

立法會
Legislative Council

LC Paper No. CB(2)2232/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of meeting
held on Monday, 23 May 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon KWONG Chi-kin
- Members attending** : Hon Alan LEONG Kah-kit, SC
Hon TAM Heung-man
- Member absent** : Hon MA Lik, JP
- Public Officers attending** : Item V
Department of Justice
Mr Robert ALLCOCK
Solicitor General
Mr Paul TSANG
Senior Government Counsel
University Grants Committee
Miss WONG Hoi-wan, Charmaine
Acting Secretary-General

Item VI

Department of Justice

Mr Robert ALLCOCK
Solicitor General

Mr James O'NEIL
Deputy Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Cathy WAN
Senior Government Counsel

Financial Services and the Treasury Bureau

Mr Alan LO
Principal Assistant Secretary (Financial Services)

**Attendance by : Item V
invitation**

The Chinese University of Hong Kong

Dr Anthony NEOH, SC, JP
Chairman, Planning Committee for Law

Professor LIU Pak-wai
Pro-Vice-Chancellor

Professor Mike J. McConville
Professor of Law (Designate)

The University of Hong Kong

Professor Johannes CHAN, SC
Dean, Faculty of Law

Professor Michael WILKINSON
Head, Department of Professional Legal Education

The City University of Hong Kong

Professor Peter MALANCZUK
Dean & Chair Professor, School of Law

Dr Priscilla LEUNG
Associate Dean (External Affairs)

Professor D K SRIVASTAVA
Associate Dean, School of Law

Professor Anton COORAY

The Hong Kong Bar Association

Mr Edward CHAN, SC

Item VI

The Law Society of Hong Kong

Mr Denis G BROCK
Chairman of the Working Party on Limited Liability
Partnership

Mr Allan C Y LEUNG
Member of the Working Party on Limited Liability
Partnership

Ms Angela LI
Assistant Director
Regulation and Guidance

Hong Kong Institute of Certified Public Accountants

Mr Edward K F CHOW
President

Mr Paul F WINKELMANN
Convenor of the Liability Reform Working Group

Mr Ken McKelvie
Chairman of the Professional Risk Management
Committee

Mr Stephen CHAN
Executive Director

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Paul WOO
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1590/04-05 – Minutes of meeting on 31 March 2005)

The minutes of the meeting held on 31 March 2005 were confirmed.

II. Information papers issued since the last meeting

(LC Paper No. CB(2)1466/04-05(01) – Hong Kong Bar Association's revised comments on the recommendations of the Judiciary's review of the Lands Tribunal Ordinance (Cap. 17) and the Land Tribunal Rules (Cap. 17A)

LC Paper No. CB(2)1516/04-05(01) – An Executive Summary and a report on "Recovery Agents" from the Special Committee on Recovery Agents of the Hong Kong Bar Association

LC Paper No. CB(2)1588/04-05(01) – An Executive Summary and the submission on "Review of legal aid in criminal cases" from the Special Committee on Legal Aid Reform of the Hong Kong Bar Association to the Legal Aid Services Council

LC Paper No. CB(2)1608/04-05(01) – Paper provided by the Administration on "Review of sexual offences in Part XII of the Crimes Ordinance"

LC Paper No. CB(2)1609/04-05(01) – A circular on "Recovery Agents" issued by the Law Society of Hong Kong to its members on 17 May 2005)

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

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1621/04-05(01) – List of outstanding items for discussion

LC Paper No. CB(2)1621/04-05(02) – List of follow-up actions)

3. Members agreed that the following items should be discussed at the next meeting on 27 June 2005 –

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- (a) Issues relating to legal professional privileges arising from the recent Police attempts to execute search warrants in the Legal Aid Departments;
- (b) Reform of the law of arbitration; and
- (c) Professional Indemnity Scheme of the Law Society.

(Post-meeting note : (i) At the request of the Administration and with the agreement of the Chairman, the item in paragraph 3(a) above was postponed for discussion; and (ii) at the request of the Law Society and with the agreement of the Chairman, the item "Solicitors' Accounting Rules" was added to the agenda for the meeting on 27 June 2005.)

IV. Matters arising from the meeting on 25 April 2005

(LC Paper No. CB(2)1621/04-05(03) – Paper prepared by the LegCo Secretariat on "Budgetary arrangements for the Judiciary")

4. The Chairman informed members that pursuant to the discussion of the Panel at its last meeting on 25 April 2005, the Secretariat had prepared a paper setting out the suggestions of members on the budgetary arrangement for the Judiciary. Subject to members' endorsement, the paper would be provided for the Administration's consideration and response.

5. Members endorsed the paper and agreed that the issue of budgetary arrangement for the Judiciary should be followed up at a future meeting.

V. Establishment of a third law school

(LC Paper No. CB(2)1605/04-05(01) – Background brief prepared by the LegCo Secretariat on "Issues relating to legal education and training in Hong Kong"

LC Paper No. CB(2)1605/04-05(02) – Paper provided by the Chinese University of Hong Kong on "The Law School of the Chinese University of Hong Kong"

LC Paper No. CB(2)1605/04-05(03) – Paper provided by the Law Society of Hong Kong on "A Third Law School"

LC Paper No. CB(2)714/04-05(02) – Paper provided by the Administration on "Proposed establishment of a third law school")

6. The Chairman welcomed the representatives of the Administration, the Chinese University of Hong Kong (CU), the University of Hong Kong (HKU), the City University of Hong Kong (CityU) and the Hong Kong Bar Association to attend the meeting to discuss issues relating to the establishment of a new law school at the CU.

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7. The Chairman referred members to the submissions received by the Panel. She pointed out the Law Society, which was not represented at the meeting, had provided a paper on the subject matter for the Panel's reference.

Submission from the CU

(LC Paper No. CB(2)1605/04-05(02))

8. At the invitation of the Chairman, Dr Anthony NEOH briefed members on the progress of the establishment of the School of Law of CU. He highlighted the updated development as follows –

- (a) the CU had established an Executive Committee of the School of Law, which was chaired by Sir T L YANG, to assist the infusion of the University's bilingual culture into the School in its formative years and to take over the function of the Dean;
- (b) a Law Academic Advisory Committee chaired by Professor Sir David Williams, QC had been established to advise on the academic plans of the School including curriculum design, teaching, research and collaborative links;
- (c) a Planning Committee chaired by him with representatives of the two legal professional bodies had been set up to oversee the planning of the School;
- (d) on the recommendation of the Planning Committee and following a selection procedure on a world-wide search for senior academics to lead the School, CU had appointed Professor Mike McConville of the University of Warwick as the first Chair Professor and Director (Designate) of the School; and
- (e) CU was in the process of recruiting a core team of academic staff members to assist the Director in preparing the initial academic programmes and related activities. It was planned that a core team of eight academic staff would be in post by September 2005. While 25 to 30 academic staff members would be recruited during the early years, the full academic staff establishment of about 50 would be achieved when the School reached maturity.

9. Professor LIU Pak-wai briefed members on the goals of the setting up of the new law school at CU, the characteristics as well as the teaching and learning philosophy of the School as detailed in the paper provided by the CU. He also highlighted on the following inaugural programmes of the School –

- (a) the four-year Bachelor of Laws (LLB), Juris Doctor (full time and part-time) and LLM (in Business and Law in China; International Economic Law; and Common Law) programmes would be offered

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beginning in the academic year 2006-07. There would be 50 University Grants Committee (UGC) funded student places for the LLB programme in 2006-07; and

- (b) the Post-graduate Certificate in Laws (PCLL) (full time and part-time) programme would be offered with effect from 2007-08. 36 places of the programme would be UGC-funded.

Views of the Administration

(LC Paper No. CB(2)714/04-05(02))

10. In response to the Chairman, Solicitor General said that the Steering Committee on Legal Education and Training (the Steering Committee) had consulted the various stakeholders on the establishment of a new law school in Hong Kong. Broadly speaking, there was support for the setting up of a third law school, including the support of the Department of Justice (DOJ). He summarised the position of DOJ as follows –

- (a) regarding the concern about the impact of a new law school on the number of new entrants to the legal profession, DOJ took the view that there was no direct link between the number of local law students taking LLB and the number of entrants to the profession, taking into account the fact that about half of those entering the profession studied law elsewhere. Moreover, those obtaining a law degree did not necessarily want to practise law;
- (b) as to the PCLL, half of the places were UGC-funded and the rest were self-financed. The number of places available was not limited by the number of UGC-funded places. Even if there was an increase in UGC-funded places, this would not necessarily increase the total number of places available. It would mean that more students would have financial assistance to undertake their professional legal education; and
- (c) according to the consultants engaged by the Steering Committee to undertake a comprehensive review on legal education and training in recent years, which had been endorsed by the Steering Committee, it was the quality of the new entrants to the profession rather than the number of LLB or PCLL places which should be monitored and improved. The standards and quality of new entrants could be properly ensured by virtue of the entry standards, relevance and quality of the PCLL course and teachers, and the rigorousness of the PCLL examinations. Beyond that, in a free and competitive economy, market forces would in practice ensure that only those who possessed the best standards and quality would be able to do successfully in the profession.

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Views of the Faculty of Law of the HKU
(LC Paper No. CB(2)1664/04-05(01))

11. At the invitation of the Chairman, Professor Johannes CHAN highlighted the views of the Faculty of Law on the establishment of a new law school at CU as follows –

- (a) the Faculty of Law of HKU believed that a larger community of legal scholars and healthy competition among quality law schools would, subject to the availability of sufficient resources, enhance the standard and quality of legal education in Hong Kong;
- (b) the Faculty of Law, however, was concerned about the lack of consultation and studies on the resource needs for the establishment of a new law school. Sufficiency of resources was of vital importance in developing quality legal education and training. The Faculty of Law felt that there would be little gain if the same resources for the existing two law schools at the HKU and the CityU were to be shared among three providers of legal education and training, with the establishment of a third law school at the CU. In this regard, there was a policy issue to be addressed as to whether, in light of shrinking public resources, it was more appropriate to use the scarce resources in building up excellence than to spread the resources, including human resources, thinly among the three institutions;
- (c) the issue of resource constraints, particularly in relation to teaching in the PCLL, was a major concern, taking into account that the establishment of a new law school would increase the difficulty of getting enough experienced professional practitioners to assist in providing the necessary practical training to the students; and
- (d) the Faculty of Law had reservation about whether it was an opportune timing for offering a third PCLL course at the new law school in the academic year 2007-08, when no LLB students would have graduated in that year due to the transition from a three-year to a four-year LLB programme.

Views of the School of Law of CityU

12. In response to the Chairman, Professor Peter MALANCZUK made the following comments –

- (a) the position of the School of Law of the CityU had been expressed in the Steering Committee on Legal Education and Training. In general terms, CityU considered that there was enough room for a third law school and it welcomed the opportunity of cooperation in addition to competition among the three institutions in the interests of raising the standard of legal

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education in Hong Kong. It also afforded the opportunity for the three law schools to join efforts in areas where they could work together for the betterment of not only the interests of Hong Kong but also the interests of the greater China; and

- (b) while it was a matter of academic autonomy for the universities in developing their priorities, any decision to be taken would need to have regard to the benefits of the community as a whole. The Standing Committee on Legal Education and Training would be able to monitor standards at the law schools. As far as government funding was concerned, it was important that every institution should be provided with a level playing field with equal conditions of competition. There should not be a stronger allocation of LLB and PCLL places for any one of the institutions than the rest.

Views of the Hong Kong Bar Association

13. In response to the Chairman, Mr Edward CHAN said that while the Bar Association supported in principle the establishment of a third law school at the CU, it shared the same concern expressed by the Faculty of Law of HKU about resource constraints and division of limited resources among providers of legal education. The Bar Association was particularly concerned about the limited capacity of the two legal professional bodies in providing an adequate pool of experienced practitioners to teach in the PCLL, which was a professional training course essential for the practice of law in Hong Kong.

14. Mr Edward CHAN further said that the Bar Association considered that CU should finalise the academic plans of its law school as soon as possible, in particular the curriculum design, if it were to meet the target dates of the offering of its inaugural programmes as planned.

Issues raised

15. Ms Emily LAU said that she supported in principle healthy competition among the universities as providers of legal education in Hong Kong. However, she shared the concern that the setting up of a new law school would dilute the existing limited resources, including teaching expertise, which had to be shared among all the law schools. This could have an adverse impact on the quality of legal education. She also agreed with the views expressed by HKU and the Bar Association on the progress of planning of the new law school and its academic programmes. She considered that all these concerns had to be fully addressed at an early stage. Ms LAU added that in her view, overall resources provided for the three law schools should be increased to ensure that they could cooperate and compete on fair and equal terms in improving legal education and training in Hong Kong.

16. Professor LIU Pak-wai said that resources allocated to the new law school, as with the two existing law schools at HKU and CityU, would be determined on the basis of a set of criteria including the number of student places, teaching staff, research work

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undertaken and other requisite facilities. As regards LLB student places, CU was not allocated any additional student numbers. Therefore, the number of places at HKU and CityU would not be reduced with the establishment of a new law school at CU. Regarding the PCLL to be offered by the new law school, Professor LIU said that 36 places would be UGC-funded. These were the only newly added places for the new law school.

17. Dr Anthony NEOH said that CU fully agreed that each of the law schools should have a fair share of the resources and there should be fair and equal conditions for competition among them to bring about improvement to the legal education system in Hong Kong. He pointed out that upon allocation of resources to the universities, it would be within the autonomy of the universities themselves to decide on how the resources should be utilised in various priority areas, in accordance with the policy of the universities concerned. He said that the Planning Committee would take on board the views expressed on the planning of the new law school, including the need to finalise the curriculum design at an early stage. He added that with the appointment of Professor Mike McConville, recruitment of seven additional teaching staff members would soon be completed. Dr NEOH further said that it was CU's firm target to offer the LLB programme in the academic year 2006-07, and a planned target to offer the PCLL by 2007-08. Relevant stakeholder parties were in active participation in the discussion of the design and the content of the courses. Dr NEOH said that CU would do its best to achieve the targets.

18. Professor LIU Pak-wai supplemented that in deciding the curriculum of the law programmes, the views of the two legal professional bodies, which were represented on the Planning Committee, would be fully considered.

19. Mr Edward CHAN said that the involvement of the legal profession in the law programmes of the universities extended beyond participation in the various boards and committees. Barristers and solicitors with practical experience and skills devoted a lot of time in scrutinising the course programmes and in teaching of the law programmes, particularly the skills-based PCLL. He hoped that the curricula of the new law school could be finalised as soon as possible to allow sufficient time for the legal profession to consider them in detail.

20. Professor Mike McConville responded that the targets set were realistic ones. He informed members that the planning of the LLB, which would be offered in 2006, had reached the stage of an outline framework for the various components of the course, while a detailed planning on the PCLL had yet to be undertaken. He said that the law school would work closely with the profession in all regards including collaboration over the creation of the law programmes and how the programmes would be scrutinised and monitored. On the issue of quality, Professor McConville said that CU had a distinguished record of being able to attract high quality students, and it would seek to ensure quality through the admission process of students and the oversight by the Academic Board in which the legal profession would be represented. In addition, there would be general oversight by the Standing Committee on Legal Education and Training, and the involvement of the legal professional bodies in overseeing the

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delivery of the courses. So far as staffing was concerned, he said that the response to the initial recruitment exercise provided every confidence to the school that it would be able to recruit staff of the highest quality to deliver the planned programmes.

21. Professor Mike McConville further said that it was wrong in principle that students should be denied a place for receiving legal education for reasons other than merit. The addition of 36 UGC-funded PCLL places at the new law school would to some extent increase the opportunity for students to take up the programme, which might otherwise be denied because of lack of funds. The places would be merit-based, and would be available to the best students regardless of whether they obtained their law degree from the local law schools or from overseas.

22. In response to the Chairman, Acting Secretary General, UGC (SG/UGC) informed members that the Administration had agreed to the establishment of a new law school at CU. Approval of the Finance Committee of the Legislative Council (LegCo) had been obtained regarding the recurrent expenditure for the new law school for the years 2005-06 to 2007-08. The UGC might seek funding approval from LegCo for the capital works project in relation to the physical accommodation of the new law school in due course.

23. SG/UGC further said that as compared with 2003-04, the number of student places in both the LLB and PCLL programmes at HKU and CityU had not changed in 2005-06.

24. In reply to the Chairman, Professor Johannes CHAN said that sufficiency of resources was an issue of vital importance which had to be addressed if the Government took a serious view of improving legal education and was minded to bring into existence a new law school which could measure up to world class standards. In his view, the resources that were needed for running a new law school went far beyond that required for the creation of 36 additional PCLL places. A significant increase in resources as well as a reconsideration of the funding policy was necessary.

25. Referring to SG/UGC's comment that the PCLL and LLB places at HKU had not been reduced, Professor Johannes CHAN pointed out that there were 170 PCLL places and 120 LLB places in 1999-2001. However, due to a subsequent change in the methodology for determining government funding for the places, the number of PCLL and LLB places had been reduced to 117 and 86 respectively. He further said that the abolition of a mixed-subsidy model for the funding of PCLL places by UGC had resulted in an increase in the fees for the self-financed PCLL places. This had affected students who wished to take up the PCLL course.

26. Regarding the new four-year LLB programme, Professor Johannes CHAN said that the Faculty of Law of HKU had not been provided with additional resources in the first three years of the implementation of the programme. This meant that the Faculty had been using existing resources in the first three years in designing and running a four-year programme. At this stage, the Faculty was not certain as to the extent of government funding for the fourth year of the programme.

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27. Responding to the issues raised by Professor Johannes CHAN, SG/UGC said that in considering the student numbers for LLB and PCLL in the roll-over year 2004-05, UGC had taken into account the Administration's advice that the number of UGC-funded places in the two legal education programmes should be maintained as that of 2003-04. It was then decided that the student numbers for the two law schools in 2004-05 should be on a par with that provided in 2003-04. As such, HKU was allocated 117 PCLL places and 86 LLB UGC-funded places in 2004-05, which was at the same level as in 2003-04.

28. Concerning the LLB programme which had been extended from three to four years, SG/UGC said that the Administration had undertaken to provide the requisite resources to cater for the student places in the fourth year of the programme.

29. Ms Emily LAU said that after hearing the views and concerns expressed, she did not feel assured that the targets set as regards the inauguration of the new law school at CU and its law programmes could be achieved. She considered that the problems raised were genuine ones and called upon the parties concerned to give a fresh look at the issues of concern and review them in detail in deciding how the establishment of the new law school should be taken forward. She said that more specific information on the funding arrangements for the new law school and the allocation of resources among the three law schools should be provided for LegCo's consideration. The Chairman and Ms Emily LAU requested UGC to inform the Panel as soon as possible –

UGC

- (a) information on the overall estimated government funding required for the establishment of the new law school at CU, including the costs for the physical accommodation and other facilities and the staff costs, and the basis for determining such funding;
- (b) information on the number of LLB and PCLL places (including UGC-funded and self-financed places) offered by the two existing law schools since 2000-01, and to be offered by the new law school; and
- (c) the levels of funding for the two existing law schools since 2000-01 and the basis for determining such funding, and whether and how the establishment of a new law school at CU might affect the allocation of resources for the other law schools.

30. The Chairman considered that the Panel should follow up the subject matter at a future meeting. She requested the Planning Committee of the new law school to revert to the Panel in six months' time on the progress of the establishment of the law school and the formulation of its academic curricula. Dr Anthony NEOH said that the Planning Committee would be happy to come back to report on progress when invited.

VI. Limited liability for professional practices

(LC Paper No. CB(2)1613/04-05(01) – Background brief prepared by the LegCo Secretariat on "Limited liability for professional practices")

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LC Paper No. CB(2)1613/04-05(02) – Report of the Law Society's Working Party on Limited Liability Partnership

LC Paper No. CB(2)1613/04-05(03) – Paper provided by the Administration on the Report of the Law Society's Working Party on Limited Liability Partnership)

31. The Chairman said that the Panel had considered at its meeting on 31 March 2005 the report of the Hong Kong Institute of Certified Public Accountants (HKICPA) on professional liability reform and the proposals set out therein. Discussion at this meeting was intended to focus mainly on the report of the Working Party of the Law Society on the proposed introduction of limited liability partnerships (LLPs) in Hong Kong.

Introduction by the Law Society

32. At the invitation of the Chairman, Mr Denis BROCK highlighted the views of the Law Society's Working Party as follows –

- (a) the aim of the Working Party's proposal to permit Hong Kong solicitors to practise as LLPs was to introduce a more equitable system of limiting liability for legal practitioners. The introduction of LLPs was one step in the professional liability reform. A number of jurisdictions, including Canada, the United States, the United Kingdom and some European Union States, had adopted measures or had legislation to implement LLP in different forms;
- (b) at present, Hong Kong only had legislation allowing law firms to limit their liability through incorporation albeit the implementing rules awaited enactment. However, the profession found that solicitors corporation was not an attractive way of structuring solicitors practices and was not the right solution for Hong Kong law firms;
- (c) the fact that legislation was enacted to enable solicitors to limit their liability by means of solicitor corporations suggested that the community had accepted the concept of limiting professional liability and that limiting liability was not inconsistent with protection of consumer interests. LLPs were merely a different type of vehicle which moved away from the corporate model to a partnership model. In addition, there was already in existence a high level of mandatory insurance which protected the clients up to a maximum of \$10 million per claim; and
- (d) Hong Kong was a global financial and business centre taking on cross-border transactions. Under an increasingly litigious business environment, in the case of large transactions, there was the risk of catastrophic claims against firms which could wipe out the firms. A system of LLPs would remove the risk of innocent partners but leave the claimants with recourse to remedy against both the LLP itself and the

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individual partners which were held personally liable for their own negligence. It would not only be good for the solicitors profession but also for Hong Kong, if Hong Kong was to maintain its position as a key centre for the provision of legal services in the region, bearing in mind that Singapore, a keen competitor of Hong Kong, was poised to bring in the system of LLPs.

33. In reply to the Chairman's question, Mr Denis BROCK said that under the Law Society's proposal, there would be no additional insurance requirements on LLPs. As under the present structure, where a claim arose, recourse would first be to the Solicitors Indemnity Fund subject to a maximum limit of \$10 million per claim. If the limit was exceeded and if there was no top-up insurance, the claimant could seek additional remedy from the assets of the LLP and from the assets of the solicitor partners responsible for the wrong-doing.

Views of the Administration

34. Deputy Solicitor General (DSG) introduced the paper provided by DOJ which responded to the report of the Law Society's Working Party on Limited Liability Partnership. He summarised the views of the Administration as follows –

- (a) the Administration was aware of the concerns raised by many quarters about potentially huge liabilities and their call for limiting or capping liability. They included, apart from the legal and accountancy professions, the medical profession, the insurance industry and even the taxi driver trade;
- (b) professional liability reform required careful and rational consideration as it involved a wide range of complicated matters affecting not just the legal or accountancy professions. It also had government-wide ramifications cutting across the policy responsibilities of a number of bureaux;
- (c) it would not be rational or fair to introduce, or even to consider introducing, LLPs for only the legal profession or the accountancy profession, or both. Introduction of "proportionate liability" would have an even greater potential impact. Under the proposal, the well known and well understood concept of joint and several liability of tort-feasors would be replaced. This would be a fundamental change of the general law of tort. The various proposals on limiting liability would shift the burden of risk from the professionals to their clients; and
- (d) the Government could not make any commitment to introduce any of the major forms of limiting liability without undertaking a comprehensive assessment of the overall impact and implications. It might be necessary to prioritise the tasks. A paper was under preparation for consideration by the Policy Committee to determine the way forward.

Issues raised

35. In reply to the Chairman, DSG said that DOJ would take the lead in preparing the paper for the Policy Committee's consideration. The paper would cover the various issues which had been raised by interested parties on professional liability reform, including the proposals on LLPs, proportionate liability and capping of liability by legislation etc, and explain their legal impact. The implications to protection of consumers and public interest brought about by liability limiting measures would also be covered in the paper. It was expected that the paper could be submitted to the Policy Committee in less than six months.

36. Mr Albert HO said that he was disappointed at the Administration's failure to provide a clear timeline on when and how to take concrete action to take forward a review on liability reform, despite that it had acknowledged the concerns expressed by the stakeholders and interested parties. He considered that the Administration should undertake a detailed study on the various proposals and their likely impact on the community without further delay. He suggested that as a start, the study could focus on the impact of a new liability limiting regime on certain sectors and professions where partnership was a common business model, e.g. lawyers, accountants, engineers and architects.

37. DSG replied that as liability reform involved a wide range of complicated matters with far-reaching impact, it was necessary to obtain a steer from the Policy Committee as to the direction to be followed in dealing with the various issues. He informed members that at this stage, DOJ and the Financial Services and the Treasury Bureau were mainly responsible for the preparation of a paper for the consideration by the Policy Committee. Principal Assistant Secretary (Financial Services) added that in view of the interest and concerns expressed by different trades and professions, it might be necessary to involve other policy bureaux and departments at a later stage after the scope of the study had been decided.

38. Mr Albert HO asked whether the Administration would request the Law Reform Commission (LRC), or engage private consultants, to conduct the study. Ms TAM Heung-man referred to paragraph 5 of the Administration's paper, which stated that following a submission to the Financial Services Bureau in 2002, the issue of proportionate liability was referred to the Standing Committee on Company Law Reform (SCCLR). She enquired about the outcome of the SCCLR's deliberations.

39. DSG responded that the SCCLR had undertaken a study of proportionate liability in the context of company law. Given that the issue of proportionate liability was of a wide scope and involved a fundamental change to the general law of tort, the SCCLR subsequently requested the LRC to look at the matter. However, the LRC was of the view that it would not be appropriate for it to study the issue in the context of a law reform. DSG said that as the matter now stood, the Administration was keeping an open mind as regards the appropriate modus operandi of taking forward the study. He reiterated that the Administration considered that it might be necessary to prioritise so that different issues could be dealt with at different stages. He added that in view

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of the complexity of the subject matter, and where new legislation was considered necessary for the implementation of certain proposal, it would require ample time for in-depth consideration.

40. Ms TAM Heung-man sought the views of HKICPA on the Administration's comment in paragraph 11 of its paper that the proposals on limiting liability would shift the burden of risk from the professionals to their clients. Mr Edward CHOW responded that under the proposed approach of proportionate liability, the liability of a defendant was limited to that proportion of the damages suffered by the plaintiff which was directly referable to that defendant's degree of fault. In the end, it would be for the court to determine the degree of fault, and hence the appropriate damages, to be borne by the defendant and other co-defendants. In the view of the HKICPA, proportionate liability was a fair and reasonable system for attribution of fault and remedy as ultimately decided by the court.

41. In response to the Chairman, Mr Denis BROCK said that the Law Society was in support of the approach of LLPs. In the view of the Law Society, LLPs were a vehicle which had the advantages of being relatively simple and easier to administer, as compared with proportionate liability and liability capping legislation. Moreover, so far as the issue of limiting liability was concerned, LLPs were a more attractive way of running business than a corporate model.

42. Ms TAM Heung-man asked whether the Administration had any anticipated timeframe for implementing the HKICPA's proposals on limiting liability. DSG replied in the negative. He said that the way forward would have to be set by the Policy Committee.

43. Mr Edward CHOW said that the HKICPA was concerned about the absence of a definite timetable for the undertaking of a professional liability reform. He said that as far as the accountancy profession was concerned, the delay had resulted in auditors in Hong Kong becoming increasingly reluctant to take on new work of a higher risk nature. This imbalance between risk and reward for the professional practitioners had hindered the development of Hong Kong's economy and in particular capital market activities. He remarked that a liability reform should be proceeded with as a matter of priority.

44. Mr Martin LEE asked whether the recommendations of the Policy Committee would have to be submitted for the Executive Council (ExCo)'s approval. DSG replied that he could not predict the outcome of the deliberations of the Policy Committee at this stage. He added that any recommendations resulting in legislative change would first need to be approved by ExCo and then be scrutinised and ratified by LegCo.

45. Ms Emily LAU agreed with the Administration that the subject of limiting professional liability involved very complex issues with far-reaching impact and hence had to be examined carefully. In particular, the issue of proper safeguard of consumer interests had to be fully considered. She urged the Administration to commence a

Action

study on the feasibility of the various proposals at an early stage, taking into consideration the concerns expressed, and to revert to the Panel on the progress as soon as possible.

Way forward

Admin 46. The Chairman requested the Administration to consider making the following suggestions in its paper to the Policy Committee –

- (a) to study the proposal on LLPs separately from the issue of proportionate liability, as the latter had previously been referred to the SCCLR for consideration; and
- (b) to consider introducing LLPs for a number of professions including the solicitors, the accountants and medical practitioners.

47. The Chairman further said that the Administration could make reference to the Research Report prepared by the Research and Library Services Division of the LegCo Secretariat on “Limited Liability Partnerships and Liability Capping Legislation for the Practice of Law in Selected Places”, which had been considered by the Panel at its meeting on 31 March 2005.

48. Mr Martin LEE said that the Administration should involve the participation of the Law Society and the HKICPA in the process of conducting the study. DSG responded that the views of the Panel and the concerned professional bodies would be taken on board in the Administration’s consideration.

Admin 49. The Chairman said that the Panel should follow up the subject matter at a future meeting, after the Policy Committee had the opportunity to consider the issues and when the Administration was in a better position to report to the Panel on the developments. In response to the Chairman, DSG said that the Administration could revert to the Panel in about six months’ time.

VII. Any other business

Visit to the Judiciary

50. The Chairman reminded interested members who would take part in the Panel’s visit to the Judiciary on 24 May 2005 to assemble at the LegCo carpark at 8:40 am.

51. The meeting ended at 6:45 pm.