立法會
Legislative Council

LC Paper No. CB(2)716/01-02
(These minutes have been seen by the Administration)

Ref : CB2/PL/AJLS

Legislative Council
Panel on Administration of Justice and Legal Services

Minutes of the meeting
held on Tuesday, 18 September 2001 at 4:30 pm
in Conference Room B of the Legislative Council Building

Members Present	:	Hon Margaret NG (Chairman) Hon Jasper TSANG Yok-sing, JP (Deputy Chairman) Hon Albert HO Chun-yan Hon Martin LEE Chu-ming, SC, JP Hon James TO Kun-sun Hon Mrs Miriam LAU Kin-yee, JP Hon Mr Ambrose LAU Hon-chuen, JP Hon Emily LAU Wai-hing, JP
Member Attending	:	Hon Audrey EU Yuet-mee, SC, JP
Public Officers Attending	:	Item IV Mr Stephen WONG Deputy Solicitor General Miss Amy CHAN Senior Government Counsel Legal Policy Division Miss Eliza YAU Principal Assistant Secretary for Security Miss Angela LEE Assistant Secretary for Security

Item V

Mr Stephen WONG
Deputy Solicitor General

Ms Kitty FUNG
Senior Government Counsel
Legal Policy Division

Item VI

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine CHENG
Deputy Judiciary Administrator (Operations)

Ms Emma LAU
Deputy Judiciary Administrator (Development)

Mr James CHAN
Assistant Director of Administration

By Invitation : Item IV

Hong Kong Bar Association

Mr Philip DYKES, SC
Mr Hectar PUN

Hong Kong Committee on Children's Rights

Dr CHOW Chun-bong
Chairperson

Miss Corinne REMEDIOS
Executive Committee member

Mr Thomas MULVEY
Executive Committee member

Item V

The Law Society of Hong Kong

Mr Vincent LIANG
Chairman of Hong Kong Solicitors Indemnity Fund Ltd.

Mr Anthony CHOW
Director of Hong Kong Solicitors Indemnity Fund Ltd.

Mr Christopher HOWSE
Director of Hong Kong Solicitors Indemnity Fund Ltd.

Mr Patrick MOSS
Secretary General
The Law Society of Hong Kong

Mr Lawrence LEE
Chief Executive Officer
Aon Risk Services Hong Kong Ltd.

Mr Andrew BELLERS
Regional Director
Aon Asia Ltd

Horvath & Giles and Erving and Brettel

Mr William GILES
Mr Chris ERVING

Clerk in Attendance	**:**	Mrs Percy MA Chief Assistant Secretary (2)3
Staff in Attendance	**:**	Mr Stephen LAM Assistant Legal Adviser 4 (Item V only)
		Mr Paul WOO Senior Assistant Secretary (2)3

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I. Confirmation of minutes of meetings
(LC Paper Nos. CB(2)2138/00-01 and 2268/00-01)

The minutes of the meetings held on 24 April 2001 and 26 June 2001 were confirmed.

II. Information papers issued since last meeting
(LC Paper Nos. CB(2)1966/00-01(01) and (02); 2082/00-01(01))

2. Members noted that the above papers had been issued.

III. Items for discussion at future meetings
(LC Paper Nos. CB(2)2266/00-01(01); 2195/00-01(01); 2297/00-01(01) and (02))

Jurisdiction to award costs in criminal proceedings

3. The Chairman informed members that the above item was proposed by the Law Society. Members agreed that the item should be put on the "List of issues to be considered by the Panel" for discussion at a future meeting.

Review of section 18(3) of the Court of Final Appeal Ordinance

4. The Chairman said that a member of the public had written to the Panel to request the Administration to consider amending section 18(3) of the Court of Final Appeal Ordinance to the effect that there could be a further appeal from the decision of the Appeal Committee. In response to the request, the Secretariat had asked the Administration to consider, as a matter of policy, whether there should be a further appeal from the decision of the Appeal Committee. The Administration's written reply had been circulated to members vide LC Paper No. CB(2)2297/00-01(02)).

5. Members agreed that the above item should be put on the "List of issues to be considered by the Panel" to be discussed at a future meeting.

Recruitment of Court Prosecutors

6. The Chairman suggested and members agreed that the above item should be discussed at a future meeting.

Review of legal education and training in Hong Kong

7. Members noted that the Final Report of the Consultants had been issued to the Panel on 10 August 2001. Members also noted the letter from the

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Solicitor General dated 13 September 2001 (circulated vide LC Paper No. CB(2)2297/00-01(01)) advising that most of the members of the Steering Committee would be unable to provide meaningful comments on the Report in October. The Solicitor General had suggested that a discussion between the Panel and the Steering Committee be held after one or two further meetings of the Steering Committee.

8. Members considered that it would be more appropriate for the Panel to hold a preliminary discussion on the Report as soon as possible. After some discussion, members agreed to hold a special meeting on 29 September 2001 at 9:30 am to discuss the Report. Members also agreed that representatives of the Steering Committee, the law schools of the two universities and the two legal professional bodies should be invited to attend.

IV. Paragraphs 27 and 43 of the Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) on Report submitted by the Hong Kong Special Administrative Region (HKSAR)

(LC Paper Nos. CB(2)2266/00-01(02) and (03); 2298/00-01(01))

9. The Chairman said that following the issue of the Concluding Observations of the UNCESCR on 11 May 2001 on the Report submitted by the HKSAR under the International Covenant on Economic, Social and Cultural Rights (the Covenant), all Panels of the Legislative Council were invited to discuss the relevant aspects referred to in the Concluding Observations which were of particular concern to their members. This Panel had decided to follow up on paragraphs 27 and 43 of the Concluding Observations.

Paragraph 27 of the Concluding Observations

10. At the invitation of the Chairman, Deputy Solicitor General (DSG) briefed members on the Administration's paper (LC Paper No. CB(2)2266/00-01(02)) which responded to the statement made by the UNCESCR in paragraph 27 of the Concluding Observations, which read as follows –

> "The Committee reminds the HKSAR that the provisions of the Covenant constitute a legal obligation on the part of the State parties. Thus, the Committee urges the HKSAR not to argue in court proceedings that the Covenant is only "promotional" or "aspirational" in nature."

11. DSG drew members' attention to paragraph 14 of the Administration's paper which stated that the principal obligation under Article 2(1) of the Covenant was to take steps "with a view to achieving progressively the full

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realisation of the rights recognized" in the Covenant. He said that the concept of "progressive realization" had been explained in paragraph 9 of General Comment No. 3 of the UNCESCR which assisted the courts in coming to the view that the Covenant was "promotional" or "aspirational" in nature.

12. Ms Emily LAU referred to paragraph 16 of the Administration's paper, which stated that the Administration accepted that there was an obligation under international law to implement the rights under the Covenant. However, it went on to say that an international covenant, in the absence of its being incorporated into the domestic legal system, did not create any domestic right. In her view, these statements were contradictory. She said that if the Government had an obligation to implement the rights, then people should legitimately expect to be able to enjoy such rights domestically.

13. Mr Martin LEE considered that the first statement in paragraph 16 of the Administration's paper would mislead the international community that the Administration had complied with the obligations under the Covenant when in fact it had not.

14. DSG said that under the principle of progressive realisation, the implementation of the rights under the Covenant was not immediate but progressive, having regard to the nature of and the realistic ways of dealing with the particular issues in question. He added that the opinion that the Covenant was "promotional" or "aspirational" in nature was expressed by the courts in the context of three immigration cases which involved applications for judicial review of removal orders issued by the Director of Immigration against persons who had no right to remain in Hong Kong. He reiterated that at the international level, the SAR Government was obliged to implement the Covenant, subject to the relevant reservations and declarations. But as a matter of domestic law, the Covenant was only binding to the extent that it had been incorporated in our domestic law. As the Covenant was not incorporated in the domestic law of Hong Kong, the Administration considered that the international obligation to implement the rights under the Covenant did not create any domestic right or legitimate expectation that those rights would be taken into consideration by the Government in respect of immigration decisions on persons who had no legal right to enter or remain in Hong Kong.

15. The Chairman declared interest as counsel representing the applicant in the case of Chan To Foon v Director of Immigration referred to in paragraph 13 of the Administration's paper.

16. The Chairman sought Mr Philip DYKES' views on the issues raised.

17. Mr Philip DYKES opined that there was a hinge between international treaty obligations and Article 39 of the Basic Law, the latter stipulating, inter alia, that the Covenant should remain in force and should be implemented

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through the laws in Hong Kong. In his opinion, the rights under the Covenant were justiciable and had domestic legal consequences in Hong Kong.

18. Mr Philip DYKES further said that while he accepted the concept of "progressive realisation" of the rights under the Covenant, to say that the Covenant was merely "promotional" or "aspirational" in nature tended to devalue the Covenant. He added that in a case before the court where it was argued that an international treaty obligation was relevant to the matter at issue, the Government should state a firm and consistent view as to the nature and extent of that obligation.

19. The Chairman asked whether the Secretary for Justice (S for J) also held the view that the Covenant was merely "promotional" or "aspirational" in nature.

20. DSG responded that it would not be appropriate to give, as suggested by the Chairman, a simple "yes or no" answer to the question. He said that he would not repeat what S for J had told the Council earlier, but stressed that the Government acceded to the concept of "progressive realization" as explained in paragraph 9 of General Comment No. 3 of the UNCESCR in interpreting the nature of the Covenant.

21. Mr Martin LEE and Ms Emily LAU referred to the last sentence of paragraph 9 of General Comment No. 3 of the UNCESCR quoted in paragraph 14 of the Administration's paper, where it was said that there was an obligation of State parties to move as expeditiously and effectively as possible towards the goal of full realisation of the rights under the Covenant. They asked whether there was a time-table for the Administration to do so.

22. DSG said that the position of the Administration was that the process of achieving the goal was on-going and progressive and the Administration would be doing the best it could within its resources.

Paragraph 43 of the Concluding Observations on age of minimum age of criminal responsibility
(LC Paper Nos. CB(2)2266/00-01(03) and 2298/00-01(01))

23. The Chairman drew members' attention to the paper submitted by the Administration (LC Paper No. CB(2)2266/00-01(03)) which explained the Administration's proposal to amend the Juvenile Offenders Ordinance to raise the age of criminal responsibility from seven to 10 years of age and to retain the rebuttable presumption of doli incapax for children aged 10 to below 14 years. The proposed legislative amendment was in accordance with the recommendations contained in the final Report on "The Age of Criminal Responsibility in Hong Kong" published by the Law Reform Commission (LRC) in May 2000. The Chairman then invited representatives of the Hong

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Kong Committee on Children's Rights (HKCCR) to present their views.

24. Dr CHOW Chun-bong said that the HKCCR was of the view that the minimum age of criminal responsibility should be raised to 14. He pointed out that the developmental process of children was such that a child under the age of 14 was unable to appreciate the gravity and consequences of his actions, nor was the child capable to comprehend criminal proceedings. Children of such age were also easily prone to being subject to undue influence by their peers and other adults. The traumatic experience of being criminally prosecuted and convicted at such a young age would impose a stigma on a child and destroy his self-esteem which would do no good to the effective rehabilitation of the child.

25. Ms Corinne REMEDIOS briefed members on the paper prepared by her on the subject. She summarized her views as follows -

(a) The appropriate age at which children should be held criminally responsible was 14. This was in line with the majority view as reflected in surveys such as the one carried out by the City University of Hong Kong on behalf of the LRC;

(b) Other legislation such as the Evidence Ordinance and the Criminal Procedure Ordinance which had provisions applicable to child witnesses also recognised the significance of the age of 14 being the age at which maturity could reliably be said to have been reached;

(c) It had been the international trend to raise the minimum age of criminal responsibility. Other jurisdictions including the Peoples' Republic of China and Taiwan also adopted 14 as the minimum age;

(d) If the minimum age of criminal responsibility was raised to 14, the rebuttable presumption of doli incapax could be dispensed with. Alternatively, if the age of 14 was not adopted, the presumption should remain to protect immature children between the new minimum age and the age of 14.

26. Mr Martin LEE and Ms Emily LAU said that they preferred the minimum age of criminal responsibility be raised to the age of 14.

27. In response to Ms Emily LAU, Principal Assistant Secretary for Security said that Chapter 6 of the LRC Report explained the reasons and justifications for recommending that the minimum age of criminal responsibility be increased to 10 years of age.

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28. Mr James TO said that the minimum age should at least be raised to the age of 10. He added that the problems and consequences associated with raising the minimum age to 14 had to be carefully considered, such as how effective correctional/rehabilitation programmes could be made available to children under the age of 14 who had committed really serious offences. He suggested that the Administration should make reference to overseas experience as to the types of mandatory correctional measures available to deal with serious offenders who were barely below the minimum age of criminal responsibility.

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29. In concluding the discussion, the Chairman invited the Administration to take note of the views expressed on the subject. She said that there would be further opportunities for the relevant issues to be discussed in detail by a Bills Committee when the legislative proposals were introduced into the Legislative Council for scrutiny.

V. Solicitors (Professional Indemnity) (Amendment) Rules 2001

(LC Paper Nos. LS143/00-01 and LS158/00-01; CB(2)2270/00-01(01) to (03); CB(2)2294/00-01(01) to (05); CB(2)2312/00-01(01) and (02))

30. The Chairman drew members' attention to the subsidiary legislation relating to Solicitors (Professional Indemnity) (Amendment) Rules 2001 (the Amendment Rules) (L.N. 162 of 2001) which was gazetted on 6 July 2001. The main purpose of the Amendment Rules was to increase the contributions to the Solicitors Professional Indemnity Scheme (the Scheme), in terms of a net increase of 130% in insurance premium costs payable from 1 October 2001.

31. The Chairman pointed out that the increase in contribution to the Scheme would take effect on 1 October 2001. She sought advice from Assistant Legal Adviser (ALA) on the time-frame for LegCo to scrutinize the Amendment Rules and the implications in the event of amendment or repeal of the Amendment Rules.

32. ALA said that amendments, if any, to the Amendment Rules would have to be made at the second meeting of LegCo in the next session, i.e. 17 October 2001, or the third meeting if extended by resolution, i.e. 31 October 2001. He pointed out that by virtue of section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), a repeal or amendment would be deemed to take effect from the date of the publication in the gazette of the resolution to repeal or amend the subsidiary legislation. The repeal or amendment would be without prejudice to anything done under the Amendment Rules before such repeal or amendment. However, whether there were other implications, such as the possibility of a pro-rata refund of the annual contribution, might need to be further examined.

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33. At the invitation of the Chairman, Mr Anthony CHOW brief members on the background to and the reasons for the increase in contribution to the Scheme. The details were set out in the papers provided by the Law Society (issued vide LC Paper Nos. CB(2)2294/00-01(02) to (05)), which were summarised as follows -

(a) At present, the Scheme had a three-year reinsurance programme which was due to expire on 30 September 2001. Under the current arrangement, the Hong Kong Solicitors' Indemnity Fund Limited (SIF) provided coverage of $10 million in each and every claim to its membership. Of this amount, SIF retained the first $1 million of every claim and reinsured the remaining $9 million. To further limit the aggregate impact of the $1 million retention for each claim, SIF also purchased Stop Loss Reinsurance which provided coverage if the aggregation of retention was in excess of a predetermined amount.

(b) In view of the substantial increase in claims payments in recent years, SIF commissioned the Scheme's brokers to conduct a benchmarking exercise in April 2000. The exercise predicted an enormous reinsurance premium increase after 30 September 2001. At a forum attended by members of the Law Society on 15 September 2000 to discuss the options available, the decision was taken to cancel the three-year programme and re-write a five-year programme which allowed an increase in reinsurance premium phased in over a period of five years on a progressive basis. The five-year programme had the effect of subsidising the Scheme in early years and capping the premium for the five years even if the claims situation was to deteriorate. The five-year programme commenced on 1 October 2000.

(c) However, the new reinsurance programme required SIF to increase its retention for the self-insured layer from $1 million to $1.5 million per claim from 1 October 2001 to 30 September 2005. Based on projections made by actuaries, the costs of the premium and SIF's retention over the five years were found to have exceeded the members' contributions based on the existing contribution assessment formula set out in paragraph 2 of Schedule 1 to the Rules. Therefore, the formula was amended as introduced under the Amendment Rules to raise the amount of contributions sufficient to administer the total coverage.

34. The Chairman referred member to a report submitted to the Panel by Horvath & Giles and Erving Brettell (Horvath & Giles), which raised issues and concerns about the proposed contribution increase under the new

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reinsurance programme (the report was circulated vide LC Paper No. CB(2)2270/00-01(03)).

35. At the invitation of the Chairman, Mr William GILES and Mr Chris ERVING presented their comments as follows -

(a) Widespread concern had been expressed by lawyers over the new arrangements made on their behalf through SIF, in particular the insurance premium increases proposed. The views held by many small solicitors firms, which were already operating under a depressed business environment, were that the premium increases were simply untenable, and would have the effect of forcing them out of business.

(b) The Law Society had not provided sufficient information on and explanation of the commitments under the five-year scheme for the consideration of its members. Pending an immediate and independent review, it appeared that there were no sufficient justifications for the contribution to be increased so drastically at this stage. In fact, according to a recent survey on more than 600 law firms conducted by Horvath & Giles, of which about 55% had responded, 99% of the respondents demanded an immediate and independent review of the arrangements under the existing mutual scheme.

(c) Under the existing compulsory mutual indemnity insurance scheme, all solicitors firms paid their contributions under a prescribed formula, irrespective of their claims experience and the degree of risks associated with their work. Some firms expressed dissatisfaction about the present arrangement under which firms with good claims records were effectively forced to subsidise others with poor claims records. Hence, it would be desirable to review and revise the formula in such a way that firms would be paying contributions commensurate with their claims records and nature of business. It would also be worthwhile to look at other options, such as a Qualified Insurer Plan (QIP) similar to that implemented by the Law Society of England and Wales, whereby individual members could buy coverage from any insurer that agreed to abide by contract terms.

36. The Chairman noted that in a letter sent to the Law Society from Li, Wong & Lam Solicitors (a copy of which was tabled at the meeting and subsequently circulated vide LC Paper No. CB(2)2312/00-01(01)), there was a table showing the value of claims by type of practice. She asked for an update on the figures for 1999/2000. In response, Mr Lawrence LEE provided the updated information as follows -

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(Value of claims)

	Indemnity Year 1999/2000($)
Conveyancing	85,308,789
Commercial (reclassified)	0
Litigation	10,058,700
Probate	2,150,000
Miscellaneous	100,000
Total	**97,617,489**

37. Ms Emily LAU enquired about the implications of the huge amount of claims. Mr Vincent LIANG responded that the claims records in Hong Kong were not worse than that of comparable common law jurisdictions such as the United Kingdom. Mr Christopher HOWSE said that the problem, to a large extent, arose from conveyancing work. Historically, claims arising from conveyancing made up about 80% of the total value of claims in any year. The situation was exacerbated by the fall of the local property market, as many people looked for ways to get out of transactions they no longer wished to hold on to. Another contributing factor might be the change in conveyancing scale fees, i.e. the reduced fees charged by lawyers, which could possibly have affected the quality of work in certain cases. However, he said that he did not believe that the deterioration of the claims situation necessarily indicated that lawyers in Hong Kong were generally becoming more negligent.

38. Mr Albert HO asked whether it would be too late for a review as SIF had already signed the contract with the reinsurers as regards the new five-year plan. Referring to the option of QIP, he pointed out that the experience of some foreign jurisdictions was that it resulted in many small firms being driven out of practice because they could not afford to pay the high premium. Mr HO also asked whether the future enactment of the Land Titles Bill could help alleviate the problems caused by conveyancing work.

39. Mr Vincent LIANG advised that a contract was signed with the reinsurers after the forum held in September 2000. If SIF were to break the contract on grounds other than that provided in the contract, SIF would be liable to pay damages. He said that if the Amendment Rules were repealed, there would be a danger that SIF would not be able to pay for the premiums, and hence the claims. He further pointed out that one of the major purposes of setting up a mutual professional indemnity fund, which was compulsory under the law, was to protect the interests of the general public against fraud and negligence by solicitors.

40. On the question of the Land Titles Bill, Mr Vincent LIANG said that he was not sure whether the enactment of the Bill could solve the problems with conveyancing. He pointed out that in England, where land titles statutes

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existed, there were still a lot of claims arising from conveyancing work.

41. Mr Anthony CHOW said that the Law Society was not at all opposed to the possible alternative of a QIP. However, there were substantial arguments about the advantages and disadvantages of a QIP. Also, there would be far-reaching consequences of conversion to such a scheme. All these would need to be fully evaluated before a decision could be taken. He pointed out that according to the experience elsewhere, one possible disadvantage of a QIP was that without a bulk-buying or bargaining power, individual firms, especially the small ones, would have to bear the burden of a much higher premium payment. Many were even forced out of business because of the inability to get insurance cover. Furthermore, there had been complaints that initial premium savings in the first year were negated by subsequent increases on renewal of the insurance policy.

42. The Chairman asked how the increase in premium would affect solicitors firms of different businesses, and how it would impact on the legal services provided to the public. She said that she had received feedback opinion that many small solicitors firms operating with marginal profits would be forced out of business because of the increase in contribution which they could not afford to pay. Many of them were firms with good claims records and not engaging in conveyancing work. She also opined that the Law Society should do a research to analyse the effect of different professional liability insurance schemes on solicitors firms.

43. Mr Vincent LIANG said that the majority of small solicitors firms in Hong Kong in fact undertook conveyancing work. Under a scheme which was not a mutual liability scheme, small firms with previous claims records would find difficulty in getting insurance at a low premium. He added that the SIF was exploring ways to help its members in meeting the increased contribution, such as acquiring bank loans at prime interest rate. It was also looking into the feasibility of setting up a Premium Financing Programme to provide a more structured means of financing for its members.

44. Mr Chris ERVING opined that the Law Society had failed to consult its members fully on the situation and the problems created by the increase in contributions. He said that the forum in September 2000 was held at very short notice, and only about 65 members had attended. He added that as far as he understood, the idea of a Premium Financing Programme had never been mentioned to solicitors firms before.

45. Sharing the Chairman's views, Ms Miriam LAU opined that in view of the substantial increase in contribution introduced by the Amendment Rules, the Law Society should carrying out an in-depth analysis of the impact of the increase on different solicitors firms offering different types of legal services. She said that she well appreciated the demise of the small firms which were

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saddled with the increased contribution, as many of them were operating even at negative profit under the current depressed business environment. She said that the law required that a solicitor must hold insurance before he could obtain a practising certificate. She had heard of some members of the profession saying that they would reconsider whether to apply for a practising certificate in view of the hefty increase in contribution.

46. Mr Vincent LIANG and Mr Christopher HOWSE advised that calculation of contribution to the Fund was based on a formula laid down in the Rules. The formula took into account a number of factors, including the number of principals of a firm, the number of assistant solicitors and consultants, and the gross fee income etc. Hence, it would be difficult for the Law Society to assess accurately the impact on individual firms without detailed knowledge of how the firms ran their business.

47. Ms Eudrey EU asked whether it was feasible to readjust the contribution payable by individual firms depending on their previous claims records so that, for example, those with good claims experience would be awarded a reduced rate in the form of a no-claim discount.

48. Mr Patrick MOSS said that the major problem with this proposal was that the shortfall in contributions would still have to be made up elsewhere, i.e. by the rest of the firms. Mr Christopher HOWSE added that a mutual indemnity scheme meant inevitably that there were cross-subsidisation among its members. In the context of the Scheme in Hong Kong, anecdotal evidence cxshowed that firms which were heavily subsidising others in terms of contributions were the international big law firms, which did relatively little conveyancing or other high-risk work, as compared to the smaller firms. A consequence of switching to a non-mutual scheme, or a scheme with no-claims discount, would be that the big firms could pay for their insurance cover much cheaply, leaving the smaller firms in the situation having to pay much higher premium than at present.

49. The Chairman said that this involved the question of who deserved to bear the blunt of higher premium. Some of the views she received were that it was unfair that the good should be subsidising the bad.

The way forward

50. In concluding the discussion, the Chairman said that the Amendment Rules had far-reaching impact and should therefore be considered by all parties in detail. She suggested and members agreed that the Panel should make a report to the House Committee on 5 October 2001 when the new legislative session commenced and recommend that a subcommittee be set up to scrutinise the Amendment Rules.

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51. The Chairman added that some pertinent issues had been raised at this meeting which might warrant further discussion, e.g. how the proposed increase in contribution would affect law firms differently and the provision of legal services to the public, whether the amount of contribution should be based on the claims records and the nature of business of the firms, and whether other alternative schemes should be explored. She requested the Law Society and Horvath & Giles to do some fact-finding research on these issues to facilitate the deliberation of the subcommittee if formed.

Law Society / Horvath & Giles and Erving and Brettel

VI. Operation of the District Court and the High Court
(LC Paper Nos. CB(2)1684/00-01(01) and 2265/00-01(01))

52. Members noted the two progress reports prepared by the Administration on the operation of the District Court (DC) and the High Court (HC) after the commencement of the District Court (Amendment) Ordinance and the new District Court Rules on 1 September 2000. The two reports covered the period from 1 September 2000 to 31 July 2001.

53. In response to Ms Audrey EU's enquiry, Judiciary Administrator (JA) said that the overall increase of 38% in non-Inland Revenue Department civil cases in the District Court for the period from 1 September 2000 to 31 July 2001 was mainly attributable to the increase in the civil jurisdiction of the DC.

54. Ms Audrey EU said that many cases involving finance companies and lending institutions were tried in the DC. She opined that a significant number of such cases involved claims which, but for the amount of legal fees, should more appropriately be dealt with by the Small Claims Tribunal. She asked whether the situation could be reviewed from the policy point of view. While noting the need to be cautious in not mixing up judicial and policy issues, JA undertook to reflect Ms EU's view to the judges and judicial officers.

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55. In reply to Ms Emily LAU, JA said that three Masters in DC had been appointed subsequent to the implementation of the District Court (Amendment) Ordinance. Also, two additional judges had been deployed to the DC to deal with civil cases. He added that for the 11-month period from September 2000 to July 2001, there was a decrease of 15% of civil cases filed in the HC over the previous corresponding period. However, the reduced number of cases filed did not cause an immediate impact on the workload of the HC because the majority of cases presently listed for trial in the Court of First Instance were filed before September 2000.

56. In response to the Chairman, JA advised that the Judiciary had not yet decided on the timing for a review to consider the need to raise the civil jurisdiction of the DC further, as the District Court (Amendment) Ordinance

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had only come into effect for about a year. He agreed to report to the Panel on the matter in due course.

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57. At members' request, JA undertook to provide another progress report in six months' time.

58. There being no other business, the meeting ended at 7:05 pm.

Legislative Council Secretariat
17 December 2001