

立法會

Legislative Council

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Panel on Administration of Justice and Legal Services

Minutes of meeting held on Monday, 25 May 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 WU Chi-wai, MH
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, SBS, MH, JP
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
Hon Jimmy NG Wing-ka, BBS, JP
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 Jeremy TAM Man-ho

Member attending : Hon CHAN Hak-kan, BBS, JP

Members absent : Hon WONG Kwok-kin, SBS, JP
Hon CHUNG Kwok-pan
Hon KWONG Chun-yu

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)

Mr Jock TAM
Assistant Judiciary Administrator (Corporate Services)

Mr Francis CHENG
Principal Executive Officer (Project Planning and Accommodation)

Architectural Services Department

Mr Frank WONG
Project Director 1

Mr LAM Kwai-sang
Chief Project Manager 103

Mr Kevin SUEN Chi-hang
Senior Project Manager 121

Agenda item IV

Judiciary Administration

Miss Emma LAU, JP
Judiciary Administrator

Miss Patricia SO
Deputy Judiciary Administrator (Development)

Ms Wendy CHEUNG
Deputy Judiciary Administrator (Operations)

Mr Jock TAM
Assistant Judiciary Administrator (Corporate Services)

Agenda item V

Judiciary Administration

Miss Emma LAU, JP
Judiciary Administrator

Miss Patricia SO
Deputy Judiciary Administrator (Development)

Mr Jock TAM
Assistant Judiciary Administrator (Corporate Services)

Agenda item VI

Department of Justice

Mr Peter WONG
Deputy Law Officer (Treaties & Law)

Ms Lorraine CHAN
Deputy Principal Government Counsel (Treaties & Law)

Miss Katie KWONG
Senior Government Counsel (Treaties & Law)

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 meeting

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|-----------------------------------|--|
| (LC Paper No. CB(4)557/19-20(01)) | - Information paper on Biennial review of the amount of damages for bereavement under the Fatal Accidents Ordinance (Cap. 22) provided by the Department of Justice |
| LC Paper No. CB(4)596/19-20(01) | - Letter dated 19 May 2020 from Hon Elizabeth QUAT proposing that the Panel should discuss matters relating to the assignment of cases by the Judiciary to a District Court Judge) |

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Members noted the above papers issued since the last meeting.

II. Items for discussion at the next meeting

(LC Paper No. CB(4)583/19-20(01) - List of outstanding items for discussion)

2. Members noted that the following items would be discussed at the next regular meeting to be held on 22 June 2020:

- (a) Implementation of the recommendations made by the Law Reform Commission of Hong Kong;
- (b) The Law Reform Commission of Hong Kong's Report on Review of Substantive Sexual Offences; and
- (c) Proposed framework for cooperation with the Mainland in insolvency matters.

3. Ms Elizabeth QUAT and Dr CHIANG Lai-wan respectively enquired about the possible timeframe for the Panel on Administration of Justice and Legal Services ("the Panel") to discuss items they had proposed earlier on the list of outstanding items for discussion (items 26 and 27). The Chairman said that she had already raised the matters with the Administration, and would follow up as appropriate as to whether sufficient time could be made available for the Panel to discuss these matters at its next regular meeting.

4. Ms Tanya CHAN referred to the joint letter dated 22 May 2020 from five members belonging to the Civic Party requesting the Panel to discuss matters relating to the draft Decision on establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security deliberated by the National People's Congress ("NPC") (LC Paper CB(4)634/19-20(01)). She said that, as the matter was of serious concern to the public, there was urgency for the Panel to discuss it at a special meeting.

5. The Deputy Chairman, Mr Jeremy TAM and Mr Alvin YEUNG concurred, saying that since the national security law applicable to HKSAR to be enacted by the Standing Committee of NPC ("NPCSC") ("the national security law") would have major impact to the principle of "One Country, Two Systems", it was imperative that the Administration had to clarify its details.

6. Mr Steven HO suggested that, given that the national security law was to be enacted by NPCSC rather than the HKSAR Government, the Chairman

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should seek the views of the Administration regarding whether or not, and to what extent, the relevant information could be made available to the public. Mr Holden CHOW and Mr Martin LIAO expressed the view that it would be premature for the Panel to discuss the matter before the issuance of further details of the national security law.

7. The Chairman concluded that she would consider the appropriate way to follow up the matter when more information of the proposed national security law became available.

(On the Chairman's instruction, the meeting was suspended at 4:48 pm and was resumed at 4:58 pm.)

8. The Chairman informed members that it was her original decision to invite the Judiciary Administration ("Jud Adm") to discuss the item on assignment of cases by the Judiciary at the present meeting. However, in response to the Panel's invitation, the Judiciary Administrator ("JA") advised that the Chief Justice of the Court of Final Appeal ("CJ") considered that since the assignment of cases was a matter for the Judiciary, it was not appropriate for Jud Adm to discuss the topic in a Panel meeting. As a result, she decided to invite Jud Adm to discuss the mechanism for handling complaints against judicial conduct ("the mechanism") under item V of the present meeting.

III. Additional courtrooms and associated facilities at lower ground fourth floor in the High Court Building

(LC Paper No. CB(4)583/19-20(02) - Judiciary Administration's paper on additional courtrooms and associated facilities at lower ground fourth floor in the High Court Building)

9. At the invitation of the Chairman, JA briefed members on the major works project for the construction of additional courtrooms and associated facilities on the lower ground fourth floor of the High Court Building ("HCB") to meet operational needs of the courts ("the Project").

10. 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, and observed the relevant rules on voting under the circumstances.

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Discussion

11. Mr POON Siu-ping indicated support in principle for the Project, and enquired about the details of the estimated annual recurrent expenditure arising from the Project. In reply, Principal Executive Officer (Project Planning and Accommodation) of Jud Adm ("PEO(P&A")) advised that the estimated annual recurrent expenditure arising from the Project was \$1.7 million, which included the repair and maintenance costs of electrical and mechanical facilities, information technology facilities, and digital sound recording systems, etc.

12. Noting that the construction works of the Project were expected to commence in late 2020 for completion by phases in the third quarter of 2023, Mr POON Siu-ping expressed concern about the impact of the Project if the funding approval from the Finance Committee could not be sought within the current legislative session. In response, Project Director 1 of the Architectural Services Department advised that in that case, the planned timetable of the Project would be inevitably affected. JA further explained that the shortage of courtrooms had posed limitations on measures such as appointing additional Judges and Judicial Officers ("JJOs") or Deputy Judges and exercising flexible listing to tackle the increase, in particular the sudden increase, of cases. She added that while the long-term accommodation needs of the High Court would be met by the new HCB at Site 5 of the new Central Harbourfront under planning, new HCB was still at a very preliminary planning stage. Therefore, there was an imminent need to construct additional courtrooms and associated facilities in HCB to meet operational needs of the courts.

13. Dr Junius HO said that while he supported any proposed increase in resources for the Judiciary to meet its operational needs, the Judiciary should first review the functions and structures of the existing 46 courtrooms and associated facilities in HCB and see whether these rooms and facilities could be re-shuffled for better utilization to meet the operational needs. On the other hand, from the lessons learnt from the impact of the outbreak of coronavirus disease-2019 ("COVID-19"), the Judiciary should explore more unconventional modes for handling court businesses of the High Court, such as conducting hearings/meetings through video conferencing and on-line meeting technologies, hence reducing the reliance on physical space. Dr HO considered that the above measures might help save the resources required for the Project which could only solve the operational needs of the courts in short to medium term.

14. In reply, JA explained that with the increased caseload and complexity of cases, the existing 39 criminal/civil courtrooms in HCB had been grossly inadequate to meet existing and future court services requirements. The proposed six courtrooms in the Project were relatively small in size to cater for

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cases with a smaller number of litigants. JA also explained that, since the outbreak of COVID-19, the Judiciary had been proactively taking incremental steps to explore the use of alternative modes of hearing such as video-conferencing and telephone hearings, and would maintain close communication with all relevant stakeholders in devising necessary measures and planning for the way forward.

15. The Chairman expressed support for the Project as the provision of additional civil courtrooms and associated facilities would cope with the increased caseload and workload of the High Court. However, she suggested that the Judiciary should also increase the number of JJOs at all levels of court to clear the thousands of cases in backlog.

16. Dr Junius HO noted that the High Court Library had to be relocated to the first floor of the High Block, Queensway Government Offices, in order to release space required for the Project. He expressed concern that this would cause inconvenience to library users. JA explained that the construction of additional courtrooms was feasible only if space could be vacated by the High Court Library, and that the new location for the High Court Library was in close proximity to HCB. It was believed that the relocation of the High Court Library would not have significant effect on the existing level of services provided to library users. She advised that this was the most practical arrangement, taking into account the overall need for provision of services to court users and the smooth operation of the courts.

17. The Chairman noted that upon relocation to Queensway Government Offices, the High Court Library would deploy more mobile shelving systems to achieve more efficient use of space. Nevertheless, given the increasing popularity of searching information online, the Chairman suggested that the Judiciary should consider digitizing certain legal reference books and research materials kept by the High Court Library. It would not only make them easier for access, but also further overcome the space and physical constraints faced by the High Court Library in the long run. In response, JA advised that members' views would be taken into account when formulating long-term plans for meeting the accommodation needs of HCB.

Conclusion

18. After discussion, the Chairman concluded that the Panel supported the Administration's submission of the funding proposal to the Public Works Subcommittee for consideration and endorsement. Members agreed.

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IV. Proposed creation of a judicial post in the Judiciary and making permanent a directorate post in the Judiciary Administration

(LC Paper No. CB(4)583/19-20(03) - Judiciary Administration's paper on proposed creation of a judicial post in the Judiciary and making permanent a directorate post in the Judiciary Administration)

Briefing by the Judiciary Administration

19. JA briefed members on the Judiciary's proposals to create two permanent posts ("the staffing proposals") as set out in Jud Adm's paper, including:

- (a) creation of a judicial post of Justice of Appeal of the Court of Appeal of the High Court ("CA") (JSPS 17) ("the proposed post of Justice of Appeal") to cope with the increased workload of CA arising from, inter alia, the upsurge of civil appeals in relation to non-refoulement claims cases filed with CA; and
- (b) creation of a Principal Executive Officer ("PEO") post (D1) ("the proposed PEO post"), which was a civil service directorate post, to rationalize the existing manpower of the Accommodation Section so as to provide on-going and long-term strategic and management support to Jud Adm on accommodation and court security matters.

Discussion

The proposed post of Justice of Appeal

20. The Chairman and Mr POON Siu-ping expressed support for the creation of the proposed post of Justice of Appeal in the Judiciary.

21. Noting that the rapid surge in court cases, in particular the civil appeals in relation to non-refoulement claims cases in recent years had imposed a great pressure on workload as mentioned in paragraph 5(a) of Jud Adm's paper as well as the speech delivered by CJ at the Ceremonial Opening of the Legal Year 2019, the Chairman considered that the creation of the proposed post of Justice of Appeal alone would not suffice to cope with the heavy workload of CA. In response, JA advised that the Judiciary had all along been taking a pragmatic and prudent approach to increase its judicial manpower according to operational needs, and it would continue reviewing its need for additional manpower based on the established mechanism.

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22. Ms Elizabeth QUAT expressed concerns about the upsurge of appeals in relation to non-refoulement claims cases filed with CA, and asked whether Jud Adm had assessed the effectiveness that the proposed post of Justice of Appeal could help relieve the workload of CA.

23. JA replied that, as there had been a clear sign of increasing workload for CA in recent years, a number of measures had been adopted by the Judiciary to cope with and help improve court waiting times. One of these involved deploying Judges of the Court of First Instance of the High Court ("CFI Judges") to sit as additional Judges of CA. While such arrangement might provide temporary relief to the judicial manpower of CA, there was a need for the judicial manpower of CA to be strengthened by the creation of the proposed post of Justice of Appeal. This would not only increase listing flexibility and maximize the number of divisions that could be formed (i.e. five divisions, vis-à-vis four divisions at most currently, at any one time given that three Justices of Appeal were required to form a division) to hear cases, but also relieve the pressure on CFI Judges.

24. JA further said that the Statute Law (Miscellaneous Provisions) Bill 2019 had received first reading in January 2020 which, among other things, introduced amendments to the High Court Ordinance (Cap. 4) to extend the use of a 2-Judge bench of CA to determine appeals from CFI in relation to the refusal of leave to judicial review or the grant of leave to judicial review on terms, which would facilitate the more efficient handling of cases.

25. Ms Elizabeth QUAT considered that many claimants in cases of non-refoulement claims were "bogus refugees" who had overloaded Hong Kong with financial burden and security problems. She urged that the Judiciary must have sufficient resources to deal with the civil appeals in relation to non-refoulement claims cases as soon as possible. Noting that there were also appeal cases arising from cases relating to the social events, Ms QUAT cast doubt on whether the creation of the proposed post of Justice of Appeal alone would be sufficient to relieve CA's existing heavy workload.

26. In reply, JA said that besides those appeal cases mentioned by Ms Elizabeth QUAT, there were also other appeal cases to be heard by CA and the time required for processing a case would be affected by a basket of factors such as the readiness of the parties to the case, complexity of the case, the availability of Judges of CA and courtrooms in HCB. Many of these factors as well as the recent outbreak of COVID-19 were beyond the control of the courts. While it was difficult to quantify the effect that the proposed post of Justice of Appeal would have on the time taken to clear CA's backlog, JA assured members that its creation would certainly help alleviate the workload of CA.

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27. Deputy Judiciary Administrator (Operations) supplemented that the numbers of appeals in relation to non-refoulement claims cases filed with CA were 393 and 351 in 2018 and 2019 respectively. 392 cases were disposed of in 2018 whereas, in 2019, 236 cases.

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28. Ms Elizabeth QUAT considered that Judiciary should provide more information to members for consideration when seeking approval for the creation of the proposed post of Justice of Appeal. She also requested Jud Adm to provide the total number of outstanding appeal cases (including those in relation to non-refoulement claims) awaiting processing as at end-2019. JA undertook to consider how best to provide the relevant information as appropriate after the meeting.

29. The Chairman pointed out that with the increasing workload of CA, the court waiting times would inevitably be lengthened and, as justice delayed was justice denied, the extremely slow pace in clearing the backlog cases would be unfair to the community. The Chairman reiterated her view that the creation of the proposed post of Justice of Appeal alone was far from sufficient and urged the Judiciary to critically review its manpower and other resources with a view to formulating comprehensive measures to clear the backlog cases as soon as possible. Ms Elizabeth QUAT shared the Chairman's views.

The proposed post of Principal Executive Officer

30. Mr POON Siu-ping indicated support in principle for the creation of the proposed post of PEO in Jud Adm. Noting that the proposed post was to make permanent a supernumerary PEO post (i.e. PEO(P&A)) which had already lapsed on 1 April 2020, Mr POON enquired about the transitional arrangements before approval of Finance Committee was granted.

31. JA explained that CJ had approved the use of a Principal Magistrate post for keeping the supernumerary PEO(P&A) on a temporary basis in view of the operational needs. She stressed that the temporary deployment of the vacant judicial post had not affected the operation of the Magistrates' Courts as the Principal Magistrate post was a judicial vacancy on establishment at that juncture.

32. Mr POON Siu-ping further enquired whether the proposed PEO would be involved in the new HCB project as mentioned in the previous agenda item. JA answered in the affirmative and added that the proposed PEO would also oversee the planning and implementation of the new District Court project, as well as formulating and implementing long-term accommodation strategy for new Magistrates' Courts in Hung Shui Kiu, Tseung Kwan O and Hong Kong Island.

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33. Citing previous cases of security threats to the safety of JJOs in courts, recent vandalism and arson to court buildings as well as the blatant personal attacks and insults launched against specific JJOs, the Chairman expressed great concerns about the court security and the safety of JJOs in courts. She hoped that the proposed PEO, whose duties included matters relating to court security, would help Jud Adm in enhancing the court security through various means, including the application of advanced technology more proactively.

34. In reply, JA advised that the Judiciary attached great importance to court security and the safety of JJOs and court users to ensure that the administration of justice could proceed in a safe and orderly manner. She advised that members had been briefed at the Panel meeting in December 2017 and during the Panel's visit to HCB in May 2019 on the Judiciary's measures to enhance security in law courts buildings/premises, including the plan to implement appropriate security screening at law courts buildings in phases according to operational needs. She added that the proposed PEO would also be responsible for the formulation and implementation of security measures on crowd management in the hearing of high-profile cases at law courts buildings/premises. In order to implement those measures smoothly, there was a genuine and operational need to create the proposed PEO post to enhance strategic overview at directorate level in the planning of crowd management and court security measures.

Conclusion

35. After deliberation, the Chairman concluded that the Panel supported the Administration's submission of the staffing proposals to the Establishment Subcommittee for consideration and endorsement. Members agreed.

V. The mechanism for handling complaints against judicial conduct: an update since the last information note to the Panel

(LC Paper No. CB(4)583/19-20(04) - Judiciary Administration's paper on the mechanism for handling complaints against judicial conduct: an update since the last information note to the Panel

LC Paper No. CB(4)583/19-20(05) - Paper on mechanism for handling complaints against judicial conduct prepared by the Legislative Council Secretariat (updated background brief))

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36. JA briefed members on the implementation of the improvement measures on the mechanism since the Panel was last informed of its progress in July 2018, as set out in LC Paper No. CB(4)583/19-20(04).

Discussion

Matters relating to the reasons for sentence delivered by a District Judge

37. Mr IP Kin-yuen referred to the statement made by CJ today (i.e. 25 May 2020) regarding the Reasons for Sentence delivered by a District Judge on a recent case ("the statement"). In the statement, CJ expressed that the Reasons for Sentence had caused controversy in that there was a risk that some reasonable, fair-minded and well-informed persons could reasonably take the view that the principles he mentioned in the statement might have been compromised in that a wrong perception was given. Mr IP asked how many complaints had been received by Jud Adm against the District Judge concerned.

38. Mr IP Kin-yuen also expressed that, while complaints against judicial decisions would not be entertained under the mechanism, the Department of Justice should have appealed against the sentence delivered by the District Judge to uphold justice for the victims.

39. Ms Elizabeth QUAT pointed out that when delivering sentence on criminal cases, it was not uncommon for JJOs to express their opinions other than legal points, especially if domestic violence or youngsters were involved. Ms YUNG Hoi-yan said that while she respected the statement made by CJ, she considered that the District Judge concerned should not be criticized as he was only recording his observations on facts but not making any political statements in the Reasons for Sentence.

40. The Chairman noted from the statement that for the reasons as set out therein, it was decided that the District Judge concerned should not deal with any cases involving a similar political context for the time being. She considered that the Judiciary could elaborate more about that decision to allay JJOs' concerns on expressing opinions in judgments.

41. The Deputy Chairman supported the views expressed in the statement in which CJ had reiterated some important principles that JJOs should adhere to so as to uphold judicial independence and impartiality. He reminded the Judiciary to be cautious that, while it should continue its efforts in handling complaints against judicial conduct, it should ensure that the principles of judicial independence and impartiality would not be compromised in dealing with these complaints. Dr Junius HO suggested that the Judiciary should

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consider the need for reviewing the Guide to Judicial Conduct ("the Guide") which had been drawn up for some time.

42. In response to members' views and concerns, JA said that CJ had set out his views regarding the case in his statement and Jud Adm had nothing to add. Since the processing of the complaints was still ongoing, the Judiciary was not in a position to provide the relevant information on complaints. She pointed out that the Guide set out important principles relating to judicial conduct. The Guide included, among others, three classes of cases calling for disqualification, namely, actual, presumed or apparent bias, and the arrangement regarding this case was in line with the principles of the Guide.

43. JA also reiterated that in line with the cardinal principle of judicial independence, complaints against judicial decisions could not and would not be handled under the mechanism. Any dissatisfaction with judicial decisions could only be dealt with through appropriate legal procedures such as lodging an appeal by parties to proceeding. Matters regarding whether a party would lodge an appeal was outside Jud Adm's purview.

Matters concerning judicial conduct

44. Ms Elizabeth QUAT and Mr Holden CHOW said that there were other recent cases which aroused public concerns on judicial conduct, including three JJOs expressing their political views anonymously in the media, a High Court Judge signing a joint public petition against the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019, and the appointment of a former member of a political party and District Councillor as Permanent Magistrate.

45. The Chairman, Mr Steven HO and Ms YUNG Hoi-yan expressed grave concerns against three JJOs who expressed their views on political issues anonymously in the media. They enquired whether the Judiciary had investigated into the matter and about the Judiciary's response on the media reports. In reply, JA said that the Judiciary would not comment on the media reports.

46. The Chairman strongly urged the Judiciary to conduct investigation into the matter. She said that the Judiciary should not take the matter lightly as these reports might lead others to believe that the controversial views on political issues had the support of JJOs, and could put into question the impartiality of JJOs and even the Judiciary.

47. Based upon her own experiences, the Chairman suggested that the Judiciary might consider asking whether any JJOs had made those remarks, and

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followed up with the issue of a public statement if misleading information was provided in the media reports. Mr Steven HO concurred and said that if the Judiciary did not investigate into the matter, it would weaken the public confidence in whether the Judiciary was really upholding the principles in the statement.

48. In response, JA said that having regard to the independence and impartiality of the Judiciary, CJ had reminded all JJOs that they should refrain from expressing comments on political and other controversial issues. As regards members' views, she would relay them to CJ.

49. Ms Elizabeth QUAT and Mr Holden CHOW were concerned that CJ had issued the statement concerning the District Judge promptly but not for the other cases mentioned above. They questioned whether the Judiciary would adopt a fair and consistent approach in handling these cases. Ms QUAT said that it was important that the same yardstick be adopted.

50. The Chairman and Ms YUNG Hoi-yan suggested that measures should be developed to facilitate the filing of complaints against the alleged misbehaviour committed by anonymous JJOs. Mr IP Kin-yuen noted that there was a considerable number of complaints lodged against individual JJOs regarding the remarks made in their judgments on cases relating to the social events, which were of the same or similar contents. He was concerned that the mechanism might have been abused for personal attack against individual JJOs, and enquired about the measures to be taken by the Judiciary to protect JJOs from unreasonable criticisms.

51. In response, JA said that the Judiciary had always been handling complaints against judicial conduct in a fair and impartial manner. Under the established mechanism, the Judiciary would conduct investigation if the required information was provided.

Appointment and removal of Judges

52. The Chairman pointed out that according to Article 89 of the Basic Law ("BL"), a judge of court of HKSAR might only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by CJ and consisting of not fewer than three local judges. She enquired if the cases against the three anonymous JJOs and the High Court Judge as mentioned above were substantiated, and whether their conduct would amount to misbehaviour under BL 89 so that they might be removed. JA replied that, as the Chairman's question involved interpretation of the Basic Law, it was not appropriate for her to make any comment.

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53. Mr Holden CHOW and Mr Steven HO queried about the mechanism of judicial appointment and questioned why a legal professional, who was a former member of and District Councillor representing a political party which clearly stated its stance against BL 23 and in support of the notion "achieving the justice by violating the law", would have been appointed. Mr HO further asked about how the Judiciary could ensure that JJOs appointed would truly uphold the Basic Law and the principle of "One Country, Two Systems".

54. In response, JA said that JJOs had been chosen on the basis of their judicial and professional qualities in accordance with BL 92. She further said that none of the serving substantive JJOs were members of political parties.

Other issues

55. Dr Junius HO said that the current system dealt with judicial conduct matter upon receipt of complaints. In order to raise public confidence in the Judiciary, Dr HO suggested that the Judiciary should consider introducing further proactive measures such as setting certain benchmarks on the expected caseload to be handled by individual JJOs, ensuring the efficiency in handling court cases, and maintaining the consistency of sentences imposed for different offences.

56. In response, JA said that Dr Junius HO's concerns on the assignment of cases and efficiency in handling court case were not matters directly related to judicial conduct to be dealt with under the complaint handling mechanism. She added that the time required for completing a court case could be affected by a host of factors such as the complexities of the cases, and various measures had been taken forward by Court Leaders with a view to enabling the court cases be dealt with as efficiently as practicable.

Conclusion

57. The Chairman said that public concerns over matters relating to judicial conduct had been increasing. She suggested that there might be a need for the Judiciary to consider ways to follow up anonymous complaints and complaints filed against JJOs whose identity could not be established. The Chairman added that the public would support the Judiciary for its continued adherence to the principle of impartiality.

(At 6:52 pm, the Chairman directed that the meeting be extended by 15 minutes.)

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VI. 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

(LC Paper No. CB(4)572/19-20(01) - 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

LC Paper No. CB(4)572/19-20(02) - Executive summary of the 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

LC Paper No. CB(4)583/19-20(06) - 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 prepared by the Legislative Council Secretariat (updated background brief))

58. Deputy Law Officer (Treaties & Law) of the Department of Justice ("DLO") briefed members about the public consultation paper (LC Paper No. CB(4)572/19-20(01)) ("the consultation paper") issued on 2 March 2020 to seek public views and comments on whether the United Nations Convention on Contracts for the International Sales of Goods ("CISG") should be applied to Hong Kong, and the related issues.

Reasons for Hong Kong not being a party to the Convention

59. The Chairman queried why CISG was not applicable to Hong Kong in the past, while many of its trading partners had become Contracting States of CISG. In response, DLO said that prior to 1 July 1997, CISG was not applied

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to Hong Kong because the United Kingdom was not a Contracting State, while the status quo was maintained after 1997.

Benefits for Hong Kong

60. The Chairman queried what benefits the application of CISG would bring to Hong Kong, in particular members of the legal profession. In response, DLO said that the application could assist in promoting external trade as, at present, CISG had 93 Contracting States including trading partners of Hong Kong such as Mainland China, the USA, certain European countries and countries participating in the Belt and Road Initiative. He also said that regarding trade between Hong Kong businesses and businesses from newly developing countries or economies, who might not be familiar with each other's laws, CISG could provide a more neutral platform for them to trade by reducing certain legal barriers. Furthermore, as CISG cases might often be resolved by means of arbitration, the application could provide an opportunity to further enhance Hong Kong's status as an international legal and dispute resolution services centre.

61. DLO further advised that the application of CISG to Hong Kong and implementing it in Hong Kong law might benefit the legal profession by increasing the opportunities for Hong Kong lawyers from the perspective of advising on relevant trade contracts and dispute resolution.

Effect of differences between the United Nations Convention on Contracts for the International Sales of Goods and Hong Kong law

62. Ms YUNG Hoi-yan noted the effect that the various differences between CISG and existing Hong Kong laws might have on the application of CISG to Hong Kong, and enquired how this would be overcome. She further enquired about the potential conflicts between CISG and the Sales of Goods Ordinance (Cap. 26), and whether a Hong Kong party could opt out of CISG if it was applied to Hong Kong.

63. In response, DLO explained that CISG was relatively more pro-contract in the sense that its policy was to keep the contract alive, even in the event of breach, rather than allow for easy termination. Based on its analysis, the Administration could see no fundamental conflict between CISG and Hong Kong law making it impossible for the application of CISG to Hong Kong. DLO also pointed out that the flexibility of CISG allowed for the parties to derogate from certain provisions of CISG or exclude it entirely.

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64. In response to Ms YUNG Hoi-yan's further enquiry about how CISG would be implemented if it was applied to Hong Kong, DLO advised that, subject to the results of the consultation, the Administration would seek such application under BL 153 and its implementation in Hong Kong law by way of enacting a new stand-alone Ordinance, the consultation draft of which had been set out in Annex 4.1 of the consultation paper for comments.

65. In response to the Chairman's enquiry, DLO said that the consultation period would last until end of September 2020, which would be a few months longer than usual taking the outbreak of COVID-19 into consideration.

VII. Any other business

66. There being no other business, the meeting ended at 7:08 pm.

Council Business Division 4
Legislative Council Secretariat
25 August 2020