

For discussion
on 23 April 2012

LegCo Panel on Administration of Justice and Legal Services

Law Reform Commission Report on Hearsay in Criminal Proceedings

Purpose

This paper is prepared pursuant to the request set out in item 4 of the AJLS Panel's list of outstanding items for discussion as at 21 March 2012 (LC Paper No. CB(2)1462/11-12(02)). The Administration has reviewed the recommendations in the Law Reform Commission ("LRC") Report on Hearsay in Criminal Proceedings ("the Report") published in November 2009. This paper briefs Members on the Administration's suggestion on the way forward regarding the Report. An executive summary of the Report prepared by the LRC Secretariat is at the Annex.

Background

2. The Report sets out 42 recommendations which are detailed and considered. The Report recommends that the existing law of hearsay in Hong Kong criminal proceedings be reformed comprehensively and coherently according to a principled, logical and consistent system of rules and principles (Recommendation 1). In the light of the New Zealand Law Commission model, the Report recommends further that save for some specific exceptions, the admission of hearsay evidence should be based on a single statutory discretionary power to admit hearsay evidence if it is both necessary and reliable (Recommendation 9A). A Core Scheme is recommended to be adopted as a whole as the major vehicle for reforming the law of hearsay in criminal proceedings (Recommendation 10).

Responses to the Report

3. The Department of Justice has advised the LRC of its interim response to the recommendations in the Report as follows:

"The Department of Justice is studying the complex issues raised in the Law Reform Commission's report on Hearsay in Criminal Proceedings. The department has asked the Law Society and the Bar Association for their views and will consider their responses carefully before reaching a conclusion on the report's recommendations."

4. Within the Department of Justice, a team has been set up to consider the implementation of the Report. The Bar Association made inquiry on whether there are legislative proposals to implement the Report but has not responded with its comments on the Report. The Law Society's Criminal Law and Procedure Committee ("the LS's Committee") gave its response to the Report to the Department of Justice in February 2011. However, the LS's Committee only commented in detail on two of the Report's recommendations (on multiple hearsay of Recommendation 4 and the conditions of necessity of Recommendation 25), without indicating its overall stance on the rest of the Report.

5. There is general support from the Prosecutions Division of the Department of Justice for most of the Report's recommendations and proposals.

The Way Forward

6. Arrangements are being made to conduct a half day legal discussion about the Report with the two legal professional bodies and other stakeholders in May/June 2012. The Report's recommendations and proposals will be explained and discussed on this occasion. Views from the professional bodies and stakeholders will be sought on whether they support the reform as proposed in the Report.

7. An assessment will be made after the discussion as to how the recommendations of the Report should be taken forward.

8. Members are invited to note the proposed way forward in para. 6 above.

Department of Justice
April 2012