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***Legislative Council***

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

**Background brief for meeting on 23 May 2005**

**Issues relating to legal education and training in Hong Kong**

**Purpose**

This paper provides background information on the past discussions of Members of the Legislative Council (LegCo) on issues relating to legal education and training in Hong Kong.

**Review of legal education and training**

Background

2. The Steering Committee on the Review of Legal Education and Training in Hong Kong was established in November 1999 to oversee a comprehensive and independent review of legal education and training in Hong Kong, pursuant to the recommendation of the Advisory Committee on Legal Education. The Steering Committee agreed that the review should be carried out in two stages, namely, a consultancy stage to be followed by a further study by a Review Panel. The first stage of the review was conducted by two overseas Consultants, and was mainly financed by a Services Support Fund grant. The application for funding was originally made by the Law Society of Hong Kong, but eventually the Hong Kong Bar Association, the University of Hong Kong (HKU), and City University (CityU) became co-applicants.

3. The Consultants' Report on Legal Education and Training in Hong Kong: Preliminary Review, which contained a total of 160 recommendations, was published in August 2001.

4. The Steering Committee had also engaged other consultants to carry out a manpower survey. The objective was to identify the key factors and trends that would affect the demand for and supply of personnel in the legal services sector in Hong Kong during the decade to 2011. The Executive Summary of the Study is in **Appendix I**.

## Discussion of the Panel

5. The Administration briefed the Panel on the progress of the review of legal education and training at a number of meetings in the 1999-2000, 2000-01, 2001-02 sessions. Following the publication of the Consultant's Report in August 2001, the Panel had discussed the Report and its recommendations with representatives of the Steering Committee, including representatives from the two legal professional bodies, HKU and CityU, at its meetings on 29 September 2001, 28 January and 24 June 2002. On the following two major recommendations made by the Consultants, the Panel noted that –

- (a) the Steering Committee had endorsed the recommendation that the Bachelor of Laws (LLB) be extended from three to four years. The Steering Committee had recommended to the University Grants Committee that funding be provided for the four-year LLB programme commencing in the 2004-05 academic year; and
- (b) regarding the recommendation that the Postgraduate Certificate in Laws (PCLL) should be replaced by a 16-weeks Legal Practice Course and a free-standing institution be established to conduct the course, the Steering Committee, after lengthy discussion, considered that the PCLL should not be discontinued, but that it should be subject to major reforms. The Academic Board to implement reforms to PCLL at both HKU and CityU respectively had been established.

6. In view of the progress made, the Steering Committee advised the Panel that it had no plans for the second stage of the review to be undertaken as originally envisaged. The Steering Committee recommended that a standing umbrella body with sufficient status and powers be established by legislation to oversee the implementation of reform of legal education and training and to monitor future direction of legal education. The body would replace the current Advisory Committee on Legal Education.

### **Proposed establishment of a third law school**

7. In December 2004, the Panel was consulted on the proposals in the Statute Law (Miscellaneous Provisions) Bill 2005. One of the proposals was to include representatives of the Chinese University of Hong Kong (CUHK) on the Standing Committee on Legal Education and Training under section 74A of the Legal Practitioners Ordinance, in anticipation that a law school would be established by CUHK. The Bill was introduced into LegCo on 9 March 2005 and is being scrutinised by a Bills Committee.

8. The major concerns raised by members at the Panel meeting were –
- (a) whether it was premature to provide for representatives of the proposed third law school to be included in the membership of the Standing Committee on Legal Education and Training when approval had not yet been given for the establishment of the law school;
  - (b) whether all the relevant parties and stakeholders had been fully consulted on the establishment of a new law school; and
  - (c) whether it was desirable in terms of policy to establish a third law school at a time when there was an over-supply of legally qualified persons who were having difficulties in finding employment in the legal profession.

9. On paragraph 8(a) above, the Administration explained that the provision was included in the Bill on the basis that, if approval was given for the establishment of the proposed law school, the membership of the Standing Committee be amended at an appropriate time. The provision would only come into operation on a day to be specified by the Secretary for Justice by notice published in the Gazette.

10. In response to the request of the Panel, the Administration had subsequently provided a paper to explain the consultation that had been taken place in respect of the proposed establishment of a third law school, and the likely impact of such a development on the provision of legal services (LC Paper No. CB(2)714/04-05(02) issued to the Panel on 20 January 2005 and reissued for the meeting on 23 May 2005).

11. The Panel agreed that issues relating to the establishment of the third law school should be discussed at the meeting on 23 May 2005. To facilitate discussion at the meeting, CUHK has been requested to provide a paper to advise the Panel of the progress of planning of the new law school, and details of the law programme, e.g. whether the new law school would offer any programme and develop expertise in areas of law which are not currently available in the two existing law schools. Moreover, given the trend of developments in the high education sector is that each institution should fulfil a unique role based on its strengths and area of excellence, CUHK has also been requested to advise how the new law school would steer towards achieving this objective.

### **Relevant papers**

12. A list of the relevant papers which are available on the LegCo website is in **Appendix II**.

**THE MANPOWER NEEDS OF**

**THE LEGAL SERVICES SECTOR OF HONG KONG:**

**FINAL REPORT - EXECUTIVE SUMMARY**

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The Report identifies key factors and trends that will affect the demand for and supply of personnel in the legal services sector during the decade to 2011. Its key points are summarised by the Chapters that are used in the Report.

**CHAPTER 1 – THE FUTURE OF HONG KONG**

- Hong Kong is the principal economic city of the Southern China hinterland it serves; its future growth and development are closely interrelated to the economic development of China.
- Hong Kong will be one of a number of gateways into China after China's accession to the World Trade Organisation but its importance in this role will be little diminished over the decade due to the gradual growth of China's domestic market.
- The role of Hong Kong as a financial, logistics, transport and telecommunications hub within Asia will increase in importance and activity during the decade.
- International companies are expected to launch a wave of investment into Asia during the decade in order to increase their presence in and earnings from Asia; their key decision makers in the Asian region are expected to be located in Hong Kong or Singapore.
- The Rule of Law and freedom of speech are two important factors cited as encouraging international companies to establish their regional headquarters in Hong Kong.
- There will be developments in Hong Kong's political systems during the decade that are expected to have positive more than adverse economic impacts.
- Continuing respect for the Rule of Law will depend on perceptions of how it is regarded by the Hong Kong Government, the Law's ability to provide relevant benefits at an acceptable cost for those using its remedies and the continuing recruitment of competent people to the judiciary.
- There is a cultural change underway whereby Hong Kong's citizens are more aware of their rights and may be increasingly inclined to use legal means to protect them or resolve disputes provided they feel they can afford to do so. This change is expected to continue and speed up as Hong Kong becomes more affluent.
- The geographic spread of small locally focused practices is expected to become more pronounced during the decade.
- Developments in statute law are expected to be many and wide ranging; they will increase the demand for legal service providers who can deliver specialised, practical solutions.
- The balance of probabilities is that Hong Kong will continue to develop economically and make progress in its attempts to become the World City of Asia.

**CHAPTER 2 – THE STRUCTURE OF LEGAL SERVICES IN HONG KONG**

- The providers of legal services divide into five groups: solicitors (inclusive of their support staff), barristers, Hong Kong Government, the Courts (including tribunals) and other providers.
- Solicitors' practices can be divided into tiers ranging from sole practitioners, through small then medium size practices to large local and international practices (including foreign law firms).
- Problems for all solicitors' practices were compounded by the Asian financial crisis, but not all practices have benefitted from the upturn in the economy in 2000.
- Over the decade various developments are expected to occur:
  - Growth in the international and large local firm sectors;
  - The emergence of some medium size firms as large local firms;
  - Mergers among some sole practitioners and small practices;
  - The entrance of several foreign law firms (principally mainland law firms); and
  - The emergence at some point of multi-disciplinary practices
- International firms will develop in terms of business controlled from Hong Kong and regional headquarters here, but may shrink in terms of headcount due to relocation of staff elsewhere in the mainland, the region and the world.
- International and large local firms are expected to raise the overall standards of performance, client service and management and efficiency of service delivery.
- Quality of service will be the key to expansion of any firm – for local firms this will involve standards of spoken and written English and Chinese.
- Medium size firms are expected to continue to exist but not to change significantly in numbers.
- The number of small firms and sole practitioners may reduce in number as generalist practice gives way to more specialised needs and also as opportunities for becoming successful relatively quickly are perceived to decline further, while practices increasingly have to be managed in a business like manner in order to succeed.
- There could be an increase in the number of foreign law firms due to the continuing impact of globalisation on Hong Kong.
- More mainland firms and lawyers will come to Hong Kong, the firms recruiting some Hong Kong lawyers to assist them and their mainland clients to understand Hong Kong law.
- Multi-disciplinary practices are expected to be permitted but to be few in number, having little significant impact on the market for legal services.
- Barristers have significant opportunity provided they are perceived as being reasonably priced, capable of responding quickly to clients' needs and adding value when compared to their UK counterparts.
- Consequently this branch of the profession can be expected to expand further as overall demand increases but there will always be a significant amount of work given to silks outside Hong Kong, principally in the UK, because there is a greater pool to choose from, they are considered to be less expensive and are perceived as usually responding faster than their Hong Kong counterparts.
- Hong Kong Government is a major consumer of legal services and will continue to be by direct recruitment and briefing out – areas of increasing use of legal services are seen as being law drafting (due to increase in volume of legislation), advice to Government bureaux and departments, an increase in criminal prosecutions (particularly of "white collar" offences) and an extension of coverage of the Legal Aid scheme.
- The number of tribunals is expected to increase and also the caseload of the magistracies and the courts will increase, thus making heavier use than now of legal services.
- The use of arbitration and alternative dispute resolutions is expected to increase.

## **MANPOWER STUDY, LEGAL SERVICES SECTOR OF HONG KONG – FINAL REPORT**

- Many businesses and other organisations use in-house legal services – these requirements for legal services are also expected to increase using both Hong Kong and foreign lawyers, due to changes in the regulatory environment, the introduction of more stringent requirements relating to corporate governance and the numbers of companies listing on the Hong Kong Stock Exchange.

### **CHAPTER 3 – FUTURE DEMAND AND SUPPLY**

#### *Demand*

- Demand for legal services will increase due to the changes and expansion in Hong Kong's economy, additional legislation to improve regulation and cater for new areas of specialisation and community demand in the area of individual and collective rights.
- Among the key changes in demand will be the requirements for quality and provision of measurable value by all clients; among large corporate clients the calling of tenders from a shortlist of large firms of solicitors is expected to increase.
- Demand for conveyancing has decreased in volume and value; it may recover the volume but not the value (due to the abolition of scale fees and especially if a title instead of documentation registration system is introduced; demand for advice regarding mortgages and rental agreements has also declined and is likely to decline further).
- In the property area there will be an increase in demand for legal services in respect of the establishment of owners' corporations and liability for slope maintenance works.
- Significant areas of demand are projected to be:
  - E-commerce
  - IT and communications
  - Financial dealings, products and their supervision
  - Intellectual property
  - Entertainment media
  - International trade
  - China business
  - New legislation
  - Emergence of a dispute oriented culture
  - Criminal activities
- The opening up of the mainland and the opportunity for Hong Kong lawyers to sit for exams that will form part of the process enabling them to be licensed to practise mainland law in the mainland will lead to increasing demand by corporate clients for some Hong Kong lawyers to be located in mainland cities
- Other areas of demand that will be important but of less volume are expected to be:
  - Constitutional law
  - Human rights
  - Competition law
  - WTO dispute resolution
- There is demand not met by providers of legal services but is resolved by resort to traditions of negotiated compromise, Legislative Councillors, statutory authority hotlines, trades unions, social welfare workers, neighbourhood associations and, when relevant, Legal Aid - the most disadvantaged are seen as the middle income (sandwich) class.
- Although changing, the culture of private individuals not using providers of legal services other than for property conveyancing, divorce or the making of wills, still remains strong and will continue to be an influence (albeit diminishing) during the decade.

## **MANPOWER STUDY, LEGAL SERVICES SECTOR OF HONG KONG – FINAL REPORT**

- The extent to which future demands for legal services in Hong Kong are not met will depend on the cost of those services and how they are perceived by those with the demand as well as by any extension or contraction of Legal Aid that may occur.

### *Supply*

- There is concern regarding an apparent oversupply of law graduates who complete the PCLL but, from an overall perspective, this contention is not supported by the statistics relating either to the numbers completing the PCLL annually or to the number of solicitors.
- Solicitors who focused almost exclusively on conveyancing until scale fees were abolished have generally had difficulty in finding other work that would generate as much revenue; older professionals involved in this experience have apparently had more difficulty in effecting the change to new areas of practice - for such people almost any supply would equate to oversupply.
- While numbers of solicitors, firms and trainee solicitors have increased, the numbers of support staff have declined indicating that work previously done by support staff has been taken on by professionals and trainees.
- The standards of delivery and efficiency of production of services are being enhanced by two factors:
  - The systems used by the international and large local firms
  - The higher remuneration being offered by the international and some of the large local firms to attract quality staff.
- Some larger firms indicated double digit percentage pay rises for their professional staff had been given in 2000 and would be repeated in 2001 with individual rewards varying and overall firm payroll costs rising in single digit percentage terms - these facts show that:
  - there is a shortage of new entrants to the profession who are viewed as talented or, after a few years, experienced
  - support staff have been reduced in numbers or have experienced remuneration reductions (usually in lower bonuses or reduction of overtime)
- The ratio of support staff to professionals is expected to reduce as consequence of increased investment in electronic data interchange and the systems supporting them within professional practices: particular areas where significant decrease may occur are trademark and patent registration.
- Any suggestion that foreign lawyers are contributing to the oversupply appears to be unfounded - foreign lawyers admitted to practise Hong Kong law after passing the relevant exams amount to approximately 5% of professionals with a practising certificate; there are no reasons to expect the situation will change significantly during the decade
- Specialist skills in areas, such as IT and entertainment media, are in short supply in Hong Kong currently, necessitating alliances with overseas providers. In these areas it is expected that some Hong Kong professionals will specialise more and they will be supplemented by foreign lawyer specialists who are either live in or come to Hong Kong (as is the case now with mergers and acquisitions) or who are enabled to continue practising from their home base by modern telecommunications.
- The current shortage of mainland lawyers is expected to reduce as the decade progresses and the immigration procedures on both sides of the border are made easier for them to come to Hong Kong to practise China law.
- There are too few barristers in Hong Kong recognised widely within the profession as being highly competent resulting in those SCs who are so recognised being in great demand and charging fees that are considered to be high; there are sufficient junior barristers to meet the needs of the Legal Aid programme although the advocacy skills of some may be lacking for a variety of reasons.

## **MANPOWER STUDY, LEGAL SERVICES SECTOR OF HONG KONG – FINAL REPORT**

- There is a core of younger barristers in Hong Kong who are effective in developing their careers and practices and who are regarded as competent.
- There continues to be a steady flow of people taking up pupillage, some straight from obtaining their PCLL, others later in life after leading reasonably successful careers in other fields and there is no reason to believe that these trends will cease
- Provided barristers and lawyers from foreign jurisdictions can come to Hong Kong and be admitted to practise advocacy (from 2002, this will be after passing the relevant exams), there should be sufficient supply of barristers to meet the anticipated increase in demand; the extent of the supply needed will be affected in part by perceptions of cost and quality – this means that the current practice adopted by some firms of solicitors and their clients of referring to barristers in London and elsewhere for opinions can be expected to continue.
- The current supply of law graduates and those passing their PCLL is sufficient to meet short-term needs but may prove insufficient by the middle of the decade (2006); the real issue though is not quantity but quality and if their quality is considered to be lacking by their clients, such clients as can do so, will look elsewhere for the provision of the legal services they require.
- The Rule of Law is dependent on having sufficient competent judges, magistrates and presiding officers of tribunals; there is a sufficient quantity in place now and the means of recruiting from barristers, solicitors and overseas should enable a sufficient supply to be maintained.
- Concerns have been raised that the disparity in earnings between successful professionals in practice and the remuneration of magistrates, tribunal presiding officers and judges will deter competent people from joining the bench; this factor will continue to apply during the decade and could be overcome by recruiting a minority of positions from overseas despite the recruits being unable to speak Cantonese.
- It is considered that there will continue to be an adequate supply of law draftsmen during the decade to meet the expected demand for additional legislation; there will also be an adequate supply of suitably trained people to be law costs draftsmen but it is uncertain if they will be attracted to do this work and this situation may necessitate the Law Society of Hong Kong having to provide specific recognition of suitably qualified people who undertake this work.
- Government prosecutors are drawn from both qualified professionals and those who have passed their PCLL; the present sufficiency of supply should continue even with an increase in the numbers of prosecutions, provided the Government can continue both to attract recruits to be prosecutors and to brief out as it does now.
- The numbers of paralegals is not expected to increase significantly and may decline further, particularly if the Land Titles Bill is enacted and patents, trademarks and service marks can be registered by electronic data interchange - no shortage of supply is anticipated.

### **CHAPTER 4 – PROFESSIONAL ATTRIBUTES**

- Increasingly, providers of legal services will have to develop a wider range of attributes to meet the greater expectations of all categories of client.
- In addition to ethics, integrity and knowledge of the relevant area of law, the provider will be expected to act as a partner and practical adviser who can set before the client a range of practical options with an assessment of the risk and potential benefit to the client of each option.
- The provider will also be expected to demonstrate how value is being given to the client.

## **MANPOWER STUDY, LEGAL SERVICES SECTOR OF HONG KONG – FINAL REPORT**

- The above points indicate that providers of legal services will need to be competent in client relationship management, time and project management, problem analysis and solution development.
- Additional essential attributes will be competent interpersonal and communication skills
- Some providers will continue to need to be strategists and deal makers in order to meet their clients' requirements.
- It is imperative that a number of existing providers of legal services and all new entrants are proficient in the English language (both written and spoken); similar ability in the Chinese language and the Cantonese and Putonghua dialects is rapidly becoming as important in most areas of service provision and is more important for some clients.
- Providers of legal services should also learn basic business skills, regardless of the branch of the profession they decide to enter or the employment they take up.
- The changing requirements of providers will oblige them also to develop their innovative and creative skills or, if they are unable to do so, to be able to have access to these abilities when they need them.
- There is not the time to develop these attributes during a law degree or the PCLL and, therefore, it would be sensible if providers were to be formally trained in these attributes during the early years they provide legal services, with reinforcement being specifically required as part of continuing professional development.
- Specialist skills needed for different areas of specialisation should be pursued by the practitioner by a combination of personal initiative and training on the job, where relevant.
- The majority of interviewees supported the concept of providers of legal services being accredited with their areas of specialisation but were not sure how this idea should be regulated; they also supported the advertising of specialisation by professionals in accordance with guidelines to be laid down by the professional bodies.
- There is a feeling that professionals should provide more pro bono work but there is no suggestion as to how this should be done or that it should be monitored – it was felt better if the amount undertaken was left to individual discretion
- It should be noted that each year the Law Society organises Law Week when those of its members willing to participate, provide legal advisory services free of charge to the public. The event is well received by the community, based on the extensive use that is made of this free service. It delivers pro bono work that is organised for those providing the advisory service instead of resulting from personal initiative. The latter is often how pro bono work is generally perceived to occur.
- A number of providers of legal services take pride in and contribute to the community through work on boards of charities and schools where their legal knowledge is often sought; this activity is a form of pro bono work but not always recognised as such.

Issues relating to legal education and training in Hong Kong

Relevant papers/documents

LC Paper No.

Papers/Documents

Papers provided by the Administration

- |                                                        |                                                                                                                                                  |
|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| CB(2)338/00-01(05)                                     | -- Administration's paper on "Consultation Paper on Legal Education and Training in Hong Kong : Preliminary Review"                              |
| CB(2)1307/00-01(02)                                    | -- Administration's paper on "The Review of Legal Education and Training in Hong Kong "                                                          |
| CB(2)1794/00-01(01)<br>( <i>English version only</i> ) | -- Letter dated 8 June 2001 from the Solicitor General on "The Review of Legal Education and Training in Hong Kong"                              |
| CB(2)1809/00-01(01)<br>( <i>English version only</i> ) | -- Letter dated 12 June 2001 from the Solicitor General on "The Review of Legal Education and Training in Hong Kong"                             |
| CB(2)987/01-02(03)                                     | -- Progress report prepared by the Administration on "The Review of Legal Education and Training in Hong Kong"                                   |
| CB(2)2351/01-02(02)                                    | -- Second progress report prepared by the Administration on "The Review of Legal Education and Training in Hong Kong"                            |
| CB(2)987/01-02(02)<br>( <i>English version only</i> )  | -- A list of recommendations of the Report of the Consultants on "The Review of Legal Education and Training in Hong Kong" issued in August 2001 |

Submissions

- |                                                        |                                                     |
|--------------------------------------------------------|-----------------------------------------------------|
| CB(2)1307/00-01(03)<br>( <i>English version only</i> ) | -- Submission from the University of Hong Kong      |
| CB(2)1321/00-01(01)                                    | -- Submission from the City University of Hong Kong |

- [CB\(2\)2344/00-01\(03\)](#)  
*(English version only)* -- Preliminary response from the Hong Kong University Faculty of Law to the Consultants' Report
- [CB\(2\)2344/00-01\(04\)](#)  
*(English version only)* -- Submission from the Hong Kong University Faculty of Law to the Steering Committee

Minutes of meetings of Panel on Administration of Justice and Legal Services

- [CB\(2\)2138/00-01](#) -- Minutes of meeting on 24 April 2001
- [CB\(2\)2268/00-01](#) -- Minutes of meeting on 26 June 2001
- [CB\(2\)717/01-02](#) -- Minutes of meeting on 29 September 2001
- [CB\(2\)1155/01-02](#) -- Minutes of meeting on 28 January 2002
- [CB\(2\)118/02-03](#) -- Minutes of meeting on 24 June 2002