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LC Paper No. CB(4)603/12-13

(These minutes have been
seen by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Friday, 14 December 2012, at 10:45 am
in Conference Room 2 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, JP
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen

Member attending : Dr Hon Fernando CHEUNG Chiu-hung

Members absent : Hon Abraham SHEK Lai-him, SBS, JP
Hon WONG Yuk-man

Public Officers attending : Item III

Law Reform Commission of Hong Kong

Mr Stephen WONG Kai-yi
Secretary

Mr Eric T M CHEUNG
Member
Sub-committee on Review of Sexual Offences

Mr Andrew POWNER
Member
Sub-committee on Review of Sexual Offences

Mr Thomas LEUNG
Secretary
Sub-committee on Review of Sexual Offences

Hong Kong Bar Association

Mr Andrew BRUCE, SC

The Law Society of Hong Kong

Mr Stephen HUNG
Vice President and Chairman of the Law Society's
Criminal Law and Procedure Committee

Item IV

The Administration

Miss Emma LAU
Judiciary Administrator

Mr Stanley TO
Assistant Judiciary Administrator
(Quality)

Item V

The Administration

Mr Peter WONG
Deputy Solicitor General
Department of Justice

Ms Alice CHOY
Senior Government Counsel
Department of Justice

Hong Kong Bar Association

Mr Robert PANG, SC

Clerk in attendance : Miss Mary SO
Chief Council Secretary (4)2

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Cindy CHAN
Senior Council Secretary (4)2

Ms Rebecca LEE
Council Secretary (4)2

Ms Mandy WAN
Administrative Assistant (4)1

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I. Information paper(s) issued since the last meeting
[LC Paper No. CB(4)216/12-13(01)]

Members noted that the following paper had been issued since the last meeting -

(LC Paper No. CB(4)216/12-13(01) — A copy of the statement made by the Secretary for Justice at the press conference on 4 December 2012 that the West Wing of the Former Central

Government Offices will be allocated for office use by the Department of Justice as well as law-related non-governmental organizations provided by the Administration (Chinese version only))

II. Items for discussion at the next meeting

[LC Paper Nos. CB(4)225/12-13(01) to (02)]

Secretary for Justice's request to the Court of Final Appeal seeking clarification on the Standing Committee of the National People's Congress ("NPCSC")'s 1999 interpretation of Article 24 of the Basic Law

2. Mr Dennis KWOK expressed concern about the recent request made by the Secretary for Justice ("SJ") to the Court of Final Appeal ("CFA") to, before ruling on the foreign domestic helper's right of abode case, seek clarification from the Standing Committee of the National People's Congress ("NPCSC") on its interpretation of right of abode provisions of the Basic Law made in 1999 (hereafter referred to as "SJ's request to the CFA") to address the permanent residency issues involving persons such as babies born in Hong Kong to "doubly non-permanent resident pregnant women". Mr KWOK proposed that the Panel should continue to follow up this issue as a continuation of its past discussion on the issue of the "Procedure under Article 158(3) of the Basic Law for the court to make a reference to the NPCSC for an interpretation of the Basic Law" held on 27 February 2012.

3. Mr Albert HO said that not only was SJ's request to the CFA unprecedented, the issues concerning the foreign domestic helper's right of abode case did not relate to the relationship between the Central Government and Hong Kong. In light of the far-reaching effect of SJ's request to the CFA on the judicial system of Hong Kong, Mr HO said that the Panel should explore with SJ on the possibility of him attending a special meeting of the Panel to discuss his request to the CFA from a policy perspective. Mr HO hoped that sufficient discussion could be made on the proposal of inviting SJ to the meeting to discuss the principles of requesting the CFA to seek clarification on an interpretation of the Basic Law from the NPCSC, as he did not wish to resort to the use of voting to resolve way on handling the proposal.

4. Mr TAM Yiu-chung opposed to the suggestion of inviting SJ to the Panel to explain his request to the CFA for the time being for the following reasons. First, SJ had already explained to the media on 13 December 2012 his request to

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the CFA. Second, as the foreign domestic helper's right of abode case was pending in the CFA, any reference made to the case might prejudice the case. Mr TAM further said that it would be more appropriate for the Panel to discuss the "Procedure under Article 158(3) of the Basic Law for the court to make a reference to the NPCSC for an interpretation of the Basic Law" after the CFA had made its judgement on the foreign domestic helper's right of abode case. Mr Martin LIAO and Mr Paul TSE expressed similar views. Mr TSE further said that whilst it was the right of parties to litigation to put forward any suggestion or request to the court for consideration, the fact that SJ's request to the CFA had come to light might warrant a review of the proceedings by the relevant authority.

5. Ms Emily LAU disagreed that for the Panel to invite SJ to discuss his request to the CFA might prejudice the foreign domestic helper's right of abode case which was pending in the CFA, as much public discussions on the issues concerning SJ's request to the CFA had been carried out since SJ's request to the CFA had come to light. Ms LAU further said that to avoid violating the sub judice rule, members' discussion on SJ's request to the CFA should focus on the policy issues concerning the request and refrain from making any reference to the details of the foreign domestic helper's right of abode case. Ms Claudia MO expressed similar views.

6. Ms Cyd HO said that it was the responsibility of the Panel to follow up SJ's request to the CFA which had aroused much public concerns about its effect on the rule of law and judicial independence of Hong Kong. Ms HO further said that she could not understand why some members of the Panel considered that inviting SJ to discuss his request to the CFA might prejudice the foreign domestic helper's right of abode case which was pending in the CFA, as the same members did not consider that Ms Elsie LEUNG's remarks made at a public forum on 6 October 2012 would influence the court because judges were able to perform their judicial function independently. Ms HO hoped that the rights of the minority would not be denied by the majority of the Panel, as practised in many overseas democratic legislatures.

7. Mr James TO said that there was no cause for concern that the Panel's discussion on SJ's request to the CFA might prejudice the foreign domestic helper's right of abode case, as the Panel's discussion would focus on the circumstances under which the Government would request the court to seek an interpretation of the Basic Law from the NPCSC and the considerations which the Government would take into account before deciding to do so, and not who should have the right of abode in Hong Kong under the Basic Law.

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8. Dr KWOK Ka-ki urged the Panel to convene a special meeting to discuss SJ's request to the CFA as soon as possible, having regard to the implications of such a move to the rule of law and judicial independence of Hong Kong.

9. Mr Dennis KWOK said that the fact that the CFA was still considering the foreign domestic helper's right of abode case which might or might not involve an interpretation of the Basic Law should not prohibit the Panel from discussing SJ's request to the CFA from a policy perspective. If that was the case, the Panel should withhold from discussing the legal principles of rape and other sexual offences later in the meeting because the courts were currently considering cases of such offences. Mr KWOK further said it was within the ambit of the Panel to discuss the procedure for seeking an interpretation of the Basic Law from the NPCSC under Article 158(3) of the Basic Law and he did not believe that discussion by the Panel on SJ's request to the CFA from a policy perspective would exert or have the effect of exerting pressure on the court.

10. Mr Paul TSE said that as the Panel had discussed the procedure for seeking an interpretation of the Basic Law from the NPCSC under Article 158(3) of the Basic Law not so long ago on 27 February 2012, for the Panel to discuss the matter again every time an attempt was made to seek an interpretation of the Basic Law from the NPCSC on a case might be perceived by the public that the Panel intended to exert pressure on the court.

11. Mr Martin LIAO hoped that courts could continue to adjudicate cases in accordance with legal principles and the evidence presented before them, free of any interference.

12. The Chairman said that issues relating to SJ's request to the CFA warranted discussion by the Panel, and the appropriate time to do so was after the foreign domestic helper's right of abode case was concluded by the CFA. The Chairman drew members' attention that in the past, the Panel had discussed the prosecution decisions of the Department of Justice ("DoJ"), such as the decision of DoJ not to prosecute the wife of the President of the Republic of Zimbabwe who had allegedly committed an assault against a photojournalist during her visit to Hong Kong in 2009, and court cases, such as the case of the *Democratic Republic of Congo & Ors v FG Hemisphere Associates LLC* after the case was concluded by the CFA.

13. Mr Albert HO proposed to move a motion to convene a special meeting as soon as possible to discuss SJ's request to the CFA. Mr HO's motion was seconded by Ms Emily LAU.

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14. The Chairman put Mr Albert HO's motion to vote. 12 members voted for the motion (Mr Dennis KWOK, Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Ms Emily LAU, Ms Cyd HO, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr Charles MOK, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr KWOK Ka-ki), 14 members voted against it (Mr TAM Yiu-chung, Mr CHAN Kin-por, Mr Paul TSE, Mr NG Leung-sing, Mr Steven HO, Mr YIU Si-wing, Mr MA Fung-kwok, Ms Alice MAK, Dr Elizabeth QUAT, Mr Martin LIAO, Mr TANG Ka-piu, Dr Anne CHIANG, Mr CHUNG Kwok-pan, Mr Tony TSE), and no member abstained. The Chairman declared that the motion was not carried.

15. The Chairman suggested and members agreed that SJ should be invited to attend a regular meeting of the Panel to brief members on his request to the CFA, after the CFA had made a final judgment on the foreign domestic helper's right of abode case. To facilitate discussion of the matter, Mr Paul TSE requested the Administration to provide members with further information on the considerations of the SJ with the relevant legal principles made in his request to the CFA to seek clarification from the NPCSC on its interpretation of Article 24 of the Basic Law made in 1999.

Items for discussion at the next regular meeting

16. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for Tuesday, 22 January 2013, at 4:30 pm –

- (a) Briefing on the Chief Executive's 2013 Policy Address;
- (b) Report on Mediation; and
- (c) Proposed creation of a supernumerary post of Deputy Principal Government Counsel in the Civil Division of the Department of Justice.

17. In respect of the issue of "Report on Mediation", the Chairman said that the Panel had received a request from the Subcommittee on Mediation Ordinance (Commencement) Notice to follow up issues relating to the implementation of the Mediation Ordinance (which would come into force on 1 January 2013) and the operation of the Hong Kong Mediation Accreditation Association Limited. The Chairman suggested and members agreed to invite those organizations, which had given views to the Bills Committee on Mediation Bill on the Mediation Bill, to attend the next regular meeting of the Panel to give views on the work undertaken by the Mediation Task Force in implementing the recommendations of the Working Group on Mediation under

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"Report on Mediation". To allow sufficient time for discussion, the Chairman suggested and members agreed to extend the duration of the regular meeting on 22 January 2013 from 6:30 pm to 7:00 pm.

18. The Chairman said that the Chairman of the Hong Kong International Arbitration Centre ("HKIAC") would like to brief members on the draft Arbitration (Appointment of Arbitrators and Mediators and Decision on Number of Arbitrators) Rules. (The draft Rules were circulated to members vide LC Paper No. CB(4)40/12-13(03) on 19 October 2012). The Chairman suggested and members agreed to arrange for the HKIAC to brief members on the draft Rules at a regular meeting of the Panel in March or April 2013.

(Post-meeting note: The Assistant Secretary-General of the HKIAC advised the Clerk on 14 January 2013 that given no member had expressed any view or requested further information on the draft Rules, the HKIAC had in January 2013 submitted the draft Rules to the Chief Justice for approval.)

III. Law Reform Commission's Consultation Paper on Rape and Other Non-consensual Sexual Offences

[LC Paper Nos. CB(4)225/12-13(03) to (04), CB(4)228/12-13(01) and CB(4)242/12-13(01)]

19. Members noted the submission from the Association Concerning Sexual Violence Against Women which was issued to members vide LC Paper No. CB(4)242/12-13(01) on 13 December 2012.

Briefing by the Law Reform Commission

20. Mr Eric CHEUNG, member of the Sub-committee on Review of Sexual Offences ("the Sub-committee") of the Law Reform Commission ("LRC"), briefed members, with the aid of a power-point presentation, on the background of the work of the Sub-committee and the principal recommendations of its Consultation Paper on Rape and Other Non-consensual Sexual Offences ("the Consultation Paper"), details of which were set out in the executive summary of the Consultation Paper [LC Paper No. CB(4)225/12-13(03)] and in the powerpoint presentation material [LC Paper No. CB(4)225/12-13(04)].

21. Members noted that the Consultation Paper was the first of a series of four consultation papers intended to cover the overall review of sexual offences by the Sub-committee. The Consultation Paper dealt with the non-consensual sexual offences which were concerned with promoting or protecting a person's

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sexual autonomy. It proposed to cover the offences of rape, sexual assault by penetration, sexual assault and causing a person to engage in sexual activity without consent. In conducting the review, the Sub-committee had considered the perceived inadequacies of the current law. To ensure consistency in its approach, the Sub-committee had adopted a number of guiding principles, namely: clarity of the law; respect for sexual autonomy; the protective principle; gender neutrality; avoidance of distinctions based on sexual orientation; and adherence to the Human Rights laws and practices guaranteed under the Basic Law. The Sub-committee had examined recent studies and law changes in England, Scotland and many other jurisdictions. The main recommendations in the Consultation Paper were -

- (a) the creation of a statutory definition of "consent" to sexual activity which reflected the need for "freely and voluntarily agreement" to the sexual activity and the capacity to consent;
- (b) a newly-defined offence of "rape" which could be committed against a person of either sex and covered penile penetration of the vagina, anus or mouth;
- (c) a reformed mental element with regard to the issue of "consent", moving away from a focus simply on the subjective belief of the accused as to whether the complainant consented, to a mixed test of subjectivity and objectivity. Currently, if an accused subjectively held a genuine belief that the complainant consented, the accused was entitled to be acquitted even if that belief was unreasonable;
- (d) the abolition of the offence of "non-consensual buggery", so that the conduct which was the subject of such an offence would be covered in future by the gender neutral offence of rape;
- (e) the creation of a new offence of "sexual assault by penetration" to cater for the more serious forms of conduct, not constituting rape, and currently covered by the offence of "indecent assault";
- (f) substituting the offence of "indecent assault" with a new offence of "sexual assault" focusing on conduct which was "sexual" rather than "indecent", with a proposed definition of "sexual". It was considered that this would best accord with respect for the principle of protecting one's sexual autonomy;
- (g) "under-the-skirt photography" should, amongst other intentional acts of a sexual nature, constitute "sexual assault"; and

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- (h) the abolition of the offence of "procuring another to do an unlawful sexual act by the use of threats or intimidation" (section 119 of the Crimes Ordinance) and the creation of the offence of "causing a person to engage in sexual activity without consent", emphasizing the protection of one's sexual autonomy.

The consultation period would last till 31 December 2012.

22. Members further noted that the Sub-committee, formed in 2006, had since completed a consultation paper and a report on the issue of a register of sex offenders. It had also completed another report recommending the abolition of the common law presumption that a boy under 14 was incapable of sexual intercourse. The Statue Law (Miscellaneous Provisions) Ordinance 2012 was enacted in July 2012 to implement the LRC's recommendation.

Views expressed by the two legal professional bodies

23. Mr Andrew BRUCE of the Hong Kong Bar Association ("the Bar Association") said that whilst the Bar Association had yet to formulate a formal response to the Consultation Paper, he had no doubt many of the proposals contained therein would be strongly supported by the Bar Association. Mr BRUCE then made the following points -

- (a) clarity and precision in the drafting of the definition and scope of every sexual offence in the new legislation was essential, in order to achieve the objectives of the review of the law governing sexual offences;
- (b) the necessity of introducing the reform referred to in paragraph 21(c) above needed to be considered carefully, as in reality whether the belief claimed by the defendant to be reasonable was decided by the judge or the jury. Should it be decided that the said reform be implemented, care must be taken with the formulation of the provision because of the very bad experience with reasonable belief provisions in section 25 of the Organized and Serious Crimes Ordinance (Cap. 455); and
- (c) including "under-the-skirt photography" amongst other intentional acts of a sexual nature under the new offence of "sexual assault" was welcomed. However, there should be clear definitions of "disorderly behaviour" and "under-the-skirt photograph", as the usual charge brought for such criminal conduct at present was

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either disorderly conduct in public places, loitering or the common law offence of outraging public decency.

24. Mr Stephen HUNG of The Law Society of Hong Kong (the "Law Society") said that the Law Society agreed to most of the 21 recommendations made in the Consultation Paper, i.e. recommendations 1-5, 9, 13-16 and 21 and had comments with the remaining recommendations, details of which were set out in its submission [LC Paper No. CB(4)228/12-13(01)]. In particular, Mr HUNG said that the Law Society had the following views:

- (a) whilst agreeing to the adding of an element of "capacity" to consent to sexual activity, it was unclear how this would work if one party to the sexual activity was mentally incapacitated; and
- (b) the expansion of the scope of rape in the legislation to cover penile penetration of the "mouth of another person" would derogate from the well-understood term of rape in the local culture and this in turn would cause unnecessary complexity to the jury's task. Such forcible oral sex should be separately dealt with under the offence of indecent assault which should carry the same sentence as for rape.

Discussion

25. Dr Fernando CHEUNG welcomed the LRC's recommendations to reform the law governing sexual offences. Dr CHEUNG further said that he had received a number of concerns raised by women's organizations on the Consultation Paper. These included the objection to the recommendation of making a distinction between rape and other forms of sexual penetrative acts as the harm caused by rape and other forms of sexual penetrative acts to victims was the same, the lack of respect for the rights of victims to privacy and confidentiality, as well as the lack of protection for persons who were homosexual. In view of complexity of the issues involved in the Consultation Paper, Dr CHEUNG requested the LRC to extend the duration of the consultation period. Dr CHEUNG further requested the Panel to hold a special meeting to listen to the views of women's organizations and other interested organizations/individuals on the recommendations made in the Consultation Paper.

26. Mr Dennis KWOK urged the Administration to give due regard to the views of the two legal professional bodies on the clarity of the law when drafting the new legislation for rape and other non-consensual sexual offences so as to achieve the legal effect desired. Mr KWOK expressed support for

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extending the consultation period of the Consultation Paper to allow more time for members of the public to express their views on the recommendations made in the Consultation Paper.

27. Mr Eric CHEUNG responded that the Sub-committee would be happy to extend the duration of the consultation period to allow more time for members of the public to consider the issues in the Consultation Paper.

28. Mr Albert HO expressed concern that the proposed reform of the law governing sexual offences was overly stringent, as a greater amount of criminal acts would be classified as rape. For instance, with the creation of a new offence of sexual assault which shifted the focus from "indecent" to "sexual", a person who deceived another person to have sexual intercourse for healing that person's sickness would be charged for rape which carried a life sentence. Mr HO further said that with "under-the-skirt photography" constituted as sexual assault, other forms of harassment, such as taking of photographs of a person persistently in a public place without that person's consent, might eventually constitute sexual assault.

29. Mr Eric CHEUNG explained that the proposed reform of the law on sexual offences was guided by a set of guiding principles as set out in paragraph 21 above. Mr CHEUNG further explained that the proposed law reform would not change the common law approach on the determination of rape. By way of illustration, a doctor who used medical examination to have a sexual intercourse with a patient would be charged with rape. On the other hand, if a person, by false pretence, engaged another person to have a sexual intercourse to improve that person's health would be charged for the offence of procurement of an unlawful sexual act by false pretence under section 120 of the Crimes Ordinance (Cap. 200).

30. Dr Anne CHIANG welcomed the recommendations of the Consultation Paper. Dr CHIANG however expressed concern about including "under-the-skirt photography" under the scope of sexual assault, as youngsters who carried out such act for fun might not be aware of the serious legal consequences.

31. Mr Eric CHEUNG explained that a person would only be charged for sexual assault for "under-the-skirt photography" if the nature of such act was sexual.

32. Miss Alice MAK considered it necessary to have a separate offence to cover sexual intercourse obtained by economic threat or pressure to better protect women's sexual autonomy, and urged the Sub-committee to re-consider

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its stance on this issue. Miss MAK further said that she supported including "under-the-skirt photography" under the scope of sexual assault as such criminal act was a serious violation of a person's sexual autonomy.

33. The Chairman hoped the Sub-committee would consider the views of the Association Concerning Sexual Violence Against Women as set out in its submission, such as the adoption of evidential presumptions under section 75(2)(a)-(f) of the Sexual Offences Act 2003 in England ("the English Act").

34. Mr Eric CHEUNG responded as follows -

- (a) there was little evidence that evidential presumptions in the English Act offered much practical assistance to the criminal justice process;
- (b) the recommendations in the Consultation Paper only represented the preliminary views of the Sub-committee. The Sub-committee welcomed any views, comments and suggestions on any issues discussed in the Consultation Paper, which would assist it to reach its final conclusions in due course; and
- (c) the concern raised by the Law Society in paragraph 24(a) above would be dealt with by the Sub-committee in its next report concerning offences based on the protective principle (i.e. offences against children and mentally incapacitated persons and offences involving abuse of a position of trust).

Conclusion

35. Members agreed to hold a special meeting on 8 January 2013 at 2:30 pm to listen to the views of women and other interest groups on the Consultation Paper.

(Post-meeting note: The duration of the consultation period for the LRC's Consultation Paper on Rape and Other Non-consensual Sexual Offences was extended to 28 February 2013.)

IV. Information technology infrastructure for West Kowloon Law Courts Building

[LC Paper No. CB(4)228/12-13(02)]

36. At the invitation of the Chairman, the Judiciary Administrator ("JA") briefed members on the proposal to provide the necessary information technology ("IT") infrastructure and the Digital Audio Recording and Transcription Services ("DARTS") system in the new West Kowloon Law Courts Building ("WKLCB") of the Judiciary, details of which were set in the Judiciary' Administration's paper [LC Paper No. CB(4)228/12-13(02)]. Subject to members' views, the Judiciary Administration would seek funding support on the proposal from the Finance Committee ("FC") in February 2013.

37. Mr TAM Yiu-chung asked whether the fees to be charged by the courts in the WKLCB for providing transcripts of proceedings recorded by the DARTS system would be higher than those charged by courts in existing law court buildings, having regard to the fact that the implementation of the DARTS system in the WKLCB would entail a non-recurrent expenditure estimated at \$21.868 million.

38. JA responded that the charging basis for transcript fees adopted the cost recovery approach and the transcript fees mainly sought to recover the cost charged by the contractor of the DARTS system and the administrative and departmental costs incurred. JA further said that the Judiciary had no plan to increase the transcript fees at the moment for both English and Chinese languages which were set several years ago.

39. Ms Emily LAU said that she was supportive of the Judiciary using advanced IT equipment to improve access to justice for the benefit of all stakeholders. Ms LAU asked the Judiciary whether consideration had been given to providing simultaneous transcription service in all court proceedings, so that what was being said during the proceedings could be displayed immediately on the screens of the courtrooms, the laptops of judges, counsels, witnesses, jury, etc.

40. Mr Albert HO echoed the need for the provision of simultaneous transcription service in all court proceedings for the effective administration of justice, as practised in places such as Taiwan.

41. JA responded that whilst simultaneous transcription service could be used in all courtrooms at present, such service was not used as a standing practice. Under the present arrangements, if a party wished to use the service in a given court proceeding, he/she had to seek approval from the court for engaging such

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service from the commercial market and bear the relevant costs for the service. Since not all cases merited simultaneous transcription service, the court would have to consider the circumstances of each case to determine whether it was appropriate for such service to be engaged. Generally speaking, simultaneous transcription service was used in special, complex or long cases, e.g. cases involving multiple parties or large amount of documents. JA further said that the costs involved in using simultaneous transcription service in all court proceedings would be extremely substantial.

42. Ms Emily LAU requested the Judiciary Administration to consult the stakeholders concerned on the desirability of providing simultaneous transcription service in all court proceedings, and to provide a response in its funding proposal to the FC on the provision of an IT infrastructure and the DARTS system in the new WKLCB.

43. JA agreed to convey members' views on making the provision of simultaneous transcription service a standing and regular practice in all court proceedings for consideration by the Judiciary internally, and to provide a response on the matter before submitting the funding proposal to the FC on the provision of an IT infrastructure and the DARTS system in the new WKLCB.

44. Mr Albert HO asked whether there would be facilities in the WKLCB to enable those members of the public, who could not get into a courtroom to observe a court proceeding due to the limited seating capacity of the courtroom, to observe such via live television link in another place within the building.

45. JA replied in the positive. JA further said that to allow more operational flexibility and optimize utilization of the courtrooms, courtrooms of varying sizes, including a mega court which would have seating capacity for over 100 members of the public, would be provided in the WKLCB.

46. Mr Charles Peter MOK said that the provision of simultaneous transcription service in court proceedings would be particularly useful if languages, other than English or Chinese, were used in a court proceeding. Mr MOK then asked how the IT infrastructure and the numbers of civil servant and contract IT professional staff of the new WKLCB compared with those of the existing law courts buildings.

47. JA responded that court proceedings in Hong Kong were mainly conducted in English or Chinese. JA further said that the network equipment and services of the Judiciary were currently hosted in two server centres in the High Court Building ("HCB") and the Labour Tribunal ("LabT"). As the LabT server room was relatively small in size and had already been fully utilized with

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limited scope for future development, a new server centre would be provided in the new WKLCB to cater for the anticipated needs of the Judiciary in the next decade for hosting more servers and network equipment to meet the increasing service demand. The new WKLCB server centre would take over from the LabT server centre the role of being the network hub and Internet access point for the Judiciary network, sharing the workload of the Judiciary information systems and serving as the mutual resilience and disaster recovery site of the HCB server room. JA also said that the Judiciary Administration planned to seek members' support in February 2013 for the implementation of its Information Technology Strategy Plan ("ITSP") to meet the future operational needs of the Judiciary, and the subject of IT professional staff would be covered in the relevant paper to the Panel.

48. Mr Charles Peter MOK hoped that in its paper on the implementation of the ITSP of the Judiciary for the Panel meeting in February 2013, the Judiciary Administration would provide justifications on the Judiciary not using the centralized IT systems of the Government and had to set up its own IT infrastructure.

49. The Chairman concluded that members had no objection to the Judiciary Administration seeking funding support from the FC on providing an IT infrastructure and the DARTS system in the new WKLCB in February 2013. The Judiciary Administration was however requested to provide supplementary information on the use of simultaneous transcription service in court proceedings in its funding proposal to the FC.

(Post-meeting note: An information paper on the use of simultaneous transcription service in court proceedings provided by the Judiciary Administration was issued to members vide LC Paper No. CB(4) 362/12-13 on 28 January 2013. The same paper was also attached as an enclosure to the FC paper [FCR(2012-13)73] for the FC meeting on 8 February 2013.)

V. Proposed amendments to the Arbitration Ordinance (Cap. 609)
[LC Paper Nos. CB(4)228/12-13(03) to (04) and CB(4)242/12-13(02)]

50. Deputy Solicitor General ("DSG") briefed members on the proposed amendments to the Arbitration Ordinance (Cap. 609) which mainly sought to (i) implement the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region ("the Arrangement"); and (ii) make miscellaneous amendments to the Ordinance, details of which were set

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out in the DoJ's paper [LC Paper No. CB(4)228/12-13(03)]. Subject to any comments from members and further views from the stakeholders, the DoJ would finalize the draft bill with a view to introducing the Arbitration (Amendment) Bill 2013 into the Legislative Council in the first quarter of 2013.

51. Mr Robert PANG of the Hong Kong Bar Association said that the Bar Association was supportive of the proposal and urged for its early implementation.

52. Mr Dennis KWOK asked the following questions referred to him by the HKIAC -

- (a) whether consideration could be given to streamlining the provisions on matters relating to the enforcement of Macao arbitral awards in the Arbitration Ordinance to make it more simple and user-friendly; and
- (b) whether consideration could be given to introducing amendments to the Arbitration Ordinance to provide legislative underpinning for the emergency arbitrator appointed pursuant to the arbitration rules administered by the HKIAC.

53. Responding to Mr KWOK's first question, DSG said that the addition of a new Division 4 under Part 10 of the Arbitration Ordinance to set out matters relating to the enforcement of Macao arbitral awards would be broadly similar to Division 3 of Part 10 of the same under which the mechanism for enforcement of arbitral awards under the arrangement between Hong Kong and the Mainland on mutual enforcement of arbitral awards ("the Mainland/Hong Kong Arrangement") was set out.

54. As to Mr KWOK's second question, DSG said that DoJ was in discussion with the HKIAC with regard to the definition of "emergency arbitrator" and the enforcement of emergency relief granted by an emergency arbitrator in the Arbitration Ordinance.

55. The Chairman hoped that the Arrangement would be mutually beneficial to both jurisdictions and that the confirmation of the awards under the Arrangement would not be contrary to the public policy of both jurisdictions.

56. DSG responded that the term "public policy" used in the Arrangement largely followed that of the same under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Action

57. At the request of the Chairman, DSG undertook to provide an update on the reciprocal enforcement of arbitral awards under the Mainland/Hong Kong Arrangement after the meeting.

(Post-meeting note: A copy of the Arrangement was provided to members vide LC Paper No. CB(4)300/12-13 on 15 January 2013. An update on the reciprocal enforcement of arbitral awards under the Mainland/Hong Kong Arrangement provided by DoJ was issued to members vide LC Paper No. CN(4) 333/12-13 on 17 January 2013.)

58. The Chairman concluded that members were generally supportive of the proposed amendments to the Arbitration Ordinance.

VI. Any other business

59. There being no other business, the meeting ended at 1:00 pm.

Council Business Division 4
Legislative Council Secretariat
25 April 2013