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(These minutes have been seen by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 28 May 2012, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present	:	Dr Hon Margaret NG (Chairman) Hon Albert HO Chun-yan Hon James TO Kun-sun Dr Hon Philip WONG Yu-hong, GBS Hon LAU Kong-wah, JP Hon Emily LAU Wai-hing, JP Hon Timothy FOK Tsun-ting, GBS, JP Hon TAM Yiu-chung, GBS, JP Hon Audrey EU Yuet-mee, SC, JP Hon Paul TSE Wai-chun, JP Hon LEUNG Kwok-hung
Members absent	:	Dr Hon Priscilla LEUNG Mei-fun, JP (Deputy Chairman) Hon Miriam LAU Kin-yee, GBS, JP
Public Officers attending	:	Item III Mr Howard LEE Assistant Director of Administration Judiciary Administration Miss Emma LAU Judiciary Administrator Mrs Angela LO Assistant Judiciary Administrator (Corporate Services)

Item IV

Mr Frank POON
Solicitor General
Department of Justice

Ms Roxana CHENG
Deputy Solicitor General
Department of Justice

Mr Llewellyn MUI
Senior Assistant Solicitor General
Department of Justice

Attendance by invitation :

Item III

Hong Kong Bar Association

Mr Kumar Ramanathan, SC

Mr P Y LO

The Law Society of Hong Kong

Mr Stephen HUNG
Vice President

Mr Billy MA

Mr Mark LIN

Item IV

Hong Kong Bar Association

Mr Kumar Ramanathan, SC

Mr Hectar PUN

Mr P Y LO

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance	:	Mr KAU Kin-wah Senior Assistant Legal Adviser 3 Miss Cindy HO Senior Council Secretary (2)3 Ms Wendy LO Council Secretary (2)3 Mrs Fonny TSANG Legislative Assistant (2)3

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I. Information papers issued since last meeting
[LC Paper Nos. CB(2)1925/11-12(01) and CB(2)2133/11-12(01)]

Members noted that the following papers had been issued since the last meeting –

(a) LC Paper No. CB(2)1925/11-12(01) - Administration's paper on "Provision of paternity leave to Judges and Judicial Officers"; and

(b) LC Paper No. CB(2)2133/11-12(01) - Administration's letter dated 21 May 2012 on "Staff cost arrangement for the proposed creation of two judicial posts in the Lands Tribunal of the Judiciary".

Staff cost arrangement for the proposed creation of two judicial posts in the Lands Tribunal of the Judiciary

2. The Chairman said that the item referred to in (b) above was a response provided by the Development Bureau with an information note provided by the Judiciary Administration in response to the concerns raised by Mr James TO regarding the provision of additional staffing resources for the Judiciary by different policy bureaux instead of allocation of resources by the Financial Secretary.

3. According to the Judiciary Administration, creation of new posts of judges and judicial officers ("JJOs") for the implementation of policy and legislative proposals emanating from the Administration would be funded by the policy bureaux concerned. In view of the fact that judges enjoyed security of tenure, the Chairman enquired whether these posts would be subject to deletion if the concerned bureaux should cease to provide the necessary funding in future. She also queried the relevance of the precedent cases cited in the Judiciary Administration's paper, pointing out that those were new administrative or statutory functions not necessarily performed by judges.

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4. Judiciary Administrator ("JA") explained that the Judiciary Administrator as the Controlling Officer of the expenditure of the Judiciary, on the instruction of the Chief Justice, put forward proposals for judicial manpower requirements to the Administration to meet increased demands for judicial services or new statutory or non-statutory functions that required JJOs to perform. Whether the additional judicial resources were provided centrally or by individual policy bureaux was entirely a matter of internal arrangement within the Administration and was not the Judiciary's concern.

II. Items for discussion at the next meeting

[LC Paper Nos. CB(2)2132/11-12(01) to (03)]

5. Members agreed to discuss the following items at the next regular meeting to be held on 25 June 2012 –

(a) Further expansion of the Supplementary Legal Aid Scheme ("SLAS"); and

(b) Relocation of the Court of Final Appeal ("CFA") to the site of the former Legislative Council ("LegCo") Building.

6. As regards the item referred to in 5(a) above, members had agreed that the Panel should follow up on other proposals to expand the scope of SLAS which had not been supported by the Administration. As regards the item 5(b) above, members noted that the Judiciary Administration would be consulting the Panel on the proposed facilities of CFA to be provided at the former LegCo Building and the works schedule.

(Post-meeting note: The next regular meeting was re-scheduled for 10 July 2012. With the concurrence of the Chairman, a new item on "Law Reform Commission Report on Class Actions" was added to the agenda of that meeting.)

III. Judicial manpower situation

[LC Paper Nos. CB(2)2107/11-12(01) to (02) and CB(2)2132/11-12(04)]

Briefing by the Judiciary Administration

7. At the invitation of the Chairman, JA briefed members on the paper provided by the Judiciary Administration [LC Paper No. CB(2)2107/11-12(01)] which set out the existing judicial manpower situation, judicial training for judges, the progress of the recruitment exercises for filling the vacancies at various levels of court including judges of the Court of First Instance ("CFI") of the High Court, and engagement of temporary judicial manpower to alleviate the fluctuations in workload. In response to members' suggestions during the Panel's visit to the

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Judiciary regarding application of information technology ("IT") in conducting court proceedings to help enhance support to JJOs, the Judiciary was in the process of consulting institutional stakeholders on the consultants' preliminary proposals in its IT Strategy Plan. The Judiciary intended to consult the Panel after consolidating the comments gathered in the consultation exercises.

Briefing by the Administration

8. At the invitation of the Chairman, Assistant Director of Administration briefed members on Part II "The mechanism for judicial remuneration review" of the letter provided by the Judiciary Administration [LC Paper No. CB(2)2107/11-12(02)]. He explained that for the 2011 judicial remuneration review, the Standing Committee on Judicial Salaries and Conditions of Service ("Judicial Committee") recommended a 4.22% increase in judicial pay adjustment for 2011-2012, which was slightly different from the pay increase of 4.23% sought by the Judiciary and the 0.01% difference was the result of the different arithmetical methods adopted by the two parties for calculating the cumulative effect of private sector pay trends, and did not represent any fundamental differences regarding matters of principle. According to the Judiciary, with the experience of the 2011-2012 judicial remuneration review, the Judiciary had no difficulty adopting the same calculation method as adopted by the Judicial Committee in the event of a similar situation in future.

Issues raised

Judicial manpower situation

9. Mr Kumar Ramanathan, SC, Chairman of the Hong Kong Bar Association ("Bar Association") expressed concern that the insufficient judicial manpower would give rise to longer court waiting time at various levels of court, and considered that the Judiciary should engage more temporary judicial resources to help maintain the court waiting times at reasonable levels. Referring to the figures set out in Enclosure II of Judiciary Administration's paper in relation to court waiting times for various levels of court in 2011, Mr Ramanathan pointed out that in respect of the Court of Appeal, the average waiting time for civil cases exceeded the target by 30% from 90 days to 117 days in 2011; and in respect of CFI, the criminal fixture list exceeded the target by more than 30% from 120 to 169 days in 2011 and the civil fixture list exceeded the target by 30% from 180 to 231 days in 2011.

10. JA said that the recruitment plan had been worked out according to the instruction of the Chief Justice and the recruitment exercises had been conducted according to schedule since they were launched in June 2011. The Chief Justice also took the view that the Judiciary should continue to engage temporary judicial resources as far as practicable to relieve the pressure on listing. As at

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15 May 2012, there were 22 substantive CFI Judges and 12 Deputy CFI Judges. The Chief Judge of the High Court was giving top priority to the deployment of judicial resources for hearing criminal appeals. Responding to the Chairman's enquiry on the current stage of recruitment of the CFI Judges, JA said that following the close of application around mid-April 2012, the selection process was expected to be completed in the latter half of 2012 and newly appointed CFI Judges to be able to assume office by 2013.

11. Members noted the Law Society of Hong Kong's ("Law Society") submission for the meeting [LC Paper No. CB(2)2155/11-12(01)]. Mr Stephen HUNG, Vice President of Law Society said that no candidate from the solicitors' branch of the profession had been appointed to the High Court despite that they were eligible for appointment as CFI Judges under the statutory professional qualifications. He enquired if the Judiciary would consider providing courses to potential candidates from both branches of the profession, as the provision of appropriate courses might provide encouragement to potential candidates to see whether they had the requisite qualities to serve as Judges. JA said that qualified persons who were found suitable would be selected for appointment in the recruitment exercises and a large number of appointees to the District Court and Magistrates' Courts had been successfully drawn from the solicitors' branch of the profession for either substantive or temporary appointments. In future, when higher rights of audience became exercisable by solicitors, it was expected to have positive effect on solicitors' competing for consideration for appointment to the High Court.

12. Responding to Mr Albert HO on the past arrangement for overseas recruitment of judges, JA explained the Judiciary's policy of recruiting judges locally and informed members that over a hundred appointees were successfully recruited locally since July 1997.

Remuneration and conditions of service for JJOs

13. Noting that the remuneration of the Chief Justice was substantially lower than that of a Director of Bureau, Mr Stephen HUNG urged that there should be a complete overhaul of the judicial pay scale, including a review on the internal pay relativities amongst the various judicial ranks, namely, Magistrate (equivalent to Point 1 on the Directorate Pay Scale), District Judge (equivalent to Point 3 on the Directorate Pay Scale) and CFI Judge (equivalent to Point 8 on the Directorate Pay Scale) and their respective benchmark salaries in order to keep the pay level in line with present day circumstances to attract capable legal practitioners to join the bench. He called on the Administration to review the level of remuneration of JJOs to attract legal professionals to join the Judiciary. The Chairman shared the concerns.

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14. Mr Stephen HUNG further said that the daily rate of honorarium of Temporary Magistrates was unreasonably low (which was about $4,000 per sitting day) when compared with that of duty lawyers providing legal representation under the Duty Lawyer Scheme (which was $6,000 per day). Besides, the period of temporary appointment of Temporary Magistrates and Deputy Judges had been unduly long (ranging from over 10 months to some 18 months) and there was uncertainty in the prospect of substantive appointment after the long period of temporary sitting.

15. Apart from the level of judicial remuneration, the Chairman enquired whether the present terms and conditions of service for JJOs were considered sufficient to attract legal practitioners, noting that there was no revolving door arrangement for Judges and once they took up the judicial appointment, they would be prohibited from practising as barristers or solicitors in Hong Kong without the permission of the Chief Executive ("CE").

16. JA explained that since May 2008, judicial remuneration was determined according to a mechanism separate from that of the civil service. Under this new system for the determination of judicial remuneration, judicial remuneration was determined by the CE-in-Council after considering the recommendations of the independent Judicial Committee. The mechanism comprised an annual review and a regular benchmark study. The Judiciary welcomed the Administration's decision on the new system, which represented an important recognition of the Judiciary's independent status. In coming up with its recommendations, the Judicial Committee would take into account the basket of factors approved by the CE-in-Council in May 2008, which included, inter alia, benefits and allowances enjoyed by JJOs. The existing package of benefits was an integral part of judicial remuneration and the Judicial Committee would keep the situation under review. JA advised that with the present terms and conditions of service, the Judiciary had not encountered any undue recruitment problem in recent years.

17. Responding to the various concerns on the deployment of temporary judicial manpower, JA said that the engagement of temporary judicial resources for varying periods, depending on operational needs, would help reduce court waiting times arising from additional demands due to fluctuations in workload and provide opportunities for the deputy JJOs to gain judicial experiences at various levels of court. She said that the rates of honorarium for temporary judicial appointments had recently been adjusted upwards based on a formula endorsed by the Finance Committee and the rates would be subject to regular review by the Administration (the Financial Services and the Treasury Bureau).

Extra-judicial functions

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18. Noting that there was no immediate prospect of filling all CFI Judge vacancies and that further vacancies might arise due to retirements, Mr Kumar Ramanathan, SC suggested that CFI Judges should not take on extra-judicial duties so that they could concentrate on their judicial duty; and that such extra-judicial duties as panel judges under the Interception of Communications and Surveillance Ordinance and the Chairman of Electoral Affairs Commission should be taken up by retired judges instead.

19. Mr Albert HO also expressed concern about the statutory and non-statutory appointments of judges for extra-judicial functions as there were numerous such posts which impacted on judicial manpower deployment. JA said that it was the Judiciary's policy to request the Administration to look for a suitable person who was not a serving judge to take up extra-judicial duties in the first place, where the eligible persons for such appointments were not confined to judges by law; and consideration would be given to appointing retired or serving judges only where no other suitable person was available. Responding to Mr HO, JA said that it was stipulated under the relevant legislation that the Returning Officer of the CE Election had to be a Judge of the High Court or above; but such was not a statutory requirement in respect of the Chairman of the Market Misconduct Tribunal or Securities and Futures Appeal Tribunal, in which cases the chairmanship was taken up by retired judges. JA added that the new posts to cope with the increase in workload in the Lands Tribunal and the establishment of the Competition Tribunal were judicial posts created within the Judiciary.

Work of the Probate Registry and office accommodation

20. Mr Albert HO raised concerns that there was much room for improvement in respect of the service of Probate Registry and he noted the concern of the legal sector about the lengthy time taken by the Probate Registry in processing grant applications lodged, and he queried why it would take six weeks' time or even longer to deal with an enquiry in relation to requisition.

21. Mr Billy MA of the Law Society recognized the important service rendered by the Probate Registry to the general public. He said that recommendations for improvement were made from time to time by the Joint Standing Committee on Probate Practice comprising representatives from the Judiciary and the Law Society. However, the application process could not be shortened unless the Probate Registry was given sufficient manpower. He said that the present time frame for processing of applications was undesirable because similar requests were processed within days in the United Kingdom. He requested the Judiciary to put in more resources to improve the service of the Probate Registry on various fronts, namely, provision of additional manpower, streamlining work procedures, retention of experienced supporting probate officers, and improvement in office accommodation to cater for personal privacy for the public to submit applications.

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He further expressed that the Probate Registry had been subject to undue work pressure after the cancellation of estate duty. Mr Albert HO shared the concern adding that the time frame for delivery of its service clearly indicated its performance and work efficiency.

22. On the work of the Probate Registry, JA noted the concerns expressed above and in the Law Society's submission. JA said that to address the concerns, the number of Probate Masters had been increased from two to six, and the Probate Registry staff had been enhanced with the provision of three additional supporting staff. The duration of handling enquiries would depend on the complexity of the individual cases and she noted that there had been a suggestion for attaching an application guideline to guide the applicant in the application process. She welcomed the continued dialogue of the Joint Standing Committee on Probate Practice at its next meeting in June 2012. The Chairman considered that the views of the legal profession were legitimate concerns and should be seriously considered by JA. JA said that the Judiciary had been seeking constant reviews of its work and procedures, and on-going efforts were made to work out improvement measures to address the views of relevant stakeholders.

23. Mr LEUNG Kwok-hung said that JA should examine the underlying causes of the relevant issues and in his view, all these issues stemmed from the lack of manpower resources, which ended up with hiccups in the operation of the Probate Registry and the long waiting times for hearing of criminal cases. He considered that sufficient resources should be provided to the courts to uphold the rule of law and to meet its performance pledges.

24. In view of the growing number of unrepresented litigants, Mr Albert HO further enquired on the possibility of engaging some assistants with legal education background to assist in the work of judges such as conducting legal research work. JA said that a number of Judicial Assistants with legal education background were engaged each year to provide legal research support to judges of the appellate courts.

Way forward

25. The Chairman requested for the provision of background information on the work of Probate Registry, including the resources allocated to the Probate Registry and the time frame for its delivery of service, to evaluate and monitor the effectiveness and efficiency of its services. JA undertook to provide the requisite information after the meeting.

(Post-meeting note: An information note from the Judiciary Administration on the work of the Probate Registry was circulated to members on 11 July 2012 vide LC Paper No. CB(2)2582/11-12(01).)

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26. Concluding the discussion, the Chairman requested the two legal professional bodies to engage in further discussion to explore on how judges could deal with unrepresented litigants in a more effective manner; whether and how judicial education for JJOs provided by the Judicial Studies Board could be enhanced having regard to overseas experience; and whether the present conditions of service of JJOs were considered sufficient to attract qualified talents. Further views of the two legal professional bodies on the above issues would be followed up at a future meeting with a view to enhancing efficiency of the courts.

IV. Procedure for seeking an interpretation of the Basic Law ("BL") under BL158(1)

[LC Paper Nos. CB(2)1786/11-12(01), IN29/11-12, CB(2)2168/11-12(01) and CB(2)2187/11-12(01)]

Briefing by the Administration

27. At the invitation of the Chairman, Solicitor General ("SG") of the Department of Justice ("DoJ") briefed members of the Administration's paper [LC Paper No. CB(2)1786/11-12(01)] which set out the three occasions initiated by the CE of the Hong Kong Special Administrative Region ("HKSAR") or Standing Committee of the National People's Congress ("NPCSC") itself in the exercise of its power of interpretation of Basic Law ("BL") stipulated in BL158(1), the circumstances leading to the Administration's request, the procedures adopted in seeking the interpretation and the justifications for such requests. The paper also provided information on the interpretation by NPCSC made in 1996 in respect of the Nationality Law that had been applied to HKSAR from 1 July 1997.

28. Members also noted the information note prepared by the Research Division of the LegCo Secretariat [LC Paper No. IN29/11-12].

Views of the Bar Association

29. Mr Kumar Ramanathan, SC highlighted the following points made in the Bar's submission [LC Paper No. CB(2)2168/11-12(01)] –

(a) the Bar Association issued a press statement on 13 May 1999 expressing its disapproval of the Government's manoeuvre to seek an interpretation of certain provisions of BL which had been interpreted in a case decided by the Court of Final Appeal. The Bar Association also made a statement on 14 April 2005 expressing its deep disappointment at the Acting CE's decision to request NPCSC to interpret Article 53 of BL when there were pending judicial review applications raising the issues requiring the interpretation of the same article of BL;

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(b) the Bar Association was of the view that the procedure for interpretation in relation to a judicial reference to NPCSC should always be a transparent process for the reasons set out in paragraph 2 of its submission including: (i) NPCSC was interpreting BL of HKSAR which was the national law of the People's Republic of China ("PRC"); (ii) as the interpretation by NPCSC would be binding on the courts of HKSAR, the parties to the litigation should be given a right to make representations to NPCSC before the interpretation was issued; and (iii) since the interpretation would also impact on the Hong Kong society, it was advisable that Hong Kong residents, scholars and interested bodies (such as the Bar Association and the Law Society) should also be consulted;

(c) the Bar Association had identified in paragraph 7 of its submission the procedures adopted in the 1999 and 2005 interpretations made as a result of reference by CE to NPCSC;

(d) while there was no express provision in BL itself about the procedure for interpretation other than in relation to a judicial reference under BL 158(3), the Bar Association was of the view that the absence of an express provision as to the procedure on interpretation other than by the judicial reference did not preclude the Central People's Government ("CPG") from deciding that an interpretation of certain provision(s) of BL was necessary and appropriate. However, the question at issue was whether it was constitutionally or legally acceptable for CE and/or the Administration to take upon themselves to make such a reference; and

(e) the Bar Association suggested that CE or the Administration, when deciding whether they should make such a reference, had to consider a myriad of factors as set out in paragraph 14 of its submission, in that they should, where and whenever it was possible, to promote the autonomy of HKSAR as opposed to intervention of CPG; they should respect the principle of separation of powers, and be fully supportive of the independent judicial power guaranteed under BL; such as reference should always be considered as the very last resort and would only be invoked after the most careful consideration of all the circumstances then prevailing.

Discussion

Impact of the interpretations by NPCSC on legal proceedings

30. Mr Albert HO considered that while NPCSC had the general power to interpret BL under BL158(1), it should not exercise its power to interpret BL when

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a relevant case was being heard by the Hong Kong courts and it was undesirable for NPCSC to make any interpretation to overrule the decision of CFA. Mr HO considered that the CE's decision to seek an interpretation after CFA had delivered its judgment was tantamount to seeking to overturn the CFA judgment. He noted that in the interpretation initiated by NPCSC, there was already an application for judicial review. He said that it had projected a negative image amongst the foreign countries as the power of final adjudication had been impaired.

31. SG assured members the final adjudication power of CFA as guaranteed under BL; and that the Administration would seek an NPCSC interpretation only in the most exceptional circumstances and as the last resort. The Administration would act in a prudent and responsible manner when an interpretation had to be sought; and there had been no such request by the Administration after the 2005 NPCSC interpretation.

Procedure for seeking an interpretation of BL

32. Mr Albert HO considered that the procedure to be followed in the interpretation should be made more transparent and the participation of the public in the process should be explored. The Chairman said that the 2004 interpretation was initiated by NPCSC and it was uncertain whether the former CE had been notified of the interpretation at that time and if so, whether he had objected to it.

33. Mr TAM Yiu-chung said that NPCSC had adopted a cautious approach in the exercise of its right to interpret BL as demonstrated in the previous occasions and it had not made any interpretation of BL provision on its own initiative after the interpretation by NPCSC in 2005. He noted that while the opinion of the general public on the problem of "doubly non-permanent pregnant" women giving birth in Hong Kong was quite unanimous, NPCSC still had not made any interpretation of the relevant BL provision.

34. Mr Ramanathan, SC however pointed to the lack of clear procedure for the interpretations sought between 1999 and 2005 and he expressed concern that whether the Administration would make such a reference to NPCSC for political expediency or administrative convenience in order to get round the legislature. He reiterated that a transparent process should be in place which should involve stakeholders, the litigants who should be heard on the matter and the Administration could facilitate collecting relevant views for the consideration of NPCSC. He did not see much difficulty for the Administration to give an assurance that they should have regard to the relevant considerations as highlighted in its submission for the purpose of enhancing the accountability of the Government to the public as well as enhancing the confidence of the public in the Government and the Administration.

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35. Mr Paul TSE asked whether interpretation of BL should be initiated through other avenues besides judicial reference under BL158(3) and if so, the relevant mechanism and procedures had to be worked out. While he fully agreed with the view of the Bar Association about the need for greater transparency in the process and the relevant considerations to safeguard the autonomy of HKSAR and judicial independence and that such a reference should only be considered as the very last resort. However, when the constitutional powers and functions conferred upon CE under BL43 and 48(2) were invoked, there should be a mechanism in place to enhance accountability of the Government to the public.

36. SG said that regarding the procedural aspect as set out in paragraph 14 of the Bar Association's proposal, the Administration generally agreed with those safeguards and concerns for greater transparency and he undertook to relate the relevant concerns to CPG in future. On the other hand, SG noted that the steps revealed in paragraph 7 of the submission of the Bar Association were internal procedures of the NPCSC which were beyond the control of the Administration. He also expressed reservation about the need for a formal mechanism for CE to make a report to the CPG/State Council ("CE's requests") stressing that it had to be considered in a prudent manner.

37. The Chairman asked whether or not the Administration would further pursue the procedural aspect of the CE's requests. SG said that there were views in the community that setting up a formal mechanism might rationalize the making of such requests. On each of the previous occasions of the NPCSC's interpretation of the BL, discussions were held in LegCo and its relevant committees both before and after the interpretation to enhance transparency.

38. Mr Albert HO suggested that the role of the Committee for the Basic Law of HKSAR should be made more prominent. Mr Paul TSE also enquired about the role and functions of the Basic Law Consultative Committee and whether it was the sole established channel for canvassing views of Hong Kong people. Mr HO and Mr TSE suggested that the relevant committees should take a more leading role to gauge the public views so as to keep NPCSC fully apprised of the situation in Hong Kong.

Amendment to the Basic Law

39. Mr LEUNG Kwok-hung was of the view that interpretation initiated by NPCSC would impair the autonomy of HKSAR because it could be done anytime with or without public consensus while all people of Hong Kong would be affected. In his view, any such interpretation on a BL provision by NPCSC under BL158 should be followed by an amendment to that BL provision in accordance with the amendment procedure under BL159 whereby the consent of two-thirds of the National People's Congress deputies of HKSAR, two-thirds of all the LegCo

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Members and CE should be obtained. He considered it necessary to establish the procedure of implementing BL 159 as a constitutional practice.

40. SG explained that there was a clear difference in interpretation of BL and amending BL. Interpretation was used to clarify the legislative intent of BL. For instance, it was considered necessary to clarify the legislative intent of the relevant provisions of BL when an interpretation by NPCSC was sought by CE in 1999. Similarly, an interpretation was sought in 2005 to clarify the legislative intent concerning the term of office of the new CE. Mr LEUNG Kwok-hung reiterated his request for establishing a constitutional practice that an NPCSC interpretation under BL158 should be followed by an amendment to BL under BL159, which in his view, was in line with the principle of separation of powers.

Conclusion

41. Concluding the discussion, the Chairman stated her views below –

(a) BL of HKSAR was a national law of PRC and NPCSC was empowered to interpret statutes under the Constitution of PRC. She supported the considerations as stated in paragraph 14 of the submission of the Bar Association that such an interpretation should be considered as the very last resort. Hence, seeking an interpretation of BL after a case decided by CFA or where there was already an application for judicial review proceeding would be deemed inappropriate;

(b) CE or the Administration had to make such a request only under exceptional circumstances where no other alternative was available and they should consult the public with clear justifications; and

(c) there should be a transparent procedure for seeking an interpretation under BL158(3) by way of judicial reference. At the Panel meeting on 27 February 2012, DoJ had advised that the Congo Case was an individual case and should not set a precedent. She suggested that the legal professional bodies could initiate discussion with the academics to explore the issue further.

V. Any other business

42. There being no other business, the meeting ended at 6:40 pm.

Council Business Division 2
Legislative Council Secretariat
26 September 2012