

立法會
Legislative Council

LC Paper No. CB(4)562/17-18
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by the Administration)

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Panel on Administration of Justice and Legal Services

**Minutes of policy briefing cum meeting
held on Monday, 30 October 2017, 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 Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon CHAN Kin-por, GBS, JP
Hon CHAN Chi-chuen
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Members absent : Hon Paul TSE Wai-chun, JP
Dr Hon Fernando CHEUNG Chiu-hung

**Public officers
attending**

: Agenda item IV

Department of Justice

Mr Rimsky YUEN, SC
Secretary for Justice

Mr Wesley WONG, SC
Solicitor General

Ms Christina CHEUNG
Law Officer (Civil Law)

Mr Paul TSANG
Law Officer (International Law)

Ms Theresa JOHNSON
Law Draftsman

Mr Martin HUI, SC
Deputy Director of Public Prosecutions

Mr Alan SIU
Director of Administration & Development

Administration Wing, Chief Secretary for
Administration's Office

Ms Kitty CHOI, JP
Director of Administration

Ms Christine WAI
Assistant Director of Administration

Home Affairs Bureau

Mr Jack CHAN Jick-chi, JP
Under Secretary for Home Affairs

Mr Patrick LI Pak-chuen, JP
Deputy Secretary for Home Affairs (1)

Ms Karyn CHAN Ching-yuen
Principal Assistant Secretary
(Civic Affairs) 2

Legal Aid Department

Mr Thomas Edward KWONG, JP
Director of Legal Aid

Agenda item V

Administration Wing, Chief Secretary for
Administration's Office

Ms Kitty CHOI, JP
Director of Administration

Ms Christine WAI
Assistant Director of Administration

Clerk in attendance : Mr Lemuel WOO
Chief Council Secretary (4)6

Staff in attendance : Mr YICK Wing-kin
Senior Assistant Legal Adviser 2

Ms Macy NG
Senior Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(4)71/17-18 - Minutes of meeting on
12 October 2017)

The minutes of the meeting held on 12 October 2017 were confirmed.

II. Information papers issued since the last meeting

LC Paper No. CB(4)1440/16-17(01) - Draft Amendment Rules of the Rule 4B(2) of the Solicitors' Practice Rules, Rule 8(4) of the Foreign Lawyers Practice Rules and Schedule to the Summary Disposal of Complaints (Solicitors) Rules from The Law Society of Hong Kong

LC Paper No. CB(4)44/17-18(01) - Information paper on Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Cases between the Macao Special Administrative Region and the Hong Kong Special Administrative Region provided by the Chief Secretary for Administration's Office

LC Paper Nos. CB(4)41/17-18(01) and CB(4)130/17-18(01) - Submission from the Chairman of the Hong Kong Bar Association Standing Committee on Legal Aid Reform on Financial Eligibility Limits for legal aid and the Administration's response

2. Members noted the above papers issued since the last meeting. Referring to the submission from the Chairman of the Hong Kong Bar Association Standing Committee on Legal Aid Reform on Financial Eligibility Limits for legal aid and the Administration's response, the Chairman consulted members on whether the matter should be included in the list of outstanding items for discussion of the Panel on Administration of Justice and Legal Services ("the Panel"). Members agreed.

III. Items for discussion at the next meeting

(LC Paper No. CB(4)31/17-18(01) - List of outstanding items for discussion

LC Paper No. CB(4)31/17-18(02) - List of follow-up actions)

Regular meeting on 27 November 2017

3. Members agreed to discuss "Proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments in civil and commercial matters" at the next regular meeting to be held on 27 November 2017.

(Post-meeting note: Upon the request of the Administration and with the concurrence of the Chairman, an item on "Transfer of the legal aid portfolio" was subsequently added to the agenda of the meeting on 27 November 2017. The revised agenda was issued to members vide LC Paper No. CB(4) 220/17-18 on 15 November 2017.)

Special meeting on 20 November 2017

4. Members noted that a special meeting to receive public views on the Consultation Paper on Gender Recognition issued by the Inter-departmental Working Group on Gender Recognition ("IWG") in June 2017 ("IWG's Consultation Paper") was scheduled for 20 November 2017 at 4:30 pm. Members noted that IWG had just announced today that the deadline of the above consultation had been extended from 31 October to 31 December 2017. The Chairman said that the Administration and IWG had been requested to take into account the views expressed at the above-mentioned special meeting.

Regular meeting in December 2017

5. The Chairman said that she and the Deputy Chairman had expressed grave concerns about the security of court buildings in view of an incident in which a man brandished a chopper in front of a judge at the High Court in mid-October 2017. She suggested and the Panel agreed to include the above item in the agenda of the regular meeting to be held in December 2017.

IV. Briefing on the Chief Executive's 2017 Policy Address

(LC Paper No. CB(4)24/17-18(01) - Paper provided by the Department of Justice

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| LC Paper No. CB(4)24/17-18(02) | - Paper provided by the Home Affairs Bureau |
| LC Paper No. CB(4)24/17-18(03) | - Paper provided by the Chief Secretary for Administration's Office) |

Other relevant documents

The Chief Executive's 2017 Policy Address

The Chief Executive's 2017 Policy Agenda

Briefing by the Administration

6. At the invitation of the Chairman, Secretary for Justice ("SJ"), Under Secretary for Home Affairs and Director of Administration ("DoA") briefed members on the policy initiatives under respective purviews in the Chief Executive's 2017 Policy Address and Policy Agenda, details of which were set out in LC Paper Nos. CB(4)24/17-18(01)-(03).

Arbitration and mediation services

Joint Dispute Resolution Strategy Office

7. Ms YUNG Hoi-yan asked about the operation of the Joint Dispute Resolution Strategy Office ("JDRSO") under the Department of Justice ("DoJ") in providing support and services to the arbitration and mediation institutions. She also enquired the Administration about its plan to enhance the overall coordination of arbitration and mediation work of DoJ in the coming year.

8. SJ explained that JDRSO, the purview of which covered the relevant two teams under DoJ, i.e. the Arbitration Unit of the Legal Policy Division and the Mediation Team of the Civil Division, had been formed to enhance the overall co-ordination of the promotional work for mediation and arbitration services. Since its establishment, JDRSO had been promoting the Hong Kong Special Administrative Region ("HKSAR")'s international legal and dispute resolution services through taking part in conferences and seminars overseas as well as in the Mainland and HKSAR. In this regard, DoJ and the Hong Kong Trade Development Council ("HKTDC") would attend a promotional trip to Malaysia in November 2017 to promote Hong Kong's international legal and dispute resolution services.

9. SJ also said that JDRSO also maintained close contacts with the legal profession as well as the arbitration and mediation institutions in Hong Kong. Through getting feedbacks from the stakeholders, JDRSO could better understand the services demanded for dispute resolution as well as the latest advances in the field so as to facilitate the Administration in formulating appropriate policies and legislative regimes to meet new demands. Apart from facilitative mediation, DoJ would also promote the use of evaluative mediation in resolving intellectual property disputes in response to relevant stakeholders' views.

Conditional fees for arbitration in Hong Kong

10. The Deputy Chairman enquired whether the Administration would consider implementing conditional fees in HKSAR. In reply, SJ said that the subject of "conditional fees" had been studied by the Law Reform Commission of Hong Kong ("LRC") and the Hong Kong Bar Association ("HKBA") about a decade ago. As the matter was complicated and controversial, the subject needed to be handled with due care and prudence.

11. SJ said that he noted that after the completion of the recent study on allowing third party funding for arbitration and mediation, there was a view that the conditional fees should be revisited. One suggestion was to study the feasibility of introducing conditional fees for arbitration, as a first step, but not a blanket introduction covering court proceedings which were of different nature with arbitration. SJ said that DoJ was open-minded to this suggestion and would listen to the views from different stakeholders.

12. SJ also stressed that in considering the introduction of conditional fees, two important principles to be upheld were that the measure(s) should enhance the competitiveness of HKSAR as a leading centre for international legal and dispute resolution services in the Asia-Pacific region; and the measure(s) would not sacrifice the professional standards and ethics of the legal profession.

Enhancing legal cooperation with the Mainland and other jurisdictions

Belt and Road Initiative and the Development Plan for a City Cluster in the Guangdong-Hong Kong-Macao Bay Area

13. Mr CHUNG Kwok-pan noted DoJ's measures to enhance cooperation with the Mainland authorities, the local legal profession, and arbitration and mediation institutions in HKSAR to facilitate the provision of international legal and dispute resolution services in the Mainland. He asked in what way the cooperation could enhance regional integration and collaboration to benefit the traders.

14. In response, SJ said that among other benefits that the cooperation between the legal professionals of HKSAR and the Mainland had brought, it had led to the innovation of new mode of legal services. One example was the acceptance of ad hoc arbitration by the Mainland recently while, in the past, only institutional arbitration was accepted. This new mode of service was resulted from the cooperation between law firms in HKSAR and the Mainland over the years, and had benefitted the maritime and insurance industries, in particular.

15. SJ added that, as a leading centre for international legal and dispute resolution services in the Asia-Pacific region, HKSAR could provide legal risk management services to the relevant enterprises under the Bay Area plan as well as under the Belt and Road Initiative, and there was immense room for cooperation between HKSAR and the Mainland. To quote as an example, a Mainland enterprise contemplating to do business with a Belt and Road country might be unfamiliar with the relevant legislation or regulations of that country while certain international law firms in HKSAR might be knowledgeable in that area. The law firm concerned could form association with its counterparts in the Mainland as partnership under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") to provide legal services to the enterprise.

16. Mr CHUNG Kwok-pan noted that external jurisdictions were involved in the Belt and Road countries. In view of this, he asked how HKSAR could compete with other competitors in the Asia-Pacific region for providing the legal services including arbitration and dispute resolution to the enterprises which participate in the Belt and Road Initiative.

17. In response, SJ said that according to some reports, such as that of the International Monetary Fund, the business volume which could be generated under the Belt and Road Initiative would be enormous. It was his view that the demand for legal services would be more than that could be met solely by the HKSAR law firms. Moreover, as the law firms in different cities might excel in different areas, they could engage in healthy competition or complemented each other's services with respective strengths.

18. Mr CHUNG Kwok-pan considered it important that a special team would be set up by the Administration to provide direct legal advice and assistance for traders conducting business under the Belt and Road Initiative. In response, SJ said that DoJ had been considering to provide legal services and advice on matters relating to the Bay Area plan and Belt and Road Initiative through a platform similar to what Mr CHUNG had suggested. There were also organizations contemplating the provision of legal services to enterprises under the Belt and Road Initiative, such as an online dispute resolution service.

19. Mr CHUNG Kwok-pan asked whether training would be provided to equip the HKSAR legal professionals with knowledge relevant to the Belt and Road Initiative. SJ said that while legal education was primarily provided through the universities in Hong Kong, the Administration had encouraged these institutions to get in touch with the Belt and Road jurisdictions, especially those having close business ties with HKSAR, to understand what training (e.g. legal, language, etc.) would help capacity building.

The Mainland and Hong Kong Closer Economic Partnership Arrangement

20. Mr Holden CHOW was disappointed to note that although CEPA had been implemented for many years, only 11 associations in the form of partnership between HKSAR and Mainland law firms had so far been approved to be set up as in September 2017. He asked whether there were any difficulties which hindered the legal cooperation between the two places.

21. Mr Martin LIAO also asked what improvement measures would be introduced by the governments of HKSAR and Guangdong in the cooperation between the law firms on either sides pursuant to the Framework Agreement on Hong Kong/Guangdong Cooperation.

22. In response to Mr CHOW and Mr LIAO, SJ advised that there had been ongoing discussion with the relevant Mainland authorities on the legal cooperation between HKSAR and Guangdong. Annual meetings were also held between DoJ and the two legal professional bodies to discuss how the implementation of CEPA in the legal sector could be enhanced. SJ illustrated with the example that, in response to a suggestion received, DoJ was considering how the measures to implement certain preferential treatments under CEPA could be enhanced for the legal sector.

23. Solicitor General of DoJ ("SG/DoJ") supplemented that the agreement under CEPA on cooperation between the legal professions was only signed in November 2015 and came into effect in June 2016, under which association of law firms of the two places in the form of partnership had become permissible. There being 11 associations set up in the form of partnership in three different areas in Guangdong within such a short period, SG/DoJ considered the progress encouraging.

24. SJ added that, over the years, HKSAR and the Mainland had worked together to broaden and enrich the contents of CEPA, which had also benefitted the legal sector. Furthermore, CEPA was only one of the approaches which could be taken for entering the Mainland market. Under other initiatives such as the Bay Area plan and the China (Shanghai) Pilot Free Trade Zone, it was his

view that the modes of cooperation between HKSAR and Mainland law firms would become more diversified.

25. Mr Martin LIAO asked whether the Administration would consider seeking the Central Authorities' support for extending the partner cities for legal cooperation to those beyond the Guangdong Province, such as Shanghai. In response, SJ said that DoJ had been watching for opportunities to extend the legal cooperation with Mainland cities both within and outside the Bay Area. It would continue to study the economic development and major commercial activities of individual cities to assess the legal services demanded, and plan for the appropriate promotional work to the cities concerned.

26. SJ noted that DoJ was also undertaking studies regarding the Bay Area plan with a view to formulating measures to promote HKSAR as a platform for providing international legal and dispute resolution services for enterprises in the Bay Area, the details of which would be reported to the Panel in due course.

Arrangement with the Mainland on reciprocal recognition and enforcement of judgments in civil and commercial matters

27. The Chairman expressed her support on DoJ's efforts on making arrangement with the Mainland on reciprocal recognition and enforcement of judgement in civil and commercial matters. In view of the expected rise in commercial activities between the two places under the Bay Area plan, she hoped that the arrangement on enforcement of judgments in commercial matters could be further enhanced.

28. SJ advised that the Administration was discussing with the Mainland on the arrangement on reciprocal recognition and enforcement of judgments in civil and commercial matters. The proposed arrangement would, by way of preliminary suggestion, cover judgments made by the courts in circumstances where the parties had not entered into exclusive choice of court agreements. However, the subject matter was complicated as issues relating to "One Country, Two Systems" and the provisions of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters signed at The Hague on 15 November 1965, had to be taken into consideration. SJ advised that DoJ would soon report to the Panel the progress of the relevant discussions with the Mainland.

Law Reform Commission's proposals on class actions

29. The Deputy Chairman, Mr Martin LIAO and Mr Holden CHOW were concerned about the work progress of the cross-sector working group on Class Actions ("Working Group") which was set up by DoJ to study LRC's proposals

of introducing a class action regime in HKSAR. The Deputy Chairman asked whether a legislative proposal would be submitted to the Legislative Council in this regard. Mr CHOW asked whether the Working Group would submit an interim or preliminary report for discussion by the Panel on the advantages and disadvantages of introducing a class action regime in HKSAR, given that LRC had made its recommendations in its report in 2012.

30. SG/DoJ advised that the Working Group had so far held 19 meetings to study the LRC's proposals on class action in detail. A subcommittee was also formed under the Working Group to assist it on technical issues that might arise during its deliberations of the subject matter, and the subcommittee had held 25 meetings. SG/DoJ said that two important principles underlying the deliberations of the Working Group were that, firstly, access to justice had to be ensured and, secondly, abuse by way of class actions which would adversely affect the overall competitiveness of Hong Kong should be avoided.

31. SG/DoJ said that the Working Group was chaired by him with members from the private sector, relevant government bureaux and departments, the two legal professional bodies and the Consumer Council. Also on the Working Group was a representative from the Judiciary to provide, where necessary, input to the deliberations from the perspective of court operations.

32. SG/DoJ said that issues which warranted study by the Working Group (which needed to call on the experience of overseas jurisdictions including the United States, Canada and Australia both on their federal and state/provincial levels) included how to deal with the possibility of counterclaim in class actions and the litigation costs involved. He added that there had been some developments in the European Union to which the Working Group would also need to pay attention.

33. SG/DoJ advised that as the Working Group and the Subcommittee would hold further meetings to consider the many issues involved and would make recommendations on the subject to the Government, the Administration would report to the Panel in due course.

Power to make prosecutions decisions

34. The Deputy Chairman requested the Administration to respond to the worries of some members of the public that the decision of initiating criminal prosecutions was subject to political considerations. Mr Alvin YEUNG asked whether SJ would consider reviewing the practice of making the prosecution decisions on his own and transfer all or part of this power to the Director of Public Prosecutions ("DPP") who was not a politically appointed official.

Mr YEUNG also asked whether SJ would discuss the matter with the Panel within the current Government term.

35. The Chairman said that she was strongly opposed to transferring SJ's power to make prosecution decisions to DPP as SJ, being the head of DoJ, could not abdicate from his constitutional duty by transferring all his prosecution responsibilities to DPP.

36. SJ said that it was his view that the worries that the prosecution decision-making process was subject to political considerations was a matter of perception which could be dealt with by putting in place some objective measures. SJ stressed that, while the Administration would keep an open mind to reviewing the present arrangement for making the prosecution decision, any review or reform had to be complied with the Basic Law including Article 63 which stated that "The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference." While concrete timetable for discussion with the Panel was not available yet, DoJ would continue to study this matter.

Briefing out of cases by the Department of Justice

37. The Chairman raised concerns about DoJ's practice of briefing out cases to counsels in the private practice with higher seniority and let them make the decisions, and thus higher litigation costs to another side have been incurred. She requested DoJ to consider recruiting more Government Counsels to handle the prosecution cases in-house.

38. SJ stressed that DPP and his staff in the Prosecutions Division considered the circumstances of each case thoroughly in deciding whether to prosecute, and the sensitivity of a case in deciding whether it should be briefed out. DoJ would closely monitor the progress of briefed out cases. In respect of the high litigation cost, SJ advised that the Court would assess whether the legal costs were reasonable.

39. In response to Mr Alvin YEUNG's enquiry about whether the Administration had conducted a recruitment exercise to fill the vacancy of the current post of DPP, SJ advised that the recruitment exercise for the post of DPP was underway and the result would be announced in due course.

(Post meeting note: DoJ announced the appointment of DPP on 29 December 2017.)

Gender recognition

40. Mr CHAN Chi-chuen expressed concern over the progress of IWG's work to protect the rights of transgender or transsexual persons in legal contexts. He said that it had been several years since the Court of Final Appeal made its comments in the Judgment on W's case in 2013, but some transgender or transsexual persons were still suffering from discrimination under the present legal framework.

41. The Chairman opined that issues relating to gender recognition did not only affect the transgender or transsexual persons but the society as a whole, and hence should be handled with due care and prudence. She said that while some transgender or transsexual persons might face difficulties, the impact of introducing the gender recognition scheme on the society should not be underestimated as there had been views in strong opposition. She requested the Administration to consider introducing administrative measures to target specific needs of individual transgender and transsexual persons rather than introducing legislative regime on gender recognition which would cause fundamental and controversial policy changes.

42. In response to Mr CHAN and the Chairman, SJ said that the Administration was aware of the difficulties faced by some transgender or transsexual persons. However, as the issue on gender recognition was highly controversial and the views were very diverse, it was important that there should be consensus in the community before the Administration could decide on the measures relating to gender recognition.

43. Mr CHAN Chi-chuen considered that some public opinions given in response to the IWG's Consultation Paper were exaggerated, untruthful or biased. He asked whether the Administration would make clarifications on those opinions to avoid misunderstanding. SJ said that the community should adopt a rational and practicable approach in giving their views to the Administration and IWG. Regarding Mr CHAN's concerns, he considered that those exaggerated, untruthful or biased comments might be addressed in the final report of IWG.

Law Reform Commission of Hong Kong's review of law concerning sexual offences

44. Mr CHAN Chi-chuen expressed concerns over the slow progress of reviewing the law concerning sexual offences by LRC. Mr CHAN pointed out that some provisions in the existing legislation concerning sexual offences, e.g. the differential treatment and penalties for offences involving a male and a

female vis-à-vis those involving two males, were unconstitutional and subject to challenge by way of judicial reviews.

45. Mr CHAN Chi-chuen considered the present situation unsatisfactory and the judicial reviews lodged against the Administration were wastes of resources since it was highly likely that the Administration would lose the cases. He called on the Administration to consider introducing a miscellaneous amendment bill to deal with those problematic provisions.

46. In response, SJ said that the Review of Sexual Offences Sub-committee under LRC was of the view that the different legislations concerning sexual offences, as they were interrelated, should be reviewed concurrently. However, in view of the time involved and the relevant JR cases, SJ said that he would reflect Mr CHAN Chi-chuen's views to LRC and see if it would explore other measures including Mr CHAN's suggestion to provide stopgap measures before LRC had come up with its final recommendations.

Legal aid services

Support provided to members of the public on application for legal aid

47. Ms YUNG Hoi-yan expressed concern over the poor design of HAB's website of the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures ("the Scheme"), which provided text-only information and were difficult for the grassroots and the underprivileged to understand. She also requested the Administration to consider expanding the scope of the Scheme to cover criminal cases as well.

48. Deputy Secretary for Home Affairs (1) ("DSHA(1)") undertook to review the content of the webpage regarding the Scheme. He advised that the Scheme was launched in 2013 to provide free legal advice on civil procedural matters for unrepresented litigants in need. In the light of the continuous increase in demand for the service as well as the Judiciary's proposed increase in the jurisdictional limit of the District Court, the Administration would set up an additional office for the Scheme in the Wanchai Law Courts Building in 2018 - 2019, with a view to meeting the increasing service needs and providing more accessible service to litigants involved in District Court and Family Court cases. He added that, to promote the Scheme, promotional materials including leaflets were distributed in the courts and through other channels.

Provision of legal advice services for persons detained in police stations

49. The Deputy Chairman asked about the timetable of studying the recommendation of the Legal Aid Services Council ("LASC") on providing legal advice services for persons detained in police stations.

50. DSHA(1) advised that HAB and the Security Bureau had reported to the Panel in July 2017 about LASC's recommendation that a publicly funded scheme be made available to ensure that detainees could have access to legal advice on their rights once their liberty was restricted. LASC proposed that the service be introduced on a pilot basis and provided at four representative police stations. He said that LASC's proposal involved the collaboration of various bureaux and departments and would entail substantial financial and operational implications. Relevant bureaux and departments were in the process of carefully examining the feasibility and implications of the proposal. Upon completion of internal deliberation, the Administration would report to the Panel again on the recommended way forward.

Accommodation of courts and manpower of judges and judicial officers

51. The Deputy Chairman asked about the timetable of the proposed developments of a Judicial Complex for the High Court ("JCHC") and a District Court Complex ("DCC"), and the exact location for DCC.

52. In response, DoA advised that the proposed developments of JCHC and DCC were still at an early stage with a lot of preliminary work required, such as seeking the Town Planning Board's approval and planning for interfacing with the railway projects under planning or construction. Therefore, the completion dates for the JCHC and DCC developments were not yet fixed. DoA also said that the proposed DCC would be located at the site of the ex-Electrical and Mechanical Services Department Headquarters in Caroline Hill, at close proximity to the South China Athletic Association.

Overall jurisdiction and high degree of autonomy

53. Referring to SJ's remarks made on the radio the day before regarding the overall jurisdiction exercised by the Central Government over HKSAR ("the overall jurisdiction"), Mr James TO asked whether the Central Authorities had given any briefing to SJ or the HKSAR Government on this subject. In response, SJ said that the Central Authorities did not contact him on the subject and his views expressed in the radio interview had already been set out in the Basic Law.

54. Mr James TO asked SJ to elaborate on his views given on the radio regarding the relationship between "overall jurisdiction" and "HKSAR's high degree of autonomy". Mr TO considered that, as the Central Government had already resumed its sovereignty over Hong Kong, it could grant high degree of autonomy to HKSAR Government without resorting to "overall jurisdiction".

55. In response to Mr TO's enquiry, SJ explained that "sovereignty" over HKSAR included but was not equivalent to "overall jurisdiction". He further pointed out that HKSAR was established on the basis of Article 31 of the Constitution of the People's Republic of China, which was originated from the nation's sovereignty over HKSAR.

V. 2017-2018 Judicial Service Pay Adjustment

(File Ref: CSO/ADM CR 6/3221/02 - Legislative Council brief on 2017-2018 Judicial Service Pay Adjustment

LC Paper No. CB(4)31/17-18(03) - Paper on Judicial Service Pay Adjustments prepared by the Legislative Council Secretariat (updated background brief))

56. At the invitation of the Chairman, DoA briefed members on the judicial service pay adjustment for 2017-2018 as detailed in the Legislative Council brief. She explained that on the recommendation of the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee"), the Chief Executive in Council had decided that the pay for judges and judicial officers ("JJOs") for 2017-2018 should be increased by 2.95%.

57. The Chairman reminded members that in accordance with Rules 83A and 84 of the Rules of Procedure of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interests relating to the subject under discussion at the meeting before they spoke on the subject.

Judicial remuneration

58. The Chairman said that, in view of the uniqueness of judicial work, it might not be appropriate to make direct comparison between the judicial pay with the earnings of the legal practitioners in the private sector. She also pointed out that as judges could enjoy the security of tenure and a high esteem in the community, potential candidates might perceive these factors as attractions for joining the bench.

59. Ir Dr LO Wai-kwok concurred with the Chairman and enquired about the current mechanism for determination of judicial remuneration. In response, DoA advised that the mechanism comprised a benchmark study ("Benchmark Study"), which should in principle be conducted every five years to check whether judicial pay was broadly in line with the movements of legal sector earning over time, and an annual review. In the last Benchmark Study conducted in 2015, a clear trend of widening differential between judicial pay and the earnings of legal practitioners was noted. In this connection, an upward adjustment of 4% had been granted to the salaries of JJOs below the Court of First Instance of the High Court ("CFI") level; and an upward adjustment of 6% was granted to the salaries of judges at the CFI level and above.

60. Mr CHUNG Kwok-pan expressed concern that while judicial pay might not be a deciding factor for JJOs' decisions to accept the judicial appointment, the existing judicial remuneration was not sufficient to recruit and retain the best possible talents as JJOs. He suggested that the Benchmark Study should be conducted at more frequent intervals, e.g. once every two or three years instead of five years, in order to keep abreast of the latest information/data on legal sector earnings.

61. In response, DoA explained that besides the judicial pay adjustment under consideration, the Chief Executive in Council had approved the Judiciary's proposal to enhance five areas of the remuneration package (i.e. housing benefits, medical and dental benefits, Local Education Allowance, Judicial Dress Allowance and transport service for leave travel) with effect from 1 April 2017 to make the remuneration package more attractive to candidates of sufficient experience, quality and standing.

62. Regarding Mr CHUNG Kwok-pan's suggestion to shorten the interval for conducting the Benchmark Study, DoA said that a two-year interval might be too short for the Judicial Committee to ascertain whether the pay relativities between judicial positions and legal positions were widening or narrowing over time. However, DoA undertook to relay Mr CHUNG's suggestion to the Judicial Committee for consideration.

63. The Chairman urged the Administration to conduct a comprehensive study to assess the effects of upward pay adjustments and enhancement in some of the conditions of service for JJOs in attracting new blood and grooming and retaining existing talents in the Judiciary. In response, DoA said that the Administration would closely monitor whether the pay increase and implementation of the enhanced conditions of service for JJOs would have a positive impact on recruiting and retaining the best possible talents to serve as JJOs.

Shortage of manpower in the Judiciary

64. Mr Martin LIAO expressed concerns about the number of JJOs who would retire in the next three years and their respective levels, and how the Administration would address the shortage problem of JJOs in the Judiciary. Mr CHUNG Kwok-pan asked in view of the recruitment difficulties, whether the Judiciary had recruited judges from overseas and if yes, the details.

65. In reply to Mr Martin LIAO and Mr CHUNG Kwok-pan, DoA explained that judicial vacancies were filled through open recruitment exercises. JJOs were not necessarily required to be proficient in Chinese and some of the JJOs recruited in the past were not bilingual. Among the 165 substantive JJOs, 148 of them were proficient in both Chinese and English, while eight of them were partly bilingual (i.e. could speak and understand Cantonese but could not read and write Chinese) and the remaining nine JJOs were only proficient in English. She also advised that, against the establishment of 200 judicial posts, 165 had been filled substantively and there were 35 vacancies.

66. The Chairman declared that she was an Associate Professor of the School of Law at the City University of Hong Kong. She suggested conducting a study in the law schools of some universities to see what constituted an important factor in attracting/deterring students to join the bench when they became veteran legal practitioners. She hoped that the Administration would also consider attracting more law students to serve as assistants to JJOs so as to gain exposure to the Judiciary and increase the judicial manpower in the long run.

67. In response, DoA explained that according to the Benchmark Study conducted in 2015, most of the barrister and solicitor interviewees considered that judicial pay was not a deciding factor for considering judicial appointment. Factors such as the high esteem of the Judiciary, individuals' commitment to serve the public and the opportunity to move to the next level of one's career might be seen as attractions for them to join the bench. Nevertheless, factors like heavy workload and lack of privacy might discourage them from doing so. DoA said that the Administration would relay the Chairman's suggestion to the Judiciary for consideration.

(At 6:25 pm, the Chairman suggested and members supported extending the meeting for 15 minutes to 6:45 pm.)

68. With a view to alleviating the problem of manpower shortage, Dr Junius HO suggested relaxing the requirement of prohibition against judges' return to private practice, such as imposing the requirement that judges might not work in the private sector only within a certain period of time after leaving

their judicial service. Dr HO further suggested that, as retirement was the main source of wastage among JJOs, the retirement age of JJOs should be extended beyond 65. He also asked the Administration to provide an update on the number of vacancies of judges in the Judiciary.

69. DoA replied that the suggestion of allowing permanent judges to return to private practice should be considered with due care and prudence as it might affect judicial independence. She also informed members that the Judiciary had engaged a consultant to conduct a review on the statutory retirement ages for JJOs, and would submit its recommendations to the Administration before the end of 2017. The Administration would keep a close watch on the conclusions of the review.

70. Mr Holden CHOW observed that recently, some judges had been criticized as politically biased in delivering their judgements, which might adversely affect the reputation of the court and deter the possible talents from serving as JJOs. Notwithstanding this, Mr CHOW indicated support to the 2017-2018 proposed judicial service pay adjustment.

71. After discussion, the Chairman concluded that the Panel generally supported the Administration's submission of the funding proposal to the Finance Committee for consideration.

VI. Any other business

72. There being no other business, the meeting ended at 6:35 pm.