

**立法會**  
***Legislative Council***

LC Paper No. CB(4)82/18-19  
(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, 28 May 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  
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 CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon Vincent CHENG Wing-shun, MH

**Members absent** : Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon YUNG Hoi-yan

**Public officers  
attending**

**: Agenda item III**

Department of Justice

Mr Alan SIU  
Director of Administration and Development

Ms Christina CHEUNG  
Law Officer (Civil Law)

Ms Theresa JOHNSON  
Law Draftsman

Mr Herbert LI  
Deputy Law Officer (Civil Law) (Civil Litigation)

Ms Fanny IP  
Deputy Law Draftsman

**Agenda item IV**

Department of Justice

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

Ms Adeline WAN  
Senior Assistant Solicitor General (Policy Affairs)

Miss Joey MA  
Government Counsel

**Attendance by  
invitation**

**: Agenda item IV**

Hong Kong Bar Association

Mr Nicholas PIRIE

The Hong Kong Federation of Insurers

Mr Eric HUI  
Deputy Chairman  
General Insurance Council

Mr Philip KWAN  
Chairman  
Accident Insurance Association

**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)1062/17-18(01) - Memorandum referring to the Panel the views and concerns raised by Yuen Long District Council members relating to the implementation of the Law Reform Commission of Hong Kong's recommendations on adverse possession

LC Paper No. CB(4)1138/17-18(01) - Paper on Hong Kong e-Legislation to be the only government legislation website from 1 July 2018 provided by the Department of Justice (information paper))

Members noted the above papers issued since the last meeting.

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

(LC Paper No. CB(4)1113/17-18(01) - List of outstanding items for discussion

LC Paper No. CB(4)1113/17-18(02) - List of follow-up actions)

Regular meeting in June 2018

2. Members agreed to discuss the following items at the next regular meeting to be held on 25 June 2018 –

- (a) Legal education and training in Hong Kong;
- (b) Implementation of the recommendations made by the Law Reform Commission of Hong Kong ("LRC"); and
- (c) LRC's Consultation Paper on Miscellaneous Sexual Offences and Consultation Paper on periodical payments for future pecuniary loss in personal injury cases.

3. Members agreed that following the past practice, the relevant law schools, law student associations and the two legal professional bodies should be invited to take part in the discussion of item (a) above. They also agreed to invite the Standing Committee on Legal Education and Training to give views on the subject.

4. To allow sufficient time for discussion of the above three items, members agreed to extend the next meeting to end at 7:00 pm.

Joint letter from Ms Starry LEE and Mr Holden CHOW

5. Referring to the joint letter tabled at the meeting from Ms Starry LEE and Mr Holden CHOW on the mutual legal assistance and agreement on surrender of fugitive offenders between Hong Kong and Taiwan, the Chairman sought members' views on whether the issues contained therein should be included in the list of outstanding items for discussion.

6. Mr Holden CHOW explained that although the subject had arisen from a murder case in Taiwan which involved Hong Kong residents, he and Ms Starry LEE hoped to discuss the relevant policy issues but not the case per se.

The Chairman said that she was also concerned about the policy issues involved and had approached the Department of Justice ("DoJ") on that matter. According to DoJ, as it was still studying the relevant policy issue, it would be more appropriate to discuss the matter when there was an outcome of the study. The Chairman said that she would follow up the matter with DoJ.

7. After discussion, members agreed to include the above subject in the list of outstanding items for discussion.

*(Post-meeting notes:*

- (a) On 15 June 2018, DoJ advised that the item on "Cooperation between Hong Kong and other places on juridical assistance in criminal matters" had been included in the list of outstanding items for discussion of the Panel on Security (LC Paper No. CB(2)1480/17-18(01)), which should be broad enough to cover the subject proposed by Hon Holden CHOW and Hon Starry LEE;
- (b) at the meeting of the Panel on Administration of Justice and Legal Services ("AJLS Panel") on 25 June 2018, members agreed that when the Panel on Security discussed the item mentioned in (a) above, members of AJLS Panel should be invited to join the discussion; and
- (c) on 27 June 2018, the Clerk to the Panel on Security was informed of the view of AJLS Panel mentioned in (b) above.)

Joint letter from the Deputy Chairman and Mr Alvin YEUNG

8. The Chairman referred to the joint letter tabled at the meeting from the Deputy Chairman and Mr Alvin YEUNG on photo-taking during court proceedings and issues relating to attempted interference to fair trials. She sought members' views on whether the issues contained therein should be included in the list of outstanding items for discussion.

9. The Deputy Chairman explained that as policy issues such as court security and the adequacy of court ushers were involved, he and Mr Alvin YEUNG hoped that representatives from the Judiciary would be invited to brief members on measures to avoid similar incidents from recurring. Mr CHEUNG Kwok-kwan said that as the matter could be dealt with by the Judiciary through established mechanism, he questioned the need for AJLS Panel to follow up the matter.

10. The Chairman shared the concern of the Deputy Chairman and Mr Alvin YEUNG and reported that she had earlier approached the Judiciary Administration ("JA") in this regard. She said that according to JA, given that the handling of the photo-taking prohibition in court involved the exercise of judicial discretion and that there were on-going or potential court cases, the Judiciary did not consider it appropriate to be involved in any discussion of this subject at AJLS Panel. Nevertheless, the Chairman said that she would continue to follow up the matter with JA and stressed that AJLS Panel would only discuss the policy issues but not the court cases.

11. After discussion, members agreed to include the above subject in the list of outstanding items for discussion.

*(Post-meeting notes:*

- (a) The above joint letters [LC Paper Nos. CB(4)1165/17-18(01) and (02)] were issued to members via LC Paper No. CB(4)1165/17-18 on 29 May 2018; and
- (b) The response from JA on the matter was issued to members via LC Paper No. CB(4)1258/17-18(01) on 19 June 2018. After considering JA's response and the new Practice Direction issued by the Judiciary on Use of Mobile Phones and Other Devices in Courtrooms for Court Proceedings involving Jury, members agreed to remove the subject from the list of outstanding items for discussion at the meeting on 25 June 2018.)

#### Submissions from property owners

12. The Chairman informed members that several submissions had been received from some property owners urging the Hong Kong Bar Association ("Bar Association") and the Law Society of Hong Kong ("Law Society") to introduce codes of conduct for counsels and solicitors providing services to incorporated owners of buildings. She said that, since the submissions had referred to certain court cases and/or allegations against named persons, she considered it inappropriate to circulate those submissions to members. However, members might contact the Panel Clerk for viewing the submissions if they wished to. On the other hand, subject to members' views, the senders of the submissions would be advised to send copies of the submissions to individual members if they considered it necessary. Members raised no objection.

**III. Proposed creation of two permanent posts of Principal Government Counsel, one each in the Civil Division and the Law Drafting Division of the Department of Justice**

(LC Paper No. CB(4)1113/17-18(03) - Administration's paper on proposed creation of two permanent posts of Principal Government Counsel in the Civil Division and Law Drafting Division of the Department of Justice)

13. At the invitation of the Chairman, Director of Administration and Development of DoJ ("D of AD") briefed members on the Administration's proposal to create two permanent posts of Principal Government Counsel ("PGC"), one each in the Civil Division ("CD") and the Law Drafting Division ("LDD") of DoJ and the detailed justifications as set out in the Administration's paper.

Proposed Principal Government Counsel in the Civil Division

14. In response to Mr CHEUNG Kwok-kwan's enquiry about the organization of CD, D of AD and Law Officer (Civil Law) of DoJ ("LO(C)") explained that headed by LO(C), CD comprised four units, namely Civil Litigation Unit ("CLU"), Planning, Environment, Lands & Housing Unit, Civil Advisory Unit and Commercial Unit. LO(C) was supported by four PGCs each being the head of the above four Units respectively. The proposed PGC post in CD, i.e. the proposed Deputy Law Officer (Civil Law) ("DLO(C)"), would share the current workload of PGC in CLU.

15. The Chairman expressed support to the proposed DLO(C) post. She was of the view that, as CD was responsible for dealing with public law and judicial review cases which involved challenges against government policies and decisions or acts of public bodies over a wide spectrum of areas, the incumbent should specialize in public law. Apart from the said staffing proposal, the Chairman also urged the Administration to review other manpower requirement for CD which had been facing a surging workload and tremendous pressure in coping with a wide range of complex and significant legal issues.

16. In response, LO(C) advised that CD had all along attached great importance to public law. In this regard, PGC for the new DLO(C) post would need to be experienced in public law. Government Counsel of CD were also provided with training on public law by outside experts regularly. Regarding the staffing requirement of CD, LO(C) supplemented that DoJ would conduct annual review on the establishment and staffing resources of each division

(including CD) to ensure that the divisions were able to properly cope with the work for which they were responsible. Where appropriate, DoJ would deploy suitable manpower and resources to assist the divisions in providing legal support to the Administration.

17. The Deputy Chairman indicated support in principle to the proposed DLO(C) post in view of the surge in the number of ongoing civil litigation cases handled by CLU over the past twenty years and the marked increase in their diversity, complexity and urgency. He added that as he was concerned about the workload of Government Counsel, he had repeatedly requested DoJ to provide the total number of civil cases that were briefed out and information on the sets of chambers to which the briefed out counsel belonged in respect of civil cases in recent years. To his view, such information should help AJLS Panel monitor the fairness and effectiveness of DoJ's briefing out of criminal and civil cases to outside counsel, in particular whether it helped alleviate DoJ's workload.

18. In reply, LO(C) said that DoJ had been preparing the relevant information requested by the Deputy Chairman. However, as it took time for DoJ to review the civil cases undertaken by briefed out counsel in the past two to three financial years, the requested information was not immediately available. Having said that, LO(C) undertook to submit the requested information to AJLS Panel as soon as practicable.

19. Mr CHUNG Kwok-pan said that he supported the proposed DLO(C) post as the number of ongoing litigation cases had substantially increased by 296% from 9 286 in 1998 to 36 778 in 2017. However, he doubted whether the creation of just one post at PGC rank would suffice to cope with CD's workload, in particular the litigation cases which were demand-led and on an increasing trend. Mr CHUNG further considered that, where appropriate, briefing out more civil cases might help alleviate CD's workload.

20. In response to Mr CHUNG, LO(C) advised that DoJ would resort to briefing out under certain circumstances, such as when there was a need for expert assistance where the requisite skill was not available in DoJ. Notwithstanding this, the proposed DLO(C) post in CLU would undertake non-delegable management and administrative duties which could not be briefed out and, therefore, there was no viable alternative to creating the proposed DLO(C) post in CLU to meet the operational needs of CD in the long run. LO(C) supplemented that apart from creating the proposed permanent PGC post in CD, DoJ would keep reviewing the manpower requirement to see if additional directorate and non-directorate support would be needed.



21. Mr CHEUNG Kwok-kwan noted that the increase in heavy workload of CD was arising from non-refoulement/torture claims and other immigration related cases. He enquired whether it would be more appropriate to create additional Government Counsel posts instead of just one post at PGC rank to cope with the rising workload in CD. In reply, LO(C) advised that over the last decade, there had been an increase in the establishment of the Government Counsel Grade in CD. The additional posts were mainly at the ranks of Senior Government Counsel and Government Counsel which were created to deal with the rapid growth of immigration-related cases, in particular right of abode litigation and more recently non-refoulement claims.

22. LO(C) stressed the importance of having a new PGC in CLU in handling and supervising the abovementioned litigation cases in view of the substantial increase in the number of Government Counsel Grade officers at Deputy PGC rank and below who required PGC's supervision; the increasing volume, diversity, complexity and urgency of the cases handled by them; as well as undertaking additional management duties at a macro level.

#### Proposed Principal Government Counsel in the Law Drafting Division

23. Noting that the volume and the complexity of draft legislation required by the Administration continued to increase, the Deputy Chairman expressed full support for the creation of the proposed permanent PGC post, i.e. the proposed additional Deputy Law Draftsman ("DLD") in LDD. He particularly appreciated LDD's efforts in dealing with the proposed Members' Bills, such as the Modern Slavery Bill and the Special Education Needs Bill, in a professional and timely manner.

24. Mr CHUNG Kwok-pan was in support of the creation of the proposed DLD post. In particular, he took the view that the said post was necessary for handling the legislative exercises for Trade Single Window<sup>1</sup> as well as corporate rescue procedure initiatives for companies in short-term financial difficulty. Nevertheless, he was worried that the creation of only one post at PGC rank in LDD might not be able to address the growing workload of the Division.

#### Improvement in law drafting work

25. The Chairman declared that she had 15 years of experience in rendering judgments of Mainland courts into English and she had been a member of the Committee on Bilingual Legal System for seven years. She pointed out that

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<sup>1</sup> Trade Single Window sought to provide a one-stop electronic platform for the trade to lodge business-to-government trade documents to facilitate their compliance with all import and export regulatory requirements.

the readership of legislation had expanded exponentially and there was an expectation that ordinary readers should be able to read and understand the legislation that affected them. Therefore, the Chinese and English texts should be clear and readable.

26. The Chairman noted, however, that some Chinese draft legislation tended to be word-for-word rendition of the English text and some Chinese terms adopted by LDD were not widely accepted. She urged that all Government Counsel in LDD, in particular the proposed DLD, should possess profound skills in bilingual law drafting. She also suggested LDD making reference to the law drafting practice of the Macao Special Administrative Region Government as she noted that the Chinese text of its legislation was clear and readable.

27. In reply, Law Draftsman of DoJ ("Law Draftsman") explained that the two existing DLD in LDD had been overwhelmed by the volume of draft legislation presented to them by their subordinates for clearance. As such, their work priority had to be on ensuring that the draft legislation accurately and effectively achieved the desired policy intent and that the Chinese and English texts were of the same effect. With the proposed DLD in office to share out their duties, the two existing DLD would be able to devote more time to reviewing the structure and content of draft legislation at different stages of the drafting process, with a view to refining the Chinese and English texts to improve clarity and comprehensibility.

28. The Chairman further enquired about the workflow of the law translation process. In reply, Deputy Law Draftsman of DoJ ("Deputy Law Draftsman") explained that LDD started undertaking the translation of all the existing English laws into Chinese in 1986 and the law translation work was supported by a team of Law Translation Officers. Since 1997, the Government Counsel in LDD had been responsible for the drafting of both the Chinese and English legislation.

29. Deputy Law Draftsman further said that, in most cases, the Chinese text would be finalized after the English text had been finalized and this was at a very late stage. In this connection, the two existing DLD might not be able check the Chinese text during the early stage of the drafting process. To address this problem, the relevant Chinese and English drafting Government Counsel had been required to participate in the drafting process together from early stage in recent years and to moderate between the two language versions throughout. It was also expected that the proposed DLD would independently undertake major drafting exercises and share the responsibility of the two existing DLD in clearing draft legislation.

30. Mr CHUNG Kwok-pan also said that the clarity and readability of the Chinese text in legislation needed improvement. He cited the Inland Revenue (Amendment) (No. 2) Bill 2018 as an example and pointed out that, when scrutinizing the Bill, the bills committee noted that the term "表演者" was used as the Chinese rendition of the term "performer". He said that the Chinese word "者" should refer to an individual only, which was inconsistent with the meaning of "performer" in the English text which referred also to a corporation, partnership and trustee.

31. Deputy Law Draftsman explained that if the term "performer" as defined in the context engaged the term "person", then, by virtue of the interpretation under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), a "person" included any public body and anybody of persons, corporate or unincorporate. Apart from Cap. 1, LDD would also draw reference to relevant legislation of other places (such as Mainland and Taiwan), if necessary, when drafting legislation in Chinese.

32. Deputy Law Draftsman further indicated that LDD was committed to making both Chinese and English legislation more comprehensible and would make continuous efforts to ensure that draft legislation was as clear and readable as possible without compromising its precision.

### Improvement in Hong Kong e-Legislation

33. The Chairman appreciated the launch of Hong Kong e-Legislation ("HKeL") (i.e. the new electronic legislation database) in early 2017 as well as LDD's continuous improvements of HKeL to address users' concerns. She pointed out, however, that some users still encountered difficulties in printing out hard copies of the legislation and urged that LDD should make the printing function of HKeL more user-friendly.

34. In response, Law Draftsman explained that users might print out PDF (Portable Document Format) copies of legislation by scrolling down to the Download area in HKeL and choosing the copy that they wanted. LDD would continue to listen to users' feedback and further enhance the functions and user interface of HKeL. She also undertook to relay the Chairman's view to responsible colleagues for follow-up.

### Conclusion

35. After discussion, the Chairman concluded that AJLS Panel supported the proposed creation of one additional PGC each in CD and LDD and the Administration's submission of the staffing proposal to the Establishment Subcommittee for consideration.

**IV. Review of the damages for bereavement under the Fatal Accidents Ordinance (Cap 22)**

- (LC Paper No. CB(4)1113/17-18(04) - Administration's paper on review of the amount of damages for bereavement under the Fatal Accidents Ordinance (Cap 22)
- LC Paper No. CB(3)543/17-18 - President's letter on Hon HUI Chi-fung's proposed resolution to amend the Fatal Accidents Ordinance
- LC Paper No. CB(4)1113/17-18(05) - Submission from the Law Society of Hong Kong
- LC Paper No. CB(4)1139/17-18(01) - Letter from the Hong Kong Federation of Insurers to the Administration)

36. At the invitation of the Chairman, Deputy Solicitor General (Policy Affairs) (Acting) of DoJ ("DSG(P)(Ag)") briefed members on the following proposals of the Administration:

- (a) a resolution be moved by the Secretary for Justice within the 2017-2018 legislative session to increase the statutory sum to be awarded as damages for bereavement ("bereavement sum") under section 4(3) of the Fatal Accidents Ordinance (Cap 22) ("FAO") from \$150,000 to \$220,000, which would be capable of reflecting liberally the cumulative impact of inflation experienced over the period from March 1997 to March 2018; and
- (b) a review of the bereavement sum be conducted by the Administration hereafter to reflect inflation by making reference to the Consumer Price Index (A) ("CPI(A)") every two years.

Views of the Hong Kong Bar Association and The Hong Kong Federation of Insurers

37. Mr Nicholas PIRIE, representative of the Bar Association, said that the Bar Association supported the Administration's proposals and was pleased to note that the views of the Bar Association about introducing an automatic review mechanism of the bereavement sum, with a view to making it easier to review the bereavement sum in the future, had been taken on board.

38. At the invitation of the Chairman, Mr Eric HUI and Mr Philip KWAN from The Hong Kong Federation of Insurers ("HKFI") presented their views. Mr HUI said that HKFI supported the Administration's proposals after it had consulted its members on the proposals. However, he drew members' attention that the proposed increase in the bereavement sum would have potential impact on claim costs and premium rates for the relevant insurance policies. Mr KWAN supplemented that since 2018, the operating cost of the insurance industry had been increasing significantly. The increasing costs on various kinds of compensation had added to the burden of the insurance industry.

#### General views and level of the bereavement sum

39. Mr HUI Chi-fung said that the bereavement sum would, to a certain extent, help the dependants of the deceased in respect of a person's wrongful act, neglect or default which had caused the death of the deceased. He said that he welcomed the present opportunity for AJLS Panel to discuss the adjustment of bereavement sum, although it was he who first indicated at AJLS Panel meeting on 26 March 2018 his intention to move a resolution at a Council meeting to adjust the sum.

40. The Chairman, Mr Holden CHOW and Mr CHAN Chi-chuen indicated support to the proposal to increase the bereavement sum. However, both the Chairman and Mr CHAN considered that there was still room for increase in the bereavement sum in the future.

41. Dr Junius HO welcomed the Administration's proposal to increase the bereavement sum although it was a latecomer. Nevertheless, he considered that even after the proposed increase, the bereavement sum of \$220,000 was still too low. He pointed out that, as family size today tended to be smaller than that in 20 years ago, the bereavement suffered by dependants from the loss of a family member would be more acute, in particular if the deceased was the chief breadwinner of the family concerned. He suggested that the level should be increased substantially to not less than \$400,000. However, to avoid further delay of increasing the bereavement sum, he would support the Administration's current proposal.

42. Dr Junius HO also asked how the level of \$40,000 was set when the bereavement sum was first introduced in 1986. In his view, when the Administration conducted a comprehensive review of the bereavement sum in future, it should consider other factors, such as impact on loss of companionship and/or major breadwinner, social and family structure, and feeling of people, etc.

43. DSG(P)(Ag) advised that before the introduction of the bereavement sum, it was the court which decided the amount of bereavement sum having regard to the circumstances of individual cases. The introduction of a fixed award for bereavement was recommended by LRC as a measure of compensation for grief and loss of society and guidance, and the level was set having regard to the prevailing practice in other jurisdictions. She further advised that the award of the bereavement sum would not affect other lawful claims for compensation other than grief, such as loss of dependency, loss of accumulation of wealth, medical expenses and funeral expenses, etc, by the dependants concerned.

Failure of the Administration to propose timely adjustment of the bereavement sum

44. Mr HUI Chi-fung pointed out that when the bereavement sum was last increased in 1997, the then Attorney General undertook to review the sum every two years. Given the fact that the bereavement sum had not been adjusted for about 21 years since 1997, he queried whether the Administration had duly discharged its duty over the years. He urged that after the present proposal on increasing the bereavement sum had been implemented, the Administration should conduct the following reviews timeously and regularly.

45. DSG(P)(Ag) explained that between 1997 and 2000, there was an overall downward trend in the cumulative inflation rate and CPI(A) returned to the 1997 level only by March 2010. In mid-2014, DoJ commenced a review of the bereavement sum and proposed to increase the sum having made reference to the cumulative inflation as measured by CPI(A), and consulted the two legal professional bodies. The Administration then studied the counter-proposals received from the two legal professional bodies that the increase should take into account not only inflation but also "changing social and economic conditions of Hong Kong", including internal deliberation and consulting the relevant government departments, but concluded that it was very difficult to objectively quantify the "social and economic conditions of Hong Kong". She said that the Administration considered it appropriate to review the bereavement sum again at this stage.

46. The Chairman considered that studying the counter-proposals made by the two legal professional bodies should not be an excuse for not adjusting the bereavement sum for such a long time, and the Administration should be held responsible for the long overdue in reviewing the bereavement sum. She urged the Administration to formulate measures to avoid such oversight in the future.

47. In reply to the Chairman's enquiry about HKFI's role in the review of the bereavement sum in the past, Mr Eric HUI said that the insurance industry had

all along been performing the social function of providing protection against financial loss, a form of risk management. HKFI had never intervened in the adjustment of the bereavement sum in the past.

#### Mechanism for reviewing the bereavement sum

48. Mr HUI Chi-fung shared the views of the Law Society in its submission that, on top of the biennial review of the bereavement sum based on changes of CPI(A), there should be a comprehensive review of the quantum of the bereavement sum once every six years having regard to other factors which were beyond or not captured in the measurement of CPI(A).

49. Mr Holden CHOW asked about the Administration's response to the Law Society's view, which was shared and agreed by the Bar Association. In reply, DSG(P)(Ag) said that the Administration had carefully considered the counter-proposals made by the two legal professional bodies in 2014 and came to the conclusion that the "social and economic conditions of Hong Kong" could not be quantified objectively. She added that the Administration had also studied the methodology adopted in other common law jurisdictions, such as the United Kingdom and Canada, and recognized that the amount of damages for bereavement in those jurisdictions would be adjusted having regard to inflation. In light of the above, the Administration considered that it was not appropriate to include an amount over and above inflation in the bereavement sum to reflect the "changing social and economic conditions of Hong Kong" in the absence of an objective methodology to quantify the same.

50. Mr Holden CHOW noted that the Law Society had indicated that it would make further submissions regarding the details and the mechanics of the proposed comprehensive review. He requested that the Administration should take those views to be given by the Law Society into account.

#### Class of recognized dependants eligible to claim for the bereavement sum

51. Mr CHAN Chi-chuen was concerned about the class of recognized dependants who might claim for the bereavement sum. He noted that for the deceased in a fatal accident who had other wives in a polygamous marriage during his lifetime, the other wives might be entitled to claim for the bereavement sum under FAO under certain conditions although polygamous marriage was not legally recognized in Hong Kong. Mr CHAN considered that a wider definition of dependant should be adopted in FAO in regard to the eligibility of claiming for the bereavement sum.

52. DSG(P)(Ag) advised that the persons who might claim for damages for bereavement for their benefit were stipulated in FAO. At the request of

Admin Mr CHAN Chi-chuen, she agreed to provide supplementary information after the meeting on whether the dependants who had a relation with the deceased, which was not recognized under Hong Kong legislation but might be recognized in overseas countries, was entitled to claim for damages for bereavement under section 4(3) of FAO.

*(Post-meeting note: The Administration's supplementary information paper was issued to members on 13 June 2018 via LC Paper No. CB(4)1241/17-18(01).)*

53. Mr Nicholas PIRIE said that he was a member of the former Sub-Committee on Damages for Personal Injuries for LRC. He explained that the law reform recommendations on bereavement sum implemented in 1986 were proposed having regard to similar developments in other Commonwealth jurisdictions. On whether the bereavement sum should be adjusted according to CPI(A) only, Mr PIRIE said that it was a difficult question as it depended on how one compared the value of life between 1986 and now.

54. Mr Nicholas PIRIE added that FAO indeed had a much wider definition of dependant than similar legislation in other Commonwealth jurisdictions. He said that, for example, the godparent-godchild relationship was recognized under FAO for the purpose of a claim of dependency in a fatal accident case in Hong Kong, which was not the case in other jurisdictions.

#### Hon HUI Chi-fung's proposed resolution to increase the bereavement sum

55. Mr HUI Chi-fung pointed out that it was he who first indicated, at AJLS Panel meeting on 26 March 2018, his intention to move a resolution pursuant to section 4(5) of FAO to increase the bereavement sum from \$150,000 to \$220,000. He said that since neither members nor the Administration had raised that AJLS Panel should discuss the matter at that time, he had given notice to move a resolution at the Council meeting of 9 May 2018. He was disappointed to note that the Administration had been slow to act, only after he had given the above-mentioned notice to the Council.

56. The Chairman acknowledged that it was Mr HUI Chi-fung who first proposed increasing the bereavement sum from \$150,000 to \$220,000 via his email to DoJ and copied to her on 22 March 2018. She said that as the matter was within AJLS Panel's purview, she had informed members at the Panel meeting on 26 March 2018 that she would liaise with the Administration on the arrangement for discussing the matter.

57. Mr HUI Chi-fung referred members to the comments made by the Administration on his proposed resolution attached to the President's letter dated



27 April 2018 given to him (i.e. Appendix 1 of LC Paper No. CB(3)543/17-18). He said that, among other things, the Administration expressed that his proposed resolution had charging effect and considered that his proposed resolution should be ruled inadmissible according to Rule 31(1) of the Rules of Procedure ("RoP"), and he was not convinced by the Administration's rationale.

58. Mr HUI Chi-fung pointed out that under section 4(5) of FAO, LegCo was conferred the power to vary the bereavement sum by resolution. Mr HUI said that his proposed resolution would only have an implication to the Government or its agents if they committed tortious acts causing deaths. As such, he considered the Government's liability to utilize revenues or other public moneys to meet the statutory obligations proposed by him was remote and the amount involved would be negligible, which could be ignored for the purpose of the "charging effect" under RoP 31(1) or RoP 57(6) as pointed out in paragraph 10.54 of A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region.

59. In response to members' enquiries, DSG(P)(Ag) said that there were precedent cases that the Government had been sued for damages and claimed for bereavement by dependants of persons killed as a result of tortious acts committed by its servants or agents. She further said that in the view of the Administration, Mr HUI's proposed resolution would have a charging effect on the public moneys and, according to RoP 31(1), it was appropriate for such resolution to be moved by the Government. Since it was the norm that the Administration would first consult the relevant Panel for any motions and amendments to legislation, the Administration considered it more appropriate to discuss the matter at the Panel first.

60. The Chairman invited Senior Assistant Legal Adviser 2 ("SALA2") to explain the relevant procedure in determining the charging effect of a motion or amendment moved by Members. SALA2 advised that, in accordance with RoP 31(1), "a motion or amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by (a) the Chief Executive; or (b) a designated public officer; or (c) a Member, if the Chief Executive consents in writing to the proposal".

61. SALA2 further said that whether the proposed amendment fell within the restriction under RoP 31(1) would be determined by the President, who would take into account the rulings made in the past and whether the motion or amendment related to public expenditure or political structure or the operation of the Government.

*(At 6:25 pm, the Chairman extended the meeting for 15 minutes to 6:45 pm.)*

62. In response to members' concerns about the slow response of the Administration in proposing resolution to increase the bereavement sum, DSG(P)(Ag) acknowledged that the Administration could have proceeded more expeditiously in the present review of the bereavement sum. She said that the Administration undertook to ensure that it would review the bereavement sum every two years to take into account inflation by making reference to CPI(A).

### Motion

63. The Chairman said that she had received a motion proposed by Mr Holden CHOW, and she considered the proposed motion directly related to the agenda item under discussion and it was appropriate for the Panel to deal with it. Members agreed that the motion should be processed.

64. Mr Holden CHOW moved the following motion, which was seconded by Mr CHEUNG Kwok-kwan –

本委員會關注《致命意外條例》第4(3)條裁定給予親屬喪亡之痛的損害賠償法定款額，自1997年以來已沒有調整，以至未能全面照顧死者受養人的利益，就此，本委員會促請當局在本立法會會期內提出決議，以便盡快將損害賠償的法定款額增至\$220,000。

### (Translation)

That this Panel is concerned that, as the statutory sum to be awarded as damages for bereavement under Section 4(3) of the Fatal Accidents Ordinance (Cap 22) has not been adjusted since 1997, the benefits of dependants of the deceased are not well taken care of; as such, this Panel urges that the Administration should move a resolution in this legislative session with a view to increasing the statutory sum of damages to \$220,000 as soon as possible.

65. The Chairman put the motion to vote. A total of three members voted for the motion, none voted against it and none abstained from voting. The Chairman declared that the motion was carried. She also requested the Administration to take note of members' views expressed at the meeting.

*(Post-meeting note: The Administration's response to the motion was issued to members via LC Paper No. CB(4)1191/17-18(01) on 4 June 2018.)*

Legislative timetable

66. Mr HUI Chi-fung indicated that he had given the notice to move a resolution at the Council meeting of 13 June 2018 to increase the bereavement sum from \$150,000 to \$220,000.

67. Mr Holden CHOW urged the Administration to move the relevant resolution as soon as possible within the current legislative session. In response, DSG(P)(Ag) undertook that the Administration would proceed with the legislative amendment as soon as possible.

*(Post-meeting note:*

- (a) After the Panel meeting, the Administration gave notice on the same day to move a motion at the Council meeting of 13 June 2018 to increase the statutory bereavement sum from \$150,000 to \$220,000. At the House Committee meeting on 1 June 2018, a subcommittee was formed to study the proposed resolution by the Administration. The Subcommittee raised no objection to the proposed resolution; and
- (b) at the Council meeting of 11 July 2018, the Solicitor General of DoJ and Mr HUI Chi-fung each proposed an identical motion under FAO. A joint debate was held on the two motions. After Members and the Solicitor General of DoJ had spoken, the question on the Solicitor General's motion was put and agreed to.)

**V. Any other business**

68. There being no other business, the meeting ended at 6:30 pm.