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Report of the Panel on Administration of Justice and Legal Services for submission to the Legislative Council

Purpose

This report gives an account of the major work of the Panel on Administration of Justice and Legal Services ("the Panel") during the 2017-2018 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 11 July 2018 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining policy matters relating to the administration of justice and legal services. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 19 members, with Dr Hon Priscilla LEUNG Mei-fun and Hon Dennis KWOK Wing-hang elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

Major work

Consultation on enactment/amendment of legislation

4. The Panel continued to receive briefings by the Administration and provide views on any major legislative proposals in respect of policy matters relating to the administration of justice and legal services.

Implementation of the Law Reform of Hong Kong Report on Hearsay in Criminal Proceedings – Evidence (Amendment) Bill 2018

5. As reported last year, the Administration briefed members of the Panel in March 2017 its plan to implement the recommendations in the report of the Law Reform Commission of Hong Kong ("LRC") on "Hearsay in Criminal Proceedings" published in November 2009 ("the Hearsay Report"). It advised, among other things, that if the recommendations in the Hearsay Report could be implemented, it would be helpful in avoiding the situation where prosecution could not proceed/continue to proceed as a result of mentally incapacitated persons not being able to appear in court to give evidence.

6. At the Panel meeting on 26 February 2018, members were briefed on the outcome of the consultation exercise conducted by the Administration on the working draft of the proposed Evidence (Amendment) Bill ("the draft E(A) Bill") which sought to implement the recommendations as set out in the Report in full (with appropriate modifications) except for some of the special topics examined in the Report.

7. Members generally supported the draft E(A) Bill and welcomed the Administration's plan to introduce it within the 2017-2018 session. Some members noted that, when the Panel was consulted in March 2017, the Hong Kong Bar Association ("the Bar Association") expressed concerns that admission of hearsay evidence might complicate and create uncertainties for criminal proceedings and hence had reservation over LRC's recommendations. In response to members' enquiry at the meeting on 26 February 2018, the Bar Association confirmed that, it had no further comment.

8. A member noted that hearsay evidence might be admitted if the declarant was outside Hong Kong and it was not reasonably practicable to secure his/her attendance, or to make him available for examination and cross-examination in any other competent manner. He was concerned that this might be unfair to the defendant if the declarant had hid himself for unwilling, not unable, to give evidence. The Administration responded that if the declarant had deliberately hiding himself, it might be a factor taken into account by the court in determining whether the condition of threshold reliability of the hearsay evidence was satisfied.

Implementation of the Law Reform Commission of Hong Kong Report on Enduring Powers of Attorney: Personal Care – Continuing Powers of Attorney Bill

9. According to the Enduring Powers of Attorney Ordinance (Cap. 501), an enduring power of attorney ("EPA") is a legal instrument which allows its donor, while he/she is still mentally capable, to appoint attorney(s) to take care of the donor's affairs in the event that he/she subsequently becomes mentally incapacitated.

10. At present, the powers which may be delegated under an EPA in Hong Kong are limited to decisions in relation to the property and financial affairs of the donor. In its Report on "Enduring Powers of Attorney: Personal Care" published in July 2011 ("the EPA-PC Report"), LRC recommended the creation of a new continuing power of attorney regime to extend the scope of an existing EPA to include matters relating to the personal care of the donor.

11. At the Panel meeting on 22 January 2018, the Administration briefed members on its proposal to implement the recommendations in the EPA-PC Report, with some modifications, by introducing the draft Continuing Powers of Attorney Bill ("the draft CPA Bill").

12. Members generally welcomed and were supportive of the draft CPA Bill but considered it a latecomer. Some members were disappointed to note that "personal care matters" as defined in the Bill did not include life-sustaining treatment for the donor, and that the attorney's decision on the making or revoking of advance directive ("AD") regarding life-sustaining treatment to be given to a donor would be excluded. They considered that the draft CPA Bill would fail to streamline the current procedures to remove the complicated and redundant requirement that EPA (and the future continuing power of attorney (CPA)) and AD had to be made separately. It also failed to meet the challenge brought about by the ageing population which had been fast becoming a grave social problem.

13. In response, the Administration pointed out that LRC was aware that controversial issues regarding human life and ethical issues were involved in the giving or refusing of life-sustaining treatments and had recommended that such decisions be excluded from the CPA regime, and the recommendation was supported by the Administration.

14. Noting members' concerns about the difficulties in engaging medical practitioners to certify a EPA or CPA who were familiar with the requirements of respective instruments, the Administration undertook to study members' suggestion of introducing a duty medical practitioner scheme to provide dedicated service of helping donors to complete the certification process. Other members' suggestions included encouraging more family doctors and medical doctors in public hospitals to participate in the certification of EPA/CPA, and stepping up publicity of CPA regime to the general public.

Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill

15. The Administration first briefed members on 23 May 2011 on the need to enter into a possible arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters ("the proposed Matrimonial Arrangement") with a view to providing better legal protection and certainty to parties to such a marriage should it break down. Thereafter, the Administration held several working meetings with the Mainland side to discuss the issues.

16. The Panel was subsequently consulted on the outcome of the public consultation regarding the proposed Matrimonial Arrangement in December 2016, and the updated features of the arrangement in May 2017. Members of the Panel, the Bar Association and the Law Society of Hong Kong ("the Law Society") were generally supportive of the proposed Matrimonial Arrangement.

17. Towards the end of the 2016-2017 LegCo session, the Administration informed the Panel that the "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" ("the Matrimonial Arrangement") had been signed between the Hong Kong Special Administration Region ("HKSAR") Government and the Supreme People's Court of the Mainland on 20 June 2017.

18. At the Panel meeting on 26 March 2018, the Administration briefed members on the key features of the draft Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill proposed to implement the Matrimonial Arrangement in Hong Kong.

19. Having regard to the different considerations and approaches adopted by the courts in the two places in making judgments regarding the custody or access to children, some members expressed concerns on whether the best interests of the child would be taken into account in the recognition and enforcement of the relevant Mainland judgments, and on how the Administration could ensure the relevant judgments were enforced across the border after registration.

20. In response, the Administration advised that the Hong Kong courts had defined what the best interests of the child was, and had been adopting such principle in making judgments that affected a child. It believed that the District Court would duly consider all relevant factors, including the best interests of the child, when making order that a Mainland judgment regarding custody or access to children was to be registered. After the judgment had been registered, proceedings might be taken for its enforcement and the District Court had the same control over the execution of the judgment as if it had been a judgment originally given in the District Court.

21. Some members noted that under the Matrimonial Arrangement, one party in a matrimonial or family case might seek the judgment of the court which was advantageous to him/her and apply for its recognition in the other place's court. They were worried that this might cause unfair judgment to the other party. In response, the Administration advised that under the Matrimonial Arrangement, there were grounds on which the registration of a registered judgment had to be set aside which included, among others, the judgment was obtained by fraud, and the judgment was given in respect of a cause of action between the parties that was accepted by a court in the Mainland after a court in Hong Kong had already accepted the same cause of action between the parties.

Proposed resolution under section 4(5) of the Fatal Accidents Ordinance (Cap. 22)

22. At the Panel meeting on 28 May 2018, the Administration consulted members' views on a resolution be moved by the Secretary for Justice ("SJ") to increase the bereavement sum under section 4(3) of the Ordinance from \$150,000 to \$220,000; and the proposal that a review of the bereavement sum be conducted by the Administration every two years hereafter to reflect inflation by making reference to the Consumer Price Index (A) ("CPI(A)").

23. Members expressed grave concern that the bereavement sum had not been adjusted since 1997 and that the benefits of dependents of the deceased in fatal accidents were not well taken care of. The Administration explained that the Administration conducted a review of the bereavement sum in 2000 and reached the view that there was no basis for increasing the sum at that stage considering, inter alia, the drop in consumer price index between 1997 and 2000. The Administration considered it appropriate to review the bereavement sum again at this stage. At the meeting, the Panel passed a motion urging the Administration to move a resolution in 2017-2018 legislative session with a view to increasing the statutory sum of damages to \$220,000 as soon as possible.

24. While members were in general supportive of conducting a biennial review of the bereavement sum, some members urged the Administration to comprehensively review the bereavement sum having regard to other factors in, say, every six years as proposed by the Law Society in its submission.

25. The Administration advised that after studying the proposal of the two legal professional bodies that the increase in the bereavement sum should not just take inflation into account but also "changing social and economic conditions of Hong Kong", it was of the view that an adjustment based on inflation by making reference to CPI(A) could provide a simple and objective methodology for the coming and future reviews of the bereavement sum, and the advantage of allowing the conduct of routine reviews every two years.

26. The Administration gave a notice to move a resolution at the Council meeting of 13 June 2018 to amend section 4(3) of the Ordinance to increase the bereavement sum from \$150,000 to \$220,000. At its meeting held on 1 June 2018, the House Committee agreed to form a subcommittee to study the proposed resolution and, at the request of the House Committee, the Administration had withdrawn the notice to move the motion. The Subcommittee on the proposed resolution under section 4(5) of the Ordinance completed its scrutiny and reported its deliberations to the House Committee on 22 June 2018. The Administration gave a fresh notice to move the above resolution at the Council meeting of 11 July 2018.

Access to Justice

27. The Panel has all along been calling on the Administration to review legal aid services to improve access to justice.

Transfer of the legal aid portfolio

28. At the Panel meeting on 27 November 2017, the Administration briefed members on the proposed transfer of the legal aid portfolio from the Home Affairs Bureau ("HAB") to the Chief Secretary for Administration's Office ("CSO") ("the proposed transfer") to implement the relevant Legal Aid Services Council ("LASC")'s proposal.

29. In response to members' enquiry about the reasons for the proposed transfer, the Administration explained that following a consultancy study commissioned by LASC which was completed in 2013, LASC acknowledged that the degree of independence upheld and exercised by the Legal Aid Department ("LAD") was sufficient and it should remain a government department. LASC recommended that LAD be re-positioned and made directly accountable to the Chief Secretary for Administration. As the issue of "independence" was more of a perception issue, the Administration agreed to LASC's recommendation that the proposed transfer could address the concerns of some quarters in the community.

30. The Panel was generally supportive of the proposed transfer as it would further enhance the importance and operational independence of LAD. However, a member considered that the establishment of an independent legal aid agency with non-civil service legal aid staff should be the ideal arrangement and suggested LASC to conduct a fresh consultancy study on this subject.

31. Regarding some members' concerns about how LAD would enhance its operational efficiency after the proposed transfer, the Administration responded that it would ensure a seamless transition of the legal aid portfolio from HAB to CSO, which would continue to follow up the work undertaken by HAB to ensure the delivery of quality legal aid services.

32. During the discussion about the proposed transfer, members raised various concerns and suggestions about the legal aid services. They included further relaxation of the financial eligibility limits ("FEL"), further expansion of the scope of Supplementary Legal aid Scheme ("SLAS"), abuse of the legal aid system by individuals, the difference in the criminal and civil legal aid fees structure, and the assignment of legal aid work to lawyers with different years of experience. A comprehensive review of the legal aid regime including the above aspects was also suggested.

Proposed legislative amendments pursuant to the review of the Supplementary Legal Aid Scheme

33. As reported last year, the Panel received a briefing by the LASC and HAB in April 2017 on the recommendations made by LASC in relation to the review of SLAS and the Government's position.

34. At its meeting on 30 April 2018, the Panel was briefed by the Administration on the proposed legislative amendments pursuant to the abovementioned review. In the upcoming legislative amendment exercise, the Administration planned to expand the scope of SLAS to cover monetary claims against certain financial intermediaries and also derivatives claims, as recommended by LASC.

35. Members generally welcomed the proposed legislative amendments. However, to improve the access to justice for the middle class, they suggested further expanding the scope of SLAS to include more types of cases. In particular, the Administration should address members' long-standing requests raised in previous reviews of SLAS, such as covering claims against the incorporated owners of a multi-storey building. The Administration responded that it was open to all possible options in order to further expand the scope of SLAS on an incremental basis.

36. Some members considered that there was room for improvement in FEL under SLAS, which should be further relaxed. They pointed out that the high legal costs had thwarted many, even the middle class, in taking legal actions to protect their legitimate interest and rights.

37. The Administration responded that FEL under SLAS were reviewed annually to take into account general price movement and biennially to take into account changes in litigation costs and other relevant factors. Pursuant to a resolution moved under section 7(a) of Legal Aid Ordinance (Cap. 91) ("LAO") and approved at the Council meeting of 31 January 2018, FEL under SLAS had been increased to \$1,509,980. However, some members considered that although FEL under SLAS was reviewed annually, the increase had been unable to reflect cumulative impact of inflation.

Review of the Director of Legal Aid's First Charge

38. At the Panel meeting on 30 April 2018, the Administration briefed members on the outcome of the review on the Director of Legal Aid ("DLA")'s First Charge and the way forward.

39. Members noted the Administration's proposal to adjust upward the amount of maintenance that might be exempted from DLA's first charge from \$4,800 to \$8,660, and the amount of DLA's first charge to be waived in cases of serious hardship from \$57,400 to \$103,510. Further, the Administration would also introduce a mechanism such that the abovementioned amounts as specified in LAO would be adjusted on an annual basis in conjunction with the annual review of FEL to take into account the general price movement in future.

40. Members in general welcomed the above outcome of the review on DLA's First Charge. They noted that both the amounts mentioned in paragraph 39 served to provide relief to legally-aided persons who might suffer hardship from the deduction of legal expenses out of what was recovered for them. Having said that, in view of the hefty fiscal reserves, some members considered that the Administration should provide more relief to legally-aided persons.

41. In response, the Administration explained that currently, DLA might exercise discretion to waive his first charge for an amount not exceeding \$57,400 in cases of serious hardship pursuant to section 19B(1)(a) of LAO. The Administration would further adjust the amount on an annual basis to take into account the general price movement as measured by the Consumer Price Index (C), in conjunction with the annual review of FELs in future.

Manpower and other support for the Judiciary

42. The Panel continued to monitor the manpower and other support for the Judiciary during the current legislative session.

Judicial Service Pay Adjustments

43. At the Panel meeting on 30 October 2017, the Administration briefed members on the proposed judicial pay adjustment for 2017-2018. On the recommendation of the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee"), the Chief Executive in Council decided that the pay for judges and judicial officers ("JJOs") for 2017-2018 should be increased by 2.95%.

44. The Panel generally supported the submission of the Administration's funding proposal in relation to the proposed judicial pay adjustment to the Finance Committee. However, members expressed concerns about the shortage problem of JJOs in the Judiciary and made various suggestions to address the problem.

45. A member suggested that the benchmark study, which checks whether the judicial pay was broadly in line with the trend of legal sector earnings, should be conducted once every two or three years instead of five, in order to keep abreast of the latest information on legal sector earnings. In response, the Administration considered that it might be too short for the Judicial Committee to ascertain whether the pay relativities between judicial and legal positions were widening or narrowing.

46. Other suggestions included relaxing the requirement of prohibition against judges' return to private practice and extending the retirement ages of JJOs beyond 65. In response, the Administration replied that judges' return to private practice should be considered with due care and prudence as it might affect judicial independence. As regards JJOs' retirement age, the Judiciary had engaged a consultant to conduct a review on the subject. A member suggested attracting more law students to serve as assistants to JJOs to gain exposure to the Judiciary.

Security of court buildings

47. During a contempt court hearing in the High Court on 17 October 2017, a man who was seated at the public gallery suddenly took out a chopper from his backpack and threatened the judge. Members of the Panel were appalled by the incident and raised concerns about the security in court premises.

48. At the Panel meeting on 20 December 2017, the Judiciary Administrator ("JA") briefed members on the latest measures to enhance security in court premises after reviewing the security situation in the past few months. According to JA, further to the increased Police presence in court buildings and the enhanced security measures at the Family Court, the next enhanced security measures would be implemented in the High Court in early 2018 where security screening of persons accessing the courtrooms in the High Court Building would be conducted as a pilot scheme.

49. Given the long waiting time for lifts in the High Court Building, some members shared the Bar Association's concern that the pilot scheme might further delay court users in accessing the courtrooms, particularly during peak hours in the early morning. They suggested issuing passes to frequent court users to facilitate the security screening process. Security guards should also be stationed on every floor with courtrooms to provide immediate support, if necessary. In reply, JA informed members that the Judiciary would continue to review and enhance the security measures at High Court having regard to the operational experience gained from the pilot scheme.

50. Some members urged that more police officers should be deployed at the Magistrates' Courts and they should not be replaced by security guards. In reply, JA explained that while the deployment of police officers in court buildings was a matter for the Police, the Judiciary had strengthened the liaison with the Police at various levels to discuss about the security requirements in court buildings.

51. A member was concerned about the security in Family Court in particular given the antagonism between the wives and husbands involved. JA replied that the Judiciary had been enhancing the security arrangements for Family Court since 2012. She also advised that victims in domestic violence cases could apply to the court for the adoption of special measure(s), such as provision of special passageways, if and when necessary.

52. Members considered that, in designing the proposed Judicial Complex for the High Court and Judicial Complex for District Court, the Administration should thoroughly consider and take into account the provision of various security measures in these buildings. JA noted members' suggestion.

Policy issues relating to the administration of justice and legal services

Briefing out of criminal and civil cases by the Department of Justice

53. The Panel has all along been concerned about the briefing out arrangement of the Department of Justice ("DoJ"). At the Panel meeting on 26 February 2018, the Administration briefed members on DoJ's briefing out policy and expenditure, the mechanism for the selection of fiat counsel, as well as measures to enhance the case-handling capability of both in-house and outside counsel.

54. Some members shared the concern of the Bar Association that there was lack of transparency in briefing out criminal cases and civil cases by DoJ. In particular, the criteria for selection as counsel who would be conducting cases on behalf of DoJ, the policy on putting fiat counsel on probation after enlistment, the process or transparency in the progression of a fiat counsel from the Magistrates' Courts' lists to the District Court fiat counsel list, then to the Court of First Instance' list, were not known or unclear.

55. Members also expressed concerns about DoJ's lack of feedback to the fiat counsel, lack of clear criteria for assessing the fiat counsel's performance and no suggestion of areas of improvement. In response, the Administration advised that DoJ would continuously supervise each briefed out counsel whose performance would be assessed mainly based on their advocacy skill rather than whether the cases were won or not.

56. The Bar Association suggested that, in addition to the Joint Training Program which was valuable for assessing a trainee's suitability and competence for fiat work, continued training or refresher programs should be provided by DoJ to the younger fiat counsel.

57. Some members echoed the Bar Association's comment that the case papers for fiat counsel were often provided to them just 3 or 4 days before the courts. At the magistracy level, a case might proceed to trial without the case file being scrutinized by a qualified DoJ's prosecutor but were put together by law enforcement officers who did not have training in the presentation of a case at trial. In response, DoJ undertook to look into the matter with the law enforcement departments.

58. A member raised concerns about the relatively higher proportion of cases conducted and court days undertaken by briefed out counsel in 2016. In response, the Administration explained that the number of court cases and court days could not fully reflect the workload of DoJ's in-house counsel as they had to handle many other duties which could not be briefed out. For instance, besides attendance in court, counsel of the Prosecutions Division of DoJ had to give advice to the enforcement departments on prosecutions matters. Counsel of the Civil Division would act as the instructing solicitors in litigation cases involving the Government and provide legal advice to Bureaux/Departments.

59. Some members were gravely concerned about the rate of remuneration for fiat work, which fell far behind privately-funded work, making it unattractive for more experienced and established practitioners to take up fiat work. The Administration replied that as DoJ had adopted the same scale of fees as that of the approved criminal legal aid fees of the Legal Aid Department to maintain the equality of publicly-funded prosecution work and defence work, DoJ had to adjust the fee following the adjustment in the criminal legal aid fees accordingly.

Enhancing the operation model for the Law Reform Commission in Hong Kong

60. LRC plays an important role in the development and promotion of effective law reform. At the Panel meeting on 20 December 2017, the Administration briefed members on the preliminary outcome of the study conducted by LRC ("the LRC Study") to consider various options to enhance its efficiency and operation, including examining the experience of law reform agencies in other jurisdictions. Possible options considered include maintaining the status quo (Option 1); maintaining the current Commission and sub-committee structure but enhancing the LRC Secretariat support (Option 2); and setting up a fully independent law reform body (Option 3).

61. LRC preferred Option 2 as it would harness all the advantages of the current LRC structure and composition, while significantly improving the support to the LRC and its sub-committees and the timeliness of completing LRC consultation papers and reports. With regard to the issue of whether or not the LRC should undertake the task of systematic review of the laws of Hong Kong, LRC concluded that this role went beyond its current remit and it would require a very substantial increase in resources if a systematic approach were to be adopted.

62. The Panel was in general supportive of maintaining the current structure of LRC and enhancing the Secretariat support to enhance its efficiency and operation. While some members considered that a fully independent statutory law reform body should be the ultimate goal, others had reservation as they considered that, besides the huge costs that would be incurred, the Administration might not be keen to implement the recommendations made by an independent law reform body.

63. As regards LRC's staffing proposal to enhance the Secretariat support, some members suggested hiring more in-house staff with different areas of expertise. The Administration replied that this would incur huge cost as it was not possible to envisage what study would be conducted by LRC. However, experts or consultants might be engaged from outside research bodies, including law schools, to provide assistance on specific issues.

64. Some members were of the views that just enhancing the efficiency and operation of LRC would be meaningless if the Administration did not take timely action to implement the LRC's recommendations. In response, the Administration said that while it was for Bureaux to decide whether to implement LRC's recommendations under their purview having regard to various factors, LRC had adopted a number of measures to monitor the progress of their implementation. Furthermore, with enhanced staff resources in the LRC Secretariat, LRC would be able to follow up more proactively the implementation of its proposals.

65. Members also expressed their views on various issues relating to the work of LRC. A member expressed that in referring subjects to LRC for consideration, SJ or the Chief Justice ("CJ") should give due regard to whether they were relating to people's livelihood. Another member pointed out that law reform should be a continuous undertaking to be conducted systematically and the current roles and functions of LRC was limited as it could only consider law reform projects referred by SJ or CJ.

66. The Administration responded that SJ and CJ would normally consider a host of factors in considering whether a subject was suitable for referral to LRC, and the subjects would normally be chosen from suggestions made by LRC members, the legal profession, the public at large on the Administration.

Proposed arrangement with the Mainland on reciprocal recognition and enforcement of judgments

67. As of December 2017, Hong Kong has concluded five arrangements with the Mainland in various aspects of mutual legal assistance in civil and commercial matters. However, according to the Administration, these arrangements were not able to fully address the needs for a clear and comprehensive reciprocal recognition and enforcement of judgments ("REJ") mechanism arising from the increasingly close interaction and cooperation between the two places in the people-to-people context as well as in terms of trade and economic activities.

68. In view of this, DoJ had commenced discussion with the Supreme People's Court with a view to establishing a more comprehensive framework for an REJ arrangement with the Mainland ("the Proposed Arrangement") to cover civil and commercial judgments outside the scope under the Choice of Court Arrangement and the Matrimonial Arrangement.

69. At the Panel meeting on 27 November 2017, the Administration briefed members on the background and key features of the Proposed Arrangement. The Panel generally supported the Proposed Arrangement. Some members considered that the Proposed Arrangement would help Hong Kong residents involved in lawsuits in the Mainland court whose judgment could not be enforced in HKSAR, and urged the Administration to expedite the legislative process.

70. In response to members' enquiry about the impact of trial supervision system in the Mainland on the Proposed Arrangement, the Administration advised that it would further study and consider how best to address the issues of finality, including the criteria in deciding the Mainland judgments would be considered enforceable under Mainland law.

71. A member expressed reservation on the Proposed Arrangement as he had doubts about the compatibility of the laws of the two places, the independence of the Mainland's judicial system and the effectiveness of the proposed safeguards under the Proposed Arrangement in guarding against injustice.

72. In response, the Administration advised that REJ with foreign courts had been an international trend and, under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319), judgments from about 10 foreign jurisdictions were currently enforceable in HKSAR. Furthermore, the proposed safeguards in the Proposed Arrangement, which were in line with the latest international practices and Hong Kong's statutory and common law regime, together with the proposed indirect jurisdictional rules, should help strike an appropriate balance between the advantages brought by a more comprehensive REJ mechanism and the risks perceived by members.

73. The Panel noted that the Bar Association was supportive of the Proposed Arrangement. They also noted the Bar Association's views on the jurisdictional basis for determining the eligibility of judgment for REJ, suggestion on the inclusion of interim reliefs for REJ and its concerns over excluding the disputes over registration and validity of intellectual property rights from the Proposed Arrangement.

74. Some members echoed the Bar Association's suggestion to extend the scope of the Proposed Arrangement to cover REJ of court orders in relation to the winding-up of companies, personal bankruptcy as well as debt restructuring. The Administration replied that, given the complexity of the issues involved, it was advisable to implement the Proposed Arrangement as a first step.

Consultation Paper on Gender Recognition issued by the Inter-departmental Working Group on Gender Recognition in June 2017

75. In May 2013, in the Judgment of the Court of Final Appeal ("CFA") in *W v Registrar of Marriages* ("W's case")¹, CFA observed that the Administration should consider how to address problems facing transsexual persons in all areas of law by drawing reference to overseas law and practice. Pursuant to the CFA's judgment, the Inter-departmental Working Group on Gender Recognition ("IWG") was established in January 2014 to consider legislation and incidental administrative measures that might be required to protect the rights of transsexual persons in Hong Kong in all legal contexts and to make such recommendations for reform as may be appropriate.

76. On 23 June 2017, IWG issued "Consultation Paper: Part 1: Gender Recognition" ("the Consultation Paper") to seek the views of the public on issues concerning legal gender recognition. A public hearing was conducted by the Panel at its special meeting on 20 November 2017 to receive views from deputations/individuals on the Consultation Paper. 58 deputations/ individuals presented their views at the meeting while 21 submissions were received from those who did not attend the meeting.

77. A member considered that certain deputations' views were untruthful, exaggerated or even hate remarks towards transgender and transsexual persons. Others were upset by the views of some deputations that CFA's judgment on W's case needed not be followed, which was against the rule of law, and the views that transsexual and transgender persons were immoral. IWG was urged to clarify any misunderstandings about the gender recognition scheme to remove any prejudices as early as possible.

78. Some members expressed the views that the rights of the sexual minorities, including transgender and transsexual persons, should be respected and protected, and should not be exploited by the majority views. The Administration and IWG were urged to proposed concrete law reform proposal to address the needs of transsexual and transgender persons as soon as possible.

¹ [2013] 3 HKLRD 90; FACV 4/2012 (13 May 2013).

79. On the other hand, some members considered that the establishment of a gender recognition scheme through legislation would have great impacts on the society and it would not be a good remedy for addressing the gender recognition issues. On the contrary, it might widen the fissure between opposing camps on the issue and there should be thorough discussion on the matter before any decision was made. They suggested that administrative measures, including the provision of support and psychological counselling services, should be provided to the transgender and transsexual persons to take care of their needs.

80. Some members noted that in certain countries where self-declaration was adopted as the requirement for gender recognition, there were worries about the security and privacy of using gender-specific public facilities (such as changing rooms and washrooms). In response to this view, some members opined that while such concerns might be addressed through improving the designs of the public facilities as well as updating the legislation relating to sexual offences, they should not be used to justify objecting to the gender recognition scheme.

81. In response to members' views, representatives of IWG expressed that it fully understood the complexity and controversy of the issue. It would carefully consider all views and comments received during the consultation exercise.

Policy initiatives of the Department of Justice

82. Ms Teresa CHENG Yeuk-wah was appointed as SJ with effect from 6 January 2018. She briefed members on DoJ's policy initiatives at the special Panel meeting on 29 January 2018.

83. During the deliberations, some members expressed grave concern about the unauthorized building works ("UBWs") found in Ms CHENG's residence, and were disappointed that she did not actively disclose various issues about her UBWs and had kept delaying giving an account of the related matters to the Legislative Council. Some members expressed concern about the integrity and conduct of Ms CHENG and her suitability to carry out SJ's duties.

84. Apart from the above, members also expressed concerns about the various policy initiatives of DoJ, including local legal and dispute resolution services, implementation progress of the recommendations in LRC Report on "Class Actions", free trade agreements with other overseas jurisdictions, legislation for the National Anthem Law and progress of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Co-location) Bill.

Mechanism for Handling Complaints Against Judicial Conduct

85. Through an information paper issued by the Judiciary in March 2018, the Panel was informed of the progress made in implementing the improvement measures following the review conducted by the Judiciary on the mechanism for handling complaints against judicial conduct in 2016. JA advised that the enhanced mechanism with the improvement measures put in place has been operating smoothly. The Judiciary will continue to monitor the situation with a view to handling complaints against judicial conduct in an efficient and effective manner.

Issues of concerns to the legal profession

Future development of the legal profession under the trend of globalization, its impacts on the legal profession and legal services to the public in Hong Kong

86. At the Panel meeting on 26 March 2018, members of the Panel, the Administration, the Bar Association, and 10 deputations including those from law schools, exchanged views on the future development of the legal profession under the trend of globalization, its impacts on the legal profession and legal services to the public in Hong Kong.

87. As regards the developments in the local legal education, some members considered that the courses provided by universities should be tailor-made to cope with the trend of globalization. More courses relating to globalization such as international trade and international law should be provided.

88. There were also concerns about the impacts of the development of advanced technology on the legal profession in Hong Kong in future. As such, some members suggested that the Administration, universities and law students, as well as relevant stakeholders should be well-equipped with knowledge about the application of technology to legal profession a view to addressing new challenges and capitalizing on the opportunities.

89. Further, the Bar Association considered that to maintain Hong Kong's competitive edge and embrace the opportunities brought by globalization, Hong Kong's policy on language education should enhance the biliterate (Chinese and English) and trilingual (Cantonese, Putonghua and English) abilities of Hong Kong students.

90. The Administration responded that the Standing Committee on Legal Education and Training, an advisory body established under section 74A of the Legal Practitioners Ordinance (Cap. 159), would continuously review critically the present system of legal education and training in Hong Kong and make recommendations.

91. Some members considered that a comprehensive review should be conducted on the dual structure of the legal profession, such as the practice areas of barristers and solicitors, client management and cab-rank rule. To enhance competitiveness of the legal profession in Hong Kong, professional clients and the public might be allowed to have direct access to barristers in certain areas of practice.

92. Under the trend of globalization, some members considered that the Administration should expedite the progress of law reform in Hong Kong, especially in the areas of class actions and financial regulations. A sound foundation in Hong Kong's legal system would facilitate its development in dispute resolution, particularly in arbitration and mediation. Further, some members also urged the Administration to provide more support to facilitate Hong Kong lawyers' entrance to the Mainland legal services market.

93. In response, the Administration explained that it, together with the Law Reform Commission, were working diligently on various law reform projects. The Administration would also keep close contact with the two legal professional bodies and relevant stakeholders so as to help Hong Kong barristers and solicitors make use of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) measures to explore the Mainland market.

Legal education and training

94. At the Panel meeting on 25 June 2018, the Administration informed members of the latest development of the comprehensive review on legal education and training in Hong Kong ("the Comprehensive Review") commissioned by the Standing Committee on Legal Education and Training ("SCLET"), which released the final report of its appointed consultants on the Comprehensive Review ("the Final Report") on 15 May 2018.

95. Representatives from the Bar Association, the Law Society, law schools of the University of Hong Kong ("HKU"), the Chinese University of Hong Kong ("CUHK") and the City University of Hong Kong ("CityU"), the HKU School of Professional And Continuing Education, and law students' associations also attended the meeting to give views on the Comprehensive Review. They raised various views such as the form and content of

Postgraduate Certificate of Laws ("PCLL"), legal executive qualification, expansion of the pool of Juris Doctor students in the undergraduate programme. However, they were particularly concerned about the Common Entrance Examination ("CEE") and the Law Society Examination ("LSE") proposed by the Law Society.

96. The Law Society explained that the proposed LSE was intended to provide an additional pathway for entering the solicitors' profession for qualified law graduates, including some intending solicitors who got good academic degrees from overseas universities, who failed to secure a PCLL place in the three universities. It also provided those who failed in previous PCLL examinations a second opportunity for entering the profession. However, the Law Society stressed that the standard required for passing the LSE would be on par with that for PCLL.

97. Some representatives expressed concern that entrance to the solicitors' profession might be monopolized if either CEE or LSE was to be implemented by the Law Society. Representatives of the three universities did not consider CEE or LSE necessary as efforts had been made to increase the PCLL places, system had been in place to ensure the quality standards of respective PCLL programmes, and the possible confusion which might cause to law graduates in deciding which routes to take for entering the legal profession. They also supported the moratorium of CEE as recommended in the Final Report.

98. Some members considered that the Law Society had failed to provide basic facts and information regarding the proposed LSE, such as the estimated demand for LSE places, admission requirements, etc. so that stakeholders could not assess its impact on the current legal education system and the legal profession as a whole. A member also expressed concerns about the lack of consultation with CJ on this proposal which would have important bearing on the legal profession. The Law Society replied that it would consult CJ on the proposal in due course.

99. Some members supported CEE but shared the worries of law students about its format and requirements. They considered that the Law Society should address such worries and there was no need for a rush. Another member supported the idea of LSE and considered that it would benefit those law graduates who, due to limited PCLL places, had failed to gain admission into the PCLL programmes. He urged the two professional bodies to come up with some mutually acceptable proposal.

100. The Panel noted the diverse views on this subject and did not come to any conclusion. The Administration expressed that DoJ would continue to engage other stakeholders on the SCLET platform with regard to the Final Report and its recommendations.

Other issues

101. During the 2017-2018 LegCo session, the Panel also discussed SJ's annual report on the implementation of the recommendations made by LRC, and was briefed on LRC's consultation papers on miscellaneous sexual offences and on periodical payments for future pecuniary loss in personal injury cases.

102. The Panel was also consulted on the following staffing proposals: proposed creation of one permanent post of Deputy Principal Government Counsel (DL2) in the International Law Division of DoJ; and two permanent posts of Principal Government Counsel (DL3), one in each of the Civil Division and the Law Drafting Division of DoJ.

103. The Panel supported their submission to the Establishment Subcommittee for consideration and the Finance Committee for approval.

Legislative Council

Panel on Administration of Justice and Legal Services

Terms of Reference

1. To monitor and examine, consistent with maintaining the independence of the Judiciary and the rule of law, policy matters relating to the administration of justice and legal services, including the effectiveness of their implementation by relevant officials and departments.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Administration of Justice and Legal Services

Membership list for the 2017-2018 session

Chairman Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Deputy Chairman Hon Dennis KWOK Wing-hang

Members Hon James TO Kun-sun
Hon CHAN Kin-por, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
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
Hon Vincent CHENG Wing-shun, MH

(Total : 19 members)

Clerk Mr Lemuel WOO

Legal adviser Mr YICK Wing-kin

* Changes in membership are set out in Annex to Appendix II

Panel on Administration of Justice and Legal Services

Changes in membership

Member	Relevant date
Hon YIU Si-wing, BBS	Up to 23 October 2017
Hon Frankie YICK Chi-ming, SBS, JP	Up to 23 October 2017
Hon CHAN Chun-ying	Up to 23 October 2017
Hon LEUNG Che-cheung, SBS, MH, JP	Up to 23 October 2017
Hon Starry LEE Wai-king, SBS, JP	Up to 23 October 2017
Dr Hon CHIANG Lai-wan, JP	Up to 23 October 2017
Hon Steven HO Chun-yin, BBS	Up to 23 October 2017
Hon POON Siu-ping, BBS, MH	Up to 23 October 2017
Hon Michael TIEN Puk-sun, BBS, JP	Up to 23 October 2017
Dr Hon Elizabeth QUAT, BBS, JP	Up to 23 October 2017
Hon Alice MAK Mei-kuen, BBS, JP	Up to 24 October 2017
Hon Christopher CHEUNG Wah-fung, SBS, JP	Up to 24 October 2017
Hon Jeffrey LAM Kin-fung, GBS, JP	Up to 24 October 2017
Hon Abraham SHEK Lai-him, GBS, JP	Up to 27 February 2018
Hon Vincent CHENG Wing-shun, MH	Since 23 March 2018