

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1382/17-18  
(These minutes have been  
seen by the Administration)

Ref : CB4/PL/AJLS

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

**Minutes of meeting**  
**held on Monday, 22 January 2018, 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  
Dr Hon Fernando CHEUNG Chiu-hung  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
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 attending** : Hon Charles Peter MOK, JP  
Hon Tanya CHAN  
Hon KWONG Chun-yu

**Members absent** : Hon Paul TSE Wai-chun, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon CHU Hoi-dick

**Public officers attending : Agenda item III**

Department of Justice

Mr Peter WONG  
Deputy Solicitor General (Policy Affairs)

Mr Bernard YUE  
Senior Government Counsel

**Agenda item IV**

Department of Justice

Mr Alan SIU  
Director of Administration & Development

Mr Paul TSANG  
Law Officer (International Law)

Dr James DING  
Deputy Law Officer (Treaties & Law)

**Attendance by invitation : Agenda item III**

Hong Kong Bar Association

Mr Ken TO

Ms Thelma KWAN T M

**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

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Action

**I. Information papers issued since the last meeting**

(LC Paper No. CB(4)442/17-18(01) - Letter copied to the Chairman of the Panel from Hon Claudia MO

LC Paper No. CB(4)482/17-18(01) - Joint letter dated 12 January 2018 from Hon Dennis KWOK and Hon Alvin YEUNG requesting to invite the Secretary for Justice to a Panel meeting on matters relating to the unauthorized building works in her residence)

Members noted the above papers issued since the last meeting.

**II. Items for discussion at the next meeting**

(LC Paper No. CB(4)487/17-18(01) - List of outstanding items for discussion

LC Paper No. CB(4)487/17-18(02) - List of follow-up actions)

Request to call a special meeting to invite the Secretary for Justice to discuss matters relating to the unauthorized building works in her residence

2. The Chairman referred members to the joint letter from the Deputy Chairman and Mr Alvin YEUNG requesting to call a special meeting of the Panel on Administration of Justice and Legal Services ("Panel"), and invite Ms Teresa CHENG, the Secretary for Justice ("SJ") to respond to members' concerns and questions relating to the unauthorized building works ("UBW") in her residence ("the incident concerned") (LC Paper No. CB(4)482/17-18(01)).

3. The Chairman said that there was no precedent that the Panel had called a special meeting for individual government officials responding to members' questions about their conduct not in the performance of their official duties. Nevertheless, members were consulted on the above request (*via* LC Paper No.

CB(4)483/17-18 issued on 13 January 2018). Of the 16 members who had responded, seven members expressed support and nine members objected to the request. She also informed members that Mr CHEUNG Kwok-kwan and Mr Holden CHOW had sent letters to provide further comments on the request, which were tabled at the meeting.

*(Post-meeting note: The two letters from Mr CHEUNG Kwok-kwan and Mr Holden CHOW were issued to members via LC Paper Nos. CB(4)526/17-18(01) and (02) on 23 January 2018.)*

4. The Chairman informed members that Mr WONG Yan-lung, the former SJ, after his appointment as SJ during the second term of the Hong Kong Special Administrative Region ("HKSAR") Government, attended the Panel meeting in December 2005 to brief members on the Department of Justice ("DoJ")'s policy initiatives. Similar to that practice, Ms Teresa CHENG had agreed to attend the next regular meeting of the Panel on 26 February 2018 to brief the Panel on DoJ's policy initiatives.

5. The Chairman said that it was her view that members might raise questions deemed related to the discharge of Ms Teresa CHENG's duties as SJ at the above meeting on 26 February 2018. However, in view of the recent developments as well as the joint request from the Deputy Chairman and Mr YEUNG, she had explored with SJ the possibility of advancing her briefing given to the Panel to today's meeting, or a special meeting before the Lunar New Year. SJ had replied saying that she could only attend the Panel meeting on 26 February 2018 as more time was needed for preparation in relation to different aspects of DoJ's work. The Chairman invited members' views on the matter.

#### *Members' views*

6. The Deputy Chairman said that SJ's reason for not coming to the Panel today was only a pretext and had failed to meet the public expectation. He expressed deep regret that SJ had not taken the opportunity to allay public concerns by answering members' questions at today's meeting, but had chosen to be interviewed at a radio programme the day before. Mr CHAN Chi-chuen and Mr KWONG Chun-yu shared his view. Mr CHAN expressed that Ms Teresa CHENG should step down from the position of SJ.

7. Mr Alvin YEUNG criticized SJ for disclosing the details about the UBWs in her residence bit by bit, just like "squeezing toothpaste out of the tube". He urged SJ to attend a special meeting of the Panel as early as possible, instead of the next regular meeting a month later. Mr YEUNG stressed that the main concern of the public was about Ms Teresa CHENG's

integrity and whether she was capable of discharging SJ's duties, rather than the UBWs as such.

8. Ms Tanya CHAN drew members' attention to the latest news reports about Ms CHENG's disclosure of her other properties and some UBWs therein. There was also suspicion that Ms CHENG might have avoided stamp duty tax in purchasing her properties. Ms CHAN queried Ms CHENG's integrity and the appropriateness for her to take up the position of SJ. She considered that the House Committee should be the most appropriate forum for SJ to discuss the issue with Members.

9. Mr James TO, Mr HUI Chi-fung and Mr KWONG Chun-yu urged SJ to attend before the Panel to answer members' questions relating to the UBWs in her properties as soon as possible. Mr TO and Mr HUI considered that, by doing so, Ms Teresa CHENG could prove her suitability as SJ to the Panel. Otherwise, it would not only damage her integrity but also HKSAR Government's credibility. Mr HUI and Mr KWONG called on the Chairman to continue inviting SJ to attend a meeting of the Panel before 26 February 2018.

10. Dr Fernando CHEUNG supported calling a special meeting as soon as possible. He said that, under the accountability system, principal officials should be made accountable to the public. He was disappointed to note that, while SJ had several opportunities to explain her case before the Legislative Council and in public, she had declined the Panel's invitation to attend a meeting earlier and, what was worse, more and more alleged misconduct of SJ had come to light.

11. Mr CHUNG Kwok-pan believed that members of the public had been waiting for SJ's explanation and responses to queries about the incident concerned, as well as her view on the future work of DoJ. He considered that Ms CHENG had performed badly in handling public queries about her UBWs and hoped that the Chairman would continue urging SJ to attend a special meeting before the next regular meeting. Otherwise, the Administration would be adversely affected.

12. Ms YUNG Hoi-yan said that the Secretariat's consultation about whether to hold a special meeting was conducted more than a week ago. Having regard to the latest developments, she considered that SJ should make responses on those issues as soon as possible and, to avoid affecting the Panel's work, she agreed that a special meeting should be held before the next regular meeting.

13. Mr Abraham SHEK said that the Panel should focus on the agenda items within its terms of reference. He queried whether the issues surrounding the suitability of Ms Teresa CHENG as SJ should fall within the Panel's purview. Mr SHEK further said that the Panel could not force any public officer to attend its meeting to give explanation on his/her private affairs which was unrelated to his/her official duties. As such, it was up to SJ to decide whether to explain about the UBWs in her residence to the Panel and, for that matter, to choose the most appropriate platform to do so. Having said that, Mr SHEK agreed that Ms CHENG should brief members on the future DoJ's policy initiatives as the newly appointed SJ.

Discussion items at the next regular meeting on 26 February 2018

14. After discussion, members raised no objection in principle to discuss the following items at the next regular meeting to be held on 26 February 2018 –

- (a) Policy initiatives of DoJ; and
- (b) Briefing out of cases by DoJ.

15. The Chairman said that in light of the views expressed by Panel members at today's meeting, she would continue to explore with SJ on the possibility of advancing the discussion on item (a) above.

*(Post-meeting note: SJ agreed to advance the discussion of "Policy initiatives of DoJ" to a special meeting of the Panel held on 29 January 2018. In light of this development, the Administration suggested and the Chairman concurred to discuss "Implementation of the Law Reform Commission of Hong Kong ("LRC") Report on Hearsay in Criminal Proceedings-Evidence (Amendment) Bill 2018" at the Panel meeting held on 26 February 2018. The item mentioned in paragraph 14(b) above had also been renamed as "Briefing out of criminal and civil cases by DoJ".)*

Motion

16. The Chairman said that she had received a request from the Deputy Chairman and Mr Alvin YEUNG for moving a motion relating to whether the new SJ was still fit for the position of SJ. As the motion was not directly related to an agenda item of the meeting, she ruled in accordance with Rule 22(p) of the House Rules that the motion might not be proposed.

### **III. Implementation of the Law Reform Commission of Hong Kong's Report on Enduring Powers of Attorney: Personal Care – Continuing Powers of Attorney Bill**

(LC Paper No. CB(4)487/17-18(03) - Administration's paper on proposed Continuing Powers of Attorney Bill)

*(At 5:09 pm, the Chairman ordered that the meeting be suspended to enable Panel members who were also members of the Establishment Subcommittee ("ESC") to vote on an item at the ESC meeting concurrently held in Conference Room 3. The meeting was resumed at 5:16 pm.)*

17. At the invitation of the Chairman, Deputy Solicitor General (Policy Affairs) ("DSG(P)") briefed members on the Administration's proposal to introduce the Continuing Powers of Attorney ("CPA") Bill which sought to implement the recommendations in the report on "Enduring Powers of Attorney: Personal Care" published by LRC in July 2011 ("the 2011 Report"). He advised members that an inter-departmental working group ("IWG")<sup>1</sup> was convened by DoJ to examine the 2011 Report, which agreed to adopt most of the recommendations in the 2011 Report with some modifications. The Administration proposed:

- (a) to extend the scope of an enduring power of attorney ("EPA") to include decisions on a donor's personal care;
- (b) to give additional powers to the Guardianship Board and the court for the supervision of an attorney appointed under an EPA and for the resolution of disputes in relation to an EPA; and
- (c) to remove the restriction in section 8(1)(b) of the Enduring Powers of Attorney Ordinance (Cap. 501) ("EPA Ordinance") that the donor of an EPA cannot confer upon the attorney a general power to act in relation to all of the donor's property and financial affairs.

18. DSG(P) pointed out that, as the above-mentioned proposed changes would substantially alter the existing EPA under the EPA Ordinance, implementing the proposed changes by way of amending the EPA Ordinance was not advisable, particularly as it would cause confusion to the general public. A new CPA Ordinance was therefore proposed to replace the existing EPA Ordinance. He said that after the commencement of the CPA

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<sup>1</sup> Members of the inter-departmental working group include representatives from the Labour and Welfare Bureau, the Food and Health Bureau and the Social Welfare Department.

Ordinance, while new EPAs might no longer be created, EPAs executed prior to that would continue to be governed by the EPA Ordinance.

19. DSG(P) also informed members that a consultation exercise was being conducted on the proposed CPA Bill for two months until the end of February 2018. He highlighted the key features of the proposed CPA Bill as set out in the Consultation Paper attached in the Appendix of the Administration's paper, and invited members for their views.

*(Post-meeting note: On 21 February 2018, DoJ announced that the consultation period on the proposed legislation on CPA had been extended to 28 April 2018.)*

20. In response to the Chairman, Mr Ken TO of the Hong Kong Bar Association indicated that the Bar Association had no views to present on this item.

#### Delay in implementing the Law Reform Commission's recommendations

21. Mr Alvin YEUNG and Dr Fernando CHEUNG welcomed and were supportive of the Administration's legislative proposal. However, Mr YEUNG considered the proposed CPA Bill a latecomer given that LRC had already made its recommendations in 2011, and asked for the reasons.

22. DSG(P) explained that, after the 2011 Report was published, the Administration and in particular IWG had been taking some time to examine the report in detail with a view to making the best proposals available to the public. While most of the recommendations in the 2011 Report were adopted, IWG had proposed some modifications for further enhancements, such as in the designation of substitute attorney.

#### Scope of personal care matters on which the attorney under a continuing power may act for the donor

23. Dr Fernando CHEUNG enquired whether the "personal care matters" under the proposed CPA Bill would cover the advance directives ("AD") regarding life-sustaining treatment to be given to a donor if he/she became terminally ill, in a state of irrecoverable coma or in other end-stage irreversible life limiting condition, and was mentally incapacitated. Mr CHEUNG Kwok-kwan also urged the Administration to provide more concrete examples on what medical treatments would be covered by the "personal care matter" as members of the public found it difficult to understand the effect or scope of CPA.



24. In response, DSG(P) said that "personal care matters" was defined in the proposed CPA Bill as "matters concerning the welfare, other than the financial matters, of the individual", which might include general or special medical treatment but did not include life-sustaining treatment. While a list of personal care matters on which the attorney for a continuing power might act had been provided in Clause 6 of the proposed Bill, the Bill imposed restrictions on an attorney's decisions relating to the donor's personal care in Clause 5 so that the attorney must not, inter alia, make any decision to give, refuse or withdraw life-sustaining treatment for the donor.

25. DSG(P) further advised that, when considering issues relating to the decision of giving or refusing of life-sustaining treatment, LRC was aware that controversial issues regarding the value of human life and ethical issues were involved and had recommended that attorney's decisions on such matters be excluded from the "personal care matters", which was also agreed by IWG.

26. Dr Fernando CHEUNG noted that the purpose of the proposed CPA Bill was to create a new CPA regime under which a donor was allowed to appoint attorney(s) to take care of his/her affairs in the event that he/she subsequently became mentally incapacitated. As such, he found it regrettable that the attorney's decision on the giving or refusing of life-sustaining treatment and the making or revoking of ADs for the donor, which was an important personal care matter, would be excluded.

27. In response, DSG(P) supplemented that under the proposed CPA regime, donors who appointed attorney(s) under CPA might, in a separate course of action, make ADs on the life-sustaining treatments which should be given to him/her or be refused. He also advised that the proposed CPA Bill had provided in Clause 5(1)(e) that the attorney must not, inter alia, make any decision to make, vary or revoke an AD for the donor.

28. Dr Fernando CHEUNG was disappointed by DSG(P)'s reply as the proposed CPA Bill should introduce measures to streamline the current procedures to remove the complicated and redundant requirement for making EPA (and the future CPA) and ADs separately, which had discouraged many people from making EPA. He also pointed out that the Administration had previously advised that it was not feasible for the Fire Services Department ("FSD") to implement certain ADs since, according to legal advice given to the Administration, there appeared to be a conflict between the implementation of the relevant ADs and the statutory obligation of FSD officers under the Fire Services Ordinance (Cap. 95) ("FSO") which mandated initiation of life-sustaining measures. Mr Alvin YEUNG shared Dr CHEUNG's concern and asked whether DoJ was aware of the problem facing FSD in implementing ADs.

29. In response, DSG(P) advised that matters regarding ADs was a separate issue covered by the LRC Report on "Substitute Decision-making and Advance Directives in relation to Medical Treatment" published in 2006 ("the 2006 Report"), and was outside the scope of recommendations in the 2011 Report. In the 2006 Report, LRC recommended that the concept of ADs should first be promoted under the common law system, and the Administration should review the position after the community had become more widely familiar with the concept. However, he assured members that he would refer the concerns regarding the possible conflict between ADs and FSD's statutory obligations to the relevant policy bureau to follow up.

30. Mr Alvin YEUNG pointed out that the proposed CPA Bill was introduced several years after the LRC's 2011 Report had been published. With the ageing population fast becoming a social problem of wide public concern, he considered that the CPA regime should cover life-sustaining treatments and ADs to meet the growing needs of the senior citizens notwithstanding the 2011 Report. Otherwise, the CPA regime would lag behind the trend of social change. He also considered that, by including ADs in the proposed CPA Bill, ADs would be given the statutory powers which might help resolve the conflict with FSO. Dr Fernando CHEUNG concurred with his view and said that it would also help streamlining the procedure and promote the use of EPA and CPA.

31. DSG(P) said that while he appreciated the concerns of Dr Fernando CHEUNG and Mr Alvin YEUNG, the recommendation of not including the giving or refusing of sustaining treatment and the making of ADs in the CPA regime was proposed after LRC's thorough deliberation, particularly over the complicated issues involved, and was accepted by the Administration. He considered that whether ADs should be included in the CPA regime was a controversial issue which should be considered with prudence and care, and hence should be treated separately from the proposed CPA regime. DSG(P) supplemented that, since the public consultation on the legislative proposal was still in progress, the Administration would listen to any views/suggestions on this matter collected during the consultation.

32. The Chairman said that the issues about ADs raised by Dr Fernando CHEUNG and Mr Alvin YEUNG were valid concerns and urged the Administration to look into the matter. On the other hand, she noted that an AD regarding a patient's refusal to receive life-sustaining treatment in an end-stage irreversible life limiting condition might be confused by some as conducting euthanasia, which was the direct intentional killing of a person as part of the medical care being offered. She asked whether the Administration would clarify this to the public to remove any possible misunderstanding.

33. In reply, DSG(P) said that euthanasia was illegal and could constitute a criminal offence in Hong Kong. He stressed that the Administration had no plan to legalize euthanasia and the proposed CPA Bill, which provided that the attorney must not, *inter alia*, make any decision to withdraw life-sustaining treatment for the donor, was made within the current legal framework which presume euthanasia being criminal offence.

Certification of a Continuing Power of Attorney by a registered medical practitioner and a solicitor

34. Mr Alvin YEUNG noted that the donors to create a CPA would have to personally sign the relevant instruments before a registered medical practitioner and a solicitor who had to meet some qualifications and carry out the certification in accordance with the relevant arrangement under the proposed CPA Bill. He expressed concern that the public might lack information on how to engage registered medical practitioner with the requisite knowledge to certify a CPA. He suggested that the Administration might, by making reference to the Duty Lawyer Scheme, consider introducing a duty medical practitioner scheme to provide dedicated service of helping donors to complete the certification process.

35. Mr Alvin YEUNG further suggested that, to encourage the family doctors to participate as registered medical practitioner to certify CPAs, the Administration should acquaint these family doctors with information about the legal requirements and duties to act as witnesses under the proposed CPA Bill. To further promote the usage of EPA and the proposed CPA regime, he also suggested that medical doctors in public hospitals should also be able to certify such instruments.

36. DSG(P) noted members' concerns about the difficulties in engaging registered medical practitioners who were familiar with the requirements of an EPA or the proposed CPA to conduct the certification work. He explained that as one of the measures to address the problem, the Administration had relaxed the relevant requirement under the EPA Ordinance in 2012 to allow a solicitor to certify an EPA within 28 days after it had been certified by a registered medical practitioner, which would also be adopted in the proposed CPA Bill.

37. DSG(P) said that the take-up rate of EPAs was very few before 2010 and, after the above-mentioned relaxation in 2012, had steadily increased to 288 in 2017. He undertook to refer Mr YEUNG's suggestion of introducing a duty medical practitioner scheme to the relevant policy bureau for consideration.

Recognition of enduring powers of attorney made overseas in Hong Kong

38. Dr Fernando CHEUNG enquired whether the legal effect of an instrument of similar status to the EPA or proposed CPA which was made in the overseas jurisdictions, in particular the common law jurisdictions, would be recognized in Hong Kong.

39. DSG(P) replied that in the 2011 Report, LRC had recommended that an EPA made in a jurisdiction other than Hong Kong should be recognized locally if it complied with the Hong Kong execution requirements or it complied with the EPA requirements of that jurisdiction. However, IWG considered that this recommendation should not be pursued at this stage since, without a clearly defined scope of "personal care" locally, it would not be possible to decide whether the EPA made in an overseas jurisdiction should be recognized. Furthermore, as it was not possible to give a blanket recognition of all such instruments made in the over 200 overseas jurisdictions, it was equally difficult to specify which jurisdictions to be recognized. IWG therefore suggested that the matter should be considered after the proposed CPA Bill had been enacted.

Promotion and public education

40. Dr Fernando CHEUNG considered that the general public, even members of the social and welfare sectors, was lack of knowledge about the EPA so that there had been little use of EPA. He hoped that DoJ and/or the Guardianship Board would organize talks to explain the proposed CPA Bill.

41. In reply, DSG(P) advised that talks or forums had been organized to brief the public on the details or progress of introducing the proposed CPA, including a forum organized by the Guardianship Board in early 2017, and some talks had been or would be organized by DoJ for voluntary groups and The Hong Kong Council of Social Service in mid-May 2017 and early February 2018 respectively. He was also pleased to note that some community groups had also assisted in promoting the EPA among the elderly people.

42. DSG(P) added that DoJ would also brief the Panel later on the result of the consultation as well as the proposed way forward. The proposed Bill would be refined taking into account the comments received during the consultation period.

**IV. Proposed creation of a permanent post of Deputy Principal Government Counsel in the International Law Division of the Department of Justice**

(LC Paper No. CB(4)487/17-18(04) - Administration's paper on proposed creation of a permanent post of Deputy Principal Government Counsel in the International Law Division of the Department of Justice)

43. At the invitation of the Chairman, Director of Administration and Development of DoJ ("D of AD") briefed members on the proposed creation of one permanent directorate post of Deputy Principal Government Counsel ("DPGC") in the International Law Division ("ILD") of DoJ ("the proposed DPGC post") to better cope with the substantial increase in workload of the Treaties and Law Unit of ILD ("T&L Unit") as a result of the increasing volume, complexity and scope of its work. The Panel's support on the staffing proposal was sought for the Administration to seek the recommendation of ESC and approval from the Finance Committee.

Justifications for the proposed creation of the directorate post

44. In view of the manpower shortage of T&L Unit, the Chairman was supportive of the proposed DPGC post. She suggested that ILD should review the manpower resources of both T&L Unit and the Mutual Legal Assistance Unit ("MLA Unit") under ILD to achieve synergy and flexibility in providing legal advice on international law issues. The Chairman also hoped that ILD would, in association with the local universities, explore how to attract more law students to study international law so as to increase the manpower in this professional field.

45. Law Officer (International Law) of DoJ ("LO(IL)") explained that T&L Unit would carefully review the manpower required to manage the increasing workload. He further said that, with a view to fully utilizing DoJ's manpower resources, ILD would spare no effort in providing support to other divisions in DoJ with its expertise and experience. One example that LO(IL) mentioned was the provision of support to the Legal Policy Division on matters relating to mutual legal cooperation with the Mainland on civil and commercial matters.

46. Mr CHUNG Kwok-pan and Mr CHEUNG Kwok-kwan indicated support for the proposed DPGC post. Mr CHUNG enquired whether the creation of one DPGC post could manage the increasingly heavy workload of T&L Unit, particularly as the Administration had been actively seeking to sign

free trade agreements with other overseas jurisdictions. He also expressed concern whether T&L Unit possessed competence and expertise to provide specialized advice on the new initiatives of trade-related agreements, in view of the difference between Hong Kong and other overseas jurisdictions in terms of culture and legal system. Mr CHEUNG shared Mr CHUNG's concern and asked if T&L Unit was able to handle the increasing complexity and expanded scope of the trade-related work, especially for the Belt and Road Initiative, in-house.

47. In response, LO(IL) advised that with the support of the proposed DPGC post, it was envisaged that T&L Unit would be able to provide legal advice to relevant bureaux/departments on the negotiation, interpretation and application of the bilateral international agreements and multilateral treaties in a professional manner on a long-term basis without delay or other adverse consequences. LO(IL) assured members that T&L Unit possessed both confidence and competence in managing the increasing complexity and scope of its work, drawing on its experiences, for example, in the World Trade Organization work and free trade agreement negotiations with countries including New Zealand, members of the European Free Trade Association (consisting of Norway, Iceland, Switzerland and Liechtenstein), Chile and Australia.

48. Mr Holden CHOW considered that the workload to be shouldered by the new DPGC would be quite heavy, such as participating in the negotiation of multilateral and bilateral agreements and arrangements in trade-related areas, and providing support after the drafting and negotiation stages. In this connection, he enquired whether other existing staffing resources of T&L Unit would be strengthened to provide better support to the new DPGC.

49. In response, D of AD and LO(IL) explained that apart from the abovementioned staffing proposal, two Senior Government Counsel and one Government Counsel would be redeployed within ILD to support the new DPGC. Moreover, it was planned that one Senior Government Counsel post and one Government Counsel post would be created in T&L Unit in 2018-2019 to strengthen support at non-directorate level.

50. Mr HUI Chi-fung questioned whether the heavy workload of T&L Unit was mainly generated from the Belt and Road Initiative and mutual legal cooperation with the Mainland on civil and commercial matters. He requested the Administration to provide information on all the multilateral and bilateral international agreements signed with other jurisdictions, as well as the expired or outdated agreements which did not require any subsequent legal support from T&L Unit.

51. LO(IL) replied that the Belt and Road Initiative and the mutual legal cooperation with the Mainland on civil and commercial matters were only two of the contributing factors to the rising workload of T&L Unit in recent years while, actually, T&L Unit's overall workload had kept on increasing substantially for many years. He further explained that the increase in multilateral treaties and bilateral international agreements applicable to HKSAR had also contributed to the overall increase in caseload. In the case of multilateral treaties applicable to HKSAR, the number stood at over 250 at present, with some of them amended from time to time — the application of such amendments to HKSAR would in turn give rise to work for T&L Unit. Further, the growing number of bilateral agreements did not only end up in additional workload shouldered by T&L Unit during the drafting or negotiation stage, but was also a clear pointer to an increasingly heavy work portfolio that ILD took up on a long-term basis.

52. Dr Junius HO expressed reservation about the Administration's justifications for creating the new DPGC post. In view of the job nature of T&L Unit, he considered it more appropriate to redeploy existing non-directorate staffing resources in ILD or other government departments to cope with the rising workload in T&L Unit. He also requested the Administration to provide more information and data on the work of T&L Unit, including the length and content of each piece of legal advice and the details of ILD's work after the drafting or negotiation stage of the bilateral agreements.

53. In reply, LO(IL) explained the justifications for the proposed DPGC post. He mentioned that for many bilateral agreements entered into by HKSAR, they did not have a proforma and their provisions had to be negotiated with the counterparties. Besides, the introduction of a new type of bilateral agreement often involved sensitive and important legal issues, and would require substantial legal inputs from T&L Unit since there was a need for making reference to the experience of overseas jurisdictions in concluding similar agreements. For instance, in the drafting of free trade agreements whose length often ran up to hundreds of pages covering wide-range of subjects including trade in goods, trade in services, customs procedures, etc., detailed and careful thoughts with reference to overseas experiences was required. Hence, their negotiation would require guidance and close supervision by a Government Counsel at directorate level.

54. LO(IL) further advised that, from 1998 to 2017, bilateral international agreements and multilateral treaties applicable to HKSAR had increased by 398% and about 25% respectively. Because of the substantial increase in the number and complexity of bilateral international agreements and multilateral treaties applicable to HKSAR, there was a strong operational need for creating

the proposed DPGC post. In response to Dr HO's enquiry about the workload of MLA Unit, LO(IL) said that the numbers of advice and the requests for assistance had risen substantially over the last decade: such numbers in 2017 being about 250% and about 237% respectively of the corresponding numbers in 2007.

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

### Role of the International Law Division

55. The Deputy Chairman expressed concern about ILD's role in handling matters relating to the Palermo Protocol ("the Protocol").<sup>2</sup> He enquired whether ILD would advise the relevant bureaux/departments to draw reference from the Protocol, and review and amend the relevant provision of human trafficking. Noting that the Administration was being involved in a court case relating to human trafficking, the Deputy Chairman also asked what actions ILD would take if the Administration was found failing its obligation to protect the right of the applicant of not being subjected to forced labour or human trafficking.

56. In reply, LO(IL) explained that ILD was responsible for providing legal advice to the Security Bureau on the Protocol which currently was not applicable to HKSAR. As regards whether the Protocol should be applicable to HKSAR to deal with the problem of human trafficking in Hong Kong, it fell within the Security Bureau's policy purview. Should any inadequacy in the current legislation in combating human trafficking be found by a court ruling, ILD would, upon the Security Bureau's request, give legal advice for improvement from the international law perspective.

### Conclusion

57. After discussion, the Chairman concluded that majority of the Panel members supported the proposed creation of DPGC post and the Administration's submission of the staffing proposal to ESC for consideration. Dr Junius HO remarked that the Administration should provide further details and information on the proposed DPGC post to address his concerns as set out in paragraph 52 above when the staffing proposal was considered at the ESC meeting.

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<sup>2</sup> The "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime"



**V. Any other business**

58. There being no other business, the meeting ended at 6:42 pm.

Council Business Division 4  
Legislative Council Secretariat  
18 July 2018