

**立法會**  
***Legislative Council***

LC Paper No. CB(4)81/18-19  
(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, 26 March 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 CHAN Kin-por, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon CHAN Chi-chuen  
Dr Hon Fernando CHEUNG Chiu-hung  
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  
Hon Vincent CHENG Wing-shun, MH

**Member attending** : Hon WU Chi-wai, MH

**Public officers  
attending**

**: Agenda item III**

Department of Justice

Mr Wesley WONG, SC  
Solicitor General

Miss LEE Sau-kong  
Deputy Solicitor General (Policy Affairs) (Acting)

Ms Adeline WAN  
Senior Assistant Solicitor General (Policy Affairs)

Miss Deneb CHEUNG  
Senior Assistant Solicitor General (China Law)

Miss Jenny HUI  
Government Counsel

**Agenda item IV**

Department of Justice

Miss LEE Sau-kong  
Deputy Solicitor General (Policy Affairs) (Acting)

Miss Deneb CHEUNG  
Senior Assistant Solicitor General (China Law)

Ms Mary HO  
Government Counsel

Miss Melissa KIANG  
Government Counsel

**Attendance by  
invitation**

**: Agenda item III**

Hong Kong Bar Association

Mr Robert PANG, SC

Ms Kim Margaret ROONEY

Hong Kong Shue Yan University

Dr Claire WILSON  
Head of Department  
Associate Professor  
Department of Law and Business

The University of Hong Kong

Prof Michael HOR  
Dean, Faculty of Law

International Chamber of Commerce – Hong Kong

Mr Keith Martin BRANDT  
Secretary

Law Association, HKUSU

Mr YAM Long-hin  
Chairman

Undergraduate Law Society, CUSU

Mr CHEUNG Kit-fu  
President

International Academy of the Belt and Road

Prof GU Minkang  
Professor, School of Law, City University of Hong Kong  
Fellow of International Academy of the Belt and Road

Law Students' Society, City University of Hong Kong  
Students Union

Mr LEUNG Hei-tsun  
President, Acting Executive Committee

The China International Economic and Trade  
Arbitration Commission Hong Kong Arbitration  
Center

Dr WANG Wen-ying  
Secretary - General

Hong Kong International Arbitration Centre

Ms Karen TAN  
Business Development Director

City University of Hong Kong

Mr David TULLY  
Professional Development Advisor  
School of Law

**Agenda item IV**

Hong Kong Bar Association

Mr Jeremy CHAN S K

Mr Eric TSOI Y C

The Law Society of Hong Kong

Mr Dennis HO Chi-kuen  
Chairman of Family Law Committee

Ms LAM Ka-lai  
Assistant Director, Practitioners Affairs

**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

Miss Katherine CHAN  
Council Secretary (4)6

Ms Emily LIU  
Legislative Assistant (4)6

Miss Ariel SHUM  
Clerical Assistant (4)6

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Action

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

There was no information paper issued since the last meeting.

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

LC Paper No. CB(4)762/17-18(01) - List of outstanding items  
for discussion

LC Paper No. CB(4)762/17-18(02) - List of follow-up actions

*(At 4:37 pm, the Chairman suspended the meeting for five minutes due to a lack of quorum. The meeting resumed at 4:42 pm.)*

2. Members agreed to discuss the following items at the next regular meeting to be held in April 2018 –

- (a) Consultancy Report on "Enhancing Hong Kong's Position as the Leading International Arbitration Centre in Asia-Pacific" and the Government's response to the Report;
- (b) Review of the Director of Legal Aid's First Charge; and
- (c) Proposed legislative amendments pursuant to the review of the Supplementary Legal Aid Scheme.

3. As the Chairman would be out of town on 23 April 2018, members agreed to reschedule the next regular meeting to 30 April 2018 at 4:30 pm.

4. Mr HUI Chi-fung informed members that he had sent a letter to the Secretary for Justice requesting the Administration to review the sum for damages for bereavement ("the bereavement sum") under Fatal Accidents Ordinance (Cap 22) ("FAO"), which had not been adjusted for 21 years, and he had copied the letter to the Chairman. He indicated his intention to give notice to move a resolution under FAO to increase the bereavement sum at the Council meeting of 9 May 2018 and asked whether the Panel on Administration of Justice and Legal Services ("Panel") would discuss the matter before that day.

5. The Chairman said that she would explore with the Administration on whether the item could be discussed in May 2018 or after.

*(Post-meeting notes:*

- (a) On 26 March 2018, Mr HUI Chi-fung gave a notice to move a proposed resolution to amend FAO to raise the bereavement sum from \$150,000 to \$220,000 at the Council meeting on 9 May 2018. In his reply letter to Mr HUI on 27 April 2018 (LC Paper No. CB(3)543/17-18), the President recommended that the issue should first be discussed at a meeting of the Panel; and
- (b) At the Panel meeting on 30 April 2018, the Panel agreed to discuss the item on "Review of the damages for bereavement under FAO" at the meeting on 28 May 2018.)

### **III. Future development of the legal profession under the trend of globalization, its impacts on the legal profession and legal services to the public in Hong Kong**

#### Meeting with deputations and the Administration

(LC Paper No. CB(4)762/17-18(03) - Administration's paper on future development of the legal profession under the trend of globalization, its impacts on the legal profession and legal services to the public in Hong Kong

LC Paper No. FS06/17-18

- Paper on practice of the legal profession in selected places prepared by the Legislative Council Secretariat (fact sheet))

6. The Chairman said that globalization and its impacts on the legal profession had been a much-talked-about subject among legal practitioners, academics as well as law students. She welcomed deputations attending the meeting and hoped that they could share their views on various issues relating to the subject with members of the Panel as well as the Administration.

7. Solicitor General of Department of Justice ("DoJ") ("SG") thanked the Chairman for suggesting the subject for discussion. He said that the Administration's paper (LC Paper No. CB(4)762/17-18(03)) was prepared to facilitate members' deliberation. It mentioned that the Hong Kong legal profession was split into the solicitors' and barristers' branches and there were also registered foreign lawyers in Hong Kong. In addition, the paper also outlined the general admission requirements to join the legal profession in Hong Kong, as well as the liberalization measures for Hong Kong legal professionals to explore the Mainland market under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") and other ongoing initiatives.

#### Views of the Hong Kong Bar Association

8. The Chairman invited Mr Robert PANG, SC and Ms Kim ROONEY, representatives of the Hong Kong Bar Association ("the Bar Association"), to present their views. Mr Robert PANG, SC said that Hong Kong was one of the few places in the world where its legal professionals were categorized into two main streams, i.e. solicitors and barristers, notwithstanding the trend of merging the different streams of legal profession in many countries. Mr PANG, SC pointed out that both the Bar Association and The Law Society of Hong Kong ("Law Society") took the view that a strong and independent Bar was important to the Hong Kong legal system.

9. Ms Kim ROONEY said that globalization had provided the professionals of Hong Kong, including lawyers, with a lot of opportunities. There should be more promotion of Hong Kong in terms of its legal services and international dispute resolution services, as well as about Hong Kong being an innovator of dispute resolution of all forms and in dispute prevention. The Bar Association was exploring the opportunities presented by the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Bay Area development,

as well as those provided by international commercial courts such as those in the United Kingdom, Belgium and Singapore.

10. Ms Kim ROONEY added that while artificial intelligence could provide opportunities for the development of legal profession, it also posed challenges at the same time. She also said that the Bar Association would support law reform initiatives such as the implementation of the third party funding of arbitration and mediation, and looked forward to the introduction of conditional fees for arbitration in Hong Kong.

#### Presentation of views by deputations

11. The Chairman invited deputations to present their views. She reminded them that, when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were also not covered by Cap. 382. In total, 10 deputations attended the meeting, of whom six presented their views and a summary of which was in the **Appendix**.

#### Views of members

12. The Chairman then invited members to give their views on any matters relevant to the subject.

#### *Hong Kong legal education and training*

13. The Chairman declared that she was a barrister and teaching the Juris Doctor programme, the Doctor of Juridical Science programme and the Doctor of Philosophy programme at the City University of Hong Kong. She noted that the university students in many jurisdictions were actively studying the application of artificial intelligence to legal services. In this connection, local law schools and students should get prepared for the challenges and opportunities presented to the legal professions by artificial intelligence. Mr David TULLY, Professional Development Advisor of the School of Law at the City University of Hong Kong, concurred with the Chairman's views.

14. Ms YUNG Hoi-yan appreciated the efforts made by local law schools in innovating new legal education programme and increasing the exposure of law students. For example, the University of Hong Kong and the University of British Columbia had established a joint legal education programme and the students who successfully completed studying in it might practise law in Canada and Hong Kong. On the other hand, the Renmin University of China, which offered a Master of Laws programme through the City University of Hong Kong, equipped students with a thorough understanding of the operation



of the Chinese legal system. Ms YUNG hoped that the law schools in Hong Kong would continue their efforts to widen students' vision and enhance their competitiveness.

15. Dr Junius HO said that since January 2014, Hong Kong permanent residents of Chinese nationality who had passed the National Judicial Examination ("NJE") might choose to undergo internship in the branch offices of Mainland law firms in Hong Kong. Nevertheless, he noted that only a small proportion of Hong Kong legal practitioners had passed NJE. In view of the low passing rate, he suggested that local law schools should better equip students with necessary knowledge to take NJE and practise as Mainland lawyers.

16. In response to members' views expressed above, SG said that the Standing Committee on Legal Education and Training, an advisory body established under section 74A of the Legal Practitioners Ordinance (Cap. 159), had appointed independent consultants who were currently conducting a detailed review on legal education and training in Hong Kong in consultation with the relevant stakeholders.

#### *Hong Kong legal practitioners*

17. The Chairman was concerned that some local junior barristers might switch to join solicitors in the face of various difficulties such as their meager earnings and the intense competition in the legal profession brought about by globalization. She suggested the Bar Association provide more support to junior barristers to retain the talents.

18. The Deputy Chairman also expressed concern about the difficulties encountered by junior barristers, including limited job opportunities and low income. Although the Bar Association was exploring the possibility of remunerating pupils during their pupillage, he considered that this alone would not suffice. He suggested the Bar Association draw reference from other common law jurisdictions (in particular the United Kingdom) and consider permitting less experienced barristers to undertake certain general civil cases and allowing more clients to have direct access to barristers.

19. In response to members' concerns, Mr Robert PANG, SC said that the Bar Association had been providing training to junior barristers to help enhance the standards of their professional practices. The Bar Association would also keep close contact with relevant parties to assist the junior barristers in exploring the opportunities in the Mainland markets. He considered that, to maintain Hong Kong's competitive edge and embrace the opportunities brought by globalization, junior barristers had to strengthen their

biliterate (Chinese and English) and trilingual (Cantonese, Putonghua and English) abilities.

20. Given that all barristers in Hong Kong were subject to the Code of Conduct issued by the Bar Association, Ms YUNG Hoi-yan considered it important for the Bar Association to provide essential assistance and guidance to junior barristers to familiarize them with the main principles governing their duties and conduct, particularly the rules for practising barristers to undertake foreign work. Mr Robert PANG, SC responded that the Bar Association welcomed Ms YUNG's suggestion and would conduct more talks on the Code of Conduct in this regard.

21. Mr Paul TSE asked whether the Bar Association had received any complaint against barrister(s) for violating the cab-rank rule<sup>1</sup> and the number of cases, if any. In reply, Mr Robert PANG, SC agreed to check whether such information was available to the Bar Association. He also emphasized the significance of the cab-rank rule as it had enforced the rights of an individual to receive representation and a fair trial, and prevented barristers from vetting clients on political, moral or other grounds.

22. Dr Junius HO pointed out that although rights of audience in higher courts, namely the Competition Tribunal, the High Court and the Court of Final Appeal, had been extended to qualified solicitors (i.e. solicitor advocates) after the amendment of the Legal Practitioner Ordinance (Cap. 159) in 2010, he noted that the number of solicitor advocates only accounted for 0.5% of the total number of practising solicitors in Hong Kong. In this regard, he considered that more solicitors should be qualified as solicitor advocates.

### *Structure of the Hong Kong legal profession*

23. The Chairman considered that there was no pressing need to change the current division between barristers and solicitors in Hong Kong. Instead, she suggested that under the trend of globalization, more efforts should be made to enhance the competitiveness of the legal profession and to explore more opportunities for local barristers and solicitors.

24. The Deputy Chairman concurred with the view expressed by Mr Robert PANG, SC of the Bar Association as mentioned in paragraph 8 that barristers had an important role to play in Hong Kong's legal system.

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<sup>1</sup> Under the cab-rank rule, which only applied to barristers but not solicitors, barristers could not decline relevant instructions without good reasons, and they were bound to accept any relevant instructions in their usual business field at their usual fee.

Therefore, he considered it appropriate to maintain the current structure of the profession.

25. Professor GU Minkang of the School of Law at the City University of Hong Kong (Fellow of International Academy of the Belt and Road) pointed out that under the present occupational division between barristers and solicitors, clients needed to engage both solicitors and barristers in the single litigation cases and consequently, it could lead to extra expense and longer proceedings. Professor GU considered that there was room for improvement in the existing structure of the legal profession.

#### *Hong Kong legal services*

26. The Deputy Chairman pointed out that the manpower shortage in the Judiciary had led to long court waiting time and delays in the delivery of judgments. He was worried that the above drawbacks would seriously affect the efficiency in the administration of justice and hence Hong Kong's status as a legal hub, and he urged the Administration to implement measures to deal with the problems.

27. Dr Junius HO pointed out that more than a decade was spent on studying the introduction of the limited liability partnership ("LLP") and solicitor corporations before they came into effect by legislation. He expressed his disappointment over the development of Hong Kong legal services and considered that it had considerably lagged behind that of other jurisdictions. He urged the Administration not to take a conservative approach but make efforts to foster the necessary change in mindset.

28. SG responded that the Administration had not been adopting a conservative approach on matters regarding solicitors' business modes of practice, and since the introduction of LLP in Hong Kong on 1 March 2016, the number of local firms and registered foreign law firms had steadily increased. SG also explained that in respect of solicitor corporations, the current status was that the Law Society was preparing the complementary subsidiary legislation required for its introduction. The Law Society's proposed subsidiary legislation would require the approval of the Chief Justice of the Court of Final Appeal prior to introduction to the Legislative Council ("LegCo").

#### *Progress of law reform*

29. The Deputy Chairman noted that the Administration tended to spend very long time in considering the recommendations made by the Law Reform Commission of Hong Kong ("LRC") in its various reports. These

recommendations, even if implemented, would become out of date due to the lapse of time. He expressed worry that the delay in implementing those recommendations would prevent Hong Kong Law from keeping in step with the global trend and hamper the local legal system's development and, therefore, the Administration should expedite the law reform process.

30. The Deputy Chairman expressed particular concern about the work progress of the cross-sector working group which was set up by DoJ to study LRC's proposals of introducing a class action regime in Hong Kong ("the Working Group").

31. Mr Holden CHOW noted that, in its report published in May 2012, LRC proposed phasing the implementation of a class action mechanism by starting with consumer cases, with funding made available through the Consumer Legal Action Fund managed by the Consumer Council for class action proceedings arising from consumer claims and, upon experience accrued, making assessments on whether and when the class action mechanism should be extended to other types of cases. However, the Working Group had not published the results of the study so far. He enquired when the Working Group would submit an interim report for discussion by the Panel on the merits and demerits of introducing a class action regime in Hong Kong.

32. In response, SG said that the Working Group last held its meeting on 16 March 2018. He pointed out that the matters arising in the study of implementing a class action regime were inter-related and complicated. However, the Working Group was making progress and it would continue to work towards formulating its recommendations for the Administration.

#### *Dispute resolution services*

33. The Chairman observed that the Silk Road Economic Belt and the 21<sup>st</sup> Century Maritime Silk Road ("the Belt and Road Initiative") was a topical subject these days attracting the attention of different sectors. In this connection, she expressed concern about how Hong Kong should grasp the opportunities presented by the Belt and Road Initiative and meet the challenges. She also suggested enhancing the maritime legal and arbitration services of Hong Kong.

34. The Deputy Chairman was of the view that the legislation relating to arbitration introduced in the last few years had helped strengthen Hong Kong's status as an international arbitration centre. He urged the Administration to appoint as early as possible the commencement date of the major operative provisions of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 ("the Ordinance").

35. SG replied that the Administration would appoint an authorized body to draft a code of practice setting out the practices and standards with which third party funders were expected to comply in accordance with the relevant provisions in the Ordinance, and to consult members of the public before issuing the code. The Ordinance was expected to come into operation after issue of the code of practice.

36. The Deputy Chairman pointed out that the legal practitioners in some neighbouring jurisdictions in the region were allowed to conduct arbitration on conditional fees, which had given them the competitive edge. He enquired whether the Administration would conduct a consultation on introducing conditional fees for arbitration in Hong Kong to maintain its competitiveness.

37. In response, SG explained that during the scrutiny of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016, the Administration had advised members that the subject of conditional fees was outside the scope of LRC's review on third party funding for arbitration and the scope of the then legislative exercise. Given that the matters relating to conditional fees were complicated and still subject to discussion, such as the availability of "after-the-event" insurance, the Administration considered it important to handle the subject with due care and prudence. Having said that, the Administration would continue to listen to the views from different stakeholders, including the two legal professional bodies, relevant arbitral bodies and the Advisory Committee on Promotion of Arbitration, on the subject of conditional fees.

*Promotion of Hong Kong legal and dispute resolution services*

38. Dr Junius HO noted that the Administration was rolling out the Legal Hub programme to provide office space for international and local law-related organizations, including arbitration institutions, in the West Wing of the former Central Government Offices and the former French Mission Building to attract more international legal services and dispute resolution institutions to set up branches or offices in Hong Kong. However, he considered that the existing programme would not suffice and the Administration should make reference to Qianhai's experience to enhance the existing Legal Hub programme.

39. Dr Junius HO also cast doubt on the effectiveness of the promotional activities organized or co-organized by DoJ, such as the 5<sup>th</sup> Hong Kong Legal Services Forum, in the relevant cities in Mainland China and in Belt and Road countries to promote Hong Kong's legal and dispute resolution services. In reply, SG explained that the promotional events including the successive Hong Kong Legal Services Forums and recent seminars in Chongqing, Chengdu, Beijing, Shanghai, Guiyang, Xi'an and Wuhan in the context of the Belt and

Road Initiative received very positive responses. For example, the last Hong Kong Legal Services Forum held in Nanjing attracted over 800 participants from across the business and legal sectors in the nearby regions. Hence, DoJ would continue its efforts to promote Hong Kong's legal and dispute resolution services in the Mainland.

*Entry of Hong Kong lawyers to the Mainland legal services market*

40. Noting that only few Hong Kong residents (i.e. 117 persons) had been approved to practise as Mainland lawyers in the Guangdong Province, Mr Paul TSE enquired if the Administration could provide more information on their background. In reply, SG explained that Hong Kong residents who applied to enjoy the CEPA measure were not required to disclose their background information apart from information required under CEPA.

41. Ms YUNG Hoi-yan pointed out that only very few Hong Kong legal practitioners were retained by law firms in the Mainland as legal consultants to advise on Hong Kong law or foreign law. She suggested that, in order to help Hong Kong legal practitioners explore the Mainland market and seize the opportunities presented by the Belt and Road Initiative, the Administration and the two legal professional bodies as well as other stakeholders should study the problems facing them and provide support where appropriate. Mr Paul TSE also asked why only a small number of Hong Kong legal practitioners (i.e. over 30 Hong Kong barristers and two solicitors) were retained as legal consultants by Mainland law firms.

42. In reply, Senior Assistant Solicitor General (China Law) of DoJ ("SASG(CL)") advised that becoming legal consultants was only one of the avenues for Hong Kong legal practitioners to enter the Mainland market under the framework of CEPA. Apart from that, they might make use of other liberalization measures such as secondment of Hong Kong lawyers from Hong Kong law firms to work in Mainland law firms as consultants or setting up partnership associations under CEPA. As at 1 March 2018, eleven associations in the form of partnership associations between the Hong Kong and Mainland law firms had been approved to be set up, with seven in Shenzhen (Qianhai), two in Guangzhou (Nansha) and two in Zhuhai (Hengqin).

43. Mr Holden CHOW noted that the People's Government of the Guangdong Province had announced in January 2018 its decision to extend the pilot areas for setting up partnership associations to the whole of the Guangdong Province. Notwithstanding this, he relayed the concerns raised by small- and medium-sized law firms that the situation of "big doors were open, but small doors remained shut" existed in the Mainland market, and that

they were facing considerable difficulties such as equity share restrictions when exploring business opportunities in the Mainland.

44. In response, SG explained that Hong Kong had made proposals to the Mainland to enhance the liberalization measures on partnership associations under CEPA. Both sides would continue discussions under the existing mechanism to strive for further expansion and better market access conditions for Hong Kong law firms and legal practitioners. The Administration, together with the legal professional bodies and relevant stakeholders, would liaise closely with the Mainland authorities to reflect views and concerns of the Hong Kong legal profession on the existing restrictions and take follow-up actions as appropriate.

#### **IV. Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill**

(LC Paper No. CB(4)762/17-18(04) - Administration's paper on Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

LC Paper No. CB(4)762/17-18(05) - Paper on Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region prepared by the Legislative Council Secretariat (background brief))

45. At the invitation of the Chairman, Deputy Solicitor General (Policy Affairs) (Acting) of DoJ ("DSG(P)(Ag)") briefed members on the key features of the proposed Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill ("the proposed Bill") which sought to implement *The Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region*

(《關於內地與香港特別行政區法院相互認可和執行婚姻家庭民事案件判決的安排》) ("Arrangement"). DSG(P)(Ag) also mentioned that the Administration had sought the preliminary views of the representatives of the Law Society, the Bar Association and the Hong Kong Family Law Association on the key features of the proposed Bill.

46. DSG(P)(Ag) recapped that briefings on the proposals regarding the Arrangement had been given to the Panel at its meetings in May 2011, June 2016, December 2016, and May 2017. During the meetings, members of the Panel as well as the two legal professional bodies had indicated support for an early conclusion of the proposed arrangement. She added that the Arrangement, which had been signed between the Government of the Hong Kong Special Administrative Region and the Supreme People's Court on 20 June 2017 in Hong Kong, would be implemented in the Mainland by way of judicial interpretation and in Hong Kong by way of legislation.

#### Views of the two legal professional bodies

47. The Chairman invited the two legal professional bodies to present their views on the key features of the proposed Bill. Mr Jeremy CHAN representing the Bar Association, and Mr Dennis HO representing the Law Society, said that the Administration had set out the majority of the views made by the respective professional bodies on the key features of the proposed Bill in the Administration's paper. Mr Jeremy CHAN said that the Bar Association would actively participate in the consultation process of the Bill. Mr Dennis HO urged the Administration to introduce the Bill into LegCo as soon as possible.

#### Registration of Mainland/Hong Kong judgments on matrimonial or family cases

48. The Chairman asked for examples of Mainland judgments on matrimonial or family cases which might not be qualified for registration under the proposed Bill. DSG(P)(Ag) advised that, in general, if at the time of the application for registration, the reasons for setting aside a registration as set out in the proposed Bill had already been demonstrated or self-evident, or if the judgment was not covered by the Arrangement, the District Court would have the discretion to decide whether to register the Mainland judgment.

49. Mr Paul TSE noted from paragraph 15(4) of the Administration's paper that the registration of a registered judgment had to be set aside if the respondent/the party against whom a registered judgment was enforceable under the law of the Mainland in respect of which the judgment was given was



not summoned according to the law of the Mainland. He expressed concern about how a summons could be served in the Mainland to the respondent/party concerned who could not be located.

50. SASG(CL) advised that for civil and commercial cases, judicial documents such as judgments or summonses would normally be delivered to the parties concerned through the courts. To address the difficulties of serving judicial documents to a party in the Mainland who could not be located or his or her address was not known, the Administration had been exploring with the Supreme People's Court on whether the judicial documents could be served by way of public announcement in the Mainland.

51. Mr Paul TSE further enquired that if a Hong Kong judgment on a matrimonial or family case was written in English only, whether an applicant applying to the Mainland court for recognition and enforcement of a Hong Kong judgment would be required to provide a Chinese translation and whether the Chinese translation had to be attested for use in the Mainland.

52. SASG(CL) advised that the applicant for recognition and enforcement of a Hong Kong judgment would need to provide the Chinese translation to the Mainland court. If the Chinese translation was not available from the Hong Kong court, the applicant would be required to provide a Chinese translation which should be an accurate translation of the English judgment. SASG(CL) added that the Chinese translation of the judgment need not be attested.

#### *Enforcement of registered judgments*

53. The Chairman enquired how a Mainland judgment on the custody or access to a child, after being registered, could be effectively enforced in Hong Kong. In reply, DSG(P)(Ag) said that under the proposed Bill, for the purpose of execution, a registered Mainland judgment would be of the same force and effect as if it had been a judgment originally given by the District Court. Proceedings might be taken for the enforcement of the Mainland judgment and the District Court would have the same powers with respect to the execution of the Mainland judgment as if it had been a judgment originally given in the District Court on the day of registration and entered on the day of registration.

*Interests of children<sup>2</sup> affected by the judgments*

54. Dr Fernando CHEUNG expressed concerns that in making custody orders, Mainland courts and Hong Kong courts might have different considerations, such that the best interests of the children involved might not be fully protected. He said that, to his understanding, Mainland courts would normally grant the custody of infants or little girls to mothers while that of little boys to fathers, which would cause the separation of siblings. Furthermore, Mainland courts tended to grant custody orders to the parent who was better off financially, to the disadvantage of the party who was less well-off.

55. In response, DSG(P)(Ag) advised that one of the grounds for setting aside the registration of a Mainland judgment would be that the recognition and enforcement of the judgment would be manifestly contrary to the basic principles under the law or public policy of Hong Kong, and that if the Mainland judgment involved a child, in consideration of the application of this ground, the District Court must take into account the best interests of the child.

56. In this regard, the Chairman suggested that cultural differences, the best interests of the child in Hong Kong and the relevant professional advice given by social workers on the best interests of the child should be taken account of.

57. DSG(P)(Ag) stated that Hong Kong courts were familiar with and had applied the concept of best interests of a child before. Accordingly, she believed that the District Court would duly consider all relevant factors when considering the best interests of a child and that the District Court should not be limited in the factors which it could consider when considering the application of this ground.

58. The Chairman further enquired whether sufficient supporting measures would be provided to the parties concerned after a Mainland judgment had been registered. In reply, DSG(P)(Ag) advised that DoJ had consulted the relevant Government departments on various issues before entering into the Arrangement with the Mainland, including the supporting measures. After considering the views of the major stakeholders on the key features of the proposed Bill, the Bill would be refined and public consultation on the refined Bill would be conducted. DSG(P)(Ag) said that the Administration would continue to listen to the views of the relevant stakeholders during the consultation.

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<sup>2</sup> "Child" or "children" in the context of the discussion on the proposed Bill refers to a child who is under the age of 18.

*(At 6:26 pm, the Chairman extended the meeting for 15 minutes to 6:45 pm. At 6:43 pm, members raised no objection to the Chairman's proposal to further extend the meeting for 15 minutes to 7:00 pm.)*

### *Mainland Divorce Certificate*

59. Dr Fernando CHEUNG noted that the procedure of applying for a divorce certificate in the Mainland was simpler than the divorce proceedings in Hong Kong. He expressed concerns that one party of a cross-boundary marriage, in particular the one who was better off financially, might obtain a divorce certificate in the Mainland first and seek registration of that judgment in Hong Kong with a view to binding the other party, which would result in unfairness.

60. Dr Fernando CHEUNG considered that, in the spirit of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, the courts of both sides should be given the power to refuse recognition and enforcement of some matrimonial judgments under certain circumstances. Dr CHEUNG also asked whether the Hong Kong courts could overrule a Mainland judgment which did not take the best interests of a child into consideration.

61. In response to Dr Fernando CHEUNG's concerns, DSG(P)(Ag) advised that in the Mainland, a divorce certificate would only be granted with the agreement of both parties. She also pointed out that, under the proposed Bill, if a judgment was given in respect of a cause of action between the parties that was accepted by a court in the Mainland after a court in Hong Kong had already accepted the same cause of action between the parties, it would be one of the grounds on which registration of a Mainland judgment had to be set aside. DSG(P)(Ag) also clarified that the Arrangement did not provide for Mainland/Hong Kong judgments to be overruled by the courts in the other place. Rather, it provided a mechanism for determining whether the Mainland/Hong Kong judgments on matrimonial or family cases should be recognized for enforcement across the boundary.

62. Mr Jeremy CHAN expressed that there could not be a comprehensive solution to problems arising from the differences in court judgments made in the Mainland and Hong Kong, and the Arrangement had already addressed the concerns in respect of the best interests of a child and provided for the necessary safeguards. He added that if a Mainland judgment on matrimonial or family cases was not recognized in Hong Kong, the Hong Kong courts could make a separate judgment under its own jurisdiction.

*Progress of introducing the Children Proceedings (Parental Responsibility) Bill*

63. The Deputy Chairman pointed out that some law reform proposals made by LRC were related to matrimonial or family law, such as the proposal of introducing the Children Proceedings (Parental Responsibility) Bill ("Children Proceedings Bill"), which sought to introduce the shared parental responsibility model in custody proceedings. He said that many LegCo Members were in support of the above law reform proposal, and he hoped that DoJ would convey this to the Labour and Welfare Bureau ("LWB") for early introduction.

64. Ms Mary HO, Government Counsel of DoJ replied that according to her understanding, LWB would first enhance the co-parenting support measures for separated/divorced parents and their children before introducing the Children Proceedings Bill into LegCo. She added that the Home Affairs Bureau would commission a consultancy study on divorce issues in Hong Kong in the first half of 2018 which would also review the system of recovery of maintenance payments and therefore likely to examine the suggestion on the establishment of a maintenance board among various divorce issues.

65. Mr Dennis HO said that, to his understanding, it was LWB's plan to enhance the support measures and educate the public about the proposed Children Proceedings Bill before its introduction. He added that one of the support measures to be taken by the Administration was to allocate an additional annual recurrent expenditure of about \$56 million for setting up five one-stop co-parenting support centres over the territory. Services to be provided by these centres included co-parenting counselling, parenting coordination and children contact, etc. He noted that LWB hoped to introduce the Children Proceedings Bill in early 2019 for implementation in 2020.

Legislative timetable

66. The Chairman, the Deputy Chairman, Mr Paul TSE and Dr Fernando CHEUNG indicated support for the proposed Bill. The Deputy Chairman and Mr TSE urged the Administration for early implementation of the Arrangement by introducing the refined Bill into LegCo.

67. Mr Dennis HO questioned the need to conduct further public consultation on the Bill given that a public consultation on the Arrangement had already been carried out previously and the Arrangement had already been signed with the Mainland.

68. In response, DSG(P)(Ag) explained that the Administration would be considering the suggestions of major stakeholders mentioned in paragraph 45 in refining the Bill. Public consultation would then be held to consult relevant Government departments, the Judiciary and other concerned stakeholders on the refined Bill. It was the Administration's target to start consultation on the Bill in the summer and, subject to the result of the consultation, introduce the Bill into LegCo before the end of 2018.

**V. Any other business**

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

Council Business Division 4  
Legislative Council Secretariat  
26 October 2018

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

**Meeting on Monday, 26 March 2018, at 4:30 pm**

**Receiving public views on "Future development of the legal profession under the trend of globalization, its impacts on the legal profession and legal services to the public in Hong Kong"**

**Summary of views and concerns expressed by deputations**

<b>No.</b>	<b>Name of deputation</b>	<b>Submission/Major views and concerns</b>
1.	Dr Claire WILSON Department of Law and Business, Hong Kong Shue Yan University ("HKSJU")	<ul style="list-style-type: none"> <li>pointed out that only a small percentage of graduates from the Department of Law and Business of HKSJU would continue to pursue a legal career in Hong Kong; and</li> <li>suggested by some graduates that more emphasis should be placed on the application of legal knowledge and development of professional skill in legal education, and more legal practitioners' inputs should be brought to the class, particularly in the areas of dispute resolution</li> </ul>
2.	Professor Michael HOR Faculty of Law, The University of Hong Kong ("HKU")	<ul style="list-style-type: none"> <li>indicated that HKU was totally committed to fostering globalization and internationalization by attracting talents from all over the world to research and study in HKU, and sending students abroad on exchange programmes;</li> <li>pointed out that around 50 to 60 students studied introduction to Chinese law in HKU's partner universities in China every year, and lecturers from HKU also started teaching this subject there for Mainland engagement; and</li> <li>there were difficulties in meeting the goals of training up local legal professionals and becoming more globalized owing to the limited time and space, but HKU would strive to meet the challenges</li> </ul>

No.	Name of deputation	Submission/Major views and concerns
3.	Mr YAM Long-hin Law Association, HKUSU	<ul style="list-style-type: none"><li>● presentation of views as set out in submission (LC Paper No. CB(4)827/17-18(02) (Chinese version only)</li></ul>
4.	Mr CHEUNG Kit-fu Undergraduate Law Society, CUSU, The Chinese University of Hong Kong	<ul style="list-style-type: none"><li>● indicated that local law students might encounter difficulties in securing a place in legal sector due to various reasons, such as lack of clarity of the newly implemented Common Entrance Examination at the current stage and more overseas lawyers to be registered in Hong Kong in the coming future;</li><li>● suggested that credits earned from exchange programmes be made transferable for meeting the requirements to complete 11 mandatory core subjects which served as the prerequisite for admission to the Postgraduate Certificate in Laws (PCLL); and</li><li>● suggested investing more resources in the legal education in Hong Kong to equip students with necessary skills and experience in the light of the opportunities presented by the development of Hong Kong as an international legal and dispute resolution services centre in the Asia-Pacific region, the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Bay Area</li></ul>
5.	Professor GU Minkang School of Law, City University of Hong Kong, Fellow of International Academy of the Belt and Road	<ul style="list-style-type: none"><li>● presentation of views as set out in submission (LC Paper No. CB(4)827/17-18(01) (Chinese version only)</li></ul>

No.	Name of deputation	Submission/Major views and concerns
6.	Mr LEUNG Hei-tsun Committee Law Students' Society, City University of Hong Kong Students Union	<ul style="list-style-type: none"><li>• suggested that the Administration should take measures to ensure the survival and sustainability of local law firms in the face of the influx of foreign law firms into Hong Kong;</li><li>• pointed out that there might be a potential loss of lawyers from Hong Kong because of various reasons, like increase in local students going overseas to further study and practise in view of the intense competition in Hong Kong, and ambiguity of the Common Entrance Examination and the reforms to the entrance to the legal profession; and</li><li>• indicated that care should be taken in dealing with the opportunities and challenges brought by globalization</li></ul>