

立法會
Legislative Council

Ref : CB4/PL/AJLS

LC Paper No. CB(4)272/17-18
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 22 May 2017, 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 Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Members absent : Dr Hon Elizabeth QUAT, JP

Members attending : Hon Charles Peter MOK, JP
Hon Tanya CHAN

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have

been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public officers
attending** : Item III

Department of Justice

Mr Peter WONG
Deputy Solicitor General (Policy Affairs)

Ms Peggy AU YEUNG
Senior Assistant Solicitor General
(China Law) (Acting)

Ms Ines LEE
Senior Government Counsel

Miss Melissa KIANG
Senior Government Counsel (Acting)

Ms Mary HO
Government Counsel

Item IV

Department of Justice

Ms Theresa JOHNSON
Law Draftsman

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting and
Administration)

Ms Karmen KWOK
Senior Government Counsel

Mr Edward WONG
Systems Manager(2)

Item V

Department of Justice

Mr Keith YEUNG, SC, JP
Director of Public Prosecutions

Mr Alan SIU, JP
Director of Administration and Development

Mrs Apollonia LIU, JP
Deputy Director (Special Duty)

Ms Polly WAN
Senior Assistant Director of Public Prosecutions I (3)

**Attendance by
invitation**

: Item III

Hong Kong Bar Association

Ms Corinne D'A REMEDIOS

Mr Jeremy S K CHAN

Ms Bonnie Y K CHENG

The Law Society of Hong Kong

Mr Dennis HO
Chairman, Family Law Committee

Ms Anne Barbara HUNG
Member, Family Law Committee

Ms Jennifer IP Wing-ching
Member, Family Law Committee

Ms Catherine POR Keng-guan
Member, Family Law Committee

Ms Kally LAM
Assistant Director, Practitioners Affairs Department

Item IV

Hong Kong Bar Association

Mr Martin W H WONG

Item V

Hong Kong Bar Association

Mr Graham A HARRIS, SC

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Miss Joyce CHING
Senior Council Secretary (4)2

Ms Jacqueline LAW
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Information paper(s) issued since the last meeting

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

LC Paper No. CB(4)1033/16-17(01) -- Information paper entitled "Proposed Legislative Amendments relating to the Procedures of Civil Appeals to the Court of Appeal" provided by the Judiciary Administration

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II. Items for discussion at the next meeting

LC Paper No. CB(4)1022/16-17(01) -- List of outstanding items for discussion

LC Paper No. CB(4)1022/16-17(02) -- List of follow-up actions

2. The Chairman sought members' view on whether the two discussion items, "Reducing the use of paper in the Judiciary" and "Enhancing the Judiciary's website", as proposed by Dr Elizabeth QUAT in her letter dated 19 May 2017 should be added to the list of outstanding item for discussion. Members agreed.

3. Members agreed that the next regular meeting scheduled for 26 June 2017 at 4:30 pm would be extended to end at 7:30 pm to allow more time to discuss the following items:

- (a) Legal education and training in Hong Kong;
- (b) Implementation of the recommendations made by the Law Reform Commission; and
- (c) Proposal to write off an irrecoverable judgment debt.

III. Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments on Matrimonial and Related Matters

LC Paper No. CB(4)1022/16-17(03)-- Administration's paper on "Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments on Matrimonial and Related Matters"

LC Paper No. CB(4)1022/16-17(04)-- Updated background brief on "Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments on Matrimonial and Related Matters" prepared by the Legislative Council ("LegCo") Secretariat

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Briefing by the Administration

4. At the invitation of the Chairman, Deputy Solicitor General ("DSG") (Policy Affairs) briefed members on the key features of the updated proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters ("Proposed Arrangement").

Views of the Hong Kong Bar Association ("Bar Association")

5. Mr Jeremy CHAN said that the Bar Association supported the Proposed Arrangement in principle. Mr CHAN hoped that the legislative proposals to implement the Proposed Arrangement in Hong Kong would be introduced as soon as possible and that the Mainland side would also reciprocally provide avenues to give effect to the orders or judgments made by Hong Kong courts.

Views of the Law Society of Hong Kong ("Law Society")

6. Mr Dennis HO said that the Law Society welcomed the Proposed Arrangement and he hoped that an agreement on the arrangement would be signed as soon as possible with the Mainland authorities. Mr HO stressed the importance for reciprocal enforcement of maintenance orders and the return of children being "wrongfully removed" from Hong Kong. Mr HO believed that the Proposed Arrangement could establish a mechanism for reciprocal recognition of civil judgments in matrimonial and family cases between Hong Kong and the Mainland, thereby providing better safeguards to parties to cross-boundary marriages and their children.

Discussion

Safeguards under the Proposed Arrangement

7. Dr Fernando CHEUNG said that he supported the direction of the Proposed Arrangement. Dr CHEUNG pointed out that it was not uncommon for the courts in the Mainland to give orders granting the custody of siblings to a different parent, thereby splitting up the siblings. Dr CHEUNG also expressed concern with the difficulty in establishing a mechanism for reciprocal recognition and enforcement of matrimonial judgments due to the differences in legal principles and civil procedures between Hong Kong and the Mainland. Furthermore, parties might try to affect the judgments of the Mainland courts by means of bribes. With a view to protecting the interests of the child

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concerned , Dr CHEUNG asked whether any safeguard measures would be introduced under the Proposed Arrangement. The Chairman raised a similar concern on custody orders granted by the Mainland courts.

8. In response, DSG (Policy Affairs) advised that according to the Proposed Arrangement, if the Mainland court considered that the recognition and enforcement of the Hong Kong judgment was manifestly contrary to the basic legal principles of Mainland law or the social and public interests of the Mainland; or the Hong Kong court considered that the recognition and enforcement of the Mainland judgment was manifestly contrary to the basic principles under the law of Hong Kong or the public policy of Hong Kong, the recognition and enforcement of such judgment would be refused under the Proposed Arrangement. In addition, if the judgment involved a child, the court should take into account the best interests of the child in deciding the application of the ground of refusal mentioned above. Furthermore, if the judgment was obtained by fraud, the recognition and enforcement of such judgment would also be refused under the Proposed Arrangement. DSG (Policy Affairs) supplemented that, in considering the application of the above grounds of refusal, procedural fairness would be the prime consideration.

9. Dr Fernando CHEUNG pointed out that a more financially able party to a cross-boundary marriage might try to start a cause of action and obtain a judgment in the Mainland in his/her favour and then seek to enforce the judgment in Hong Kong. With a view to preventing a financially able party from depriving the rights of the other party, Dr CHEUNG asked whether any measures would be introduced under the Proposed Arrangement in this regard.

10. DSG (Policy Affairs) advised that if the judgment was rendered in a cause of action which was accepted by the original court after the requested court had already accepted the cause of action on the same dispute, the recognition and enforcement of such judgment would also be refused.

11. Dr Fernando CHEUNG said that even with the safeguard mentioned above, a financially able party could still take control by starting a cause of action in the Mainland as early as possible before any other court in Hong Kong had accepted the cause of action on the same dispute. Referring to Dr CHEUNG's concern, the Chairman suggested the Administration to handle such cases from a humanitarian point of view in order to safeguard the best interests of the families and the children concerned.

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Other related measures

12. Noting that due process instead of the merits of individual cases would be the main consideration in recognition and enforcement of judgments, Dr Fernando CHEUNG reiterated his concern on the enforcement of custody orders granted by the Mainland which could result in the splitting up of siblings. He also expressed concern over "parental abduction cases", where the parent in the Mainland removed a child from the existing care of the parent in Hong Kong. Dr CHEUNG then asked whether any mechanism was available under the Proposed Arrangement to facilitate the return of children in "parental abduction cases".

13. The Chairman said that the Administration should also further explore other related measures to provide better safeguards to parties of cross-boundary marriages and give due regard to the best interests of children. The Chairman suggested DoJ to consult the Immigration Department on the arrangements in handling custody cases across the borders and liaise with the Social Welfare Department ("SWD") to follow up on issues arising from the mutual recognition and enforcement of judgments and/or orders, especially those relating to the welfare of children. Also, both the Administration and the Mainland side should set up channels for the parties in need to seek assistance and advice on enforcement issues.

14. DSG (Policy Affairs) agreed that enhancement of related measures was necessary and that the Administration would strive to work out the best options to facilitate the arrangement of cross-boundary matters. DSG (Policy Affairs) further said that in taking forward the Proposed Arrangement, DoJ had been maintaining on-going discussions with the stakeholders, including the Bar Association and the Law Society, and with the relevant bureaux/departments, including SWD.

Customary marriage

15. The Chairman asked whether the Proposed Arrangement would cover judgements or orders on matrimonial issues related to Chinese customary marriage. She pointed out that since 7 October 1971, no man could lawfully take a concubine in Hong Kong. But in the case of a customary marriage, concubines taken before that date would be recognized and their children will be considered legitimate. She said that there might be a situation where a man married another woman in the Mainland after the passing away of his first wife, but without first properly obtaining a divorce with his concubine(s) taken before 7 October 1971 in Hong Kong. She further said that many problems would

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arise under such situation, for instance, the issues of bigamy and validity of marriage as well as division of property of parties to a marriage.

16. DSG (Policy Affairs) advised that the Proposed Arrangement mainly covered matrimonial and family matters in divorce situation and that the types of judgments covered by Hong Kong and Mainland courts had been set out in paragraphs 5 and 6 of the Administration's paper respectively. DSG (Policy Affairs) further advised that a "divorce certificate" obtained through registration with a Mainland administrative authority in the Mainland, which had the same legal effect as a divorce order granted by a Mainland court, would also be covered by the Proposed Arrangement. On the Hong Kong side, an agreement or memorandum for dissolution of customary marriages or modern marriages under Part V of the Marriage Reform Ordinance (Cap.178) and an agreement or memorandum of dissolution of certain marriages celebrated in the Mainland under Part VA of Cap. 178 would also be included in the Proposed Arrangement. Nevertheless, some of the issues arising from the situation mentioned by the Chairman above, including the applicable laws to be recognized by both sides in governing the disputes and bigamy, involved considerations in a broader scope which might not be covered under the Proposed Arrangement for the time being.

Implementation timetable of the Proposed Arrangement

17. Understanding that the Administration aimed at signing the Proposed Arrangement with the Mainland side before the end of June in 2017, Mr POON Siu-ping asked about the legislative timetable to implement the Proposed Arrangement in Hong Kong.

18. DSG (Policy Affairs) responded that the legislative proposals would be prepared as soon as possible for consultation with the stakeholders and that the legislative proposals would be introduced into the Legislative Council before the end of 2018.

(Post-meeting note: An information paper titled "Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region ("HKSAR")" ("Arrangement") with a copy of the Arrangement signed between the HKSAR Government and the Supreme People's Court of the Mainland on 20 June 2017 was issued to members vide LC Paper CB(4)1275/16-17(01) on 21 June 2017.)

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IV. Launch of Hong Kong e-Legislation

LC Paper No. CB(4)1022/16-17(05)-- Administration's paper on "Launch of Hong Kong e-Legislation"

LC Paper No. CB(4)1022/16-17(06)-- Background brief on "Launch of Hong Kong e-Legislation" prepared by LegCo Secretariat

Briefing by the Administration

19. At the invitation of the Chairman, Law Draftsman ("LD") briefed members on the official launch of Hong Kong e-Legislation ("HKeL"), particularly the background of HKeL and the challenges and issues arising since its launch in February 2017, details of which were set out in the paper provided by the Department of Justice ("DoJ") [LC Paper No. CB(4)1022/16-17(05)].

Views of the Hong Kong Bar Association

20. Mr Martin WONG said that among the five main categories of users' concerns set out in paragraph 9 of the DoJ's paper, item (a) performance of loading or displaying lengthy chapters in HTML format and item (c) user interface were concerns shared among some members of the legal profession. As regards the speed of the system, Mr WONG said that being one of the members of the Hong Kong Legislation Database User Liaison Group ("Liaison Group"), he understood that HKeL was a much more sophisticated system that might require some time to perform backend searching and loading functions before the search results could be shown. Although some of the users might find the performance of HKeL was not as satisfactory as that of the former legislation database, Bilingual Laws Information System ("BLIS"), the functionality and security of the new system were greatly improved. As for the user interface, Mr WONG was of the view that it was a question of habit. Since BLIS was in operation for about 20 years, users got used to it and it was understandable that it should take time and effort for users to become familiar with the new HKeL. Mr WONG admitted that the new system was sometimes frustrating because of its lengthy searching and loading processes, but the search results displayed on the screen were much more informative than before and the users could easily navigate to the exact piece of information they were looking for. Considering that the ultimate goal of developing HKeL was to provide a reliable platform offering free online access to Hong Kong legislation with legal status, and thereafter to replace the existing loose-leaf edition of the

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Laws of Hong Kong, Mr WONG opined that the implementation of HKeL project was essential in the long run.

Discussion

Problems encountered in using HKeL

21. Mr Charles MOK and Mr Dennis KWOK noted that there was a lot of negative feedback by members of the legal profession about HKeL. Mr Charles MOK said that some members had expressed particular concerns on item (b) lack of PDF copies for some chapters and item (d) internet search engine results not displaying HKeL search results mentioned in paragraph 9 of the DoJ's paper. Nevertheless, both Mr Charles MOK and Mr Dennis KWOK concurred with Mr Martin WONG that it took time for users to get used to the new system.

22. Ms Tanya CHAN conveyed the views of some students and colleagues of the LegCo that while the new system to a certain extent provided greater convenience to users, e.g. users could single out selected provisions from different pieces of legislation for legal research and investigation, many problems were encountered in HTML printing. Ms CHAN said that the line spacing was too wide and the font size was too large which had wasted a lot of papers in printing. As such, she asked if other environmental-friendly printing options were available in HKeL.

23. Senior Government Counsel ("SGC") advised that alongside HTML printing, users could print out the PDF copy of the legislation as well. For chapters that had been verified, users could obtain both verified PDF copy and information-only PDF copy from the Download area of the individual chapters. Having regard to the issues with HTML printing, PDF copies for not-yet verified chapters were progressively added to HKeL until the verified copies were available. SGC further advised that two PDF printing options were available in HKeL to address the needs of different users. SGC said that information relating to different printing options would be supplemented to the Frequently Asked Questions ("FAQ") section for users' reference.

24. Responding to Mr Holden CHOW's concern that the mobile version of HKeL was frequently not accessible, SGC said that it was the first time that such feedback was received and she undertook to examine the problem. SGC further advised that there was a program in HKeL to automatically direct the user to either the desktop version or the mobile version of HKeL after detecting the size of the device the user was using.

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25. The Chairman said that other than lawyers, the main users of the new electronic legislation database were research staff of university departments and libraries as well as law firms. She asked what measures would be taken by the Government to ensure that HKeL could meet the requirements of individual users after BLIS was phased out and that the merits of BLIS would be duly migrated to HKeL. Given the experience gained in the development of BLIS, the Chairman opined that the new system should be much more efficient and user-friendly than the old one. Unfortunately, she received many complaints that it was difficult and time-consuming to use the new system.

26. LD said that projects of similar scale in other common law jurisdictions like New Zealand, in which only one language and one alphabet system were involved, had taken 10 years to complete. In view of the cutting-edge technologies applied and the requirement to support three languages in the development of HKeL, LD took the view that the system was still in its early stage of development in terms of user acceptance and familiarity. To address the needs of the main user groups mentioned by the Chairman, LD advised that training had been conducted for university law librarians and other people who were experts in undertaking legal research in legislation.

27. LD further said that DoJ attached great importance to quality user experience. Efforts had been made to ensure that all the advantages of BLIS would be retained in HKeL. Notwithstanding this, it would still take time for users to familiarize themselves with the new system. While some changes on the user interface would be made based on the users' feedback, DoJ would strive to balance the needs of different users. Bearing in mind that the new system was created to facilitate users' access to Hong Kong legislation with legal status, DoJ would continue to listen to the views of HKeL users and make enhancements as appropriate to best meet users' needs.

28. Dr Fernando CHEUNG said that a number of problems were encountered when using HKeL, namely the PDF copy of certain chapters was not available, information such as chapter and section number, version date and gazette number of a chapter was difficult to locate in HKeL, and the link provided by Google to the relevant webpage in HKeL was not accessible if a search in Google was performed for a chapter number.

29. LD responded that PDF copies of 70% of the chapters were available in HKeL. For those chapters that PDF copies were not available, a direct link to the relevant webpage in BLIS would be provided with a view to facilitating users to obtain the PDF copies. In respect of the information relating to gazette number and gazette date of the chapter, LD said that this information

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was available in HKeL and Law Drafting Division would be willing to demonstrate to Dr Fernando CHEUNG after the meeting, if needed. For access through general search engines, LD advised that actions had been taken to address this problem and the search results relating to HKeL were now appeared in the first page of the search results and sometimes at the top of the list of search results.

Promotion efforts on HKeL

30. Expressing appreciation to the efforts made by LD and her colleagues in conducting a demonstration on HKeL to the Members of the LegCo, Mr Dennis KWOK enquired whether DoJ had any plans in place to conduct more seminars or demonstrations for both the members of the public and the legal practitioners so as to enhance their understanding of the new system.

31. LD advised that around 1 000 people had attended the training sessions on HKeL to date and DoJ would continue to support users in making the transition from BLIS to HKeL as easy as possible by offering training sessions as required. In addition, there were some training tools available on the HKeL website, such as quick reference guides and multimedia clips, for users to familiarize themselves with the system.

32. Mr James TO commended that the demonstration conducted by SGC on the use of HKeL at a continued professional development course for lawyers was very interesting, impressive and easy to understand. Mr TO said that DoJ should make better use of the talent of DoJ's colleagues in giving presentation with a view to enhancing the public's understanding on the new system. Mr TO suggested DoJ to conduct a condensed training session, say around 15 minutes instead of the whole session of about 1.5 hours, and upload its video clip to HKeL website in order to assist members of the public and different corporations to use HKeL. Alternatively, the video clip of a completed training session could be uploaded online for public's viewing.

33. Ms Tanya CHAN suggested that the Government should consider presenting the content of the videos in a more interesting manner, say by inviting the Secretary of Justice to conduct the demonstration himself, so as to attract more people to watch the videos and to use the new system. The Chairman was of similar view and suggested that videos showing the functions of HKeL demonstrated by colleagues of DoJ who were experienced in conducting relevant trainings should be produced.

34. SGC responded that under question 16 of the FAQ section, there were a number of slideshows with step-by-step demonstrations of the search and

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subscription functions in HKeL, and also video clips to explain to users how to update and maintain hard copies of verified chapters. Each of these slideshows and video clips only lasted for two to three minutes. DoJ would try to make the content of the video more interesting and attractive with reference to the comments received in the training sessions. LD said that the suggestion of producing short videos where there was a real person demonstrating would be examined.

Other issues

35. Noting that a Liaison Group was established to provide input to the HKeL project from the users' perspective, Mr Charles MOK enquired about the composition of the Liaison Group, whether the Administration had any plans to expand the composition of the Liaison Group and whether any users or focus group surveys had been done before and after the system went live with a view to fully gauging the views of users. In his view, the Government should open up more channels for soliciting views of the legal profession and the community on the new system in order to yield a wider spectrum of opinions.

36. LD responded that the Liaison Group comprised representatives from the Law Society of Hong Kong, Hong Kong Bar Association, Judiciary and the Legal Service Division of the LegCo Secretariat. While the Government had no current intention of expanding the Liaison Group, LD undertook to look into this suggestion. Apart from gauging users' comments through the Liaison Group, an email enquiry address was set up in HKeL through which much useful feedback was received. In addition, LD said that regular meetings were held among the legislative drafting and publishing offices of certain common law jurisdictions to exchange information and share views on legislative database, which was a specialized area of IT.

37. Mr Charles MOK opined that indeed some of the users' concerns set out in the DoJ's paper were specification issues which were not technical in nature. He asked whether additional costs were charged by the contractor to tackle these issues. LD replied that some of these concerns were technical issues which were discovered only after the new system went live. These concerns were primarily related to the loading time of long or unusual documents and DoJ had been working with the contractor to rectify these issues. LD said that as the rectifications done on the new system and certain changes in the user interface were covered in the contract and there was also a nursing period, no extra costs were incurred in this respect.

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38. The Chairman asked whether the new system had been used in other jurisdictions, and whether DoJ's decision to adopt this system in Hong Kong was due to its outstanding performance in these jurisdictions.

39. SGC advised that it was not feasible to purchase a ready-made system from the market or another jurisdiction, due to the fact that the legislation in Hong Kong had to be published in both Chinese and English. As such, DoJ stressed the need to develop a highly-customized system for the publication of legislation in Hong Kong when preparing the tender documents. As mentioned by LD earlier, reference had been made to the valuable experience of other common law jurisdictions in developing electronic legislation database. SGC said that efforts in promoting the use of HKeL would be stepped up so that members of the public could enjoy the benefits of the new system as soon as practicable.

40. Noting that HKeL and BLIS were running in parallel while technical issues in the new system were being resolved, the Chairman enquired when BLIS would be completely phased out, and whether DoJ would consider keeping BLIS so that those users who were attached to BLIS could continue to use it. Dr Fernando CHEUNG urged the Government to pay heed to users' views before phasing out BLIS.

41. In reply, LD said that it was not practicable to run BLIS in tandem with HKeL on a long term basis. LD assured members that BLIS would be in operation to serve as a safety net for users until majority of users and DoJ were satisfied with the performance of HKeL, and users' views would be duly consulted before switching only to HKeL. Deputy Law Draftsman (Bilingual Drafting and Administration) ("DLD(BD&A)") added that the parallel run of both HKeL and BLIS would be maintained in the near future. That said, balance had to be struck between users' need and resources incurred in updating legislation in both systems. DLD(BD&A) assured members that if the parallel run arrangement was to be ceased, sufficient notice would be given to users.

V. Handling of prosecution works before the Magistrates' Courts

LC Paper No. CB(4)1022/16-17(07)-- Administration's paper on "Prosecution Work in the Magistracy : Direction for the Future "

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LC Paper No. CB(4)1022/16-17(08)-- Letter dated 10 May 2017
from The Law Society of
Hong Kong to the
Department of Justice

Briefing by the Administration

42. At the invitation of the Chairman, Director of Public Prosecutions ("DPP") briefed members on the outcome of the consultation conducted by the Government on the future development of prosecution work in the Magistracy and the proposal which suggested to take forward the matter, in particular issues concerning the future arrangement for the Court Prosecutor ("CP") Grade. Details of the proposal were set out in the paper provided by the Department of Justice ("DoJ") [LC Paper No. CB(4)1022/16-17(07)]. In gist, it was proposed in the consultation paper that: the CP Grade should be retained on a long-term basis; the cases to be handled by CPs should be rationalized, with the formulation of a List of "Scheduled Duties" which were to be taken up by Government Counsel ("GC") and fiat counsel. Besides, involvement of GC in duties at the magistracy level should be enhanced by posting one Senior Government Counsel ("SGC") to each Magistracy, while existing important functions of Senior Court Prosecutor I ("SCP I") in case management should continue.

(Post-meeting note: The speaking note of DPP was issued to members vide LC Paper No. CB(4)1078/16-17(02) on 23 May 2017.)

Views of the Hong Kong Bar Association

43. Mr Graham HARRIS expressed that the Bar Association did not resist in principle the proposal on the premise that the prosecution work briefed on fiat to junior barristers would not be reduced. Mr HARRIS stated that the Bar Association had to protect the position of junior barristers because traditionally the junior barristers developed their skills to handle prosecution work in the Magistrates' Courts. He considered that it was in the public interest to continue this practice. Mr HARRIS also welcomed the proposed deployment of SGC to the Magistrates' Courts and opined that the "Scheduled Duties" List proposed by DoJ was comprehensive. He was pleased to see that proceedings relating to contentious issues were proposed to be prosecuted by people who were legally and professionally qualified. He believed that such arrangement was consistent with an overall committed position that the bulk of prosecutions should be undertaken by persons who were legally qualified. He concluded

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that the Bar Association welcomed the proposal, and was willing to continue the dialogue with DoJ on matters beyond those contained in the paper.

Discussion

Manpower of the CP Grade

44. Mr Dennis KWOK expressed that DoJ should strike a proper balance between upholding the principle that the bulk of prosecutions should be handled by the legally qualified and rationalizing the cases to be handled by CPs. Mr KWOK noted that some graduates of Bachelor of Laws ("LLB") programmes failed to gain admission into the Postgraduate Certificate in Laws ("PCLL") programmes due to their unsatisfactory academic performance. He was of the view that academic excellence was not a prerequisite for becoming a successful lawyer, and these graduates might still excel in the legal profession in the future. In this connection, he urged DoJ to consider according candidates with a law degree priority in the recruitment of new CPs, so that these LLB graduates would have an alternative route to pursue their career in the legal profession.

45. DPP responded that the suggestion raised by Mr Dennis KWOK had already been considered during the course of preparing the proposal. DPP explained that according to the policy of the Civil Service Bureau, the recruiting bureau/department should not specify in the vacancy advertisement a preferred academic qualification higher than that stipulated in the Guide to Appointment for the respective grade. This notwithstanding, candidates with knowledge of legal matters would certainly have an advantage in the shortlisting process. For instance, candidates with a law degree were directly invited to attend the selection interview during the recruitment of CPs in 2008/2009. Nonetheless, DPP added that the Government did not wish to see the CP Grade being perceived as one designated for LLB graduates who failed to gain admission to PCLL programmes. The possible labeling effect arising therefrom should be avoided.

46. The Chairman declared that she taught law at the City University of Hong Kong. In view of the above restriction on vacancy advertisement mentioned by DPP, the Chairman asked what measures would be implemented by the Government to attract law graduates of various programmes to join the CP Grade thereby facilitating them to enter the legal profession. DPP replied that in the recruitment of new CPs, candidates with legal qualifications generally enjoyed a competitive edge over the other applicants. This preference would definitely attract talents who were not fully legally qualified but had acquired legal qualifications to join the CP Grade.

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47. Mr POON Siu-ping expressed support to the proposal, in particular the recommendation of maintaining an appropriately-sized team of CPs undertaking prosecution and related work at the magistracy level. Noting that the number of vacancies for the CP Grade was 30 against a total establishment of 102 at end 2016, Mr POON queried why only 10 new CPs would be recruited to fill the vacancies as mentioned in paragraph 35 of the consultation paper.

48. DPP pointed out that in addition to the 10 new CPs to be recruited, seven SGCs would be posted to the Magistrates' Courts to join the prosecution teams, bringing the total number of staff handling prosecution work at the magistracy level to nearly 90. DoJ would keep in view the establishment and strength of the CP Grade and recruit additional CPs as required to meet its manpower needs having regard to any changes in work nature and workload.

49. Mr Holden CHOW considered that most of the CPs were experienced and capable of dealing with vast number of magistracy cases which were less complicated and relatively straightforward in nature. Mr CHOW was concerned about the high wastage of the CP Grade staff and noted from the DoJ's paper that a significant reason for the wastage was lack of job satisfaction as the work was monotonous due to the limitation of duties. He asked what measures would be taken by DoJ to retain staff of good calibre.

50. DPP said that wastage was one of the factors taken into consideration in conducting the review and the reasons for high wastage of the CP Grade staff were mainly two-fold. First, insofar as the 13 CPs of Batch 19 was concerned, the job duties undertaken by them were not attractive and professionally challenging enough, contributing towards the low retention rate of the Batch 19 CPs and only three CPs still remained in service. Second, the situation of "different pay for the same job" among the serving CPs had affected their morale. DPP said that while respecting the principle announced in 2008 that "the bulk of prosecutions ought ideally be conducted by the legally qualified, if not in the short term, then in the medium to long term", CPs without legal qualifications should be exposed to an appropriately wide range of cases, so that they could build up the requisite skills and professional knowledge necessary for the handling of a broad range of cases, and have the initiative to stay and develop in the CP Grade. It was hoped that the attractiveness of the CP Grade could be enhanced having regard to the adjusted new duties, thereby retaining people of good calibre in the Grade.

51. DPP supplemented that one of the key factors affecting the viability of the proposed measures was whether good quality new CPs could be recruited based on the new system. As such, the recruitment of new CPs would be resumed as soon as practicable so that the Government would be in a better

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position to duly assess the viability of the new system and re-consider the measures for addressing the long-term manpower needs as appropriate.

52. Responding to the Chairman's enquiry on the academic qualification of the CP Grade officers, DPP provided information on the academic qualification of the 13 CPs of Batch 19 when joining the grade for members' reference: one CP was fully legally qualified, three CPs had completed LLB/Common Professional Examination/Juris Doctor programme and nine CPs had no legal qualifications but were degree holders. DPP remarked that the academic qualification of all the 13 recruits was higher than the minimum entry requirement for the CP Grade.

53. Noting that some of the CPs would pursue legal studies after joining the Grade, the Chairman was concerned whether these CPs would resign from the Grade and go into private practice when they were qualified as lawyers. DPP said that during his communication with members of the CP Grade, some CPs had expressed their sentimental ties with the Grade. DPP pointed out that most of the serving CPs took the CP Grade as their lifetime career and had no intention of joining private practice to make money even though they were fully legally qualified. For illustration, out of 72 serving CP members, six were fully legally qualified and had already served pupillage, 29 had completed PCLL programme or had acquired other legal qualifications, and 28 CPs possessed a university degree.

Handling of prosecution work in the Magistracy

54. In response to Mr LEUNG Kwok-hung's enquiry as to whether the prosecution work in the Magistrates' Courts would no longer be handled by CPs under the proposal, DPP advised that except the Batch 19 CPs recruited in 2008/2009, CPs in principle could handle all types of cases conducted before the Magistrates' Courts. To rationalize the cases to be handled by CPs, a List of "Scheduled Duties" was proposed in the consultation paper. The List covered more difficult duties/cases that would be removed from the duties of CPs and to be taken up by legally qualified persons, i.e. in-house or fiat counsel or legally qualified CPs. As for the "Non-scheduled Duties", the prosecution work would continue to be undertaken by CPs. DPP added that the proposed List was applicable to all CPs across-the-board. DPP believed that this approach could ensure that the bulk of prosecutions would be handled by legally qualified prosecutors, while allowing for better flexibility in assigning prosecution duties to CP Grade officers or legally qualified persons according to the nature and charges of the case.

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55. Mr LEUNG Kwok-hung considered it unsatisfactory for CPs without legal qualifications to prosecute cases in the Magistracy, although they might have accumulated substantial experience in handling such work. He also opined that the proposed measures to improve the handling of prosecution of magistracy cases covered in the consultation paper were inadequate. DPP responded that one of the objectives of the review of the CP system was to streamline the roles and responsibilities of the CP Grade officers. By screening out relatively more complicated cases from the purview of CPs through the adoption of a "Scheduled Duties" List, more time would be allowed for CPs to handle the substantial amount of administrative duties which were important and indispensable for the smooth disposal of cases in the Magistracies.

56. Mr Alvin YEUNG expressed concern on whether the duty/scope of work between SGC and SCP I could be clearly defined in actual operation. DPP agreed that this matter had to be considered in detail. DPP said that a detailed manual specifying the scope of work of both the SGC to be posted to the prosecution teams in the magistracies and the SCP Is in these teams would be worked out once the proposal was finalized. Generally speaking, SCP Is would continue to discharge their administrative and case assignment duties, while SGC would be tasked to handle more complicated and sensitive cases which required appearance before the court.

Impacts of the judgment of the case HKSAR v Ngo Van Nam & Anor

57. Mr Alvin YEUNG said that when he was engaged as a fiat counsel, he got much assistance from the experienced CPs. He acknowledged CPs' contribution made towards the criminal judicial system. He noted the comment set out in the DoJ's paper that since the hand down of the judgment of the case *HKSAR v Ngo Van Nam & Anor*, trials were fixed more swiftly and had exerted considerable pressure on the prosecution. In this regard, he enquired how the resumption of recruitment of CPs could relieve the pressure.

58. DPP advised that the aforesaid judgment had changed the sentencing discount policy for guilty pleas whereby an applicant would not be afforded a full one-third discount from the starting point for sentence, if the plea was changed from one of not guilty to one of guilty on the day set for trial. DPP explained that the new sentencing discount policy had given rise to a substantial increase in the applications for adjournment for the defence to peruse papers before advising their clients on the pleas. Instead of simply adjourning the cases for mention, some of the Principle Magistrates would order that pre-trial reviews be held so as not to waste the mention hearings if not-guilty pleas would be entered. To prepare for possible pre-trial review in case the

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defendant pleaded not guilty, the CP had to do extra paper work. Thus more senior or experienced CPs would have to be deployed to cope with the increased workload of plea courts. DPP said that such situation had not only adversely affected the work efficiency of CPs, but also caused undue pressure on them.

59. DPP further explained another impact of the aforesaid judgment was that more defendants tended to plead guilty. DPP advised that before the hand down of the judgment in question, around 6% to 6.5% of magistracy cases were tried as the defendants pleaded not guilty on their first court appearance; but after the hand down of the judgment, the figures dropped substantially to around 4%. This had as a result speeded up the fixing of trials and shortened the court waiting time. DPP said that the date of trial of a case could be only five days after the not-guilty plea was entered. The short notice inevitably gave rise to various administrative or logistical issues to both the prosecution and the defence. DPP took the view that the best way forward regarding the long term handling of prosecution work in the Magistrates' Courts could be revisited after the full effects of the change in sentencing discount policy on the criminal justice system were known and assessed.

VI. Any other business

60. There being no other business, the meeting ended at 7:02 pm.