised that the Administration might engage external consultants to assist in the promotion work, such as the arrangement of duty visits, when necessary. Deputy Solicitor General (General) supplemented that the new unit would collaborate with the Hong Kong Trade Development Council, which had extensive experience in promoting products and services, in conducting local and overseas promotional activities for arbitration.

The filling of the new position

45. In reply to the Chairman's enquiry about how the new post would be filled, SG(Atg) said that upon the creation of the new post, a decision would be made, following established procedures, on whether to fill the new post by internal promotion or open recruitment.

Establishment of an international legal hub

46. Mr Dennis KWOK expressed full support for the Administration's effort in actively promoting arbitration services in the past few years. However, he was concerned about whether sufficient funding would be allocated to convert the former French Mission Building (formerly housing the Court of Final Appeal) into an international legal hub with facilities of international standard, and which law-related organization(s) ("LROs") were to be housed in this international legal hub.

47. SG(Atg) advised that the Administration had planned to brief the Panel in the 2015-2016 legislative session on the conversion plan of the former French Mission Building and the West Wing of the former Central Government Offices into an international legal hub. D of AD added that as the former French Mission Building was a declared monument, the Administration had already

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obtained the support of the Central and Western District Council and the Antiquities Advisory Board on the proposed conversion project.

48. As regards the selection of LROs to be housed in the legal hub, D of AD advised that a Committee on Provision of Space in the Legal Hub, which was chaired by the Secretary for Justice and comprised non-official members from the legal, business and other relevant sectors, had been set up to consider matters relating to the provision of space to LROs in the legal hub. The Committee was currently considering 25 applications received from LROs. It would advise on the selection of LROs based on the assessment of the relative merits of individual applicants.

Hong Kong's competitiveness in the provision of international legal and dispute resolution services in the Asia-Pacific region

49. In response to Ms Emily LAU's enquiry about Hong Kong's competitiveness in the provision of international legal and dispute resolution services in the Asia-Pacific region, SG(Atg) advised that according to the 2015 International Arbitration Survey conducted by the School of International Arbitration at the Queen Mary University of London in 2015, Hong Kong ranked third after London and Paris as the most preferred and widely used seats of arbitration. In order to respond to stiff competition from other jurisdictions in the region, Hong Kong should take every opportunity to showcase its ability to provide first-class arbitration services.

Conclusion

50. In closing, the Chairman concluded that members supported the proposed creation of one permanent post of DPGC in LPD of DoJ.

V. Any other business

51. There being no other business, the meeting ended at 6:14 pm.