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

**Meeting on 23 May 2016**

**Updated 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 LRC's by bureaux/departments ("B/Ds") at previous meetings of the Panel.

**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 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 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. A total of 64 reports have been published by the LRC since 1982. With the recommendation of one report on the procedure governing the admissibility of confession statements in criminal proceedings published in July 2000, recommended no change to the law, the implementation status of the remaining 63 reports is set out in the LRC's paper for the Panel meeting on 20 July 2015 (LC Paper No. CB(4)1313/14-15(02)).

5. At present, there are six ongoing projects under study by the LRC:
- (a) Review of sexual offences;
  - (b) Causing or allowing the death of a child;
  - (c) Archives law;
  - (d) Access to information; and
  - (e) Third party funding for arbitration; and
  - (f) Periodical payments for future pecuniary loss in personal injury cases.

#### 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.

7. At the Panel meeting to discuss the "Role and work of the LRC" on 20 December 2011, 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 Panel proposed for the endorsement of the House Committee ("HC") the following mechanism for monitoring the Government's progress in implementing the LRC recommendations:

- (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.

The mechanism was endorsed by HC at its meeting on 2 March 2012. Pursuant to the above mechanism, SJ submitted the first, second and third annual reports to the Panel at its meetings on 25 June 2013, 27 May 2014 and 20 July 2015 respectively.

### **Discussions of the Panel**

8. Major views/concerns expressed by Panel members on the implementation of the LRC's recommendations by B/Ds and the responses from SJ are summarized below.

### Progress of implementation of LRC recommendations

9. Members expressed concern that the Administration had spent a long time in considering LRC recommendations on various reports and that the recommendations would become out of date due to the lapse of time. Members were worried that the delay in implementing those recommendations would hinder the local legislation system from keeping up with the global trend as well as the system's overall development.

10. SJ advised that the Administration had followed up concerns on the need to expedite the implementation process and LRC also attached great importance to monitoring the progress on implementation of its recommendations. Since 2013, the progress on implementation was a standing item for discussion at each LRC meeting and relevant information was regularly uploaded onto LRC's website for public viewing. However, in the light of the policy and practical implications of the issues involved, the Administration encountered various difficulties in implementing some of the recommendations. For example, in the case of LRC Report on "Insolvency – Part 2: Corporate rescue and insolvent trading" published in 1996, SJ advised that different sectors of the community had divergent views on the scope of the Companies Bill, thus making it difficult to use the Bill to take forward LRC recommendations concerned.

### Resources and the work of LRC

11. 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, members suggested that the Administration should consider seeking funding to employ more full-time staff to support the work of LRC. SJ 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. At the Panel meeting on 20 July 2015, SJ advised 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.

12. 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.

13. As all topics of study by LRC were now initiated by the Administration, some members were concerned that the general public might have doubts about the independence and impartiality of LRC, and that the topics of study might be subject to the Government's interference.

14. SJ advised that 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 the formal referral mechanism, proposals for law reforms could also be generated by the Legislative Council ("LegCo"), the academic sector and the public. Furthermore, 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

*LRC Report on "Guardianship and custody – Part 4: Child custody and access" published in March 2005*

15. At the Panel meeting on 22 April 2014 to discuss the consultation paper put forward by CJ's Working Party on Family Procedure Rules, some members took the opportunity to express their disappointment that the LRC Report on "Guardianship and custody – Part 4: Child custody and access" published in March 2005 had not been taken forward by the Administration. Members 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 LRC Report and propose changes to the substantive law in relation to child custody and access. A motion was passed to urge the Administration to immediately follow up on the recommendations made by LRC in its 2005 Report on Custody and Access.

16. SJ advised 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 on the results of the consultation exercise and the Administration's plan to prepare legislative proposals and implementation arrangements in July 2013. LWB was 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 was 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.

*LRC Report on "The regulation of debt collection practices" published in July 2002*

17. Noting that the use of 'positive credit data' proposed by LRC Report on debt collection practices was implemented through the Code of Practice on Consumer Credit Data 2002, a member enquired about the rationale for rejecting other recommendations on controlling debt collection practices, such as stalking, which were highly concerned by the public.

18. SJ explained that there were some operational difficulties in implementing the other recommendations on controlling debt collection practices. Having considered that the number of complaints relating to debt collection practices had dropped and there were already other legislative provisions in place to combat abusive practices employed by debt collection agencies, the Administration rejected other recommendations of the report.

*LRC Report on "Class actions" published in May 2012*

19. Members noted that a cross-sector Working Group established by DoJ had held 10 meetings to study the proposals of the LRC Report on "Class Actions". Question was raised as to when a decision would be made on whether to or not to implement the proposals on class actions.

20. SJ advised 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. He however pointed that whether to 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. Moreover, 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.

*LRC report on "Enduring powers of attorney: personal care" published in July 2011*

21. Members noted 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. Although the duration of the consultation on the draft bill would be for three months, SJ advised that it was difficult to say whether the results of the consultation would delay the introduction of the proposed legislation into LegCo in the 2015-2016 legislative session.

*LRC Report on Privacy – Part 3: Stalking published in October 2000*

22. In view of the divergent views over the implications of the recommendations made in the LRC Report on "Privacy – Part 3: Stalking" on constitutional rights, including freedom of the media and freedom of expression and to protect individuals from harassment, a member 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.

23. SJ advised that the Constitutional and Mainland Affairs Bureau ("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.

#### Progress of ongoing projects under study by LRC

24. Some members enquired about the work progress on law reform topics of archives law and access to information. 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.

25. SJ 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 amongst 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.

#### **Latest position**

26. SJ will submit its fourth annual report on the progress of implementing LRC's recommendations by B/Ds to the Panel for its meeting scheduled for 23 May 2016.

#### **Relevant papers**

27. A list of relevant papers is in the **Appendix**.



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

**List of relevant papers**

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

Meeting	Date	Paper
	20 July 2015 (Agenda item III)	<a href="#">Agenda</a> <a href="#">Minutes of meeting</a>

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