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Panel on Administration of Justice and Legal Services

Meeting on 20 December 2017

**Background brief on the operation model for
the Law Reform Commission of Hong Kong**

Purpose

This paper summarizes the major views and concerns expressed by Members of the Legislative Council ("LegCo") relating to the operation model for the Law Reform Commission of Hong Kong ("LRC"), and provides background information on this and related matters.

Background

2. The remit of LRC, which was established by the former Executive Council of Hong Kong in 1980 as an independent body, is to consider for reform such aspects of the law as are referred to it by the Secretary for Justice ("SJ") or the Chief Justice ("CJ").¹ The aim of any LRC reference is to consider the law in a specified area and, where appropriate, present well-considered proposals for improving the law.

Process for projects referred to the Law Reform Commission of Hong Kong

3. Subjects referred to LRC for its study are looked at in detail by a sub-committee of experts, usually under the chairmanship of a member of LRC. In view of the need to be in contact with the community at large, the LRC sub-committees often have a substantial proportion of non-lawyer members.²

¹ SJ chairs LRC, and CJ and the Law Draftsman are *ex-officio* members. Other members of LRC are appointed by the Chief Executive of the Hong Kong Special Administrative Region, on the advice of SJ. They are not confined to members of the legal profession, but include non-lawyers and prominent members of the community.

² Since LRC was established in 1980, members of sub-committees are appointed by SJ, all on a voluntary basis. Where a sub-committee is appointed, one of the qualified lawyers from the LRC Secretariat services the sub-committee as secretary and researcher.

Alternatively, LRC may decide to dispense with a sub-committee and to proceed on the basis of research carried out by the LRC Secretariat which consists of the Secretary, a Deputy Secretary and several other lawyers. The LRC Secretariat researches topics and prepares background papers and assists in the drafting of sub-committee reports and the LRC reports.

4. Whether or not a sub-committee is appointed to deal with a particular topic, LRC always ensures that there is extensive public consultation on any of its projects before it reaches its conclusions. In almost every case, the public's views will be sought by way of a consultation paper, which sets out the sub-committee's preliminary conclusions and recommendations. The publication of each sub-committee's consultation paper is widely publicized, and the paper is made available both in hard copy and on the LRC website.³ As at June 2017, LRC has published a total of 65 reports since 1 January 1982.⁴ In every case, recommendations made by LRC will be passed to the relevant policy bureau(x) of the Government for consideration.

Operation model for the Law Reform Commission of Hong Kong

5. According to the information provided by LRC to the Panel on Administration of Justice and Legal Services ("the AJLS Panel") in April 2011, LRC was established in 1980 as a result of a joint initiative by the then Attorney General and CJ, and the model chosen was thought appropriate to Hong Kong. Unlike law reform agencies in many other jurisdictions, LRC has no full-time Commissioners. Instead, the members of LRC and its sub-committees volunteer their services, part-time and unpaid, to the work of law reform. While that may mean that LRC projects take longer than might be the case if there were full-time Commissioners, it has the considerable advantage that those projects benefit from the wide range of expertise represented by LRC and sub-committee members which might not otherwise be available to LRC. Over 500 members of the community have served as members of LRC or on one or more of its sub-committees since LRC's establishment.

Implementation of the recommendations of the Law Reform Commission of Hong Kong

6. The recommendations made by LRC will be passed to the relevant policy bureau of the Government for consideration. In response to concerns expressed by

³ Hyperlink of the publication: <http://www.hkreform.gov.hk/en/publications/introduction.htm> [Accessed December 2017].

⁴ With one report recommending no change to the law, the implementation status of the remaining 64 reports are as follows: 35 reports are implemented in full; eight reports are implemented in part; 16 reports are under consideration or in the process of being implemented; three reports are rejected outright by the Government; and the Government has no plan to implement two reports at this juncture.

the AJLS Panel regarding the delays in considering and implementing LRC proposals, the Administration issued in October 2011 a set of guidelines to bureaux and departments having policy responsibility over the subject matter of an LRC project ("the Administration's Guidelines"). The Administration's Guidelines require bureaux or departments to provide public responses to the LRC reports under their purview within specific time limits. Pursuant to these Guidelines, a detailed response should be given within 12 months of the publication of a LRC report, setting out which recommendations the Administration accepts, rejects or intends to implement in modified form. Even before that time, the relevant bureaux should issue within six months of a report's publication an interim response, setting out a clear timetable for implementation and the steps taken so far.

Major views and concerns of Members

Progress of implementation of the Law Reform Commission of Hong Kong recommendations

7. Undue delay in the implementation of LRC recommendations by the Administration has been an on-going concern to Members of LegCo. A written question on "Implementation of recommendations on law reform" raised at the Council meeting of 26 January 2011 was concerned about the law reform recommendations contained in 22 reports out of those 27 reports completed by LRC since 1997, which had not yet been implemented by the Administration.

8. At its meeting on 19 April 2011, the AJLS Panel noted the information paper provided by LRC on its role and work including the state of implementation of the LRC recommendations made in its reports published since 1 January 1996. The Administration then briefed and discussed with members the role and work of LRC at the AJLS Panel meeting on 20 December 2011. Members in general expressed dissatisfaction at the delays in implementing LRC recommendations. To facilitate the AJLS Panel and other relevant LegCo Panels to follow up on the progress of implementation with the relevant bureaux and departments, SJ has submitted five annual reports to the AJLS Panel since 2013.

9. During the deliberations of the above annual reports at the subsequent AJLS Panel meetings, some members expressed concerns that the Administration had spent a long time in considering LRC recommendations on various reports and they would become out of date due to the lapse of time. They were also worried that the delay in implementing those recommendations would hinder the local legislation system from keeping up with the global trend as well as the system's overall development. In this connection, the Administration was urged to expeditiously implement LRC recommendations on various reports, and accord

higher priority to those recommendations which the public had consensus on and were related to the people's livelihood or commercial in nature.

10. The Administration responded that it had followed up concerns on the need to expedite the implementation process and LRC also attached importance to monitoring the progress on implementation, and it had been made a regular item of LRC meetings for monitoring the situation. However, in the light of the policy and practical implications of the issues involved, the Administration encountered various difficulties in implementing some of the recommendations.

Duplication of work between the Law Reform Commission of Hong Kong and the Administration

11. Some members considered it a duplication of efforts for LRC and the bureaux to conduct separate public consultation exercises on the same subject matter. Some suggested that studies by LRC on areas which were considered controversial in nature in the light of overseas experience should be avoided in order not to waste resources or create unrealistic expectation.

12. The Administration responded that since LRC had conducted public consultation before formulating its proposals in its final report, the views of the public had been taken into account. However, since proposals made by LRC might involve policy considerations and might draw different views from the stakeholders, bureaux might need to carry out detailed research and public consultation before introducing any bill into the legislature.

Independence of the Law Reform Commission of Hong Kong

13. Noting that LRC remit was to consider for reform those aspects of the law which were referred to it by SJ or CJ, some members were of the view that the general public might have doubts about the independence and impartiality of LRC, and the topics of study might be subject to the Administration's interference.

14. In response, the Administration explained that in addition to the formal referral mechanism, LRC welcomed any topics which might merit consideration for law reform from LegCo Members, the academic sector as well as the public. The Administration also stressed that the independence of LRC, which comprised both academics and practicing lawyers and prominent members of the community, was beyond doubt. LRC would conduct public consultation in the process of finalizing its reports to ensure that LRC recommendations would have sufficient public support. However, the setting of policy priority would be a matter for the Administration.

Guidelines for consideration of the Law Reform Commission of Hong Kong reports

15. Some members observed that according to the Administration's Guidelines as mentioned in paragraph 6 above, bureau(x) and departments were only required to provide a detailed public response as soon as possible within 12 months of the publication of a LRC report but no timeframe was specified for taking forward the recommendations made. They were concerned that it could not address the problem that some LRC reports were left idle for years with little or no progress. There was also an enquiry about whether the relevant bureaux would revert to LRC on the outcome of its consideration on LRC reports, in particular the recommendations which they would accept, reject or intend to implement in modified form.

16. In response, the Administration explained that the Administration's Guidelines would apply to newly published LRC reports while the responses of the Administration to those already published reports had been uploaded on the LRC website for the public's information.

Resources for the Law Reform Commission of Hong Kong

17. Noting that LRC members were working on a voluntary basis, some members opined that the inadequacy in manpower resources in LRC might have prolonged the consultation process and the study of legislative proposals. In this regard, they suggested the Administration should consider seeking funding to enhance the manpower resources and the working efficiency of LRC and engage more full-time members and staff with professional legal knowledge to support the work of LRC. With a view to expediting the law reform process in Hong Kong, some members also suggested the Administration allocate more resources to expand LRC and its Secretariat.

18. At the AJLS Panel meeting on 26 June 2017, the Administration informed members that the LRC Secretariat had made reference to practices in other jurisdictions and considered possible options for LRC's considerations, including those regarding the increase of manpower resources and possible cooperation with universities on law reform projects.

19. At the AJLS Panel meeting on 30 October 2017 to consider the policy briefing on the Chief Executive's 2017 Policy Address given by the Administration, SJ briefed members that as the process of law reform had been in operation for quite some time, it was considered useful to review the process with a view to exploring possible options to enhance the efficiency and operation of LRC. The purpose of this study was to consider, with reference to the experience of various law reform agencies in other jurisdictions, whether the law reform system in the Hong Kong Special Administrative Region, and insofar as it involved the structure

and operations of LRC, should be improved and if so, to identify possible measures and options for reform.

Latest position

20. The Department of Justice plans to brief the AJLS Panel on enhancing the operation model for LRC at its meeting to be held on 20 December 2017.

Relevant papers

21. A list of the relevant papers is in **Appendix**.

Council Business Division 4
Legislative Council Secretariat
14 December 2017

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List of relevant papers

Meeting	Date	Paper
Council meeting	26 January 2011	<u>Hon Paul TSE Wai-chun raised a question on implementation of recommendations on law reform</u>
Panel on Administration of Justice and Legal Services	19 April 2011	<u>Administration's paper</u>
	20 December 2011 (Agenda item III)	<u>Agenda</u> <u>Minutes of meeting</u>
	27 February 2012 (Agenda item III)	<u>Agenda</u> <u>Minutes of meeting</u>
House Committee	2 March 2012 (Agenda item VII)	<u>Agenda</u> <u>Minutes of meeting</u>
Panel on Administration of Justice and Legal Services	25 June 2013 (Agenda item III)	<u>Agenda</u> <u>Minutes of meeting</u>
	27 May 2014 (Agenda item III)	<u>Agenda</u> <u>Administration's response to the motion passed at the meeting on 22 April 2014</u> <u>Minutes of meeting</u>

Meeting	Date	Paper
	20 July 2015 (Agenda item III)	<u>Agenda</u> <u>Minutes of meeting</u>
	23 May 2016 (Agenda item IV)	<u>Agenda</u> <u>Minutes of meeting</u>
	26 June 2017 (Agenda item IV)	<u>Agenda</u> <u>Minutes of meeting</u>

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