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Replies to supplementary questions raised by Finance Committee Members in examining the Estimates of Expenditure 2018-19

Director of Bureau : Secretary for Justice

Session No. : 2

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CONTROLLING OFFICER'S REPLY

S-SJ01

(Question Serial No. S0012)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational Expenses

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

1) In respect of the work of the Law Reform Commission, would the Department of Justice (“DoJ”) inform this Committee of the following: How many completed projects are pending further action by the Government and what are the topics involved? What is the progress and expected completion time of each of the 5 ongoing projects (including Review of Sexual Offences; Causing or Allowing the Death of a Child; Archives Law; Access to Information; Periodical Payments for Future Pecuniary Loss in Personal Injury Cases)?

2) Regarding the value-for-money indicator for the Programme, the number of “ongoing Law Reform Commission Projects” is estimated to be reduced from 8 to 7 in 2018-19. Please advise the title of the project to be deleted.

3) Will new projects be launched this year? If yes, what are the projects and their timeframes?

Asked by: Hon AU Nok-hin (Member Question No. (LegCo use):)

Reply:

1) There are altogether 16 Law Reform Commission (“LRC”) reports pending consideration by the Government, the details of which are as follows:

Insolvency – Part 2: Corporate rescue and insolvent trading (October 1996)

Extrinsic materials as an aid to statutory interpretation (March 1997)

Privacy – Part 3: Stalking (October 2000)

Contracts for the supply of goods (February 2002)

Privacy – Part 4: Privacy and media intrusion (December 2004)

Privacy – Part 5: Civil liability for invasion of privacy (December 2004)

Guardianship and custody – Part 4: Child custody and access (March 2005)

Substitute decision-making and advance directives in relation to medical treatment (August 2006)

Hearsay in criminal proceedings (August 2009)

Criteria for service as jurors (June 2010)

Enduring powers of attorney: Personal care (July 2011)

Double jeopardy (February 2012)

Class actions (May 2012)

Charities (December 2013)

Excepted offences under Schedule 3 to the Criminal Procedure Ordinance (Cap 221) (February 2014)

Adverse possession (October 2014)

As regards the topics under study (i.e. Review of Sexual Offences; Causing or Allowing the Death of a Child; Archives Law; Access to Information; Periodical Payments for Future Pecuniary Loss in Personal Injury Cases), the relevant Sub-committees of the LRC are working diligently with the aim of publishing the consultation papers as soon as possible in 2018 to seek the views of the public thereon. Whereas the LRC just published the Consultation Paper on Periodical Payments for Future Pecuniary Loss in Personal Injury Cases on 25 April, it will publish a consultation paper on another topic next month. The consultation period for consultation papers of the LRC usually lasts for 3 months. The Sub-committees concerned will take into account the responses received in the consultation exercise before finalising the proposal(s), if any is needed, for reform. Upon consideration of the draft reports submitted by the Sub-committees, the LRC will publish its final reports. Given the importance and complexity of the issues involved, it is too early to commit to an expected completion date for each of the above projects.

- 2) Regarding the value-for-money indicator for Programme (3), the project deleted from the “ongoing Law Reform Commission projects” is “Third Party Funding for Arbitration”. It was deleted because the report on the project had already been published on 12 October 2016.
- 3) The LRC Secretariat is conducting background studies on new projects to be launched. Projects will be formally referred to the LRC and an announcement to the public will be made on its website in due course.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ02

(Question Serial No. S0013)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational Expenses

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

This question follows up on Replies SJ011 and SJ030. Regarding the Hong Kong/Mainland cross-boundary projects which your bureau including the departments under your purview have been involved, has any cooperation arrangement been negotiated with the Mainland authorities in respect of the co-location arrangement for the Guangzhou-Shenzhen-Hong Kong Express Railway Link? Has any agreement been signed? Has it been made public? If not, what are the reasons?

Asked by: Hon AU Nok-hin (Member Question No. (LegCo use):)

Reply:

The Department of Justice (“DoJ”) advises Government bureaux and departments on legal issues as required from time to time, including those arising from projects under their purview, such as the co-location arrangement in respect of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”) project (primarily under the purview of the Transport and Housing Bureau (“THB”). On 18 November 2017, the Hong Kong Special Administrative Region (“HKSAR”) Government and the Mainland signed the Co-operation Arrangement between the Mainland and the HKSAR on the Establishment of the Port at the West Kowloon Station of the XRL for Implementing Co-location Arrangement. The Co-operation Arrangement has been made public and uploaded onto the THB’s website for public information.

Other Hong Kong/Mainland cooperative projects in which the DoJ has been involved are set out in detail in Reply SJ011. Those projects concern legal and judicial co-operation and do not involve the co-location arrangement for the XRL.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ03

(Question Serial No. S0014)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational Expenses

Programme: (2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

According to Programme (2) of Head 92, matters requiring special attention in 2018-19 include provision of advice on the legal aspects of studies, projects and initiatives pertinent to the Guangzhou-Shenzhen-Hong Kong Express Rail Link and the development of North East New Territories New Development Areas. Please inform this Committee of the following information for the past 3 years:

- (1) the number of items of legal advice provided in respect of the above two projects;
- (2) the way the advice were given in respect of the above two projects; and
- (3) the establishment and expenditure on staff responsible for providing legal advice.

Asked by: Hon AU Nok-hin (Member Question No. (LegCo use):)

Reply:

The Department of Justice advises Government bureaux and departments on legal issues as required from time to time, including those on the legal aspects of studies, projects and initiatives pertinent to the Guangzhou-Shenzhen-Hong Kong Express Rail Link and the development of North East New Territories New Development Areas. Written legal advice on the two items has been and will be, from time to time, tendered among other advisory duties of the Department and the relevant manpower resources and expenditure involved therefore cannot be separately identified.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ04

(Question Serial No. S0020)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational Expenses

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

As mentioned in paragraph 6.22 of the Report on the examination of the Estimates of Expenditure 2017-18, the Department of Justice hoped that the study report “on the proposal of converting the Law Reform Commission into a full-time body...would be ready...within the current-term Government”. Now that the previous term of Government has expired, would the relevant authority provide particulars of the progress of the relevant study report?

Asked by: Hon AU Nok-hin (Member Question No. (LegCo use):)

Reply:

The study referred to in the question, which aimed at considering various options to enhance the efficiency and operation of the Law Reform Commission (“LRC”), was completed. The Secretary for Justice (“SJ”) also reported the following preliminary outcome of the study to the Legislative Council Panel on Administration of Justice and Legal Services on 20 December 2017:

In the short run, maintain the current LRC and sub-committee structure and enhance support to the LRC Secretariat:

This was the LRC's preferred option, as it would harness all the advantages of the current LRC structure and composition, while significantly improving the support to the LRC and its sub-committees and the timeliness of completing LRC consultation papers and reports.

In the long run, consider establishing a fully independent statutory law reform body:

The LRC proposed that this option should be considered as a longer term goal of the Government. The LRC noted in particular that this option would involve significant investment of resources and it might be difficult to establish such a body in Hong Kong, given the small pool of suitably qualified lawyers who might be prepared to undertake the role of full-time LRC commissioners.

In the same meeting, the SJ also advised that concrete proposals on increasing the staffing resources required for the LRC Secretariat and briefing out of research study projects (where appropriate) would be made after consolidating the views of the Panel, the LRC and the relevant Government bureaux.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ05

(Question Serial No. S0021)

Head: (92) Department of Justice

Subhead (No. & title): (000) Operational Expenses

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

1) This question follows up on SJ052. The Department of Justice has said that the two Sub-committees of the Law Reform Commission are aiming at “publishing the relevant consultation papers as soon as possible in 2018”. Would the Administration clarify whether “as soon as possible” means completion by the fourth quarter of 2018? The Administration is requested to provide a timetable on the publication of the relevant consultation papers.

2) Regarding the value-for-money indicator for Programme (3), the number of “ongoing Law Reform Commission projects” is estimated to be reduced from 8 to 7 in 2018-19. Would the Administration clarify whether the project to be deleted is the one on “Archives Law”? If not, please provide the details of that project.

3) Please advise the number of meetings held by the Archives Law Sub-committee and the progress of the study since March 2017.

Asked by: Hon AU Nok-hin (Member Question No. (LegCo use):)

Reply:

1) The Archives Law Sub-committee (“AL Sub-committee”) and the Access to Information Sub-committee of the Law Reform Commission (“LRC”) are working diligently with the aim of publishing the consultation papers as soon as possible before the end of the fourth quarter of 2018 to seek the views of the public thereon.

2) Regarding the value-for-money indicator for Programme (3), the project deleted from the “ongoing Law Reform Commission projects” is “Third Party Funding for Arbitration”. It was deleted because the report on the project had already been published on 12 October 2016.

3) Since March 2017, the AL Sub-committee of the LRC has held 7 meetings, including an intensive one which lasted 4 consecutive days. In-between such meetings, the AL

Sub-committee conducted researches, as well as drafted and reviewed the consultation paper.

The AL Sub-committee has reviewed the current local situation and commenced comparative study and analysis of the position in various overseas jurisdictions. It is actively completing the drafting of the consultation paper so as to consult the public as soon as possible at a later stage.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ06

(Question Serial No. S0019)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

With regard to the replies to Question Serial Numbers SJ007 and SJ023 in the Examination of Estimates of Expenditure 2018-19, would the Administration further elaborate on:

- (1) the expenditure incurred by the Department of Justice (“DoJ”) in the financial year of 2017-18 in engaging practising counsel to handle cases relating to the “disqualification of 4 Legislative Councillors”?
- (2) the expenditure incurred by the DoJ in the financial years of 2016-17 and 2017-18 respectively in engaging practising counsel to handle the “criminal contempt of court case against WONG Ho-ming and WONG Chi-fung relating to the clearance of the Occupy Mong Kok site in 2014”?
- (3) the expenditure incurred by the DoJ in the financial years of 2016-17 and 2017-18 in engaging practising counsel to handle “cases relating to the Mong Kok Clashes on Lunar New Year’s Day in 2016”?
- (4) the expenditure incurred by the DoJ in the financial year of 2017-18 in engaging practising counsel to handle cases relating to the “disqualification of 2 Legislative Councillors”?

As the financial year of 2017-18 has now ended, the Administration should be able to advise or estimate the relevant expenditures. If not, please explain.

Asked by: Hon CHU Hoi-dick (Member Question No. (LegCo use):)

Reply:

- (1) In the financial year of 2017-18, the briefing out expenditure incurred in the cases relating to the “disqualification of 4 Legislative Councillors” (HCAL 223-226/2016 and HCMP 3378, 3379, 3381, 3382/2016) was \$746,350.
- (2) For the case “criminal contempt of court case against WONG Ho-ming and WONG

Chi-fung relating to the clearance of the Occupy Mong Kok site in 2014”, there was no briefing out expenditure in respect of CACV 259/2017 (WONG Ho-ming) and CACV 14/2018 (WONG Chi-fung) in the financial year of 2016-17. In the financial year of 2017-18, the briefing out expenditure incurred for the two cases [CACV 259/2017 (WONG Ho-ming) and CACV 14/2018 (WONG Chi-fung)] were \$444,650 and \$28,500 respectively.

For the cases HCMP 795/2015 (WONG Chi-fung) and HCMP 798/2015 (WONG Ho-ming), they were directed by the Court to be heard together with other cases (HCMP 774, 776-781, 783, 784, 787-789, 791-794, 796, 797/2015) which involved some common legal issues. The briefing out expenditure so incurred was for briefing local Senior Counsel and junior counsel to handle all these cases together. Hence, we do not maintain a separate breakdown for the briefing out expenditure of each set of such proceedings.

- (3) In the financial year of 2017-18, the briefing out expenditure incurred in relation to the “cases relating to the Mong Kok Clashes on Lunar New Year’s Day in 2016” (mainly involving HCCC 408/2016 and HCCC 408A/2016) was \$3,287,000. No briefing out expenditure was incurred in relation to the above cases in the financial year of 2016-17.
- (4) In the financial year of 2017-18, the briefing out expenditure incurred in relation to the “disqualification of 2 Legislative Councillors” (FAMV 7-10/2017) was \$1,164,000.

- End -

CONTROLLING OFFICER'S REPLY

S-SJ07

(Question Serial No. S0004)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (-) Not Specified

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

Please set out the respective numbers of occasions in each of the past five years when the Department of Justice:

1. visited the Liaison Office;
2. met with officials of the Liaison Office.

Asked by: Hon KWOK Ka-ki (Member Question No. (LegCo use):)

Reply:

Officers of the Department of Justice (DoJ) meet or liaise with organisations and individuals from relevant sectors (including officials of offices set up by the Central People's Government in Hong Kong, such as the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region) from time to time as work requires. The DoJ does not maintain a breakdown of statistical information on such meetings or liaisons between its officers and outside organisations and individuals by organisation or individual met.

- End -

CONTROLLING OFFICER'S REPLY

SV-SJ01

(Question Serial No. SV003)

Head: (92) Department of Justice

Subhead (No. & title): (-) Not Specified

Programme: (1) Prosecutions
(2) Civil

Controlling Officer: Director of Administration and Development (Alan Siu)

Director of Bureau: Secretary for Justice

Question:

To follow up on Question Serial Number SJ028:

Please provide a list of counsel instructed to handle civil cases under the briefing out system of the Department of Justice.

Asked by: Hon KWOK Wing-hang, Dennis (Member Question No. (LegCo use):)

Reply:

Similar to the question raised at the meeting of the Panel on Administration of Justice and Legal Services (AJLS) on 26 February 2018, the above supplementary question raised by the Hon Dennis Kwok also requested information regarding the briefed out counsel in respect of the handling of civil litigation cases in the recent years. The Department of Justice is preparing the relevant information and will submit the same to the AJLS Panel as soon as possible.

- End -