## 立法會 Legislative Council

LC Paper No. CB(4)1205/18-19

(These minutes have been seen by the Administration)

Ref: CB4/PL/AJLS

### Panel on Administration of Justice and Legal Services

### Minutes of meeting held on Monday, 25 February 2019, at 4:30 pm in Conference Room 1 of the Legislative Council Complex

Members present	<ul> <li>Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman) Hon Dennis KWOK Wing-hang (Deputy Chairman) Hon James TO Kun-sun Hon Starry LEE Wai-king, SBS, JP 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</li> </ul>
	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 HUI Chi-fung
Member attending	: Hon Claudia MO
Member absent	: Hon CHEUNG Kwok-kwan, JP

Public officers attending

### : Agenda item III

The Law Reform Commission of Hong Kong ("LRC")

Ms Adeline WAN Secretary (Acting)

Archives Law Sub-committee of LRC

Mr Andrew LIAO, SC Chairman

Mr Richard KHAW, SC Member

Mr Byron LEUNG Secretary

Access to Information Sub-committee of LRC

Mr Russell COLEMAN, SC Chairman

Mr Brian GILCHRIST Member

Ms Cathy WAN Secretary

### Agenda item IV

Judiciary Administration

Miss Emma LAU Judiciary Administrator

Miss Patricia SO Deputy Judiciary Administrator (Development)

Mrs Erika HUI Deputy Judiciary Administrator (Operations) Mrs Connie NGAN Assistant Judiciary Administrator (Corporate Services)

### Agenda item V

### **Department of Justice**

Miss LEE Sau-kong Deputy Solicitor General (Policy Affairs) (Acting)

Ms Peggy AU YEUNG Senior Government Counsel

Miss Melissa KIANG Senior Government Counsel

Ms Mary HO Government Counsel

Attendance by invitation

### : <u>Agenda item V</u>

Hong Kong Bar Association

Mr Jeremy CHAN S K

Ms Corinne D'A REMEDIOS

The Law Society of Hong Kong

Ms Barbara Anne HUNG Member of Family Law Committee

Ms Catherine POR Keng-guan Member of Family Law Committee

Ms LAM Ka-lai Assistant Director, Practitioners Affairs

Clerk in attendance : Mr Lemuel WOO Chief Council Secretary (4)6

# Staff in attendance: Mr YICK Wing-kin<br/>Senior Assistant Legal Adviser 2Ms Macy NG<br/>Senior Council Secretary (4)6Ms Emily LIU<br/>Legislative Assistant (4)6

### Action

### I. Information papers issued since the last meeting

<u>Members</u> noted that there was no information paper issued since the last meeting.

### II. Items for discussion at the next meeting (LC Paper No. CB(4)546/18-19(01) - List of outstanding items for discussion)

2. <u>Members</u> noted that the following items would be discussed at the next regular meeting to be held on 25 March 2019:

- (a) Development of an online dispute resolution and deal making platform by non-governmental organization; and
- (b) Opportunities for Hong Kong's legal and dispute resolution services in the Greater Bay Area.

<u>Suggestion of discussing the cooperation between Hong Kong and other places</u> <u>on juridical assistance in criminal matters at a joint Panel meeting</u>

3. <u>The Deputy Chairman</u> asked the Chairman whether she had followed up the request made in the joint letter dated 13 February 2019 issued by him and Mr Alvin YEUNG to Hon CHAN Hak-kan, Chairman of the Panel on Security, which was copied to her ("the joint letter").

4. In response, <u>the Chairman</u> informed members that she had received the joint letter in which the Deputy Chairman and Mr Alvin YEUNG requested the Panel on Security to hold a joint meeting with the Panel on Administration of Justice and Legal Services ("AJLS Panel") to discuss the subject on cooperation between Hong Kong and other places on juridical assistance in criminal matters ("the subject"), and invite relevant stakeholders including the Department of

Justice ("DoJ") and the two legal professional bodies to give their views at the meeting.

5. <u>The Chairman</u> reported that the subject had been discussed at the meeting of the Panel on Security on 15 February 2019 and members of AJLS Panel were invited to join the discussion at the meeting. After the meeting, the Chairman of the Panel on Security discussed with her the joint letter. <u>The Chairman</u> said that Mr CHAN Hak-kan had expressed a view similar to that expressed at the meeting, i.e. as the Administration would introduce a bill on the subject into the Legislative Council ("LegCo") and a Bills Committee was likely to be formed, public views could be invited at that stage and there was no need to hold a special meeting to invite public views at the current stage. During discussion, Mr CHAN also expressed his view that there was no need to hold a joint Panel meeting.

6. <u>The Chairman</u> said that she shared a similar view and considered that, as the subject raised in the joint letter had been discussed by the Panel on Security, it would be redundant if the subject was discussed again at AJLS Panel. However, if there were any new developments on the subject but the Panel on Security did not follow it up, AJLS Panel might then consider whether it should follow up the matter.

7. <u>The Deputy Chairman</u>, <u>Dr Fernando CHEUNG</u>, <u>Mr James TO</u>, <u>Mr CHAN Chi-chuen</u>, <u>Mr HUI Chi-fung</u>, <u>Mr Alvin YEUNG</u> and <u>Ms Claudia</u> <u>MO</u> disagreed with the Chairman's views and considered that AJLS Panel should follow up the matter at present rather than later.

8. <u>Dr Fernando CHEUNG</u> considered that it would be too late if public views on the subject were invited after the relevant Bills Committee had been formed. He pointed out that when the relevant bill was introduced into LegCo, the scope of the bill would have been defined since the long title of the bill could not be amended. As a result, there would be little room for Members to contribute their views at that stage, in particular on the more controversial issues such as whether the mutual legal assistance should be restricted to certain places.

9. <u>The Deputy Chairman</u> suggested that AJLS Panel could discuss the subject without having a joint meeting with the Panel on Security as the two Panels had different foci and concerns about the subject. The Panel on Security was more concerned about the criminal issues while AJLS Panel was more concerned about its impact on Hong Kong's rule of law and legal system. He further said that the Secretary for Justice ("SJ") had not attended the meeting of the Panel on Security on 15 February 2019 to give her view on the subject while, at an AJLS Panel meeting in 1998, the then SJ had responded to

members' enquiries regarding mutual legal assistance in transfer of criminal offenders. As such, AJLS Panel should invite SJ and the legal sector to give their views on the subject. <u>Mr HUI Chi-fung</u> shared his view and considered that AJLS Panel could discuss the reciprocal enforcement of the relevant legislation between Hong Kong and other jurisdictions.

10. <u>Mr James TO, Mr CHAN Chi-chuen and Ms Claudia MO</u> opined that as it was expected that the bill on the subject would involve amendments to the Mutual Legal Assistance in Criminal Matters Ordinance ("MLAO") (Cap. 525) and the Fugitive Offenders Ordinance ("FOO") (Cap. 503), it was reasonable and necessary for AJLS Panel to discuss the matter and invite public views in this regard. <u>Mr James TO</u> added that it would be appropriate for AJLS Panel to receive public views before the deadline set by the Administration for collecting public views on the subject, i.e. 4 March 2019.

11. <u>Mr Paul TSE</u> pointed out that it was not appropriate for AJLS Panel to discuss an issue just because it was related to a legislative proposal. After all, legislative proposals would arise from various government policies, which should be deliberated by the relevant Panels of LegCo. He said that AJLS Panel would be overburdened if it had to consider every such legislative proposal.

12. <u>Mr Alvin YEUNG</u> disagreed with the views of Mr Paul TSE. He said that, unlike other pieces of legislation, as the bill on the subject would involve amendments to MLAO and FOO and have a fundamental impact on Hong Kong's legal system, it was appropriate for AJLS Panel to discuss the subject and invite SJ to express her view, in particular on how the Government would act as a gatekeeper to allay public's worries. <u>Ms Claudia MO</u> also said that members of the public might provide useful suggestions other than legislative amendments for consideration of the Administration.

13. <u>Ms Starry LEE, Dr Junius HO</u> and <u>Mr Martin LIAO</u> opined that, as the subject had already been discussed by the Panel on Security, Members could continue to raise their views and concerns on the subject to the Panel on Security and it was not appropriate for AJLS Panel to follow up the same issue in parallel. They further pointed out that if a Bills Committee relating to a bill on the subject was formed, the Bills Committee should provide a more appropriate platform for a comprehensive discussion of the subject.

14. <u>Mr Martin LIAO</u> considered it unjustified for AJLS Panel to hold a public hearing on the subject simply because the Panel on Security did not hold one. He said that, apart from security issues, the Panel on Security could also examine the legal aspect of the relevant policies. Members might also move amendments to the bill during the committee of the whole Council if they

disagreed with the details of the proposed amendments in the bill. <u>Ms Starry</u> <u>LEE</u> added that Members could submit their views directly to the Administration which was gathering public views on the subject at the moment.

15. <u>Mr Paul TSE</u> asked whether members of AJLS Panel had ever suggested holding a joint meeting with the Panel on Security before the latter held its meeting on 15 February 2019. In response, <u>the Clerk</u> said that after some members of AJLS Panel had proposed in May 2018 to discuss the subject on "Mutual legal assistance and arrangement on surrender of fugitive offenders between Hong Kong and Taiwan", the Chairman followed up the matter with DoJ. DoJ's advice was that the above matters was under the purview of the Security Bureau, and the relevant subject included in the list of outstanding items of the Panel on Security should be broad enough for members to discuss the matters.

16. <u>The Clerk</u> further said that after they were informed of DoJ's advice, members of AJLS Panel agreed that the Panel on Security should be requested to invite them to join its discussion on the subject when it was held. Later on, members of AJLS Panel received the invitation of the Panel on Security to attend its meeting on 15 February 2019 to join its discussion on the subject.

17. <u>Mr James TO</u> urged the Chairman to accede to members' request and include the subject for discussion at an AJLS Panel meeting. <u>Mr CHAN</u> <u>Kin-por</u> and <u>Mr Martin LIAO</u> expressed their views that the Chairman could, after listening to the views of members, decide whether AJLS Panel should discuss the subject.

18. In response to Mr HUI Chi-fung's enquiry on the powers and authority of the Panel Chairman in respect of determining the agenda of a meeting and as invited by the Chairman, <u>the Clerk</u> explained that according to Rule 79C of the Rules of Procedure ("RoP"), the agenda of a meeting of any committee should be determined by its chairman, except where its deputy chairman (if any) had made a determination in accordance with RoP 79B (Determining the Time and the Place of a Meeting of a Committee by the Deputy Chairman of the Committee).

19. <u>The Chairman</u> said that, after listening to the views of members, she had decided that AJLS Panel would not discuss the subject or invite public views on the subject at the present stage.

Suggestion of discussing the problem of pressure on courts arising from non-refoulement claim cases

20. <u>The Chairman</u> referred to the letter dated 16 January 2019 jointly issued by Mr CHEUNG Kwok-kwan, Dr Elizabeth QUAT and Dr CHIANG Lai-wan requesting AJLS Panel to discuss the problem of pressure on courts arising from non-refoulement claim cases (LC Paper No. CB(4)451/18-19(01)). She said that in response to the Clerk's enquiry, the Judiciary had indicated that it would be ready to discuss the above matter at a meeting of AJLS Panel between April and June 2019. <u>The Chairman</u> said that AJLS Panel would continue to follow up the matter.

III.	Consultation	paper	on	archives	law	and	that	on	access	to
	information regime									

(LC Paper Nos.	CB(4)294/18-19(01) -	Consultation	paper	and
and (02)		executive	summary	of
		consultation ]	paper on arc	hives
		law published by the Archives		
		Law Sub-co	mmittee of	the
		Law Reform	Commissio	on of
		Hong Kong		

- LC Paper Nos. CB(4)294/18-19(03) Consultation paper and and (04) - Consultation paper of consultation paper on access to information published by the Access to Information Sub-committee of the Law Reform Commission of Hong Kong
- LC Paper No. CB(4)546/18-19(02) management - Paper on of government records and access government to information prepared by the Council Legislative Secretariat (background brief))

Briefing by Chairmen of the Archives Law Sub-committee and the Access to Information Sub-committee of the Law Reform Commission of Hong Kong

21. <u>Mr Andrew LIAO, SC, Chairman of the Archives Law Sub-committee</u> of the Law Reform Commission of Hong Kong ("LRC"), ("ALSC") and <u>Mr Russell COLEMAN, SC, Chairman of the Access to Information</u> <u>Sub-committee of LRC</u> ("ATISC") respectively introduced the work of ALSC and ATISC ("the two Sub-committees"), and gave an overview of the consultation paper on archives law ("the ALSC paper") (LC Paper No. CB(4)294/18-19(01)) and the consultation paper on access to information ("the ATISC paper") (LC Paper No. CB(4)294/18-19(03)) issued on 6 December 2018 for public consultation until 5 March 2019.

### Discussion

### General views

22. <u>Mr Alvin YEUNG, Dr Fernando CHEUNG</u> and <u>Mr HUI Chi-fung</u> expressed appreciation to the two Sub-committees for their work and efforts in preparing the consultation papers. <u>Dr CHEUNG</u>, however, pointed out that Hong Kong had lagged behind many advanced countries which had archives laws and freedom of information laws for a long time. <u>Mr HUI</u> said that archives laws and freedom of information (or access to information) laws were important not only for preserving archives and public records of historical values, but also for safeguarding the public's rights to know and to monitor the government.

23. <u>Ms Claudia MO</u> welcomed both the ALSC paper and the ATISC paper but considered them latecomers as the two Sub-committees had taken five years to prepare the papers. In reply, <u>Mr Andrew LIAO, SC</u>, and <u>Mr Russell</u> <u>COLEMAN, SC</u>, advised that ALSC and ATISC had so far conducted 43 and 48 meetings respectively since their establishment in 2013. Since they had to study the existing administrative regime and laws, relevant reports from government and non-government bodies, as well as the relevant laws in other jurisdictions, the two Sub-committees had taken some time to prepare the consultation papers.

### Consultation method adopted in the consultation paper on archives law

24. <u>Mr Alvin YEUNG</u> noted that it was a general practice in the consultation papers issued by previous LRC sub-committees that preliminary conclusions and recommendations would be set out. In this connection, he enquired about the reasons why, unlike the ATISC paper which had made over 20 recommendations therein, ALSC had only listed out consultation questions in

the ALSC paper without making any preliminary conclusions or recommendations.

25. <u>Dr Fernando CHEUNG</u> and <u>Mr HUI Chi-fung</u> shared Mr Alvin YEUNG's concerns. <u>Dr CHEUNG</u> pointed out that it would take a long time for ALSC to finalize its proposals to LRC and he was worried that the legislative work for the archives law would be delayed. <u>Mr HUI</u> questioned whether the Administration was determined to implement an archives law to strengthen the current public records and archives management framework in Hong Kong.

26. In response, <u>Mr Andrew LIAO, SC</u>, said that whilst the two Sub-committees were working in tandem, they worked under a clear division of labour, separately but alongside each other. ALSC was mainly concerned about the administrative and operational matters in relation to the preservation of records as archives, including the structure and operation of the Government Records Service ("GRS") which was the central records management and service agency in Hong Kong. <u>Mr LIAO, SC</u>, said that ALSC had made reference to the archives laws in Australia, England, Ireland, New Zealand and Singapore ("the five jurisdictions"), which were all common law jurisdictions bearing closer resemblance to Hong Kong's legal system. ALSC found that their practices varied from one another and so ALSC set them out in the ALSC paper to present a full picture for the stakeholders to consider.

27. <u>Mr Richard KHAW, SC, member of ALSC</u>, said that the consultation questions were set out in the last chapter of ALSC paper and ALSC gave its provisional views as regards the fundamental question as to whether there was a case for introducing an archives law in Hong Kong. He further explained that ALSC had considered the usefulness of giving more provisional views and was concerned that it might discourage the public from giving their views. As ALSC hoped that there could be a free expression of views during the consultation exercise, it had therefore decided to list consultation questions instead of giving too many provisional views in the ALSC paper.

28. <u>Mr Andrew LIAO, SC, disagreed to the views that ALSC had only posed</u> consultation questions but did not have any preliminary conclusions or recommendations. He pointed out that ALSC had given some provisional views. For example, as stated in Chapter 9 of the ALSC paper, ALSC's provisional views were that on balance, it did see a case for the introduction of an archives law to further strengthen the management, protection and preservation of public records and archives in Hong Kong. ALSC also gave its provisional views as regards the scope of public bodies to be covered and the preservation of census schedules. But the views were provisional as ALSC had to consider the public views received during the consultation.

29. Noting that ALSC might need more time to finalize its report to LRC, <u>Ms Claudia MO</u> enquired what measures ALSC would suggest to the Administration for improving the current public records management regime in the interim, before the archives law came into existence.

30. In reply, <u>Mr Andrew LIAO, SC</u>, pointed out that whilst there was no archives law in Hong Kong at the moment, government records and archives management were regulated through an administrative regime which comprised administrative rules, guidelines and best practices promulgated and updated by the Director of Administration and GRS from time to time to improve the regime. Legislative amendment had also been introduced to other existing legislation to enhance the public records management regime. For example, the legislative amendment in 2012 to the Personal Data (Privacy) Ordinance (Cap. 486) introduced an exemption to Principle 3 for the purposes of facilitating preservation of records containing personal data by GRS, which demonstrated how the tension between rules and guidelines issued by GRS and the existing laws carrying implication for records management could be resolved if they were in conflict.

31. <u>Mr Andrew LIAO, SC</u>, added that, in recent years, the administrative public records management regime had been subject to scrutiny by external bodies such as the Audit Commission and The Ombudsman and, in response, the Administration had taken steps to improve the system. Furthermore, since its establishment in 2013, ALSC had communicated to the Administration its views and comments on how to enhance the regime.

### Coverage of public records management and access to information regimes

32. <u>The Chairman</u> noted that at present, other than government bureaux and departments ("B/Ds"), only two public bodies in Hong Kong, i.e. the Independent Commission Against Corruption ("ICAC") and Hong Kong Monetary Authority ("HKMA"), had followed the mandatory records management requirements promulgated by the Administration. By referring to the recent incident in which materials testing records and a large quantity of the Request for Inspection and Survey Checks ("RISC") forms relating to the Shatin-to-Central Link Project ("the SCL Project") were found missing, she expressed grave concern that the coverage of the existing records management and access to information regimes were too limited, and careful review should be conducted in this regard.

33. In reply, <u>Mr Andrew LIAO, SC</u>, advised that apart from ICAC and HKMA, there were hundreds of other public bodies of various sizes performing

vital public functions. In this connection, <u>Mr LIAO, SC</u>, said that ALSC considered it more advisable to follow the approach in England, Ireland, New Zealand and Singapore, i.e. enumerating from time to time specific bodies that should be subject to the public records management regime. He also mentioned the issue as to the extent of oversight by the archival authority. However, ALSC would take into account the Chairman's concern as well as the public views and comments on the coverage of public records management regime when finalizing its report to LRC.

34. <u>Mr Russell COLEMAN, SC</u>, explained that ATISC had considered The Ombudsman's Report of 2014 and its recommended approach of gradual extension of the coverage of public bodies, which ATISC agreed. ATISC also considered that at the initial stage, the list of "organizations" covered under The Ombudsman Ordinance (Cap. 397) should be adopted.

### Electronic records management

35. <u>Ir Dr LO Wai-kwok</u> expressed concern about the slow progress in developing or adopting the Electronic Recordkeeping System ("ERKS") in the Administration, noting that the print and file approach was still one of the mandatory records management requirements. <u>Ir Dr LO</u> urged for expediting the implementation of ERKS in B/Ds.

36. <u>Mr Andrew LIAO, SC</u>, advised that ALSC was aware of the efforts put in by the Administration in that regard including promoting a wider implementation of ERKS by B/Ds. ALSC had also conducted two surveys to gauge, among other things, how electronically ready public bodies were for full implementation of ERKS. Moreover, <u>Mr Andrew LIAO, SC</u>, pointed out that sometimes it was the physical document itself which was of heritage value. ALSC had raised a consultation question to seek the public's views on what other measures should be adopted by the Administration to expedite the implementation of ERKS.

### Scope of study of the Access to Information Sub-committee

37. <u>Ms Claudia MO</u> said that the Hong Kong Journalists Association had been calling for legislation on freedom of information and, when running in the Chief Executive election in 2012, the former Chief Executive Mr LEUNG Chun-ying had also promised that he would promote the legislation of freedom of information. <u>Ms MO</u> said that while she welcomed the consultation paper issued by ATISC after five years' work, she was concerned that it was on access to information rather than freedom of information. She enquired whether the terminologies were referring to the same thing, and if yes, whether the term "freedom of information" would be used when the law reform proposals were finalized.

38. <u>Mr Russell COLEMAN, SC</u>, explained that ATISC had dealt with what was required under its terms of reference, i.e. to consider access to information (held by the government or public authorities) which had not been provided under the existing regime. However, he said that the question of whether "freedom of information" or "access to information" should be used could be discussed when drafting the relevant legislation.

### Exemptions from access to information

39. <u>Mr Alvin YEUNG</u> noted that the legislative regime as proposed by ATISC would have exempt information categorized into absolute and qualified exemptions, and the Executive Council's proceedings were recommended to be in the list of absolute exemptions. He enquired whether the Executive Council's proceedings would be disclosed after a certain period of time with a view to safeguarding the right to know of members of the public.

40. In reply, <u>Mr Russell COLEMAN, SC</u>, explained that all the exempt information was intended to be exempted for the duration of 30 years. After the 30 years' period, each application for disclosure of an exempt record and information, including the Executive Council's proceedings, had to be considered afresh on every occasion.

41. <u>Mr Russell COLEMAN, SC</u>, further said that if B/Ds concerned considered that the information should still be exempted upon the expiry of 30 years, they needed to provide justifications in support of their decision. In respect of archival records, such justifications should be provided to the archival authority.

### Vexatious and repeated applications

42. <u>Ms Claudia MO</u> noted that ATISC had recommended that the proposed access to information regime should include provisions which would target vexatious and repeated applications. She enquired whether fishing expedition sometimes used by reporters for uncovering facts would also be targeted. <u>Ms MO</u> also expressed concern that, with such provisions, media's requests for information under certain circumstances might be refused on the grounds that they were vexatious and repeated applications or fishing expedition, so that media's right of reporting would be undermined.

43. <u>Mr Russell COLEMAN, SC</u>, clarified that Chapter 9 in the ATISC paper was not about fishing expedition or generally requiring one to justify why an

application for access to information was made. He pointed out that Chapter 9 dealt with the disproportionate requests which might be made in rare circumstances and would strain available resources and adversely affect the delivery of mainstream services or the processing of other legitimate access to information. <u>Mr COLEMAN, SC</u>, also stressed that the proposed provisions focused on the nature of a request, but not on the person who raised a request.

# Sanctions for non-compliance with public records management regime and access to information requests

44. <u>Dr Fernando CHEUNG</u> noted from the ALSC paper that among the five jurisdictions referred to, criminal offence was not a common feature in their archives laws for dealing with non-compliance with any provision therein, and the paper had specifically mentioned that in England, a "naming and shaming" approach was largely adopted. He asked whether this was ALSC's recommended approach. <u>Mr HUI Chi-fung</u> also referred to the recent incidents in which materials testing records and a large quantity of the RISC forms in the SCL Project were found missing. <u>Dr CHEUNG</u> and <u>Mr HUI</u> both considered that the existing measures would not be sufficient in ensuring B/Ds' compliance with their records management obligations.

In reply, Mr Andrew LIAO, SC, said that the ALSC paper only 45. summarized ALSC's observations in reviewing the archives laws of the five jurisdictions regarding the compliance framework of public records management regime. In gist, only the archives law of New Zealand had expressly provided that wilful or negligent contravention or non-compliance with any provision therein was a criminal offence. The archives law in Australia, Ireland and Singapore was silent on the consequences of non-compliance with the duties and requirements therein, although certain serious conducts (analogous to, inter alia, theft, criminal damage, etc.) were On the other hand, in England, a "naming and shaming" criminalized. approach was largely adopted. Mr LIAO, SC, stressed that ALSC had not reached any conclusion on non-compliance issues, and would continue to listen to public views and comments during the consultation period.

46. <u>The Chairman</u> noted that under the current administrative records management regime in Hong Kong, government servants were only liable to disciplinary action (such as verbal or written warnings) for non-compliance with the relevant rules and guidelines. She said that having regard to the recent incidents she mentioned earlier in paragraph 32 above as well as the loss of over three million Geographical Constituencies electors' personal data kept by the Registration and Electoral Office, which were important public records, the existing sanction was clearly not sufficient to achieve deterrent effect. 47. <u>Mr Andrew LIAO, SC</u>, agreed that the issue of sanctions needed to be studied carefully to ensure effective compliance by B/Ds with their records management obligations. As noted earlier, certain serious conducts (analogous to, inter alia, theft, criminal damage, etc.) were criminalized in some overseas jurisdictions. To gauge public views on this matter, ALSC had raised a relevant consultation question. <u>Mr LIAO, SC</u>, said that the responses to the consultation questions would assist ALSC to conduct a holistic review and finalize its proposals.

48. <u>The Chairman</u> further said that it was her observation that under certain legislation such as Cap. 486 and some election-related laws, relatively minor misconduct would be charged as criminal offences. In her view, criminal offences should not be ruled out as effective sanctions against non-compliances with the administrative records management regime, though the levels of penalties might be suitably prescribed to reflect the severity of such offences. In that connection, she also invited the view of ATISC on whether the existing sanctions for non-compliance with access to information requests should be increased.

49. In response, <u>Mr Russell COLEMAN, SC</u>, explained that ATISC recommended no sanction for mere negligence but proposed in Recommendation 18 an offence of deliberate destruction in the face of a request. He supplemented that ATISC was seeking the public's view on the question raised by the Chairman, i.e. whether the proposed criminal sanction would be appropriate.

50. <u>Mr HUI Chi-fung</u> considered that, as there would be provisions precluding any right of action in civil proceedings for failure to comply with the access to information provisions, the Administration might refuse to disclose the requested information by a number of unreasonable reasons. In addition, noting that the review of application decisions would be referred to The Ombudsman, <u>Mr HUI</u> asked whether it would be an offence if The Ombudsman considered that a public body was unable to comply with any of the requirements under the proposed access to information regime.

51. <u>Mr Russell COLEMAN, SC</u>, explained that ATISC had made two relevant recommendations in its consultation paper, focusing on the acts of individuals and that of public bodies respectively. In respect of the acts of individuals, Recommendation 18 proposed that it should be an offence to alter, erase, destroy or conceal records with intent to prevent disclosure. He further said that if a government department, bureau or public body failed to comply with a request for information (notwithstanding The Ombudsman's direction), the matter would be dealt with under Cap. 397.

### Consultation period

52. Noting that the two Subcommittees had spent five years in preparing the consultation papers, <u>Mr Alvin YEUNG</u> considered the three-month consultation period inadequate and suggested extending the period for both consultation papers.

53. In response, <u>Secretary (Acting) of LRC</u> said that the LRC Secretariat had also received requests to extend the consultation period. However, as some very substantive public responses on the consultation papers had already been received, the two Sub-committees hoped that they could resume work earlier with a view to finalizing respective proposals to LRC as soon as possible. Therefore, the two Sub-committees considered it inappropriate to grant a general extension of the consultation period. Notwithstanding this, <u>Secretary (Acting) of LRC</u> said that if individuals and groups needed more time to submit their written submissions on the consultation paper(s), they could write to the relevant Sub-committee, which would actively consider their requests.

# IV. Proposed creation of judicial posts and directorate posts in the Judiciary

(LC Paper No. CB(4)546/18-19(04)

- Judiciary Administration's paper on proposed creation of judicial posts and directorate posts in the Judiciary)

### Briefing by the Judiciary Administration

54. <u>Judiciary Administrator</u> ("JA") briefed members on the Judiciary's proposal to create a number of judicial posts and civil service directorate posts in the Judiciary ("the staffing proposal") as set out in the Judiciary Administration's paper, including:

- (a) the creation of three judicial posts of judge of the District Court ("DC") (JSPS 13) to cope with the increased workload in the Family Court; and
- (b) the creation of civil service directorate posts: one Administrative Officer Staff Grade ("AOSG") B1 post (D4) and one AOSG C post (D2) to strengthen the directorate structure of the Judiciary Administration.

### Discussion

55. <u>The Deputy Chairman</u> indicated support for the staffing proposal. He expressed concern about the long time taken for the Family Court to set the date for the hearing of the First Appointment, which could be up to six to nine months. He considered that this had reflected the shortage of judicial manpower and requested JA to find out the root problems.

56. In response, <u>JA</u> explained that there had been an increase in the number of cases handled by the Family Court in the past ten years, and these cases were demanding on judicial resources given the special nature, breadth and complexity of family and matrimonial disputes. While the number of judges and judicial officers ("JJOs") in the Family Court had been increasing to enhance the efficiency of case-handling, other factors also needed to be considered such as whether there were suitable manpower, whether court rooms and facilities in the Family Court were adequate, and whether the practices and procedures could be further improved. <u>JA</u> undertook that she would look into the matter raised by the Deputy Chairman.

57. <u>Mr Holden CHOW</u> said that he supported the proposed creation of judicial posts in the Family Court. He noted that unlike other types of cases, the nature of Family Court cases was such that even if key issues had been resolved, the parties would still be coming back to the Court to deal with related matters due to changes in circumstances over time, such as making applications for variation of maintenance orders granted and custody/access orders, etc. <u>Mr CHOW</u> asked whether the Judiciary would consider streamlining the procedures for handling such applications to reduce the manpower required.

58. In response, <u>JA</u> advised that the Judiciary had been reviewing the court practices and procedures constantly to ensure the efficient listing of cases and utilization of judicial resources and court time. She advised that the Judiciary had established a Working Group to carry out a review on Family Procedure Rules and had made a total of 133 recommendations. One of the recommendations was to introduce legislative amendments enabling the Family Court to have its own Masters to handle procedural matters and interlocutory applications. In so doing, the Family Court Judges would be able to focus on handling the substantive matters at issue. <u>JA</u> added that the relevant law drafting work was underway.

59. <u>The Chairman</u> supported the staffing proposal, in particular the proposal to strengthen the civil service directorate support for the Private Office of the Chief Justice of the Court of Final Appeal ("CJ"). She observed that being the head of the Judiciary, apart from hearing court cases, CJ had to give his attention to broader issues concerning the Judiciary and the legal profession,

such as keeping in view the developments of judiciaries in other jurisdictions, the training and development of JJOs, etc. <u>The Chairman</u> asked whether the staffing proposal could provide sufficient manpower to assist CJ.

60. In response, <u>JA</u> said that the number of posts proposed to be created was considered appropriate to meet the service demand at the moment. However, she agreed with the Chairman in her observation that CJ's duties had been heavy apart from judicial duties and there was an urgent need for the proposed AOSGC post, which would be designated as the Deputy Administrative Assistant to CJ ("DAA/CJ") to provide support for CJ's Private Office.

61. JA further explained that DAA/CJ would assist the current Administrative Assistant to CJ at AOSGB (D3) level to provide dedicated administrative support to CJ in planning for and attending official functions both within and outside Hong Kong and in exchanges with other jurisdictions. DAA/CJ would also assist in the organization of major events and conferences both locally and overseas, such as high level exchanges led by CJ and other senior judges with other judiciaries, and the Conference of Chief Justices of Asia and the Pacific to be held in Hong Kong in November 2019. JA added that CJ was also involved in matters relating to appointment of judges to sit in committees and boards and giving consent to legislative proposals relating to the legal professional bodies. DAA/CJ would also provide administrative support in those areas.

### **Conclusion**

62. <u>The Chairman</u> concluded that the Panel supported the Judiciary Administration's submission of the staffing proposal to the Establishment Subcommittee for consideration.

(At 6:22 pm, the Chairman extended the meeting for 15 minutes to 6:45 pm.)

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

(LC Paper No. CB(4)546/18-19(05)

- Administration's paper on Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill and Mainland in Judgments Matrimonial and Family

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### Briefing by the Administration

63. <u>Deputy Solicitor General (Policy Affairs) (Acting) of DoJ</u> ("DSG(P)(Ag)") briefed members on the proposed Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Bill ("Bill") and Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules ("Rules") for implementing 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* ("Arrangement"). She said that a public consultation to seek views on the draft Bill and Rules was launched on 8 February 2019 for one month.

### Views of the Hong Kong Bar Association

64. <u>Mr Jeremy CHAN and Ms Corinne D'A REMEDIOS of the Hong Kong</u> <u>Bar Association ("Bar Association")</u> said that the Bar Association was in principle supportive of the draft Bill and Rules, and would provide its detailed comments to DoJ later. Two specific comments raised by <u>Mr CHAN</u> were as follows:

(a) suggestion was made that consideration be given to granting discretionary power to the Court to extend the two-year restriction for a care-related order (Clause 9(1) of the Bill), i.e. the restriction that registration application must not seek to have the order registered if the non-compliance first occurred more than two years before the application was made. The discretionary power was necessary as there might be cases in which a child in the Mainland

came to live in Hong Kong two years after the non-compliance of the care-related order first occurred in the Mainland; and

(b) suggestion was made that the Rules of the High Court (Cap. 4A) ("RHC") should apply to all matters related to the registration of a specified order irrespective of whether the application was made in the Court of First Instance ("CFI") or DC, instead of the current proposal that RHC would apply if proceedings were before CFI, whereas the Rules of the District Court (Cap. 336H) would apply if the proceedings were before DC, which was inconsistent with the current practice of handling other Family Court cases.

### Views of The Law Society of Hong Kong

65. <u>Ms Barbara HUNG of The Law Society of Hong Kong ("Law Society")</u> indicated the Law Society's support of the Bill and Rules. She added that the Law Society would further liaise with DoJ to discuss about certain details in the draft Bill and Rules, in particular those relating to enforcement which were of concern to the legal practitioners.

66. <u>Ms Barbara HUNG</u> noted that the Arrangement would be implemented in the Mainland by way of judicial interpretation and in Hong Kong by way of legislation. She expressed in her personal capacity that she was concerned about how the judicial interpretation would operate to ensure that the judgments on matrimonial and family cases made in Hong Kong would be enforced in a fair manner in the Mainland.

(At 6:40 pm, the Chairman suggested and members raised no objection to further extend the meeting for 15 minutes to 7:00 pm.)

### Discussion

67. <u>The Deputy Chairman</u> agreed that there was a need for the proposed legislation. Sharing the concern of the Bar Association regarding the two-year restriction, he asked about the rationale of setting such a restriction. He also hoped that DoJ would consider whether discretionary power could be granted to the Court as suggested by the Bar Association.

68. <u>DSG(P)(Ag)</u> and <u>Ms Peggy AU YEUNG, Senior Government Counsel</u> of DoJ ("SGC") said that under the Arrangement, only an effective Mainland judgment given in a matrimonial or family case would be enforceable in Hong Kong. According to the Civil Procedure Law of the People's Republic of China, an application for the enforcement of an effective judgment should be made within two years from the date for performance specified in the judgment or, if no such date was specified, within two years from the date on which the judgment became effective. Where two years had lapsed, the Mainland court would consider if the other party would have any objection to enforcement.

69. <u>SGC</u> added that the principle that a judgment given by a foreign (or Mainland) court would only be enforced by the requested court if the judgment was enforceable in the place where it was given had also been reflected in the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597). She added that this was in line with the relevant Hague conventions. She said that DoJ would further study the views of the Bar Association regarding the two-year restriction relating to care-related orders.

70. <u>The Chairman</u> indicated support for the Arrangement and the draft Bill and Rules, and urged the Administration to introduce the Bill and Rules into LegCo as soon as possible. She expressed that although there were differences in the legal systems of the Mainland and Hong Kong, the ultimate aim was to protect the rights of parties in matrimonial and family cases. She also shared the view of the Bar Association regarding granting discretionary power to the Court on the two-year restriction.

71. <u>The Chairman</u> pointed out that under the Hong Kong legal system, the power of final adjudication was vested in the Court of Final Appeal. However, under the trial supervision system in the Mainland, it was possible for certain parties to initiate a review of a legally effective judgment subject to the fulfilment of certain conditions. This could result in the retrial of the case by the original trial court. <u>The Chairman</u> considered that, even if the chance of retrial under the trial supervision system was very rare, it was important to provide a clear definition in the Bill of what would be an effective judgment in the Mainland which could be recognized and enforced under the Arrangement.

### Conclusion

72. <u>The Chairman and the Deputy Chairman urged DoJ to carefully consider</u> members' views and the views collected in the public consultation, in particular those from the stakeholders including the two legal professional bodies, and refine the draft Bill and Rules with a view to introducing them into LegCo as soon as possible.

### VI. Any other business

73. There being no other business, the meeting ended at 6:49 pm.

Council Business Division 4 <u>Legislative Council Secretariat</u> 5 September 2019