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LEGISLATIVE COUNCIL

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28 February 2012

The Hon Miriam LAU Kin-ye, GBS, JP
Chairman
House Committee
Legislative Council
1 Legislative Council Road, Central
Hong Kong

Dear *Miriam,*

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

I write on behalf of the Panel on Administration of Justice and Legal Services ("the AJLS Panel") proposing to the House Committee the introduction of a mechanism to monitor the Government's progress in implementing the recommendations made by the Law Reform Commission ("LRC").

Arising from public concern about the delay in implementing LRC's recommendations, the AJLS Panel has recently discussed with the Secretary for Justice who is also the Chairman of LRC. The Panel has been advised that the Director of Administration issued a set of guidelines in October 2011 (**Appendix I**) under which bureaux and departments having policy responsibility over any LRC report are required to provide at least an interim response within six months of publication of the report and a detailed public response within 12 months of its publication. The bureaux and departments are required to give full consideration to the recommendations made by LRC and set out which recommendations they accept, reject or intend to implement in modified form in the detailed public response.

All the reports published by LRC since 1 January 1996 with the state of implementation or the Government's position are set out in **Appendix II**. The AJLS Panel is gravely concerned that many of the recommendations made in these reports have not yet been followed up. The membership of LRC includes both academic and practising lawyers and prominent members of the community. The recommendations put forward in an LRC report are the result of detailed study by

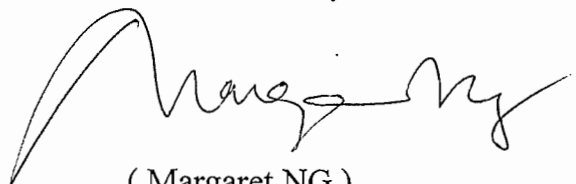
LRC members who have rich experience and expertise in their respective professional or other fields, with input from its various subcommittees comprising members drawn from a wide pool of talents in the community and within the Administration. The Panel is concerned that with long delay in implementation, the validity and relevance of LRC's recommendations are likely to be diminished and the efforts wasted.

The AJLS Panel is of the view that SJ, in addition to his role as the Chairman of LRC, has the responsibility to keep the Hong Kong's system of laws up-to-date, and Panels of the Legislative Council also have a role to play in facilitating the law reform work. To ensure that LRC's recommendations are given consideration within a reasonable timeframe and would be implemented without undue delay, the AJLS Panel proposes the endorsement by the House Committee of the following mechanism for monitoring the Government's progress in this respect –

- (a) SJ to submit to the AJLS Panel for discussion an annual report flagging up the progress in respect of the LRC reports which have not yet been implemented, say, after the Policy Address in each year;
- (b) the AJLS Panel to copy the annual report to the relevant Panels to facilitate their follow-up with the bureaux and departments having policy responsibility over the respective LRC reports; and
- (c) the relevant Panels to include the Administration's responses to the respective LRC reports in their lists of outstanding items for discussion, and to invite members of the AJLS Panel and all other Members to join the future discussion.

I would be most grateful if you could arrange to put this proposal to the House Committee for consideration.

Yours sincerely



(Margaret NG)

Chairman

Panel on Administration of
Justice and Legal Services

Encl

Guidelines for consideration of Law Reform Commission ("LRC")'s reports issued by the Director of Administration in October 2011

- (a) When a consultation paper is issued by the LRC, the Administration should at that stage decide (and resolve should there be any disagreement) which bureau (or bureaux) will take primary responsibility for consideration/implementation of the final report and should so notify the LRC.
- (b) Bureaux/departments should provide the Secretary to the LRC with the contact details of the bureau's officer with responsibility for the LRC report within 14 days of receipt of the letter from the Secretary for Justice forwarding an LRC report to the responsible Policy Secretary and requesting his consideration of the report.
- (c) Bureaux and departments having policy responsibility in respect of any LRC report should give full consideration to its recommendations and provide a detailed public response (setting out which recommendations they accept, reject or intend to implement in modified form) to the Secretary for Justice (as Chairman of the LRC) as soon as practicable. In any event, they should provide at least an interim response within six months of publication of the report which sets out a clear timetable for completion of the detailed response and the steps taken so far.
- (d) Bureaux or departments having policy responsibility in respect of any LRC report should provide a detailed public response to the Secretary for Justice within 12 months of its publication, unless otherwise agreed by him as Chairman of the LRC.

**Reports published by the Law Reform Commission ("LRC")
since 1 January 1996**

	Report (month and year of publication)	Implementing legislation/ Administration's responses
1	Hearsay rule in civil proceedings (July 1996)	The Evidence (Amendment) Ordinance (2 of 1999) was enacted in January 1999.
2	Creation of a substantive offence of fraud (July 1996)	The Theft (Amendment) Ordinance (45 of 1999) was enacted in July 1999.
3	Insolvency – Part 2: Corporate rescue and insolvent trading (October 1996)	Two bills had been introduced into the Legislative Council ("LegCo") in 2000 and 2001 respectively but both were lapsed.
4	Privacy – Part 2: Regulating the interception of communications (December 1996)	According to the Administration's response in April 2009, given the complexity and sensitivity of the issues involved in the five LRC reports on Regulating the Interception of Communications, Stalking, Civil Liability for Invasion of Privacy, Privacy and Media Intrusion and The Regulation of Covert Surveillance, the Administration would handle the five reports in stages. The Constitutional and Mainland Affairs Bureau ("CMAB") would first take forward the LRC report on Stalking.
5	Extrinsic materials as an aid to statutory interpretation (March 1997)	A bill was introduced into LegCo in March 1999 but was lapsed.
6	The year and a day rule in homicide (June 1997)	The Statute Law (Miscellaneous Provisions) Ordinance (32 of 2000) was enacted in June 2000.
7	Description of flats on sale – Part 2: Sales descriptions of overseas uncompleted residential properties (September 1997)	The Administration's response is not available. According to the Administration's paper on "Sales Descriptions of Overseas and Local Uncompleted Residential Properties" provided for the meeting of the Panel on Housing on 12

	Report (month and year of publication)	Implementing legislation/ Administration's responses
		April 2005 (LC Paper No. CB(1)1218/04-05(09)), the Estate Agents Authority would continue to monitor the number of relevant complaints/enquiries from the public and, if and when necessary, make appropriate recommendations to the Administration on the need to regulate the sale of overseas properties in Hong Kong.
8	Civil liability for unsafe products (February 1998)	According to the Administration's response in November 2010, the then Panel on Trade and Industry was consulted in 1999 but there has been strong objection to the proposal from trade representatives. The Administration does not intend to take forward the proposal at that juncture as the community is unlikely to reach any consensus on this matter in the near future.
9	Insolvency – Part 3: The winding-up provisions of the Companies Ordinance (July 1999)	<p>The Companies (Amendment) Ordinance (28 of 2003) which implemented some of the technical amendments recommended by LRC was enacted in July 2003.</p> <p>According to the responses of the Financial Services and the Treasury Bureau and the Official Receiver's Office in April 2009, some of the LRC's recommendations would not be taken forward. However, the recommendation of establishing and upkeeping a statutory licensing system for insolvency services would be re-visited in the context of Phase II of the Companies Ordinance Rewrite exercise (on winding-up provisions). Other technical amendments recommended by LRC would also be reviewed as part of that exercise.</p>
10	The age of criminal responsibility in Hong Kong (May 2000)	The Juvenile Offenders (Amendment) Ordinance (6 of 2003) was enacted in March 2003.

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11	The procedure governing the admissibility of confession statements in criminal proceedings (July 2000)	No change to the existing law is recommended in the report.
12	Privacy – Part 3: Stalking (October 2000)	On 19 December 2011, CMAB published a consultation paper for conducting a three-month public consultation exercise on the LRC's recommendations.
13	Guardianship & custody – Part 1: Guardianship of children (January 2002)	The Guardianship of Minors (Amendment) Bill 2011 which sought to implement the LRC's recommendations was passed by LegCo on 11 January 2012.
14	Contracts for the supply of goods (February 2002)	According to the Administration's response in November 2010, the Commerce and Economic Development Bureau ("CEDB") has accepted the LRC's recommendation that legislative amendments should be introduced to extend to contracts for the supply of goods the implied undertakings which currently apply in respect of contracts for the sale of goods. However, the Bureau's current priority in the area of consumer protection is to enhance legislative control over unfair trade practices and improve the operation of the Pyramid Selling Prohibition Ordinance. The Bureau would work on this subject in due course.
15	Guardianship & custody – Part 2: International parental child abduction (April 2002)	The Labour and Welfare Bureau ("LWB") consulted the Panel on Welfare Services on 8 February 2010 indicating that the Administration aimed at introducing the legislative proposals in the 2011-2012 legislative session.
16	The regulation of debt collection practices (July 2002)	In September 2005, the Security Bureau advised that the legislative proposal recommended by LRC was not supported on

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		the ground that the Administration had been adopting a multi-disciplinary approach in addressing the various issues arising from and related to delinquent debts. Such issues extended well beyond the boundaries of law and order and legislative means alone would not be adequate. Besides, the introduction of any industry-specific regulation would inevitably have repercussions on the trade and should only be done with full justifications.
17	Description of flats on sale – Part 3: Local completed residential properties: Sales descriptions and pre-contractual matters (September 2002)	The Administration's response is not available. The Transport and Housing Bureau ("THB") published a public consultation paper on Proposed Legislation to Regulate the Sale of First-hand Residential Properties in November 2011. It is the Administration's plan to introduce a bill into LegCo in the first quarter of 2012.
18	Guardianship and custody – Part 3: The family dispute resolution process (March 2003)	According to the Administration's response in May 2009, it welcomes and supports the LRC's recommendations. The Home Affairs Bureau ("HAB") stands ready to continue to coordinate efforts and input from relevant bureaux and stakeholders in further pursuing LRC's recommendations.
19	Privacy – Part 4: Privacy and media intrusion (December 2004)	Please refer to the Administration's response in respect of item 4 above.
20	Privacy – Part 5: Civil liability for invasion of privacy (December 2004)	Please refer to the Administration's response in respect of item 4 above.
21	Guardianship and custody – Part 4: Child custody and access (March 2005)	LWB published a consultation paper on 28 December 2011 to gauge public views as to whether the "joint parental responsibility model" as recommended by LRC should be implemented in Hong Kong by legislative

	Report (month and year of publication)	Implementing legislation/ Administration's responses
		means to replace the existing custody and access arrangements under the family law. The Panel on Welfare Services discussed the issue at its meeting on 9 January 2012.
22	Rules for determining domicile (April 2005)	The Domicile Ordinance (4 of 2008) was enacted in February 2008.
23	Privity of contract (October 2005)	According to the Administration's response in November 2010, the Department of Justice ("DoJ") intends to prepare a bill to implement LRC's recommendation and would consult relevant stakeholders on the draft legislation in due course.
24	Privacy – Part 6: The regulation of covert surveillance (March 2006)	Please refer to the Administration's response in respect of item 4 above.
25	Substitute decision-making and advance directives in relation to medical treatment (August 2006)	According to the Administration's response in November 2010, having considered the LRC's recommendations, the need to enhance the public's understanding of advance directives is recognized. The Food and Health Bureau ("FHB") would take necessary follow-up actions with parties concerned. As regards the LRC's recommendation to amend the definition of "mentally incapacitated persons" in the Mental Health Ordinance, the Administration would seek to pursue any necessary legislative changes under a composite proposal in the long term.
26	Conditional fees (July 2007)	DoJ advised in June 2010 that after having considered the views of the legal profession, the LRC's recommendation of establishing a privately-run Conditional Legal Aid Fund would not be pursued. As regards the LRC's recommendation of expanding the scope of the Supplementary Legal Aid Scheme, after consideration of the

	Report (month and year of publication)	Implementing legislation/ Administration's responses
		relevant review conducted by the Legal Aid Services Council, HAB has undertaken to introduce the legislative proposals into LegCo in the latter half of 2011.
27	Enduring powers of attorney (March 2008)	The Enduring Powers of Attorney (Amendment) Bill 2011 (25 of 2011) was passed at the Council meeting of 21 December 2011.
28	Hearsay in criminal proceedings (August 2009)	According to the Administration's response in December 2010, DoJ is studying the issues raised in the report and would consider the views of the legal profession before reaching a conclusion on the LRC's recommendations.
29	Sexual offences records checks for child-related work: interim proposals (February 2010)	In November 2011, the Security Bureau announced the implementation of a scheme based on the LRC's proposals with effect from 1 December 2011 to enable employers to check the sexual offence conviction records of prospective employees for work that would require frequent contact with children or mentally incapacitated persons.
30	Criteria for service as jurors (June 2010)	According to the Administration's response in December 2010, DoJ would put forward legislation to implement the LRC's recommendations.
31	The common law presumption that a boy under 14 is incapable of sexual intercourse (December 2010)	In June 2011, the Security Bureau advised that legislative amendment would be introduced to implement the LRC's recommendation to abolish the common law presumption.
32	Enduring powers of attorney: personal care (July 2011)	The report contains recommendations to extend the scope of an enduring power of attorney to include decisions as to the donor's personal care.

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		The Administration's response is awaited.

Note 1 : This list is compiled mainly on the basis of the information provided by LRC in its papers which were issued vide LC Paper Nos CB(2)1479/10-11(01) and CB(2)584/11-12(01) on 8 April and 14 December 2011 respectively.

Note 2 : For the key points in these LRC reports, Members may wish to refer to Table 3 of LC Paper No. CB(2)1479/10-11(01).

Council Business Division 2
Legislative Council Secretariat
28 February 2012