

# **立法會**

## ***Legislative Council***

LC Paper No. CB(4)876/19-20  
(These minutes have been seen  
by the Administration)

Ref : CB4/PL/AJLS

### **Panel on Administration of Justice and Legal Services**

#### **Minutes of policy briefing-cum-meeting held on Monday, 27 April 2020, at 4:30 pm in Conference Room 2 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)  
Hon Dennis KWOK Wing-hang (Deputy Chairman)  
Hon James TO Kun-sun  
Hon Abraham SHEK Lai-him, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon CHAN Kin-por, GBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Steven HO Chun-yin, BBS  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon IP Kin-yuen  
Hon Elizabeth QUAT, BBS, JP  
Hon Martin LIAO Cheung-kong, GBS, JP  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, SBS, JP  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon YUNG Hoi-yan, JP  
Hon Tanya CHAN

Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LAU Kwok-fan, MH  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho

**Members absent** : Hon WONG Kwok-kin, SBS, JP  
Hon WU Chi-wai, MH  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHUNG Kwok-pan  
Hon Jimmy NG Wing-ka, BBS, JP

**Public officers attending** : **Agenda item III**

Judiciary Administration

Miss Emma LAU, JP  
Judiciary Administrator

Miss Patricia SO  
Deputy Judiciary Administrator (Development)

Ms Wendy CHEUNG  
Deputy Judiciary Administrator (Operations)

Miss Winnie WONG  
Assistant Judiciary Administrator (Development)<sup>1</sup>

**Agenda item IV**

Administration Wing, Chief Secretary for  
Administration's Office

Ms Esther LEUNG, JP  
Director of Administration

Ms Jennifer CHAN, JP  
Deputy Director of Administration (2)

**Agenda item V**

Department of Justice

Ms Teresa CHENG, SC  
Secretary for Justice

Mr Wesley WONG, SC  
Solicitor General

Ms Christina CHEUNG  
Law Officer (Civil Law)

Mr Paul TSANG  
Law Officer (International Law)

Mr David LEUNG, SC  
Director of Public Prosecutions

Ms Gracie FOO  
Director of Administration & Development

Ms Fanny IP  
Law Draftsman (Acting)

Dr James DING  
Commissioner of Inclusive Dispute Avoidance and  
Resolution Office

Administration Wing, Chief Secretary for  
Administration's Office

Ms Esther LEUNG, JP  
Director of Administration

Ms Jennifer CHAN, JP  
Deputy Director of Administration (2)

Legal Aid Department

Mr Thomas Edward KWONG, JP  
Director of Legal Aid

**Attendance by invitation : Agenda item III**

Hong Kong Bar Association

Mr Philip DYKES, SC

Ms Anita H K YIP, SC

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

**Staff in attendance :** Mr YICK Wing-kin  
Senior Assistant Legal Adviser 2

Mr Ambrose LEUNG  
Senior Council Secretary (4)6

Miss Katherine CHAN  
Council Secretary (4)6

Ms Emily LIU  
Legislative Assistant (4)6

Mr Jason LAI  
Clerical Assistant (4)6

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**I. Information paper(s) issued since the last regular meeting on 24 June 2019**

(LC Paper No. CB(4)1167/18-19(01) - Information paper on the legislative proposals for the implementation of the Information Technology Strategy Plan of the Judiciary provided by the Judiciary Administration

LC Paper No. CB(4)44/19-20(01) - Information paper on death investigations and inquests by the Coroner's Court provided by the Judiciary Administration

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| LC Paper No. CB(4)110/19-20(01) | - Information paper on Solicitors (Professional Indemnity) (Amendment) Rules provided by The Law Society of Hong Kong   |
| LC Paper No. CB(4)139/19-20(01) | - Information paper on Statute Law (Miscellaneous Provisions) Bill 2020 <sup>1</sup> provided by the Department of Justice  |
| LC Paper No. CB(4)293/19-20(01) | - Joint letter dated 28 October 2019 from Members of the pro-democracy camp requesting to prioritize the item on "Work of the Coroner's Court" for discussion   |
| LC Paper No. CB(4)375/19-20(01) | - Joint letter dated 28 February 2020 from Hon Elizabeth QUAT and Hon Holden CHOW Ho-ding proposing that the Panel should discuss matters relating to the setting up of special courts to handle prosecutions for public order related offences |
| LC Paper No. CB(4)376/19-20(01) | - Referral of a case from the Public Complaints Office of the Legislative Council Secretariat on matters relating to the mechanism for handling complaints about the Chief Justice's conduct  |

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<sup>1</sup> As advised by the Department of Justice subsequently, the information paper should be on "Statute Law (Miscellaneous Provisions) Bill 2019".

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| LC Paper No. CB(4)376/19-20(02)                         | - Referral of a case from the Public Complaints Office of the Legislative Council Secretariat on a proposal for amending The Ombudsman Ordinance (Cap. 397)                                      |
| LC Paper No. CB(4)406/19-20(01)                         | - Administration's letter dated 18 March 2020 on its review of non-commencement of ordinances/certain provisions of ordinances   |
| LC Paper No. CB(4)430/19-20(01)                         | - Joint letter dated 20 March 2020 from 22 Members concerning their request for rescheduling all committee meetings which are unrelated to the issues about the novel coronavirus infection      |
| LC Paper No. CB(4)432/19-20(01)                         | - Letter dated 20 March 2020 from Hon Dennis KWOK Wing-hang proposing that the Panel should invite submissions on the need and expectations on technological advancement in the judicial process |
| LC Paper No. CB(4)433/19-20(01)                         | - Letter dated 20 March 2020 from Hon Elizabeth QUAT on matters relating to conflict of interests involving a Public Prosecutor of the Department of Justice                                     |
| LC Paper Nos. CB(4)471/19-20(01) and CB(4)501/19-20(01) | - Letter dated 9 April 2020 to the Judiciary Administrator by the Clerk to Panel and the Judiciary Administrator's response)   |

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Members noted the above papers issued since the last regular meeting of the Panel on Administration of Justice and Legal Services ("the Panel") held on 24 June 2019. The Chairman then referred to the letter dated 20 March 2020 from the Deputy Chairman, proposing that the Panel should invite submissions on the need and expectations on technological advancement in the judicial process (LC Paper No. CB(4)432/19-20(01)).

2. The Deputy Chairman said that he had received a substantial amount of comments from legal profession reflecting disappointment with the Judiciary's use of information technology ("IT") during the General Adjourned Period ("GAP"), and he considered that the Judiciary should listen to their views of legal profession as well as other court users. Members agreed to include the above issue in the list of outstanding items for discussion ("the List").

3. The Chairman supplemented that the Panel had also issued two letters to the Judiciary Administration ("Jud Adm"), urging the Judiciary to make reference to other jurisdictions and explore whether there was any room for electronic means to handle portion of the court business.

**II. Items for discussion at the next meeting**

(LC Paper No. CB(4)448/19-20(01) - List of outstanding items for discussion)

Regular meeting in May 2020

4. Members noted that the following items would be discussed at the next regular meeting to be held on 25 May 2020:

- (a) Proposed creation of a judicial post in the Judiciary and making permanent a directorate post in Jud Adm;
- (b) Additional courtrooms and associated facilities at lower ground fourth floor in the High Court Building ("HCB"); and
- (c) Consultation paper on the proposed application of the United Nations Convention on Contracts for the International Sale of Goods to the Hong Kong Special Administrative Region ("HKSAR").

Joint letter from Ms Elizabeth QUAT and Mr Holden CHOW

5. The Chairman said that the joint letter from Ms Elizabeth QUAT and Mr Holden CHOW dated 28 February 2020 (LC Paper No. CB(4)375/

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19-20(01)) requested the Panel to discuss matters relating to the setting up of special courts to handle prosecutions for public order related offences arising from social events. She said that the joint letter had been referred to Jud Adm for response and its reply was detailed in LC Paper No. CB(4)501/19-20(01). After discussion, members agreed to include the request raised in the joint letter of Ms QUAT and Mr CHOW in the List.

Letter from Ms Elizabeth QUAT

6. Members noted Ms Elizabeth QUAT's letter dated 20 March 2020 (LC Paper No. CB(4)433/19-20(01)), requesting the Department of Justice ("DoJ") to brief the Panel on matters relating to the approval by DoJ for the application of conducting outside work by its staff, and the mechanism to prevent conflicts of interests. They agreed to include the request of Ms QUAT in the List.

Letter from Dr CHIANG Lai-wan

7. The Chairman referred to the letter tabled at the meeting from Dr CHIANG Lai-wan dated 27 April 2020 (LC Paper No. CB(4)522/19-20(01)) requesting DoJ to explain the starting points of sentencing for different offences to the public. After discussion, members agreed to include the above issue in the List.

Joint letter from the Deputy Chairman, Mr Alvin YEUNG, Dr KWOK Ka-ki, Ms Tanya CHAN and Mr Jeremy TAM

8. The Chairman referred to the joint letter tabled at the meeting from the Deputy Chairman, Mr Alvin YEUNG, Dr KWOK Ka-ki, Ms Tanya CHAN and Mr Jeremy TAM dated 27 April 2020 (LC Paper No. CB(4)522/19-20(02)) on reform of the current system to determine whether an offence was to be tried by judge and jury or by judge alone. After discussion, members agreed to include the above issue in the List.

**III. General adjournment of court hearings**

(LC Paper Nos. CB(4)347/19-20(01) - Letter dated 21 February 2020 and (02) from Dr Hon Priscilla LEUNG Mei-fun, Chairman of the Panel, to the Judiciary Administrator regarding the general adjournment of court hearings and the Judiciary Administration's response



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- LC Paper No. CB(4)347/19-20(03) - Letter dated 20 February 2020 from Hon Dennis KWOK Wing-hang on the general adjournment of court hearings
- LC Paper No. CB(4)360/19-20(01) - Judiciary Administrator's letter dated 27 February 2020 to Dr Hon Priscilla LEUNG Mei-fun, Chairman of the Panel, on preparation for court resumption
- LC Paper No. CB(4)380/19-20(01) - Judiciary Administrator's letter dated 6 March 2020 to Dr Hon Priscilla LEUNG Mei-fun, Chairman of the Panel, on preparation for court resumption
- LC Paper No. CB(4)383/19-20(01) - Letter dated 12 March 2020 from Dr Hon Priscilla LEUNG Mei-fun, Chairman of the Panel, to the Judiciary Administrator regarding the general adjournment of court hearings
- LC Paper No. CB(4)431/19-20(01) - Judiciary Administrator's letter dated 20 March 2020 to Dr Hon Priscilla LEUNG Mei-fun, Chairman of the Panel, on preparation for court resumption
- LC Paper No. CB(4)436/19-20(01) - Letter dated 25 March 2020 from the Judiciary Administrator enclosing an information paper and a statement issued by the Chief Justice on the General Adjourned Period
- LC Paper No. CB(4)443/19-20(01) - Letter dated 30 March 2020 from the Judiciary Administrator on the General Adjourned Period

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LC Paper No. CB(4)470/19-20(01) - Letter dated 9 April 2020 from the Judiciary Administrator on the General Adjourned Period

LC Paper No. CB(4)500/19-20(01) - Letter dated 23 April 2020 from the Judiciary Administrator on the General Adjourned Period)

9. The Chairman said that owing to the outbreak of the coronavirus disease-2019 ("COVID-19") in Hong Kong, all hearings of the courts/tribunals scheduled for early 2020 were adjourned except urgent and essential hearings/matters. Some members expressed concerns about the possible impact of the general adjournment of court proceedings during GAP and requested Jud Adm to discuss this with members at the Panel meeting in February 2020. As that Panel meeting was rescheduled to a later date on consideration of the latest situation of COVID-19, Jud Adm was requested to provide a written response to the Panel.

10. Members noted that, in her response dated 24 February 2020, the Judiciary Administrator ("JA") provided information on the measures taken or to be taken by the Judiciary to address and alleviate the impact on the operation of the judicial system, both during and after GAP ("the GAP measures"). Subsequently, there were seven letters from JA which provided updated information about the GAP measures and covered actions which had been taken by the Judiciary in exploring different options to address the pressure on court business given the uncertain duration of GAP.

Briefing by the Judiciary Administration

11. At the invitation of the Chairman, JA briefed members on the latest developments and issues regarding GAP with the aid of a PowerPoint presentation (LC Paper No. CB(4)514/19-20(01)). She informed members that GAP would end on 3 May 2020 and all court proceedings would generally resume as safely as circumstances permitted from 4 May 2020. Court and tribunal registries would also start to re-open by stages from 6 May 2020, the first stage including the registries of the Court of Final Appeal and the High Court.

12. JA stressed that the decision to impose and extend GAP, as well as the various GAP measures, were made by the Chief Justice of the Court of Final Appeal ("the Chief Justice") after striking a careful balance between public health considerations and the public interest involved in the due administration of justice, while at the same time taking into account any legal and logistical

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constraints. She then gave a summary of the GAP measures adopted, including:

- (a) special arrangements for all urgent and essential court hearings and business to be handled promptly during GAP;
- (b) constant review of the scope of urgent and essential court hearings and business to be handled during GAP;
- (c) proactive case management by the Judges and Judicial Officers ("JJOs") so that clear and prompt directions would be given to the parties as necessary;
- (d) considering or inviting parties to consider disposing the cases on paper as far as possible, in particular for civil cases; and
- (e) conducting court hearings via alternative means/mode such as video conferencing or telephone conferencing as appropriate.

13. On the resumption of court hearings, JA said that having regard to public health situation and the need for social distancing, court business would initially be conducted under reduced capacity but the Judiciary would conduct as much court business as practicable. The Judiciary would closely monitor the situation and make adjustments where appropriate. She then briefed members about the details of the resumption of court hearings and the re-opening of court/tribunal registries and account offices.

14. JA further said that the Judiciary would continue to put in place appropriate preventive and crowd management measures, as well as to pursue the greater use of IT to support and facilitate the conduct of court business in the future.

Views of the Hong Kong Bar Association

15. Mr Philip DYKES, SC, of the Hong Kong Bar Association ("the Bar Association") considered that both the Judiciary and legal profession would have learned a lesson from the experience during the outbreak of COVID-19. To mitigate GAP's impact on court business as well as to prepare for the possible recurrence of pandemic in the future, the Judiciary should maintain a close dialogue with the legal profession on matters relating to the use of IT for court business in the long run.

16. Ms Anita YIP, SC, of the Bar Association added that the Judiciary should overcome its inertia towards upgrading its IT system which had led to

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the extension of GAP. Based on her own experience, she considered that the Judiciary should look into the following areas on an urgent basis:

- (a) in addition to the only Technology Court located in HCB, more Technology Courts should be set up so that more remote hearings for court cases could be conducted; and
- (b) its entire technological system for conducting court business should be upgraded, in particular the Digital Audio Recording and Transcription Services (DARTS) System which was found outdated and incompatible with most of the service providers and hardware used by the legal profession.

Discussion

*Impact on court business due to the General Adjourned Period*

17. The Chairman said that justice delayed was justice denied, hence the general adjournment of court proceedings during GAP had inevitably affected the access to justice for parties and applicants in relevant proceedings. Ms Claudia MO expressed particular concern about the delay in bail hearings for some youngsters who were involved in the recent social events.

18. In response, JA reiterated that the decisions relating to GAP were made after striking a careful balance between public health considerations and the public interest involved in the due administration of justice. The Judiciary had also made special arrangements for all urgent and essential court hearings and business to be handled promptly.

19. Ms Claudia MO pointed out that during GAP, the scope of urgent and essential court business had been adjusted 11 times. In this regard, she questioned whether the Judiciary's frequent adjustments had exposed its unpreparedness for coping with challenges during the outbreak of COVID-19.

20. JA replied that the Judiciary recognized that the longer the GAP, the more matters might become urgent and essential. As such, the Judiciary had been constantly reviewing and refining the scope of urgent and essential business which should be handled during GAP on a regular basis.

21. Mr HUI Chi-fung enquired about the criteria for determining the scope of urgent and essential business to be dealt with during GAP, and for the listing and handling of cases after resumption of court proceedings. He also declared that he had instituted private prosecutions regarding certain criminal cases in January/February 2020. Mr HUI pointed out that while the hearing dates for

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his cases were still pending, the hearings for certain prosecution cases instituted by DoJ had been scheduled, which was unfair.

22. In response, JA advised that it was not appropriate for Jud Adm to comment on individual cases or any type of cases. However, Court Leaders at all levels of courts would take account of relevant factors in determining the listing and handling of cases and, if the parties to a case considered that a case should be dealt with urgently during GAP, they might bring it to the attention of the court. JA added that, to ensure the orderly general resumption of court proceedings in May 2020, parties concerned would be given clear notification and directions on the mode of hearing, as well as sufficient lead time for preparation.

23. Ms YUNG Hoi-yan considered that many Family Court cases held up during GAP, in particular the divorce cases, had to be handled urgently. Noting that the court proceedings would generally resume from 4 May 2020, she asked why the Family Court registry would only be re-opened ten days later on 13 May 2020. In reply, JA explained that on the basis of previous experience, Jud Adm considered that adopting a staggered and progressive approach in re-opening court/tribunal registries and accounts offices would help the orderly resumption of court business, taking into account the public health situation, crowd management measures and its manpower.

24. Ms Anita YIP, SC pointed out that when the registry of the Family Court was re-opened for a brief period of time in mid-March 2020, some clerks of solicitors' firms had to line up at the registry as early as 5:30 am in order to get a ticket to file documents which had been piling up. To reduce the inconvenience caused by GAP on court users, Ms YIP, SC considered that the Judiciary should make better arrangements when the Family Court was re-opened on 13 May 2020.

25. In response, JA explained that special arrangements had been made to regulate the flow of people and handle the upsurge of caseload during the initial period of the re-opening of individual registries and offices. Measures included the introduction of ticketing and triage system, the provision of expanded registry areas and counters, the enhancement of enquiry services by experienced staff as appropriate, and the provision of drop boxes for documents which did not require immediate interaction with registry staff. JA further said that the Judiciary would try its best to generally resume court proceedings and business in an orderly manner.

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*Impact on caseload*

26. The Chairman expressed concerns about the caseload accumulated during GAP, which had added to the backlog cases arising from the Occupy Movement in 2014, the social events in 2019, as well as the non-refoulement claims. She considered that the Judiciary should consider temporary measures (including the appointment of more Deputy Judges to deal with the heavy caseload) to relieve the shortage in judicial manpower.

27. The Chairman also said that as she had previously suggested, the Judiciary should make reference to the special court set up in the United Kingdom which ran around the clock to deal with cases related to the London riot in 2011, and set up similar special courts in Hong Kong to help clear the backlog. JA advised that in response to the upsurge in the number of court cases related to the recent social events, the Judiciary would take a multi-pronged approach to deal with cases expeditiously and efficiently as far as practicable, while at the same time ensuring that they were handled fairly and strictly in accordance with the law. However, for criminal cases, they covered a wide range of offences that carried varying maximum sentence. The complexity (such as the number of charges, defendants and witnesses) and gravity also differed from case to case. Hence these cases would be tried in different levels of courts having regard to the sentence that might be imposed on conviction. The case was similar for civil cases. It might not be practicable to set up a dedicated court to handle all cases related to the recent social events, and it might not be the best and most expeditious way to dispose of these cases either.

*Use of information technology*

28. The Chairman considered that the Judiciary was quite conservative in using IT for court business. Given that wide application of IT was the global trend, the Judiciary should learn from the experience of the outbreak of COVID-19 and take a proactive approach in formulating its long-term IT strategy for court business. In response, JA advised that the Judiciary had adopted a positive and proactive approach in the use of IT in support of court operations. In this regard, since a few years ago, under the Information Technology Strategy Plan ("ITSP"), the Judiciary had been proactively developing by phases an integrated court case management system ("iCMS") across all levels of courts to enable an electronic mode for handling court-related documents and payments.

29. Mr Holden CHOW considered that under such exceptional and fast changing public health situation, it was inevitable that all stakeholders involved in the judicial system were affected, disrupted and inconvenienced to varying extent as a result. Nevertheless, the outbreak of COVID-19 might provide an

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opportunity for the Judiciary to expedite its use of IT for court business and explore the feasibility of different options, such as perusal of documents by electronic means in court proceedings and conducting remote hearings for court cases.

30. In reply, JA advised that the Judiciary had adopted an active and pragmatic approach in addressing the challenges arising from GAP, and had also been taking incremental steps so as to use alternative modes to hear submissions in civil cases by video-conferencing facilities ("VCF"). She added that the Judiciary had issued in April 2020 a Guidance Note for Remote Hearings for Civil Business in the High Court (Phase 1: Video-Conferencing Facilities), and some cases had been tried out using VCF with satisfactory results. The feedback from legal practitioners was also generally positive. JA further said that the Judiciary was actively considering the expansion of the use of VCF for remote hearings in some other civil courts. The Judiciary would continue to adopt an active approach in enhancing the use of IT for court business even when the public health situation eased.

31. Noting that the use of IT in support of the court operations must be in accordance with the law, Mr Holden CHOW considered there was urgency to provide the necessary legislative backing for the use of IT for court business and services. In response, JA explained that the Judiciary recognized the need and urgency for providing the legislative backing for the intended introduction of e-filing and e-transactions, including e-payment, for court proceedings. Under ITSP, the Judiciary had been developing by phases iCMS across all levels of courts to enable an electronic mode for handling court-related documents and payments. The Court Proceedings (Electronic Technology) Bill, which sought to provide the necessary legal basis for implementing iCMS in general, had been introduced into the Legislative Council in early January 2020.

*(Post-meeting note: The Court Proceedings (Electronic Technology) Bill received third reading at the Council meeting of 17 July 2020.)*

32. JA also said that, pending the passage of the Court Proceedings (Electronic Technology) Bill and subsequently the enactment of the related subsidiary legislation, the Judiciary had continued to explore and introduce administrative measures within the confines of its IT security policy and practices to enable the handling of certain documents by electronic means. Examples included the creation of special email accounts to enable parties to lodge certain documents to the court electronically to facilitate paper disposal, and the expansion of the scope of an existing electronic submission platform in the District Court to other courts. JA informed members that legal practitioners' feedback on these administrative measures was positive.

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33. Ms Claudia MO raised that Jud Adm should respond to the Bar Association's concerns about the Judiciary's performance in the use of IT during GAP. The Deputy Chairman shared the Bar Association's view that with only one Technology Court which was located in HCB, it was far from adequate in meeting the increasing demand for conducting remote hearings on court cases.

34. In reply, JA advised that the Judiciary was actively pursuing the greater use of IT to support and facilitate the conduct of court business during GAP in the context of its long-term IT strategies. JA also clarified that except for the existing Technology Court located in HCB, the Judiciary had also set up additional and similar technology courts in the Court of Final Appeal and the West Kowloon Law Courts Building. Mobile facilities had also been procured to meet the potential greater demand for remote hearings conducted in different courts in the short and longer run.

35. The Deputy Chairman said that he had been following very closely the discussion among the Bar Association, The Law Society of Hong Kong ("the Law Society") and the Judiciary on the use of IT for court business during GAP and in the longer run, and the legal profession had considered the Judiciary's use of IT during GAP rather disappointing. He also pointed out that the court system was outdated and incompatible with most legal profession's hardware, while other jurisdictions had already been using more advanced technology, such as application of cloud technology for conducting remote hearings. He urged the Judiciary to better utilize its resources, e.g. the funding approved by the Finance Committee in May 2013 for the implementation of Phase I of ITSP, to enhance the use of IT for court business.

36. In response, JA explained that apart from the consideration of compliance with the law, the Judiciary considered it important that any application of IT must be secure, and the integrity of the specific aspects of the court operation involving the use of IT could not be jeopardized or compromised. The Judiciary also recognized the importance of engaging the stakeholders for views and suggestions, and listening to their feedback in devising necessary measures and planning for the way forward. The Judiciary therefore had met with major stakeholders, including DoJ, the Bar Association and the Law Society, and was alert to their concerns and had taken into account the various suggestions put forward by them. JA said that the Judiciary considered the relevant discussions professional, fruitful and constructive, and would continue to adopt an open-minded, positive, and pragmatic approach to liaise closely with all stakeholders in working out any further arrangements.



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**IV. 2019-2020 Judicial Service Pay Adjustment**

(File Ref: AW-275-010-015-001 - Legislative Council brief on 2019-2020 Judicial Service Pay Adjustment

LC Paper No. CB(4)318/19-20(04) - Paper on judicial service pay adjustments prepared by the Legislative Council Secretariat (updated background brief))

37. At the invitation of the Chairman, Director of Administration ("DoA") briefed members on the proposed judicial service pay adjustment for 2019-2020, the details of which were set out in the Legislative Council brief. Members noted that the Acting Chief Executive in Council had, on the recommendation of the Standing Committee on Judicial Salaries and Conditions of Service, decided that the pay for JJOs for 2019-2020 should be increased by 5.63%.

38. The Chairman reminded members that in accordance with Rules 83A and 84 of the Rules of Procedure, they should disclose the nature of any direct or indirect pecuniary interests relating to the subject under discussion at the meeting before they spoke on the subject.

Discussion

*Recruitment and retention of talents in the Judiciary*

39. Dr KWOK Ka-ki enquired about the effectiveness of the upward pay adjustments in attracting new blood and the grooming and retention of existing talents. In response, DoA advised that the annual salary review for JJOs was just one of the measures to facilitate the recruitment of talents and their retention in the Judiciary. The other measures included the Benchmark Study to be conducted once in every five years to check whether judicial pay was kept broadly in line with the movements of legal sector earning over time, and the regular conduct of recruitment exercises. DoA also advised that according to the information provided by Jud Adm, a total of 128 judicial appointments had been made in the 15 open recruitment exercises conducted between 2011 and 2019, and a new round of recruitment exercise would be launched in the second half of 2020.

40. DoA further said that the Judicial Officers (Extension of Retirement Age) (Amendment) Bill 2019, which sought to implement the Judiciary's proposals regarding the extension of the statutory retirement ages and related arrangements for JJOs, had been passed by the Legislative Council in late 2019

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and this was an important measure to facilitate the recruitment of experienced and senior legal practitioners to the Judiciary and the retention of JJOs.

41. The Chairman considered that most of the legal practitioners who joined the Judiciary were motivated by their aspirations to serve the public as JJOs rather than being attracted by their salaries or conditions of services. Therefore, improving the remuneration package might not be seen as attractions to them. In view of the need to handle the heavy backlog of court cases in the short run and to increase the judicial manpower in the long run, the Chairman suggested that the Administration and Jud Adm should be more proactive in devising new measures for attracting new blood to the Judiciary, such as reaching out to law schools or any places where persons suitable for judicial appointments might be identified at an early stage.

*Other issues*

42. The Deputy Chairman said that it was his belief that most JJOs had been able to adjudicate cases fairly and impartially. However, it was inappropriate for JJOs to express their political views or mean comments during court hearings or in their judgments, which would generate suspicion whether the courts had really exercised judicial power independently. The Deputy Chairman called upon JJOs to exercise prudence and self-restraint in their expressions so as not to damage the public's confidence in, and its perception of, the independence and impartiality of the Judiciary.

43. In response, DoA said that the courts had all along been exercising judicial power independently and strictly in accordance with the law. This was also reiterated by the Chief Justice in his speech delivered at Ceremonial Opening of the Legal Year 2020, in which he said that in the discharge of their responsibilities, JJOs looked only to the letter and the spirit of the law and nothing else, whilst political, economic or social considerations did not enter into the equation. DoA further said that the Chief Justice had reminded JJOs about the importance of an independent Judiciary earlier in 2019.

44. The Chairman pointed out that recently, there had been vandalism and arson to court buildings and blatant personal attacks and insults launched against specific JJOs, which might be related to judgments on cases relating to the recent social events. The Chairman urged that the security of court buildings and protection of the personal safety of JJOs should be enhanced whilst, at the same time, members of the public should express their grievances or disagreement over court judgments in a more civilized way and must not resort to the use of violence.

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Conclusion

45. After deliberation, the Chairman concluded and members agreed that the Panel supported the Administration's submission of the funding proposal to the Finance Committee for consideration.

**V. Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's 2019 Policy Address**

(LC Paper No. CB(4)318/19-20(02) - Paper provided by the Department of Justice

LC Paper No. CB(4)318/19-20(03) - Paper provided by the Chief Secretary for Administration's Office)

46. At the invitation of the Chairman, Secretary for Justice ("SJ") briefed members on the 2019 policy initiatives of DoJ as set out in LC Paper No. CB(4)318/19-20(02). DoA then briefed members on the policy initiatives of the Chief Secretary for Administration's Office in relation to the Judiciary and legal aid as set out in LC Paper No. CB(4)318/19-20(03).

47. The Chairman also referred members to note the Administration's paper on Vision 2030 for Rule of Law, which was one of DoJ's key policy initiatives in the Chief Executive's 2019 Policy Address, tabled at the meeting.

*(Post-meeting note: The speaking note of SJ and the Administration's paper on Vision 2030 for Rule of Law tabled at the meeting were issued to members vide LC Paper No. CB(4)513/19-20 on 29 April 2020.)*

48. The Chairman invited members to discuss and give their views.

Performance of the Secretary for Justice and the Department of Justice

49. Dr KWOK Ka-ki referred to the popularity figures of SJ in a recent opinion poll, which were the lowest among all principal officials, and pointed out that there had been deterioration in the rule of law since SJ assumed office. He said that SJ should be held accountable for that with the proposed introduction of the Fugitive Offenders Bill, introduction of the Prohibition on Face Covering Regulation under the Emergency Regulations Ordinance (Cap. 241) by the Administration, and the unfairness in making prosecution decisions relating to the social events in 2019. Mr KWONG Chun-yu concurred and expressed strong view against SJ for failure to uphold the rule of

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law, defend the implementation of the principle of "One Country, Two Systems" and the Basic Law.

50. In response, SJ said that the most important work of DoJ was to provide independent and professional legal advice to the Government and, as head of DoJ, she also supervised the conduct of criminal prosecutions by DoJ. SJ further said that while prosecutorial decisions were difficult to make and would not please everybody, DoJ would continue to make decisions professionally according to the law and would not be influenced by any political pressure.

Vision 2030 for Rule of Law

51. Dr Fernando CHEUNG said it was ironic for SJ to promote the policy initiative of Vision 2030 for Rule of Law, while the actual state of the rule of law had been deteriorating. Dr CHEUNG cited the news reports that people who did not know each were unfairly given fixed penalty tickets for gathering in groups of more than five, hence contravening the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G), and showed that public's confidence in the rule of law in Hong Kong had diminished due to a lack of check and balance against the usage of power by the authorities.

Article 22 of the Basic Law and the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region

52. Mr KWONG Chun-yu referred to a statement made by the Constitutional and Mainland Affairs Bureau on 18 April 2020 which, among other things, stated that "the Liaison Office of the Central People's Government ("CPG") in HKSAR ("LOCPG") is one of the three organizations set up by the Central Government in accordance with Article 22(2) of the Basic Law ("BL")". He expressed concerns that the above statement was quickly superseded by another one issued later on the same day removing the reference to BL 22(2). Mr KWONG queried what was wrong with the first statement and sought an explanation of the Administration's position on this matter.

53. In response, SJ said that in order to gain a proper understanding of BL 22, members should know about three important premises:

- (a) Basic Law was a National Law enacted by the National People's Congress in accordance with Article 31 of the Constitution of the People's Republic of China ("the Constitution");
- (b) China was a unitary state where the Central Government had overall jurisdiction; and

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- (c) in accordance with BL 12, HKSAR was a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under CPG.

54. SJ went on saying that according to BL 22(2), "if there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in HKSAR, they must obtain the consent of government of the Region and the approval of CPG".

55. SJ further said that the antecedent of LOCPG, i.e. Xinhua News Agency (Hong Kong Branch) was founded in May 1947 and had been in existence prior to 1997. The State Council decided to change the name of the Xinhua News Agency (Hong Kong Branch) to LOCPG in December 1999 and the decision had been clearly announced in Letter No. 5 [2000] of the State Council issued on 15 January 2000. Hence, LOCPG was not set up in accordance with BL 22(2).

*Article 22(3) of the Basic Law*

56. Mr KWONG Chun-yu was concerned that, if BL 22(2) was not applicable to LOCPG, its personnel would not be required to abide by the laws of HKSAR under BL 22(3). Dr Fernando CHEUNG expressed a similar concern and queried whether LOCPG was operating above the laws.

57. In response to whether LOCPG was operating above the Basic Law, SJ clarified that she had never said so. She said that though LOCPG was not set up under BL 22(2) and hence BL 22(3) was not applicable to it, LOCPG and its personnel were required to abide by the laws on two grounds. Firstly, Article 5 of the Constitution stated, among other things, that "all state organs and armed forces, all political parties and social organizations, and all enterprises and public institutions must abide by the Constitution and the law" which was applicable to LOCPG. Secondly, according to Letter No. 5 [2000] of the State Council, LOCPG and its staff must strictly abide by the Basic Law and local laws, i.e. the laws of HKSAR.

*Article 22(1) of the Basic Law*

58. Noting SJ's opinion that LOCPG shall abide by the Basic Law and the laws of HKSAR, Mr KWONG Chun-yu enquired why LOCPG was not required to abide by BL 22(1) which stated that no department of CPG might interfere in the affairs which HKSAR administered on its own.

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59. In response, SJ reiterated that BL 22(1) was only applicable to departments of the Central Government, etc., set up in accordance with BL 22(2), which was not applicable to LOCPG. Since LOCPG was not set up under BL 22(2) and was authorized by CPG to handle issues relating to Hong Kong and entrusted with the authority and responsibility to represent CPG to express views, BL 22(1) was not applicable to LOCPG and no question of interference existed.

*Supervisory power of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region*

60. Mr Alvin YEUNG and Ms Claudia MO questioned the source of the supervisory power of LOCPG as recently referred to by CPG and the HKSAR Government ("HKSARG"), which they said was not found in the Basic Law. Dr Fernando CHEUNG also said that the notion of supervisory power had not been mentioned either in Letter No.5 [2000] of the State Council, nor from the public remarks made at the time by the Director of LOCPG, JIANG Enzhu.

61. Reiterating that BL 22(1) was not applicable to LOCPG, SJ said that the source of LOCPG's supervisory power should be understood under BL 12 mentioned earlier. As such, CPG of course had the power and responsibility to express views and concerns about the affairs of HKSAR, and had the relevant supervisory power. SJ said that the right question should be whether LOCPG had been entrusted with the authority and responsibility to represent CPG and whether it had abided by the laws in discharging such duties.

62. Ms Claudia MO expressed concerns that with its supervisory power, LOCPG would exert disproportionate influence on HKSARG due to its position, despite SJ's explanation that the exercising of LOCPG's power in HKSAR was allowed under the law. Mr CHAN Chi-chuen pointed out that a clear distinction should be drawn between the power for LOCPG to monitor HKSARG and the power to give instructions.

63. SJ responded that as the representative of CPG in HKSAR, LOCPG of course had the supervisory power to oversee the exercise of HKSAR's power and expressed its views and concerns. SJ reiterated that LOCPG would not take actions on affairs to be administered by HKSARG on its own under the principle of high degree of autonomy in accordance with the Basic Law.

*Past statements made by the Government*

64. Mr Alvin YEUNG pointed out that Mr Patrick NIP, the current Secretary for Constitutional and Mainland Affairs, and his predecessors including Mr Michael SUEN Ming-yeung had from time to time stated that LOCPG was

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set up under BL 22(2). He asked SJ whether her predecessors had failed to advise the Administration about the wrong statements made.

65. SJ cited two papers provided by the then Constitutional Affairs Bureau, one to the Panel in June 1999 (LC Paper No. CB(2)2254/98-99(02)) and the other to the Panel on Constitutional Affairs in January 2007 (LC Paper No. CB(2)898/06-07(02)), and clarified that the papers had clearly stated the Administration's position that LOCPG was the former Xinhua News Agency (Hong Kong Branch) renamed in 2000 and hence was not set up under BL 22(2).

The conduct of prosecutors

66. Mr HUI Chi-fung referred to a court case relating to the recent social events where the prosecutor was alleged to have used insulting words, e.g. cockroaches, to describe the defendants on the social media. He asked SJ whether the prosecutor had violated the principle of impartiality and whether his/her act was acceptable.

67. SJ said that it was inappropriate for her to comment on individual cases. She pointed out that, if the prosecutor concerned was an outside counsel handling a case briefed out by DoJ, DoJ would look at his/her performance and if problem with his/her professional conduct was found, it would be handled by the Bar Association or the Law Society as appropriate. If the prosecutor was a DoJ's staff, as a civil servant, he/she was required to observe BL 99 and the Civil Service Code ("the Code").

68. SJ said that commitment to the rule of law, being objective and impartial, and political neutrality were among the core values enshrined in the Code and, therefore, any complaint against the political neutrality of a DoJ's prosecutor would be considered comprehensively according to BL 99 and the Code. She added that DoJ's prosecutors had to make prosecutorial decisions in an objective manner based on the law, evidence and the Prosecution Code.

69. Ms Elizabeth QUAT referred to her letter dated 20 March 2020 (LC Paper No. CB(4)433/19-20(01)) to the Panel Chairman raising concerns about a DoJ's prosecutor who published a book teaching the youths about their rights after being arrested and how to evade the so-called "legal trap". She said that this had generated grave concerns among members of the public and undermined their confidence in the impartiality of DoJ's prosecutors. Ms QUAT requested DoJ to explain the approval mechanism by DoJ for the application of outside work by its staff, and the mechanism to prevent conflicts of interests.

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70. SJ said that, as the case mentioned by Ms Elizabeth QUAT was being handled, she would not comment on it but reiterated that all civil servants were required to observe BL 99 and the Code. However, to avoid any public's misunderstanding, the prosecutor concerned had been assigned to take up other duties for the time being. SJ added that the case was handled under DoJ's existing mechanism for processing application for undertaking outside work from its staff. SJ said that DoJ would review whether the mechanism needed to be improved after the case had been dealt with and would afterwards provide further response regarding the case in due course.

71. The Chairman cited another case in August 2019 in which a group of DoJ's prosecutors had jointly but anonymously issued an open letter (with DoJ's letterhead) to criticize SJ and other named officers for being politically biased in making prosecution decisions relating to social events. The Chairman said that members of the public felt shocked by the incident and questioned whether DoJ's staff supervision to ensure their political neutrality was effective.

Judicial independence

72. Mr CHAN Chi-chuen expressed concerns about the issuance of press releases by the Hong Kong and Macao Affairs Office of the State Council in support of the arrests of 15 pro-democracy activists in April, saying that the high-profile statements from a state organ would place undue pressure on the courts when handling the cases.

73. SJ stressed that anyone would have the right to air their views towards the courts' judgment as long as their comments did not constitute contempt or undermine judicial independence. SJ then referred to BL 85 which stated that the courts shall exercise judicial power independently, free from any interference, and she expressed confidence in JJOs who would handle cases impartially according to the laws and evidence only.

Basic Law education

74. The Chairman said that members' great concerns about the applicability of BL 22 to LOCPG had clearly shown a lack of understanding of the Basic Law, in particular on the relationship between CPG and HKSARG. She pointed out that besides BL 22, BL 48 and various other Articles of the Basic Law had also provided for the relationship between CPG and HKSARG, and the Basic Law should be understood holistically but not in a fragmented manner by taking out individual Article(s) to study. The Chairman also said that the issue had reflected a basic difference in the approach taken to understand the Basic Law, i.e. the common law approach generally adopted in HKSAR and the civil law approach adopted in the Mainland.



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75. The Chairman urged the Administration to step up the Basic Law education among the general public and in schools, and also among civil servants. She opined that the row between HKSAR and the Mainland would be reduced by cultivating a better understanding about the relationship between CPG and HKSAR as set out in the Basic Law, e.g. about the role and power of LOCPG and other powers the Central Government had under other provision of the Basic Law.

*(At about 6:44 pm, the Chairman directed that the meeting originally scheduled to end at 7:00 pm, be extended for 15 minutes to 7:15 pm.)*

76. Dr Junius HO said that due to the uniqueness of the principle of "One Country, Two Systems", there was a need for DoJ to work together with the Basic Law Committee to enhance people's understanding of the Basic Law. He said that some people held the view that any interpretation of the Basic Law by the National People's Congress Standing Committee would undermine the rule of law, which was incorrect as in fact the power to interpret should be seen as an integral part of the judicial system of HKSAR after reunification.

77. In response, SJ said that there was a need to enhance public understanding of the Basic Law, and DoJ had been stepping up on-going promotion of the Basic Law, both in schools and in the community, for example through animation in the Studio DoJ, other publications and training courses.

**VI. Any other business**

78. There being no other business, the meeting ended at 7:10 pm.