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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 26 March 2013, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, 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 Abraham SHEK Lai-him, 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 LEUNG Kwok-hung
Hon WONG Yuk-man
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 absent : Hon Alan LEONG Kah-kit, SC

Public Officers attending : Item III

Mr Rimsky YUEN, SC, JP
Secretary for Justice

Mr Frank POON, JP
Solicitor General
Department of Justice

Miss Deneb CHEUNG
Senior Assistant Solicitor General
Department of Justice

Hong Kong Bar Association

Mr Andrew MAK

The Law Society of Hong Kong

Mr Ambrose LAM
Vice President

Ms Christine CHU
Deputy Secretary General

Ms Valerie CHEUNG
Director of Communications and External Affairs

Hong Kong International Arbitration Centre

Mr Fred KAN
Council Member

Item IV

Ms Kitty CHOI, JP
Director of Administration

Ms Jennifer CHAN
Assistant Director of Administration 1

Office of The Ombudsman

Mr SO Kam-shing
Deputy Ombudsman

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

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

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

Members noted that no information paper had been issued since the last meeting.

II. Date of next meeting and items for discussion

[LC Paper Nos. CB(4) 500/12-13(01) and (02)]

2. Mr Dennis KWOK said that at the Panel meeting on 14 December 2012, members agreed that the Secretary for Justice ("SJ") should be invited to attend a meeting of the Panel to explain to members on why he made use of the foreign domestic helper's right of abode case to request the Court of Final Appeal ("CFA") to seek clarification from the Standing Committee of the National People's Congress ("NPCSC") on the legal effect of the NPCSC's interpretation made in 1999 with regard to Article 24(2) of the Basic Law ("BL"), after the CFA had concluded the foreign domestic helper's right of abode case. As the CFA had concluded the foreign domestic helper's right of abode case on 25 March 2013 and as SJ did not rule out referring to the NPCSC to address the

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legal effect of the NPCSC's interpretation made in 1999 on BL 24(2) so as to resolve the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents, Mr KWOK requested that a meeting with SJ should be convened by the Panel as soon as possible.

3. Mr James TO expressed support for holding a meeting with SJ to follow up on SJ's request to the CFA. As the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents was under the policy purview of the Panel on Security, Mr TO considered that members of the Panel on Security should be invited to join the discussion. Mr TO further said that the meeting should best be held when the Administration was in a position to brief members on the measures that would be taken to address the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents.

4. Mr Ronny TONG echoed the need for holding a meeting with SJ and other government officials concerned to follow up on SJ's request to the CFA as well as how the Administration intended to address the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents. Mr TONG pointed out that despite the fact that the implementation of the "zero quota" policy for expectant Mainland mothers whose husbands were not Hong Kong permanent residents had greatly reduced the number of these Mainland mothers coming to Hong Kong to give birth, it was stated by SJ and the Secretary for Security in the press conference held after the CFA judgment on 25 March 2013 that the Government would consider further options available within the local legal system to address the issue. Mr TONG expressed concern that the Administration might enact a legislation prohibiting children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents from obtaining permanent residency in Hong Kong, and would use judicial review of a case against the new law to seek interpretation from the NPCSC.

5. Ms Emily LAU said that she was supportive of holding a meeting with SJ and other government officials concerned as soon as practicable. Apart from inviting members of the Panel on Security, all other Members of the Legislative Council should also be invited. In view of the wide public concern over SJ's request to the CFA as well as how the Administration intended to address the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents, members of the public should also be invited to give views on the matters.

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6. Mr TAM Yiu-chung said that whilst he did not oppose to holding a meeting to discuss SJ's request to the CFA as well as how the Administration intended to address the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents, he did not see the urgency to hold a special meeting to discuss these matters. Mr TAM suggested that the meeting should be held jointly with the Panel on Security.

7. Mr Dennis KWOK said that the meeting to follow up on SJ's request to the CFA and how the Administration intended to address the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents should be held at the next regular meeting of the Panel in April 2013 at the latest.

8. The Chairman said that she had liaised with the Administration immediately after the judgment of the CFA on the timing for the Administration to come to the Panel. She would continue to explore with the Administration on when they would be in a position to do so as well as to discuss with the Chairman of the Panel on Security on holding a joint meeting.

9. Subject to the Administration's response on attending a meeting of the Panel to discuss SJ's request to the CFA as well as the right of abode issue of children born in Hong Kong to Mainland parents both of whom were not Hong Kong permanent residents, members agreed to discuss tentatively the following items at the next regular meeting scheduled for 23 April 2013 -

- (a) Provision of mediation services in Hong Kong; and
- (b) Promotion of Hong Kong as a regional legal and mediation services hub.

Members further agreed to invite organizations/individuals which/who had given views to the now-dissolved Bills Committee on Mediation Bill for the discussion of the issue of "Provision of medication services in Hong Kong".

10. Dr Elizabeth QUAT proposed to discuss the issue of "Handling of sexual offences cases" [Item 12 of LC Paper No. CB(4)500/12-13(01)] at the earliest opportunity.

(Post-meeting note: The issue of "Right of abode issues of children born in Hong Kong to Mainland parents both of whom are not Hong Kong permanent residents" was scheduled for discussion at the regular meeting of the Panel scheduled for 28 May 2013.)

III. Role of the Hong Kong legal profession in the development of the Qianhai Bay Economic Zone

[LC Paper Nos. CB(4) 500/12-13(03) and CB(4) 512/12-13(01)]

11. At the invitation of the Chairman, Secretary for Justice ("SJ") briefed members on the Department of Justice ("DoJ")'s major areas of work in respect of promoting the development of legal and dispute resolution services in Qianhai, details of which were set out in the DoJ's paper [LC Paper No. CB(4)512/12-13(01)].

Views expressed by the legal professional and arbitration bodies

Hong Kong Bar Association

12. Mr Andrew MAK said that the Hong Kong Bar Association welcomed the progress made by the DoJ in respect of the development and provision of Hong Kong's legal services in Qianhai. As Qianhai was functionally positioned as the modern service industry development cluster zone, he was of the view that the development of legal services and legal framework in Qianhai was of paramount importance. The Bar Association would maintain close liaison with the DoJ in the hope that the DoJ could:

- (a) seek to expedite the realization of the implementation of pilot measures to facilitate the provision of Hong Kong's legal services in Qianhai;
- (b) in conjunction with the Hong Kong legal profession, assist in promoting the standards of the international legal services in Qianhai and other areas in the Mainland by capitalizing on the competitive edge enjoyed by the Hong Kong legal profession in this regard; and
- (c) foster closer co-operation between legal professions of Hong Kong and the Mainland in optimizing the development of legal services in Qianhai.

13. Mr MAK pointed out that the full development of Qianhai as an international modern service industry innovation and co-operation exemplary zone could not be realized without the establishment of systems and a legal environment suitable to modern service industries. It was however noted that at present, financial service industry was the main focus in the planning of Qianhai while other professional services only represented less than 10% of the related projects in Qianhai. In this regard, the Hong Kong Special

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Administrative Region ("HKSAR") Government would have an important role to play in furthering the development and provision of other professional services in Qianhai, in particular the development and provision of legal services.

14. Mr MAK expressed concern about the remarks made by a representative of the National Development and Reform Commission that Hong Kong lawyers were a sensitive profession and that had caused little concern as far as the development of Qianhai was concerned. The Bar Association did not believe that the remarks were substantiated and represented part of the Central Government policy in respect of the development of Qianhai. From the perspective of the Bar Association, the Hong Kong legal professions formed an integral part of modern service industries providing essential support for the creation of a legal environment which facilitated the development and operation of modern service industries in Qianhai. Mr MAK suggested that SJ should consider an appropriate opportunity to convey this message to relevant parties.

The Law Society of Hong Kong

15. Mr Ambrose LAM said that the Law Society of Hong Kong had in 2010 set up the Working Party on Qianhai Project ("the Working Party") to look into the development of the legal profession in Qianhai. Having conducted comprehensive studies of legal professions both in the Mainland and beyond (including Australia, London and Dubai), the Working Party published its Study Report on The Development of The Legal Profession in Qianhai in November 2012. The proposals made by the Working Party included the following:

- (a) to allow Mainland law firms and Hong Kong law firms to jointly establish and operate an association in the form of partnership in Qianhai, and to make provision for pilot implementation of mixed practice involving accountants, tax agents and other professionals;
- (b) to explore the setting up of a regime for the regulation of lawyers' practice in Qianhai;
- (c) to allow the application of Hong Kong laws for commercial contracts and resolution of commercial disputes in Qianhai;
- (d) to establish a mechanism for investigation of Hong Kong laws and engagement of Hong Kong legal professionals;
- (e) to enhance professional training of lawyers with a focus on the provision of international legal services; and

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- (f) to facilitate and promote mutual understanding of lawyers of both places on the difference in the legal systems and practices between both places.

The Law Society urged the DoJ to continue to work in collaboration with the Mainland authorities to seek early implementation of the aforesaid proposals.

Hong Kong International Arbitration Centre

16. Mr Fred KAN said that the positioning of Qianhai as an international modern service industry innovation and co-operation zone had afforded the Hong Kong International Arbitration Centre ("HKIAC") an invaluable opportunity and challenge to further develop the provision of arbitration services in Qianhai and to enter the Mainland arbitration services market. Taking hold of this significant opportunity, a Working Group chaired by the Council Chairman of HKIAC had been formed to look into the related issues. With the input of the Working Group, the HKIAC would come up with a formal stance on the development of Hong Kong arbitration services in Qianhai.

17. Mr KAN further said that for Hong Kong arbitration bodies to set up branch offices and provide arbitration services in Qianhai, the scope of business and mode of operation of these representative offices would have to be well defined. At present, arbitration conducted in places other than the Mainland might not be recognized and the arbitral awards made thereof not enforceable in the Mainland, save for arbitration with a non-Mainland element. To facilitate the development of Hong Kong arbitration services in Qianhai, he suggested that the Mainland authorities could allow HKIAC to conduct arbitral proceedings in Qianhai and regard them as being Mainland proceedings and thus their awards would be enforceable although they did not have any non-Mainland element.

Discussion

18. Mr NG Leung-sing said that the development of financial service industries in Qianhai would present great opportunities for the provision of legal and arbitration services by Hong Kong service providers. Mr NG further said that he was given to understand from some legal practitioners that law firms of the Mainland, Hong Kong and Macao would be allowed to establish associations in the form of partnership in Qianhai in three years' time. Against this background, Mr NG asked about the measures which would be taken by the Administration to facilitate Hong Kong law firms to establish such new mode of association and to regulate Hong Kong law firms and lawyers practising in Qianhai.

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19. SJ responded that he had not received information that law firms of the Mainland, Hong Kong and Macao would be allowed to establish associations in the form of partnership in Qianhai in three years' time. To his understanding, the Mainland authorities were studying and in the process of drawing up detailed proposals on the implementation of association in the form of partnership. SJ further said that it was the Administration's intention to formulate measures to facilitate Hong Kong law firms to establish such new mode of association in Qianhai and to regulate Hong Kong law firms and lawyers practising in Qianhai, after studying the detailed proposals on the implementation of association in the form of partnership.

20. Mr CHUNG Kwok-pan noted from paragraph 12 of the DoJ's paper that the DoJ strived to push initiatives to the effect that (except in obviously inappropriate situations, such as sale and purchase of real estate in the Mainland) enterprises operating business in Qianhai (including Mainland enterprises, Sino-foreign joint ventures and foreign enterprises) should be allowed as much room as possible to choose Hong Kong laws as the applicable law for their commercial contracts. Mr CHUNG asked how such initiatives would be operated in practice.

21. SJ responded that the Mainland authorities intended that enterprises operating businesses in Qianhai should be subject to Mainland law as the applicable law for their commercial contracts. To promote the development of Hong Kong's legal and dispute resolution services in Qianhai, the DoJ had raised with the relevant ministries on allowing enterprises operating business in Qianhai to choose Hong Kong law as the applicable law for their commercial contracts. Should commercial disputes arise from those contracts using Hong Kong law, parties to the contracts should be allowed to resolve their disputes directly through the Hong Kong arbitration bodies set up in Qianhai or go to Hong Kong to conduct arbitration to resolve the disputes, instead of going to the special tribunal to be set up in Qianhai to deal with commercial disputes in Qianhai. SJ further said that these measures, if implemented, would boost investors' confidence, help the Qianhai Area attract foreign investments and better complement the national policy on facilitating the internationalization of Mainland enterprises.

22. Mr Ronny TONG asked whether the rules of private international law adopted by common law jurisdictions, such as Hong Kong, to allow parties to the dispute which had a "foreign law" element to choose the law and the jurisdiction to resolve the dispute, would be allowed in the Mainland. Mr TONG further said that for the application of Hong Kong laws in Qianhai to achieve the desired effects of developing Hong Kong's legal service in Qianhai, amongst others, efficient services must be provided by the Hong Kong

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arbitration bodies set up in Qianhai and that the arbitral awards made by the Hong Kong arbitration bodies in Qianhai or Hong Kong must be enforceable in the Mainland.

23. SJ responded that to his understanding, the legal principles of the People's Republic of China on the application of laws to foreign-related civil relations were similar to rules of private international law used by some common law jurisdictions. In other words, the Mainland allowed contracting parties to choose a law, other than Mainland law, as the applicable law to resolve their foreign-related civil disputes. SJ further said that the Administration recognized that the proposals of allowing Mainland enterprises to choose Hong Kong law as the applicable law and allowing Hong Kong arbitration bodies to set up offices and provide arbitration services in Qianhai for commercial contracts involved relatively complicated legal and policy considerations, and as such more time would be needed to discuss the proposals with the relevant ministries. SJ pointed out that in his discussions with the relevant ministries in Shenzhen and Beijing on the proposals since August 2012, responses from the relevant ministries were at least not negative.

24. Mr CHAN Kam-lam asked whether there would be sufficient supply of qualified legal and arbitration professionals in Hong Kong to meet the demand for legal and arbitration services in Qianhai, should the proposals of allowing Mainland enterprises to choose Hong Kong laws as applicable law and allowing Hong Kong arbitration bodies to set up offices and provide arbitration services in Qianhai for commercial contracts be implemented.

25. SJ responded that the DoJ had been discussing with the relevant Mainland authorities/bodies on organizing training for lawyers from Hong Kong and the Mainland to learn from each other and share their work experiences.

26. Mr Ambrose LAM said that the Law Society believed that the demand for legal talents brought about by the development of Qianhai could be met by pooling together legal talents from foreign law firms. To his understanding, very few Hong Kong law firms were experienced in dim sum bonds (bonds issued outside China but denominated in Chinese yuan) and related asset management. By engaging expertise from foreign law firms, Hong Kong law firms could learn from the experience of their counterparts. This in turn would be beneficial to the promotion of the standards of the international legal services in Hong Kong.

27. The Chairman said that as local universities had been offering Mainland law programmes for years, the number of practising Hong Kong lawyers who had acquired qualifications of Mainland legal practice was not small. On the

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other hand, many lawyers from the Mainland had been admitted to Hong Kong law programmes offered by local universities. Against this background, she expressed confidence that the supply of legal talents to meet the demand for legal services in Qianhai should not be a cause for concern.

28. Mr Dennis KWOK expressed support for the recommendations made in the Law Society's study report. He asked whether the Shenzhen Municipal People's Congress had made full use of the legislative powers conferred upon it, enacting rules and regulations to facilitate the use of Hong Kong laws as the applicable law for commercial contracts in Qianhai.

29. SJ responded that he had exchanged views with the Shenzhen Municipal Government and relevant ministries in Beijing in this regard. He was given to understand that the Mainland authorities were still considering the proposal of allowing Mainland enterprises operating business in Qianhai to choose Hong Kong law as the applicable law for their commercial contracts having regard to the different views expressed by various stakeholders.

30. Noting that arrangement had been in place for the mutual enforcement of arbitral awards between the Mainland and the HKSAR since 1999, Mr Paul TSE enquired about the functions of the special tribunal to be set up in Qianhai. In his view, if Qianhai was to be developed as an international financial services centre, the setting up of an effective regulatory regime should be pursued in no time.

31. SJ responded that the special tribunal referred to in paragraph 6 of the DoJ's paper was to be set up in Qianhai under Mainland law and it would deal with commercial disputes according to civil proceedings of the Mainland courts. The DoJ's role had been to seek implementation of the pilot measures which were conducive to the development of Hong Kong's legal and arbitration services in Qianhai. Specifically, the proposal of encouraging enterprises conducting business in Qianhai to expressly choose Hong Kong laws as the applicable law for commercial contracts was meant to provide contracting parties with an alternative option to resolve disputes through arbitration administered by Hong Kong arbitration bodies.

32. Mr LEUNG Kwok-hung queried whether Hong Kong laws would be widely chosen as the applicable law for commercial contracts in Qianhai, having regard to the fact that Mainland enterprises were accustomed to Mainland law. He envisaged that if parties to the dispute did not choose Hong Kong laws as the applicable law for their commercial contracts in Qianhai, they were left with no choice but to bring an action before the Mainland court.

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33. SJ explained that the choice of the applicable law in commercial contracts was often made through negotiation, depending on the relative bargaining power of the contracting parties. In the realm of international trade, it was not uncommon for Mainland enterprises to agree to adopt the law of another jurisdiction as the applicable law for their commercial contracts.

34. The Chairman shared with members that in her past experience as an arbitrator, she had been appointed to conduct arbitration in which Hong Kong laws were expressly specified as the applicable law in commercial contracts. She said that many foreign enterprises were accustomed to the use of arbitration as an alternative dispute resolution procedure and often appointed international arbitrators who were well-versed with the laws and jurisdiction of their own.

Conclusion

35. The Chairman concluded that the DoJ should take into account of the views expressed by members and the legal and arbitration profession.

(Post-meeting note: The Law Society's Study Report on The Development of The Legal Profession in Qianhai was issued to members on 3 April 2013 vide LC Paper No. CB(4)540/12-13(01).)

IV. Establishing an independent mechanism to review the decisions of The Ombudsman

[LC Paper Nos. CB(4) 496/12-13(01) and CB(4) 513/12-13(01)]

36. The Chairman said that this item was raised by Ms Tanya CHAN, a former Member of the Legislative Council ("LegCo"), during prorogation of LegCo to the then Chairman of the Panel on Administration of Justice and Legal Services and referred by Hon Gary FAN to this Panel for follow-up [LC Paper No. CB(4) 496/12-13(01)].

37. At the invitation of the Chairman, Director of Administration ("D of Admin") briefed members on the existing review mechanism within The Ombudsman and the Administration's views on why it did not see the need to have another layer of independent authority to review the decisions of The Ombudsman, details of which were set out in the Administration's paper [LC Paper No. CB(4)513/12-13(01)].

38. In response to Mr CHAN Kam-lam's enquiry about the average time required by The Ombudsman to handle a complaint, Deputy Ombudsman ("DOMB") said that performance pledges for concluding a case was within

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three months and up to six months for complex cases. The same timeframe was adopted for handling Requests for Review by complainants. DOMB further said that there was no time limit on when a Request for Review might be raised. However, for reasons of effective processing of such requests, The Ombudsman encouraged the raising of requests at an early stage, so as to reduce the difficulty in collecting further evidence or information resulting from the passage of time.

39. Mr CHAN Kam-lam hoped that The Ombudsman could achieve the target of concluding a case or a Request for Review within three to six months. Mr CHAN further said that he did not see the need to establish an independent mechanism to review the decisions of The Ombudsman, as the review mechanism of The Ombudsman was comprehensive and transparent.

40. Mr TAM Yiu-chung said that to add another layer of independent authority to review the decisions of The Ombudsman just because some complainants were not satisfied with the decisions of The Ombudsman would be never ending, as these complainants might still be dissatisfied with the decisions of the new independent authority. Mr TAM considered it not necessary to establish an independent mechanism to review the decisions of The Ombudsman, as the review mechanism of The Ombudsman had over the years proven to be impartial and fair.

41. Mr CHAN Kin-por noted that according to paragraph 16 of the Administration's paper, requests for review of the ombudsman's decisions were generally handled internally by various overseas ombudsman offices, including those in the United Kingdom, Australia, New Zealand and Sweden. There was no information of any overseas jurisdiction where the ombudsman's decisions might be subject to review by an external body save for the judiciary by way of judicial review. In the light of this and having regard to the fact that The Ombudsman was widely recognized by the public for his independence and impartiality, Mr CHAN considered it not necessary to add another layer of authority to review the decisions of The Ombudsman. Mr NG Leung-sing expressed similar views.

42. Ms Emily LAU questioned the appropriateness of The Ombudsman assigning the original case officer to process a Request for Review initially, albeit a fresh case officer would be assigned to do the same for the following reason, namely, (i) if the original case officer was under a staff complaint lodged by the complainant; or (ii) no longer in the original Investigation Team; or (iii) unsuitable to handle the case for any reasons as stated in paragraphs 9 and 10 of the Administration's paper.

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43. DOMB explained that the reason why the original case officer was normally assigned to process a Request for Review initially was for reason of effectiveness, as he was more familiar with the details of the case. Possibility of bias was minimized by the requirement that the case officer should focus his analysis on the new grounds raised by the complainant in support of his Request for Review. DOMB pointed out that the complainants generally did not object to have their Requests for Review processed by the original case officer initially, as the complainants considered that their Requests could be processed in a more efficient manner. DOMB stressed that it was the mission of The Ombudsman to handle Requests for Review through independent, objective and impartial investigation, as evidenced by the fact that on average about one-third of the Requests for Review had been assigned to be handled by a fresh case officer in the past.

44. D of Admin supplemented that -

- (a) whether a Request for Review would be processed was determined on whether there were grounds for review of the case. Such grounds might include new evidence, arguments or perspectives. Where it was considered that there were new evidence/arguments/perspectives, a review would be conducted, often involving seeking further information or comments from the organization under complaint. When the Chief Investigation Officer ("CIO")/case officer was satisfied that sufficient information had been collected on the Request for Review, the case officer would submit his analysis and recommendation on file, with CIO's support to The Ombudsman via the relevant Assistant Ombudsman and the DOMB for a decision whether to uphold or vary the original decision. The Ombudsman's decision would be conveyed to the complainant in writing, with the reasons clearly explained;
- (b) irrespective of whether a Request for Review was supported with new evidence/arguments/perspectives, all Requests for Review would be carefully examined by The Ombudsman and any decision to decline such a request must be made by The Ombudsman personally; and
- (c) The Ombudsman was required under section 3(4) of Schedule 1A to The Ombudsman Ordinance (Cap. 397) to submit an annual report in respect of matters falling within the scope of his functions, including statistics on Requests for Review received and reviews conducted, to the Chief Executive who would cause it to be tabled in LegCo.

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45. Ms Emily LAU raised the following questions -

- (a) as The Ombudsman was not involved in the investigation of a Request for Review seeking to vary the original decision, what was the basis for The Ombudsman to decide whether such a decision should be upheld or varied;
- (b) whether a fresh case officer would be assigned to handle a Request for Review upon request from the complainant; and
- (c) how many of the Requests for Review received were supported and declined; and of the Requests supported, how many decisions were upheld and varied.

46. On the first and second questions raised by Ms Emily LAU, DOMB reiterated the review process set out in paragraph 44(a) above. DOMB further said that although a fresh case officer would not be assigned automatically to handle a Request for Review upon request from the complainant save for the reasons set out in paragraph 42 above, it should be pointed out that the job of the case officer only focused on analyzing the new grounds raised by the complainant in support of his Request for Review. Such analysis and/or other information gathered would next be submitted to his superiors who would then deliberate and come up with a recommendation for The Ombudsman to decide whether the original decision should be upheld or varied. As to Ms LAU's third question, D of Admin referred to the Annex to the Administration's paper which set out the statistics on Requests for Review in the past three financial years and the current financial year up to end February 2013.

47. The Chairman said that as assigning the original case officer to process a Request for Review might be perceived by the complainant as unfair, consideration could be given to assigning an additional staff to attend the meeting with the original case officer to record any grounds which the complainant might raise in support of his Request for Review. The Chairman then asked the following questions -

- (a) whether the decision to uphold or vary the original decision was made by The Ombudsman solely; and
- (b) whether there was any mechanism to handle complaints against The Ombudsman.

48. DOMB replied in the positive to the Chairman's first question. As to the Chairman's second question, D of Admin said that she was not aware of any complaint lodged against The Ombudsman. If there was such a case, the matter might be referred to the Administration or the Chief Executive's Office.

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49. Mr YIU Si-wing said that the Chairman's suggestion mentioned in paragraph 47 above was worth pursuing. Mr YIU further said that he did not see the need for establishing an independent mechanism to review the decisions of The Ombudsman for the time being, having regard to the facts that the number of Requests for Review had dropped from 147 to 61 from 2009-2010 to 2011-2012 and that such Requests only represented a very low percent of the complaints received (i.e. 3.1%, 1.7% and 1.2% in 2009-2010, 2010-2011 and 2011-2012 respectively) as stated in the Annex to the Administration's paper.

50. Mr MA Fung-kwok queried the need for holding a discussion of establishing an independent mechanism to review the decisions of The Ombudsman, as there was no justification to support that there was such a need. Noting from paragraph 15 of the Administration's paper that 11 complainants had applied for judicial review of The Ombudsman's decision since the establishment of The Ombudsman in 1989, Mr MA asked how many of these applications were successful.

51. DOMB advised that only three applications for judicial review of The Ombudsman's decision were granted leave. The court subsequently upheld The Ombudsman's decision in all three cases.

52. Dr Kenneth CHAN disagreed that the discussion of establishing an independent mechanism to review the decisions of The Ombudsman was a waste of time. On the contrary, the discussion had provided a good opportunity for members and the Administration to exchange views on areas of concern regarding the work of The Ombudsman and to see if the work of The Ombudsman kept pace with the growing public expectation of the accountability and transparency of governmental and public bodies.

V. Any other business

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

Council Business Division 4
Legislative Council Secretariat
31 July 2013