

# 立法會

## *Legislative Council*

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

#### **Purpose**

This report gives an account of the major work of the Panel on Administration of Justice and Legal Services (“the Panel”) during the 2023 session of the Legislative Council (“LegCo”). It will be tabled at the Council meeting of 6 December 2023 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

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

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007, 2 July 2008 and 26 October 2022 for the purpose of monitoring and examining policy matters relating to the administration of justice and legal services. The terms of reference of the Panel are in **Appendix 1**.

3. The Panel comprises 13 members, with Hon Martin LIAO Cheung-kong and Hon YUNG Hoi-yan elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix 2**. During the 2023 session, the Panel continued to provide a forum for the exchange and dissemination of views on policy matters relating to the administration of justice and legal services. The major work of the Panel was summarized in the ensuing paragraphs.

#### **Policy initiatives of the Department of Justice**

##### Defending and promoting rule of law on all fronts

4. At the Panel meeting on 3 July 2023, the Administration briefed members on the Department of Justice (“DoJ”)’s initiatives to promote the rule of law on

all fronts. Whilst members appreciated DoJ's efforts in promoting rule of law through various initiatives, some were concerned that the content of these initiatives were too conceptual and abstract for the general public to understand.

5. There was a suggestion that more emphasis should be placed on enhancing the public understanding of statutes and case laws, the two cornerstones of Hong Kong's common law system. To promote a better understanding of statutes, some members proposed that DoJ should take the lead role in publicizing newly enacted laws, rather than the responsible policy bureaux. The Administration explained that the responsible policy bureaux typically led publicity of new laws, with DoJ providing assistance on legal issues. Some members noted that certain statutes relating to people's livelihood, such as the Employment Ordinance (Cap. 57), were complex and difficult to comprehend, and proposed that such laws should be reviewed and simplified as part of the ongoing systematic review of statutory laws of Hong Kong ("the Systematic Review") steered by the Secretariat of the Law Reform Commission of Hong Kong ("LRC").

6. In response to a suggestion to enhance public understanding of case laws, the Administration replied that notable judgment summaries were already available on DoJ's website. To promote an understanding of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("HK National Security Law"), a compendium of annotations of the HK National Security Law was also in the pipeline.

7. Some members voiced disappointment at the lukewarm response to the Administration's rule of law educational activities on social media and websites, and critiqued the outdated or English-only materials on these platforms. The Administration undertook to keeping such online contents up-to-date. Members noted with concerns the two surveys conducted by the Hong Kong Federation of Youth Groups in 2021 and 2023 which shed light on declining confidence and understanding of rule of law among the youth, and considered that the surveys revealed weak embrace of law-abiding values of teenagers.

8. The Administration acknowledged these surveys' significance and mentioned its efforts like the Rule of Law Education Train-the-Leaders Programme ("the Programme") to train up members from different sectors as leaders to disseminate correct messages on the rule of law to the general public including teenagers. Some members proposed recruiting secondary teachers for the Programme, to guide students rule of law learning.

9. Other concerns raised by members include the progress of the Hong Kong's Rule of Law Database launched by the Administration in November 2021 and the working relationship between the Steering Committee on Rule of Law Education and the Legal Enhancement and Development Office in DoJ, and the

lack of a consolidated list of initiatives relating to the rule of law education organized by various policy bureaux and departments (“B/Ds”) and other non-governmental organizations for public information.

10. The Administration also briefed members on the Mainland and overseas visits conducted by DoJ in the first half of 2023 to promote Hong Kong’s legal and dispute resolution services. Members appreciated DoJ’s efforts in promoting Hong Kong’s sound and robust common law system to overseas under the “One Country, Two Systems” principle, in line with the National 14<sup>th</sup> Five-year Plan positioning Hong Kong as an international centre for arbitration and dispute resolution services.

11. At the Panel’s policy briefing cum meeting on 6 November 2023, members expressed strong indignation about smears against Hong Kong’s rule of law from some jurisdictions, especially a proposed United States bill sanctioning Hong Kong officials and judges over the implementation of the HK National Security Law. They called for solidarity in telling good stories about Hong Kong’s legal and judicial systems and defending against foreign interference.

12. The Administration advised that it adopted a multi-pronged approach including the Hong Kong Legal Week to showcase Hong Kong’s legal system to judges, legal practitioners and academics overseas from foreign countries and dispel misguided views overseas. It also conducted rule of law education locally and seized opportunities during overseas visits to clarify misunderstandings.

13. Some members suggested that DoJ should plan visits to jurisdictions that were inimical towards Hong Kong in recent years as Hong Kong’s image had been skewed through ill-intentioned propaganda in these countries, and such visits could help set the record straight. The Administration replied that it was planning visits to common law jurisdictions but had not set timelines, considering DoJ’s workload priorities and geopolitical tensions. Meanwhile, DoJ would promptly issue statements refuting untruthful claims against Hong Kong’s rule of law and enforcement of the HK National Security Law.

14. The Administration advised that, as a robust Hong Kong’s legal system and rule of law was the bedrock for the sound development of various sectors, DoJ was collaborating with various B/Ds in conducting visits having regard to the visits’ nature and foci. For example, representatives from the Intellectual Property Department (“IPD”) were invited to join DoJ’s trips to the Guangzhou-Hong Kong-Macao Greater Bay Area (“GBA”) and Chengdu as both involved intellectual property matters.

15. On the other hand, the Deputy Secretary for Justice (“DSJ”) had visited the three prominent private international law organizations headquartered in

Europe in March 2023, namely the International Institute for the Unification of Private Law, the Hague Conference on Private International Law and the United Nations Commission on International Trade Law and attended a number of conferences to promote Hong Kong's sound and robust legal system and its unique advantages to the local political and business communities. DSJ had also defended against baseless criticisms of Hong Kong's rule of law and the enforcement of the HK National Security Law.

### Establishing the Hong Kong International Legal Talents Training Academy

16. At the Panel's policy briefing cum meeting on 6 November 2023, the Administration briefed members on the proposed establishment of the Hong Kong International Legal Talents Training Academy ("the Academy"). Members strongly supported the establishment of the Academy to promote talent exchanges in countries involved in the Belt and Road Initiative ("B&R countries") and provide foreign-related legal talent training for our country, as well as cultivate legal talents who are familiar with international law, common law, civil law, and national legal systems. This was instrumental for strengthening Hong Kong's legal and dispute resolution services and promoting the use of Hong Kong law internationally.

17. In response to enquiries about stakeholders' involvement in establishing the Academy and the estimates on its resource requirements, the Administration advised it would engage as many stakeholders as practical, including the Hong Kong Bar Association ("HKBA"), The Law Society of Hong Kong ("the Law Society"), law schools and relevant legal bodies. The first step was to set up the Hong Kong International Legal Talents Training Office and the Expert Committee for Hong Kong International Legal Talents Training ("Expert Committee") in 2024. The Expert Committee would facilitate effective stakeholder consultation to achieve the Academy's aim of nurturing international legal talents. Considerable resources would be needed but the exact requirements would be assessed after the office and the committee were set up.

### Consolidating Hong Kong's position as a centre for international legal and dispute resolution services

18. At the Panel's policy briefing cum meeting on 6 November 2023, DoJ was commended for its plans to strengthen ties with members of the Association of Southeast Asian Nations and B&R countries. There was a suggestion that business opportunities arising from Indonesia's capital relocation project should be explored. It was also suggested that a unified legal framework for different jurisdictions be worked out in collaboration with B&R countries.

19. In response, the Administration advised that a unified legal framework was desirable but had difficulties to be implemented in the near future, whilst promoting Hong Kong law as the governing law was most beneficial to the legal sector. The Administration agreed with members' view that Mainland enterprises using Hong Kong as a springboard and the headquarters economy initiative could help boost its position as an international centre for legal and dispute resolution services. Members urge the Administration to capitalize on the successful implementation of the policy initiatives of the Financial Services and the Treasury Bureau on developing "Headquarters economy".

#### Deepening mediation culture and the integration of GBA-Hong Kong legal practices

20. The Administration noted members' concerns about the pace of developing mediation to alleviate court workload and expressed that it was committed to working with the Judiciary to introduce various measures, such as introducing instant mediation for family cases, building confidence in the mediation system and mediators and promoting the use of mediation in building management disputes.

21. Some members suggested that the Oaths and Declarations Ordinance (Cap. 11) be amended to empower Hong Kong lawyers to administer oaths in GBA. In reply, the Administration advised that it was a long-held legal tradition that the administration of oaths had to take place within the jurisdictions concerned.

22. Members also noted that during the visit to Beijing from 28 May to 2 June 2023, DoJ had had meetings with the National Development and Reform Commission, the State-owned Assets Supervision and Administration Commission of the State Council, the Ministry of Commerce, etc. to enhance stakeholders' understanding of Hong Kong's legal system and dispute resolution services, and to promote the adoption of Hong Kong law as the applicable law in contracts, using Hong Kong's legal services and choosing Hong Kong as a seat of arbitration.

23. During the visit to Guangzhou and Shenzhen led by the Secretary for Justice ("SJ") in June 2023 with a delegation comprising representatives from the two legal professional bodies, IPD as well as DoJ, the sharing on thematic topics had facilitated mutual understanding on the relevant issues related to the Administration's aim to train legal talents in the practice of foreign-related legal affairs. It also fostered collaboration of the legal sectors in both places, thereby contributing to the building of a rule-based business environment in GBA.

## **Work of the Law Reform Commission of Hong Kong**

### Progress on the Systematic Review of Statutory Laws of Hong Kong

24. At the Panel meeting on 24 July 2023, LRC briefed members on the progress on the Systematic Review conducted by the LRC Secretariat, with focus on the adaptation of laws exercise. Members commended the progress made in the adaptation of laws since it was last reported to the Panel in December 2022, and requested LRC to expedite its work on adaptation of laws despite difficulties faced, as the exercise was long overdue.

25. Members were concerned that the general public would find the many remaining colonial references in statute law alarming and disgraceful. They requested LRC to step up publicity to explain why those colonial references had not been repealed and why their continued existence did not threaten the “One Country, Two Systems” policy. LRC responded that the Government would spare no effort in proactively engaging the public on this subject so as to keep the public informed.

26. Noting that the adaptation of certain provisions in the Matrimonial Causes Ordinance (Cap. 179) and the Parent and Child Ordinance (Cap. 429) were made through the enactment of the Family Procedure Ordinance (Cap. 646) in June 2023, some members enquired if the same method would be adopted in the adaptation of other pieces of legislation. LRC advised that the adaptation of law could proceed through different means such as introducing bills by B/Ds (e.g. the Family Procedure Bill) or omnibus bills which would enhance legislative efficiency by dealing with multiple minor amendments in one bill (e.g. the next Statute Law (Miscellaneous Provisions) Bill). However, LRC stressed that an omnibus bill would only cover amendment(s) (or repeal) that were largely minor, technical and non-controversial in nature.

27. There was a concern that “dealing with simple issues before the difficult ones” adopted in the adaptation of laws exercise would leave those difficult pieces of legislation unaddressed or shelved. In response, LRC explained that the above approach was to help identify those pieces of legislation for which concrete timetables for adaptation could be set, but it would certainly not leave the more difficult pieces of legislation idle. LRC Secretariat had identified the responsible B/Ds for such legislation, the specific issues involved and would continue to pursue the appropriate solutions with a view to setting a concrete legislative timetable as soon as practicable.

28. Members were concerned whether the priority given to adaptation of laws could compromise the progress of repealing obsolete laws and consolidation of legislation. In response, LRC advised that while priority would continue to be

accorded to the adaptation of laws, it would take every opportunity to implement other components of the Systematic Review. Whilst the decision on whether and how to proceed with the adaptation of laws or repeal of obsolete laws would remain in the hands of the responsible B/Ds, whenever new bills were introduced, they would be advised to review whether obsolete provisions might be repealed and policy changes considered necessary by the Government might be reflected in tandem.

### Implementation of the recommendations made by the Law Reform Commission of Hong Kong

29. Since 2012, in the capacity as Chairman of LRC, SJ reported the progress of implementation of the recommendations made by LRC to the Panel on an annual basis. At the Panel meeting on 2 August 2022, SJ mentioned about a new mechanism for reporting to LegCo the progress of implementation of LRC recommendations.

30. To better facilitate LegCo following up with the relevant B/Ds on the progress of implementation of LRC's recommendations, the Administration Wing of the Chief Secretary for Administration's Office ("CSO") would coordinate detailed responses from the relevant policy B/D on the progress of implementation of the recommendations in LRC reports. An information paper containing the consolidated responses would then be issued to all LegCo Members (instead of to the Panel) for information and follow-up on an annual basis. The first information paper was circulated to Members on 30 August 2023 [LC Paper No. AS 6/2023].

### **Work of the Judiciary Administration**

#### Issues related to waiting times for court proceedings

31. At the Panel meeting on 24 July 2023, the Judiciary Administration ("Jud Adm") briefed members on the latest position of waiting times for court proceedings ("court waiting times") and the key measures being implemented by the Judiciary to expedite civil and criminal proceedings. Members sought Jud Adm's clarification on how court waiting times were calculated, and requested the shortest and longest waiting times be provided for better understanding of the situation. In response, Jud Adm explained the different methodologies for counting the court waiting times for criminal cases and civil cases, and highlighted the complexity and non-standard nature of cases making it difficult to provide the shortest and longest waiting times.

32. Some members lamented that families in divorce cases, especially those from low-income groups, had to wait six to nine months for judgments on maintenance orders, causing them financial hardship. It was also noted that on average, the Lands Tribunal took seven to nine months to hand down orders for property owners' repossession applications, resulting in financial losses for owners. In response to enquiries about compliance with Practice Directions 36 and 37 issued in May 2022 with the aim of ensuring that reserved judgments for the High Court ("HC"), Family Court ("FC") and Lands Tribunal were handed down as expeditiously as reasonably practicable, Jud Adm confirmed that almost all the judgments were handed down within the stipulated timeframe other than a few exceptional cases.

33. Jud Adm's efforts in expediting proceedings through various measures were appreciated. Other measures suggested by members included providing guidance and assistance to unrepresented litigants in FC and encouraging the use of alternative dispute resolution, where appropriate, before proceeding to litigation so that court's time could be saved.

34. Members also agreed that the fundamental problem underlying the long court waiting times had been the severe shortage of judicial manpower, which was long overdue to be addressed, and some solutions were proposed at the meeting. Some members disputed the view that remuneration was a major factor for attracting legal talents, arguing that an aspiration for justice and a will to serve the public were more important. They urged nurturing such values in law students from an early stage, which would help grow in them a sense of mission and aspiration to serve the public as judges and judicial officers ("JJOs").

35. In response, Jud Adm advised that the Judiciary had been recruiting outstanding law students as judges' marshals. Experienced legal practitioners might also apply to be deputy judges to gain first-hand experience of working in the Judiciary and then consider whether they should like to pursue a judicial career in the Judiciary in the longer term.

36. Jud Adm also advised that the Judiciary had been conducting recruitment exercises in strict compliance with Article 92 of the Basic Law to select JJOs on the basis of their judicial and professional qualities. Jud Adm had worked closely with HKBA and the Law Society in arranging four judicial career talks for legal practitioners to provide them with details, such as the career pathways, remuneration package, etc.

37. There was a suggestion that judges be allowed to return to legal practice with safeguards against conflict of interests imposed, in order to address the concern that the no-return policy could be a disincentive. In response, Jud Adm stressed that the policy was well established and imperative for ensuring judicial



independence, and for avoiding any allegations of conflict of interests, real or perceived, for judges.

### Use of technology in the Judiciary

38. Some members suggested speeding up the court proceedings through the utilization of innovation and technology, such as making use of voice recognition software in recording court proceedings and preparing transcripts and actively promoting the use of the integrated Court Case Management System (“iCMS”). At the policy briefing cum meeting held on 6 November 2023, members expressed concerns about law firms’ lacklustre adoption of iCMS the use of which would be mandatorily required by the Judiciary in the imminent future. On the other hand, some members pointed out that Hong Kong was quite behind the courts in GBA in terms of transcript production for court proceedings.

39. In response, Jud Adm advised that as at end-October 2023, a total of 350 court users (including 283 law firms out of some 900 law firms in the territory) had been registered in iCMS and the Judiciary would roll out implementation plans on the mandatory use of iCMS and promoting iCMS amongst law firms through ongoing publicity activities. Jud Adm had continued to incrementally introduce technology-related facilities in more courtrooms. As for transcripts of court proceedings, Jud Adm advised that it was actively testing voice recognition software products in the market with a view to making use of this technology in recording court proceedings by the end of 2023 and preparing transcripts where appropriate in the longer term.

## **Access to Justice**

### Implementation of the enhancement measures to the legal aid system

40. At the Panel meeting on 22 May 2023, the Administration reported on the implementation of the enhancement measures to the legal aid system introduced by the Legal Aid Department (“LAD”) in October 2021 (“the Enhancement Measures”). Members considered the Enhancement Measures constituted an appropriate response to the alleged abuses of the legal aid system by violent protesters in the 2019 social events, who were under prosecution and alleged to have colluded with a specific group of lawyers by nominating them as legal aid lawyers. The Enhancement Measures were also well received by the legal sector and contributed to a more even distribution of legal aid cases amongst lawyers on the Legal Aid panel.

41. Regarding the direct assignment of lawyers to the legally aided persons (“LAPs”) for criminal legal aid cases by LAD, the Administration stressed that

nomination of lawyers for criminal cases was not a statutory “right” for LAPs. Members suggested the Administration to clearly explain this policy and educate the general public to remove the generally held misconception that nomination of lawyers for criminal cases was a “right” for LAPs.

42. The Administration further advised that LAD’s assignment of lawyers was different from the Duty Lawyer Service (“DLS”) in that LAD would consider a host of factors in assigning lawyers whilst, for DLS, lawyers were assigned to users on a random basis. To optimize the use of public resources and safeguard LAPs’ interests, one of the factors LAD would consider in assigning lawyers to a LAP was whether a lawyer had already been taking up the case and representing the LAP concerned at a lower court.

43. In response to members’ enquiries on the criteria adopted by LAD in assigning a lawyer to a legal aid case, and whether language used in court proceedings would be considered, the Administration advised that details of the criteria were available in the Manual for Legal Aid Practitioners, and the language for court proceedings was indeed one of the factors for consideration.

44. Some members criticized that junior lawyers had not been assigned with enough cases to facilitate their professional development and urged LAD to reconsider its criteria in assigning lawyers with legal aid cases. In reply, the Administration advised that experience of lawyers was an important factor to consider in assigning lawyers to take up case assignments in order to protect LAP’s interests. However, LAD would not overlook the need for professional development of junior lawyers and, in some legal aid cases, junior counsels with less of years of experience would support Senior Counsels handling the cases.

45. In response to some members’ concerns over the allegations against LAD staff for making negative comments on some lawyers proposed to be nominated by LAPs, the Administration assured members that LAD would conduct investigations on any such complaint received. It also advised members that a full record of discussion between LAD staff and LAPs had been kept by LAD and could be examined as evidence for investigations if necessary. The Administration emphasized there was no question of LAD attempting to influence a LAP’s nomination of lawyers and there had been cases where a LAP would insist on nominating a lawyer despite knowledge about his/her unsatisfactory performance records. Notwithstanding this, LAD would carefully assess whether the nomination should be accepted on the basis of whether the performance/conduct recorded would adversely affect the handling of the case concerned.

46. In response to members’ enquiries, the Administration had explained how the case assignment limits for solicitors were calculated. Some members were

concerned that the statistics on the number of legal aid cases handled by a lawyer did not take into account the delay in making full payments of legal fees on some cases so that such cases were not counted. This might be unfair to some lawyers and the Administration was urged to look into the matter.

47. Members noted with concern that whilst it was one of the Enhanced Measures that legal aid applicants and LAPs were required to declare if they had alternative sources of funding other than the legal aid, no declaration had been registered since the requirement was implemented. In response, the Administration advised that if a LAP was suspected to have failed to disclose alternative source(s) of funding at any time, LAD would conduct investigation to see if that would render him/her ineligible and whether to discharge/revoke his/her legal aid certificate. Police's investigation might also be called for.

48. The Administration also briefed members on a series of measures which had been implemented by LAD to combat potential maintenance and champerty relating to legal aid cases, including keeping in touch with HKBA and the Law Society on eliminating potential risks of maintenance and champerty in legal aid cases. Regarding members' concerns about the drop in civil legal aid applications from 2021 to 2022, the Administration advised that it had been actively engaging stakeholders including labour unions and non-government organizations to promote legal aid schemes, and had produced a TV programme to inform the public on the actual operation of these schemes.

### **Consultation on legislative proposals**

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

#### Legislative proposals to amend the Criminal Procedure Ordinance (Cap. 221)

##### *Proposed no case to answer appeal mechanism*

50. At the Panel meeting on 27 February 2023, the Administration briefed members on its proposal to introduce legislative amendments to Cap. 221 by making reference to Part 9 of the Criminal Justice Act 2003 ("the UK Act") under which the Crown could appeal against a judge's no-case ruling in the United Kingdom ("UK"), i.e. No Case to Answer Appeal Proposal ("the proposed NCA appeal mechanism"). The Administration explained that when a judge of the Court of First Instance ("CFI") made a wrong no-case ruling which was erroneous, the prosecution could only refer the matter to the Court of Appeal ("CA") for clarification of the legal principles involved under section 81D of Cap.

221 currently in force. However, there had been existing mechanism to appeal against no-case rulings of the District Court and Magistrates' Courts.

51. Some members were of the view that the Administration should not merely replicate the UK Act as the criminal proceedings in UK were quite different from those in Hong Kong in various aspects. In response, the Administration stressed that it had not replicated the provisions from the UK Act entirely but had carefully considered whether they were applicable to the actual circumstances of Hong Kong for inclusion in the proposed NCA appeal mechanism. Members welcomed the proposed NCA appeal mechanism as a timely remedy to address the lacuna.

52. In response to members' concerns about the bail entitlement of the defendants, the Administration explained that if a defendant was prosecuted on multiple charges, an appeal against a no-case ruling on one of the charges would not affect the trial and the existing bail position of that defendant on the other charges. For cases involving multiple defendants and if an appeal was made against a no-case ruling on the only charge faced by one of the defendants, CFI will consider whether bail would be granted to that defendant having regard to the actual circumstances including the progress of the appeal, the seriousness of the charge and other relevant factors.

#### *Proposed NSL 46 appeal mechanism*

53. At the Panel meeting on 22 May 2023, the Administration briefed members on the legislative proposal to amend Cap. 221 to provide for a new statutory procedure for the prosecution to appeal against a verdict or order of acquittal given by CFI constituted by a three-judge panel without a jury under Article 46 of the HK National Security Law ("the proposed NSL 46 appeal mechanism") in order to serve the interests of justice and for the judicial authorities to properly discharge the duty under the HK National Security Law to effectively prevent, suppress and impose punishment for acts and activities endangering national security.

54. The Administration explained that under the current Cap. 221, a defendant might appeal to CA against his/her conviction or sentence by the CFI regardless of the mode of trial but the prosecution did not have a right to appeal to CA if the defendant was acquitted by a three-judge panel ("the panel") even though its reasons for verdict might disclose an error of law. The Administration considered that this miscarriage of justice would be gravest where the offence in question is one endangering national security.

55. Members supported the NSL 46 appeal mechanism and considered that it would fill a legal lacuna and help prevent miscarriage of justice arising from

erroneous acquittal of a defendant in a case concerning offences endangering national security. Members also agreed that the proposal was essential for serving the interests of justice and for the judicial authorities to properly discharge the duty under the HK National Security Law to effectively prevent, suppress and impose punishment for acts and activities endangering national security.

### *The Criminal Procedure (Amendment) Bill 2023*

56. The Criminal Procedure (Amendment) Bill 2023 to implement the above two legislative proposals was introduced into LegCo on 31 May 2023. A bills committee was formed to scrutinize the Bill which was passed by the Council at its meeting on 12 July 2023.

### Legislative proposals to amend the Legal Practitioners Ordinance (Cap. 159)

#### *Ad hoc admission of overseas lawyers as barristers to practise in Hong Kong*

57. At the Panel meeting on 17 March 2023, the Administration briefed members on the legislative proposal to amend the Legal Practitioners Ordinance (Cap. 159) relating to the participation of overseas lawyers who were not qualified to practise generally in the Hong Kong Special Administrative Region (“HKSAR”) in cases concerning national security (“NS Cases”) (“the Proposal”) through ad hoc admission as barristers granted by CFI as empowered under section 27(4) of Cap. 159 (“*ad hoc* admission”).

58. Whilst members agreed that the *ad hoc* admission of overseas lawyers as barristers to participate in cases in Hong Kong would contribute to the developments of HKSAR as the leading centre for international legal and dispute resolution services and hence should continue for cases not concerning national security, allowing *ad hoc* admission of overseas lawyers for NS Cases was contrary to the interests of national security and hence not in the public interest.

### *The Legal Practitioners (Amendment) Bill 2023*

59. The Legal Practitioners (Amendment) Bill 2023 to implement the above legislative proposals was introduced into LegCo on 31 May 2023. A bills committee was formed to scrutinize the Bill which was passed by the Council at its meeting on 12 July 2023.

### Draft of the Courts (Remote Hearing) Bill

60. At the Panel meeting on 3 May 2023, Jud Adm briefed members on the draft of Courts (Remote Hearing) Bill (“C(RH) Bill”). Members in general supported the draft C(RH) Bill in providing a comprehensive legal framework for

JJOs to order remote hearings at various levels of courts and tribunals where appropriate. While some members pointed out the general benefit of potential reduction in legal costs incurred as remote hearings could reduce travelling and waiting time for parties to a proceeding, some cautioned that the potential benefits should not be overstated given the unique circumstances of Hong Kong and the benefits of physical hearings should not be understated.

61. Members agreed that great caution should be exercised in determining whether remote hearings were appropriate for criminal proceedings and agreed with the Judiciary's position that remote hearings should not be adopted for criminal trials as there could be risks jeopardizing fairness, considering that physical presence of litigants and/or witnesses would provide non-verbal clues like body language to facilitate more effective evidence-taking, which might not be available remotely. Therefore, while the Judiciary was implementing new technologies such as remote hearings to promote court efficiency, physical hearings should be preserved with improvements to procedures such as the use of "deposition" procedure, which could also save costs and time. The Judiciary was also advised to consider receptiveness of some in the legal sector to technology changes when implementing the C(RH) Bill.

62. In response, Judiciary explained that the prevailing policy was that unless the court directed otherwise, physical hearing was the default mode of hearings. The C(RH) Bill would only provide legal framework for remote hearings by JJOs where appropriate but did not change the prevailing policy. Jud Adm also assured members that it would review and improve procedures on court proceedings, whether physical or remote, to improve the efficiency and effectiveness of court operations in general.

63. Jud Adm also advised that despite some teething problems at initial stages of implementing remote hearings, progressive improvements had been made with more knowledge and experience accumulated through a variety of civil proceedings conducted through remote hearings. Members expressed concern that, while a party in a remote hearing might send or sign a document or present an object electronically as directed by the court, the use of electronic filing had not been that popular among legal practitioners.

64. In response, Jud Adm acknowledged the low usage rate of the electronic filing system of the District Court since its implementation, and expected an increase in usage upon enactment of the C(RH) Bill with more proceedings to be conducted remotely. The Judiciary would continue promoting technologies use in court in collaboration with HKBA and Law Society, and welcome practitioners to visit courts for guidance.

65. Some members enquired about how the general public could take part in remote hearings as witnesses or litigants if they had no access to the requisite equipment. Jud Adm advised that the court would take into account whether the witnesses or litigants had access to the necessary equipment and, before a remote hearing was conducted, arrange suitable tests.

66. As regards whether parties had choice of remote/physical hearings, Jud Adm advised that it was proposed that the court might, before making a remote hearing order, invite the parties to the proceeding to make submissions. The draft C(RH) Bill also provided the procedures to address dissatisfaction with the remote hearing order. Jud Adm also advised that the use of remote hearing might be confined to part(s) of the hearing process or that only some of the concerned parties were to participate remotely.

67. Noting that courts might allow real time remote access to civil and criminal remote hearings by the public according to the proposed registration arrangement, some members were concerned that such a requirement was contrary to open justice principle. In response, Jud Adm stressed that observing proceedings remotely would only be allowed exceptionally and, under normal circumstances, people who wished to observe a remote hearing would be required to go to a court building and no registration would be required as usual. Jud Adm further explained that the requirement was to facilitate providing meeting links to the observers and for identifying suspects engaging in unauthorised recording of the remote hearings.

## **Consultation on financial proposal**

### 2023-2024 Judicial service pay adjustment

68. At the Panel's policy briefing cum meeting on 6 November 2023, members were briefed on the proposed judicial service pay adjustment for 2023-2024. Members noted that the Chief Executive in Council ("CE in Council") had, on the recommendation of the Standing Committee on Judicial Salaries and Conditions of Service ("Judicial Committee"), decided that the pay for JJOs for 2023-2024 should be increased by 3.62% with retrospective effect from 1 April 2023 ("proposed pay adjustment").

69. Members in general supported the proposed pay adjustment and requested figures on government expenditures for JJOs' benefits such as housing, medical, dental, education allowances, and leave passage allowance. However, there was grave concern about the ongoing shortage of JJOs, which had contributed to prolonged court waiting times affecting Hong Kong's rule of law. While JJO's remuneration had been increased over the years, the shortage remained unresolved.

70. In response, the Administration acknowledged the current stringent manpower situation of JJOs but noted other factors, namely the violence events and riots in 2019 in relation to the proposed extradition amendment bill, which often involved large number of defendants and lengthy trials; and cases concerning offences endangering national security which were mainly handled at HC, contributing to lengthened court waiting times.

71. Members noted that JJO's pay is determined by CE in Council after considering the recommendations of the Judicial Committee. Under the mechanism approved in 2008, the Judicial Committee would consider a basket of factors in making its recommendations on JJOs' pay adjustment to CE in Council. Some members argued that the basket of factors considered was approved over 15 years ago and the parameter considerations might no longer be relevant or changed significantly, time was ripe for a review of the mechanism. The Administration advised that in conducting the annual review, the Judicial Committee would take into account the updated information of individual factors, so as to ensure that the basket of factors would reflect the prevailing situation. The Administration was of the view that the existing mechanism worked well and had no plan to conduct a comprehensive review.

72. Some members voiced disappointment with the Administration's lack of planning for a review of the mechanism, notwithstanding current situation of shortage of JJOs and despite LegCo's support for resources for the Jud Adm over the years. They were also disappointed with the Judiciary and the Administration for lack of the drive and innovative solutions to solve the problem which had lingered on for years. As experienced legal practitioners in private sector mid-late careers might be willing to join the Judiciary but rarely apply, members suggested more proactive recruitment of such candidates. The Judiciary reported having identified potential appointees as recorders or deputy judges. Some members asserted that more experienced solicitors should also be considered for appointment.

73. Members agreed JJO's remuneration could not match private firms but a sense of mission and aspiration to serve the public should motivate potential candidates. The Administration and the Judiciary were requested to focus on promoting this unique nature of judicial careers. In conclusion, the Panel supported submitting the proposed pay adjustment to the Finance Committee for approval.



## **Other issues**

74. During the session, the Panel also discussed the development of and support for the Hong Kong legal profession in Hong Kong and within GBA as well as the technological advancement in the judicial process. The Panel was also consulted on the staffing proposal of the proposed creation of a Principal Government Counsel in the Prosecutions Division of DoJ.

75. The Panel also received information papers from Jud Adm and the Administration respectively as listed below. All the information papers had been circulated to members for reference.

### *Judiciary Administration*

- (i) Information paper on allowances for jurors and witnesses and fees payable to adjudicators;
- (ii) Information paper on measures on enhancing sound quality in courtrooms arising from COVID-19;

### *The Administration*

- (iii) Information paper on Biennial review of the amount of damages for bereavement under the Fatal Accidents Ordinance (Cap. 22); and
- (iv) Information paper on the proposed legislative amendments to District Court (Fixed Costs in Matrimonial Causes) Rules (Cap. 336F).

## **Meetings held by the Panel**

76. During the period between January and November 2023, the Panel held a total of 9 meetings including one policy briefing cum meeting on 6 November 2023 to receive briefings by SJ and the Director of Administration on the Chief Executive's 2023 Policy Address in respect of the policy initiatives of DoJ and those of CSO in relation to the Judiciary and legal aid. The Panel has scheduled another meeting on 18 December 2023.

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

**Terms of Reference**

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

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

**Membership list for the 2023 session**

<b>Chairman</b>	Hon Martin LIAO Cheung-kong, GBS, JP
<b>Deputy Chairman</b>	Hon YUNG Hoi-yan, JP
<b>Members</b>	Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon Paul TSE Wai-chun, JP Hon Jimmy NG Wing-ka, BBS, JP Dr Hon Junius HO Kwan-yiu, BBS, JP Hon Holden CHOW Ho-ding, JP Hon Doreen KONG Yuk-foon Hon LAM San-keung, JP Hon Dennis LEUNG Tsz-wing, MH Hon Maggie CHAN Man-ki, MH, JP Dr Hon Kennedy WONG Ying-ho, BBS, JP Hon Carmen KAN Wai-mun

(Total : 13 members)

<b>Clerk</b>	Mr Lemuel WOO
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<b>Legal Adviser</b>	Miss Joyce CHAN (Until 10 July 2023) Ms Wendy KAN (Since 11 July 2023)
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