

立法會
Legislative Council

Ref : CB2/PL/AJLS

LC Paper No. CB(2)837/08-09
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 16 December 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Dr Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon Paul TSE Wai-chun
- Members absent** : Hon Albert HO Chun-yan (Deputy Chairman)
Hon Miriam LAU Kin-ye, GBS, JP
- Public Officers attending** : Item V
Home Affairs Bureau
Mr Thomas Edward KWONG
Deputy Director of Legal Aid
Miss Christine CHOW Kam-yuk
Principal Assistant Secretary for Home Affairs
Mr Allan CHAN Wing-cho
Assistant Director of Legal Aid
Ms Elaine MAK Tse-ling
Assistant Secretary for Home Affairs
- Item VI
Department of Justice
Mr Frank POON
Deputy Solicitor General

Ms Adeline WAN
Senior Government Counsel

Item VII

Department of Justice

Mr Frank POON
Deputy Solicitor General

Ms Kitty FUNG
Senior Government Counsel

**Attendance by : Item V
invitation**

Hong Kong Bar Association

Mr Rimsky YUEN, SC
Chairman

The Law Society of Hong Kong

Mr Lester G. HUANG
President

Mr Stephen HUNG
Chairman of the Criminal Law & Procedure Committee

Mr Michael Vidler
Member of the Criminal Law & Procedure Committee

Ms Christine CHU
Assistant Director, Practitioners Affairs

Item VI

The Law Society of Hong Kong

Mr Lester G. HUANG
President

Mr Joseph LI
Council member and Chairman of the Working Party on
Limited Liability Partnerships

Ms Heidi CHU
Deputy-Secretary General

Item VII

Hong Kong Bar Association

Mr Rimsky YUEN, SC
Chairman

The Law Society of Hong Kong

Mr Lester G. HUANG
President

Mr Peter Barnes
Chairman of the Working Party on Higher Rights of Audience

Ms Joyce WONG
Director of Practitioners Affairs

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Watson CHAN }
Head, Research and Library Services Division }
} Item IV only
Dr Yuki HUEN }
Research Officer 8 }

Ms Amy YU
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Confirmation of minutes of meeting
[LC Paper No. CB(2)367/08-09]

The minutes of the special meeting held on 20 October 2008 were confirmed.

II. Information papers issued since last meeting

2. Members noted that no information paper had been issued since the last meeting.

Action

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)438/08-09(01) - (03)]

3. In accordance with the list of items tentatively scheduled for discussion in the current session (LC Paper No. CB(2)438/08-09(01)), members agreed to discuss the following items at the next regular meeting scheduled for 13 January 2009 -

(a) Operation of the Resource Centre for Unrepresented Litigants; and

(b) Implementation of the Civil Justice Reform.

4. The Chairman expressed concern about the growing number of appointment of judges to exercise extra-judicial functions. At the suggestion of the Chairman, members agreed that the Panel should also discuss at the next meeting the overall government policy and relevant legal policy on such appointments. Members further agreed that the Panel should invite the Chief Secretary for Administration, the Secretary for Justice (SJ) and the Judiciary Administrator to join the discussion of this item. The Chairman informed members that to facilitate the discussion, the Judiciary Administration would provide information on the number and nature of such appointments held by serving judges and other relevant information. The Chairman also invited members to take note of Rule 41(8) of the Rules of Procedure, which provided that the conduct of Judges or other persons performing judicial functions should not be raised, during the discussion on this item at the next meeting.

Jud
Admin

IV. Proposed research outline on class action in selected places

[LC Paper No. CB(2)438/08-09(04)]

5. Head of the Research and Library Services Division briefed members on the proposed research outline on class action in selected places. Members noted that the Research and Library Services Division (RLSD) proposed to study the relevant schemes in the United States, Australia and the United Kingdom (UK) and aimed to complete the research by April 2009 to facilitate the Panel's discussion of the subject tentatively scheduled for the May 2009 meeting. Members endorsed the proposed research outline.

6. The Chairman said that she was given to understand that the draft consultation paper by the Law Reform Commission's Subcommittee on Class Actions was near completion and a public consultation exercise would be conducted once the consultation paper was finalized. In view of such, the Chairman requested RLSD to advance the completion of the research report as best it could.

RLSD

V. Criminal legal aid fee system

[LC Paper Nos. CB(2)438/08-09(05) and (06)]

Briefing by the Administration

7. Principal Assistant Secretary for Home Affairs (PASHA) briefed the Panel on the progress of the Administration's discussion with the Law Society of Hong Kong (the Law Society) on the proposed fee rates to be applied under the new criminal legal aid fee structure (the new fee structure). She informed members that the Administration had recently met with the Law Society and offered for its consideration a revised proposal on fee rates. The Administration hoped to reach consensus with the Law Society as soon as possible so that the legislative amendments to put the new fee structure and the applicable fee rates into effect could be implemented in 2009. Early implementation of the new fee structure, together with the proposed fee rates, would bring substantial benefits to the legal profession.

8. At the request of the Chairman, PASHA further briefed the Panel on the details of the Administration's revised proposal on fee rates. She said that should the new fee structure and the revised proposal on fee rates be adopted, the expenditure in criminal legal aid fee was expected to increase by around 90 million (i.e. from about \$95 million to \$185 million each year), while the estimated increase in remuneration for solicitors engaged in criminal legal aid work would range from 120% to 400%, depending on the length and complexity of individual cases. She elaborated that under the revised proposal, the hourly rate for criminal pre-trial work for solicitors would be increased, in simplistic terms, from \$425 to \$730 for the Court of First Instance, representing an increase of about 70% from the current level of rate. As regards the District Court cases, the proposed hourly rates for instructing solicitors and solicitor-advocates were \$520 and a maximum of \$1,130 respectively. She stressed that the Administration needed to be prudent in public money spending in working out an improved criminal legal aid fee system and the revised proposal was the most it could offer now.

Views of the legal profession

The Hong Kong Bar Association (the Bar Association)

9. Mr Rimsky YUEN, Chairman of the Bar Association, said that the fee rates for solicitors under the new fee structure should be a matter for discussion between the Law Society and the Administration. He further said that should the Law Society and the Administration fail to reach an agreement on the fee rates, the position of the Bar Association was that, given that the Bar Association and the Administration had agreed in principle on the revised criminal legal aid fee system, the legislative amendments for taking forward the matter for barristers should be introduced separately from those for solicitors, with a view to expediting the implementation of the new remuneration system for members of the Bar.

The Law Society

10. Mr Lester HUANG, President of the Law Society, said that the Law Society did not object to the Bar Association's proposal that the relevant legislative amendments for barristers in respect of both the fee structure and the fee rates be introduced first in the event that the Law Society and the Administration could not agree on the fee rates for solicitors.

11. Mr Stephen HUNG, Chairman of the Criminal Law and Procedure Committee of the Law Society, said that the Administration had failed to address issues of principle raised by the Law Society during the discussion on the fee rates for solicitors. He made the following points –

- (a) the huge discrepancy in the remuneration for practitioners undertaking the two types of legal aid work could not be justified. The Law Society's position was that the hourly rates for solicitors undertaking criminal legal aid work should be on par with the civil taxation rates used for remunerating civil legal aid work. The Administration had never furnished any justification for the difference. Under the civil taxation rate scale, the party-to-party taxation rates for High Court proceedings were \$1,600 to \$2,000 per hour for a newly admitted solicitor and \$2,400 to \$3,000 for a solicitor with five to six years' experience, while those for District Court proceedings were \$1,066 to \$1,280 per hour for a newly admitted solicitor and \$1,600 to \$2,000 for a solicitor with five to six years' experience. The revised fee rates proposed by the Administration were still far below the civil taxation rates for civil legal aid cases;
- (b) the Administration had failed to explain the basis upon which the revised fee rates were arrived at. It was unjustifiable that the revised fee rate of \$520 for District Court proceedings was even lower than the pre-trial fee of \$670 for Duty Lawyers under the Duty Lawyer Scheme. The pre-trial fee for Duty Lawyers was initially set at \$500 in November 1992, and was gradually increased to the present level of \$670. In contrast, other than the adjustments made consequent to movements in Consumer Price Index, there had been no material increase in the remuneration for criminal legal aid lawyers since 1992. While the increase in fee rates proposed by the Administration might look substantial in terms of percentage change, it did not in reality represent any significant improvement to the existing fee system given that it was started from a very low figure from the very beginning;
- (c) the findings of the survey on solicitors and law firms engaged in criminal litigation work conducted by the Law Society in October/November 2007 revealed, inter alia, that many senior solicitors had considered ceasing to act in criminal legal aid cases and a majority of law firms did not wish to see their young solicitors to engage in such

Action

work because of costs consideration. Unless significant improvements were made to the remuneration of lawyers undertaking criminal legally aided defence work, there was a real risk that there would be a significant shrinking of the pool of solicitors working on criminal legal aid cases; and

- (d) the Law Society recognized that there was room for improving the legal services provided to legally aided persons suspected of or charged with committing criminal offences, and would work out with its members on the delivery of enhanced services in criminal legal aid work to complement the increase in fee rates.

12. Mr HUNG further said that he noted from newspaper reports that the Administration had decided to increase the starting salary of the Government Counsel (GC) rank by 30% to attract fresh law graduates to join the rank, and sought confirmation on whether this was the case. To facilitate the Law Society's consideration of the Administration's revised proposal, he requested the Administration to provide information on the respective cumulative percentage changes in staff salary in the Legal Aid Department (LAD) as well as the civil and criminal legal aid budgets since 1992. He reiterated the Law Society's position that the hourly rates for criminal legal aid work should be on par with the civil taxation rates. While recognizing that the target might not be achieved in one go, the Law Society at least needed to see that it was moving towards that direction.

13. Mr Michael Vidler, member of the Criminal Law and Procedure Committee of the Law Society, said that for years, solicitors had been subsidizing the criminal legal aid system through their private resources. At present, many criminal law practitioners took up criminal legal aid work on a charitable or pro bono basis but it was unrealistic to expect them to do so on a continuous basis. It was the Law Society's position that the Administration should have a radical rethink of the criminal legal aid system as the provision of professional legal service for citizens who were entitled to proper legal representation in cases which involved possible loss of their liberty and livelihood, rather than a pro bono service propped up by private legal practitioners out of good will. Unless the Administration was prepared to seriously consider properly funding the criminal legal aid system, there could not be any meaningful progress in the discussion on fee rates.

The Administration's response

14. The Chairman said that the Panel was not a forum for mediating the differences between the Law Society and the Administration on criminal legal aid fees. The purpose of this meeting was to ascertain the progress of the discussion between the two parties and how the matter could be proceeded with. She invited the Administration to respond to the points raised by the Bar Association and the Law Society.

Action

15. On the basis of the Administration's revised proposal on fee rates, PASHA explained that they were proposed having regard to the maximum increase in criminal legal aid expenditure that was considered feasible by the Administration at the present stage. She reiterated that the revised fee rates alone represented an increase of some 70% over the current fee rates. Coupled with the introduction of the new fee structure, the estimated increase in remuneration for criminal legal aid lawyers would amount to 120% to 400%, depending on the length and complexity of individual cases. Deputy Director of Legal Aid (DDLA) pointed out that there were differences between the civil and criminal legal aid fee systems. The fees payable to lawyers engaged in civil legal aid work were determined on the basis of the scale of taxation rates for civil proceedings. However, no such scale existed for criminal legal aid work. He further said that in 2007, LAD had assigned a total of 2 082 criminal legal aid cases to solicitors and 1 721 cases to barristers, involving 577 solicitors and 265 barristers respectively. Furthermore, many private legal practitioners had expressed interest in taking up criminal legal aid work. As at the end of November 2008, 800 solicitors and 294 barristers had indicated such interest. He stressed that LAD would continue to make its best effort to offer professional legal service to criminal legal aid applicants within the limits of public affordability.

16. In respect of Mr Stephen HUNG's enquiry on the starting salary of the GC rank, PASHA said that to her understanding the grade structure review for the GC grade was still ongoing. She undertook to check with the Department of Justice (DoJ) and inform members about the status of the review.

HAB

17. Regarding the Bar Association's proposal that the legislative amendments for barristers and solicitors be undertaken separately should the Law Society and the Administration fail to agree on the fee rates, PASHA said that it was envisaged that there would be immense difficulties in implementing the proposal. It would also be difficult to operate a criminal legal aid fee system with different structures for the two branches of the legal profession. DDLA said that given that the two legal professional bodies and the Administration had already reached broad consensus on the new fee structure, he considered that a better approach would be to embark on the legislative amendments to implement the new fee structure and the revised rates proposed by the Administration immediately so that criminal legal aid lawyers could benefit from the improved remuneration under the revised system as soon as possible. In the meantime, the Law Society and the Administration could continue to negotiate on the rates with a view to reaching a mutually acceptable proposal.

18. In response to the Chairman, PASHA said that provision for the estimated increase of \$90 million in criminal legal aid expenditure would be included in the 2009-2010 Budget. Should agreement be reached with the Law Society on fee rates, the Administration would proceed to revise the relevant rules and submit them to LegCo for approval. It was the Administration's target to implement the revised criminal legal aid fee system within 2009.

Discussion

Basis for determining the level of fee rates

19. Mr LAU Kong-wah considered that the Administration should respond to the issue of principle raised by the Law Society as to whether criminal legal aid work should be provided as a public or professional service before further negotiating on the fee rates. If solicitors were expected to render professional services to their legally aided clients, they should be offered a reasonable level of remuneration which properly reflected their professional responsibilities in criminal litigation work. The Chairman shared the view that the negotiation on fee rates should be based on a set of mutually accepted principles if there was to be any material progress in the discussion. Mr LAU further pointed out that in deciding the fee levels for criminal legal aid work, it was also important to take into account the importance of upholding the principle of equality of arms between prosecution and defence.

20. Mr Rimsky YUEN echoed the view that it was vital for the Administration to ensure that there was equality of arms between the prosecution and the individual defendant in criminal litigation, particularly in cases where both the prosecution and defence counsel were private practitioners engaged by the Administration and funded by the public purse. As the fees payable to the prosecution counsel engaged by DoJ was higher than that payable to the defence counsel by LAD, it was often the case that the legally aided client would be represented by a far less experienced lawyer, which was not conducive to the principle of equality of arms. It also gave rise to the perception that the Government did not attach great importance to the rights of the defendant who was legally aided. Mr Paul TSE expressed similar views, adding that apart from the imbalance in fees between prosecution and legal aid defence, the support in kind available to the prosecution through the bureaucracy of the Administration also far outweighed the resources of the defence.

21. PASHA responded that the compatibility of the criminal legal aid fee system with the prosecution fees regime and a reasonable level of remuneration for criminal legal aid lawyers were among the governing principles of the review on the criminal legal aid fee system. In its paper submitted for the Panel meeting on 26 February 2007, the Administration had informed the Panel that the estimated increase in criminal legal aid expenditure arising from the proposed change in the fee structure alone was about 30%, or roughly \$30 million per annum, on the basis of current rates. Taken together with the Administration's present revised proposal on increase in fee rates for the solicitors, the criminal legal aid expenditure was estimated to increase by some 95%, i.e. \$90 million. She stressed that the Administration had already taken a big step forward in the revised proposal and hoped that agreement could be reached with the Law Society as soon as possible. DDLA said that lawyers engaged in criminal legal aid work had been providing quality services and the quality of their services had not been affected by the level of the rates.

Action

22. While appreciating that there was a significant increase in the revised fee rates proposed by the Administration, Mr LAU Kong-wah pointed out that there was still a huge gap between the Administration's proposal and that of the Law Society. He was concerned how the differences between the two parties could be narrowed down.

23. DDLA said that as the matter had been discussed for some years, the Administration suggested to proceed with implementing the new fee structure and proposed revised fee rates so that solicitors could benefit from the improved remuneration earlier. After the new system had been put in place, the Administration would continue to negotiate with the Law Society on the question of rates.

24. Mr Stephen HUNG did not subscribe to the point made by DDLA that there was no existing basis for determining criminal legal aid fees. Mr HUNG said that to his understanding, where taxation was conducted on the costs of criminal proceedings, the court would make reference to the civil taxation rates reasonably incurred, which was also the basis of the Law Society's proposed fee rates for criminal legal aid work.

25. Mr Paul TSE agreed with the view that the fees for criminal legal aid work should be on par with that for civil legal aid work. He pointed out that criminal cases required no less legal expertise than civil cases, not to mention that the possible consequences for the defendant were much more serious in criminal cases. He did not accept the Administration's approach of determining the criminal legal aid fees with reference to a cap in the criminal legal aid budget. Mr TSE considered that it was incumbent upon the Administration to ensure adequate legal representation for all parties and adequate resources should be allocated for the purpose. In his view, instead of restricting the criminal legal aid budget, the Administration should put in place a mechanism to monitor the case progress to ensure that legally aided criminal defence work was carried out as efficiently and as economically as possible.

26. Mr Paul TSE further expressed the view that the discrepancy between the proposed fee rates for instructing solicitors and solicitor-advocates for District Court cases was unreasonable and should be reviewed. He pointed out that instructing solicitors had to undertake thorough preparation of the cases and give advice to the barristers on the cases where appropriate.

27. Dr Priscilla LEUNG shared the view that civil and criminal legal aid fees should be compatible, and that in considering the level of criminal legal aid fees, it was vital to ensure that it was in line with the principle of equality of arms between the prosecution and defence. To enhance the middle class's access to justice, she supported increasing the provision of resources for the legal aid system.

28. The Chairman said that in respect of civil legal aid, there was no spending cap on the legal costs of each case. She was of the view that the same principle should also apply to criminal legal aid cases, considering that personal liberty was at stake in criminal cases.

Action

Proposal of delinking the implementation of the revised criminal legal aid system for barristers from that for solicitors

29. Mr Rimsky YUEN said that it was the first time he heard from the Administration that it was not feasible to delink the implementation of the revised criminal legal aid fee system for barristers from that for solicitors should the Law Society and the Administration fail to agree on the fee rates. The Bar Association considered it viable to do so, both as a matter of principle and in terms of legislative work. He requested the Administration to explain why it considered the proposal infeasible. PASHA reiterated that there would be immense difficulties in separating the legislative provisions into separate components on structure and on rates to provide different treatment for counsel and solicitors for different cases at different levels of courts. Nonetheless, PASHA said that she noted the views expressed by the Bar Association that the Government should consider proceeding with legislative amendments to improve the structure for counsel only and leave the existing structure and rates for solicitors to a later stage, and undertook to examine the request with LAD and the Bar Association further. The Chairman requested the Administration to revert to the Panel on this point.

HAB
LAD

30. In response to PASHA's comment that the Administration became aware of the Bar Association's "delinking" proposal at this meeting, Mr Rimsky YUEN clarified that he had put forward the proposal in at least two or three letters he had written to the Administration. He had made the Bar Association's position clear in these letters that should the Law Society and the Administration fail to agree on the fee rates, all the legislative amendments for revising the criminal legal aid fee system, in respect of both the fee structure and fee rates, for barristers should be made separately from those for solicitors.

31. PASHA concluded that she hoped the Law Society would consider not objecting to the Administration's proposal to proceed with legislative amendments to implement the change in structure for both solicitors and counsel and the increase in rates for solicitors offered by the Administration. The rates for solicitors could still be reviewed as time went on after the new structure and the new rates had been put into effect.

Summing up

32. In summing up, the Chairman said that given that the levels of criminal legal aid fees had been lagging behind for years, the Administration's proposal of proceeding with the legislative amendments as soon as possible would seem to be beneficial as the new fee structure and the new fee rates could then be implemented in 2009. However, she noted that there was significant divergence of views between the two parties on the fundamental issue of the basis for determining the fee rates. The Administration worked out the proposed fee rates with reference to the criminal legal aid budget while the Law Society was of the view that the fees should be reasonable and duly reflect the professional responsibilities of solicitors in criminal litigation. The Chairman urged the two parties to overcome their differences and

Action

HAB
LAD

work out a mutually acceptable basis to facilitate future discussion. She further suggested that as according to the Law Society, the court had based on the civil taxation rates when conducting taxation on the costs of criminal proceedings, both parties might consider using that basis for future discussion. She also requested the Administration to report to the Panel on the progress of the discussion in due course.

VI. Limited liability partnership for legal practice [LC Paper Nos. CB(2)438/08-09(07) and (08)]

Briefing by the Administration

33. Deputy Solicitor General (DSG) introduced the Administration's paper which set out the latest developments of a proposal to permit limited liability partnerships (LLP) for legal practice. DSG said that at the meeting on 20 October 2008, the Panel noted from SJ that DoJ was prepared to consider promoting a bill to provide for LLP for solicitors and had been in discussion with the Law Society on the related policy and legislative issues. On the legislative vehicle for taking forward the proposal, the Law Society had confirmed that it had no objection to the approach of amending the Legal Practitioners Ordinance (Cap. 159) (LPO) to introduce LLP for solicitors. The Administration and the Law Society had also reached agreement on adopting a partnership rather than a corporate model of LLP, having regard to the fact that amendments had already been made to LPO in 1997 to allow solicitors to incorporate their practices with limited liability in the form of solicitor corporations albeit the implementation rules awaited enactment.

34. DSG further said that DoJ was now considering details of the legislative proposals and was in the course of preparing draft drafting instructions. One of the issues which needed to be resolved was whether solicitor partners should be held personally liable for debts and obligations arising from the ordinary course of business, such as payment of rent and salaries of employees. Further discussions was also necessary on the issue of partners' liability for negligence of assistant solicitors and consultants under LLP. Given the time required for further consultation and for the drafting process of the proposed bill, the Administration estimated that legislative amendments for the introduction of LLP would be introduced in around October to December 2009.

Views of the Law Society

35. Mr Hester HUANG said that the Law Society had been discussing with the Administration on various legislative and policy issues pertaining to the introduction of LLP for solicitors. He further said that solicitors had requested the introduction of LLP for many years and urged the Administration to expedite the relevant legislative work so that the bill could be introduced within the 2008-2009 session. Given that many overseas jurisdictions had adopted measures or had legislation to implement LLP in some forms, the early introduction of LLP would also provide incentives for international law firms to set up offices in Hong Kong and help enhance Hong Kong's competitiveness as a key centre for the provision of legal services.

Action

36. Mr Joseph LI, Council member and Chairman of the Working Party on LLP of the Law Society, said that many jurisdictions, including some states of the United States, some provinces of Canada and the United Kingdom, had already adopted legislation that permitted the formation of LLP. Recently, laws had also been introduced in India to implement LLP. Moreover, legislation was under discussion in the People's Republic of China to allow LLP for lawyers. As the matter had been discussed for some years and given that the legislative amendments should be rather simple and straightforward, the Law Society hoped that the relevant bill could be introduced into LegCo within the current legislative session.

Issues raised by members

37. Referring to paragraph 9 of the Administration's paper, Ms Audrey EU said that aside from solicitors, many professions such as the accounting profession had also requested the introduction of LLP to limit the liability of their practitioners. She enquired about the reasons for limiting the introduction of LLP to the legal practice and whether other professions had been consulted on the matter. DSG responded that SJ had made it clear that his policy objective was to take forward the introduction of LLP for solicitors, hence the proposal that LPO be used as the legislative vehicle. As the issue of limited liability for other professions was outside the scope of SJ's policy responsibility, DoJ had not consulted other professions on the matter. He would ascertain whether the relevant policy bureaux had consulted other professions on LLP and provide such information to members as appropriate.

DoJ

38. Ms Audrey EU said that as laws had already been enacted on solicitor corporations in 1997 to provide limitation on solicitors' liability, the public might query why the Law Society had not yet drawn up the implementation rules up to now and sought the introduction of LLP instead. In response to Ms EU's enquiry on why the rules for implementing solicitor corporations had not yet been brought into force, Mr Lester HUANG said that since the amendments to the relevant principal legislation on solicitor corporations were adopted in 1997, the Companies Ordinance (Cap. 32) had been amended to allow a limited company to have only one member and one director, which had implications on the structure of solicitor corporations. In addition, amendments were also required to be made to the Solicitors (Professional Indemnity) Rules to set out the respective liabilities of directors and staff members of solicitor corporations. These were among the difficulties encountered by the Law Society in preparing the draft rules. He further said that in the past few years, the Law Society had focused its efforts on the introduction of LLP as it offered the protection most sought after by solicitors, namely, the protection of innocent partners from personal liability for acts and omissions of other partners. Nonetheless, the Law Society had recently started to work on the drafting of the rules on solicitor corporations again.

Action

39. On Ms Audrey EU's comment on the importance of enhancing public education on the nature of LLP to facilitate consumers in making informed choices when selecting legal representatives, DSG said that under the proposed legislation, LLP would be required to disclose its LLP status to its clients and include the LLP suffix to the firm's name. Furthermore, the insurance coverage required of firms and solicitors under the LLP model should not be less than the coverage under the current model of general partnership. He pointed out that in its submission to the Panel in 2005, the Consumer Council had expressed similar views on the importance of incorporating safeguards to consumers' interests if LLP were to be introduced.

40. Mr Lester HUANG assured members that the level of protection to consumers under LLP would be the same as the existing system. At present, solicitors were statutorily required to take out insurance up to the compulsory level, which provided indemnity against liability to the extent of \$10 million per claim. The same level of insurance would be required under LLP. According to his experience, this should provide adequate insurance coverage for most of the claims.

41. Ms Audrey EU further asked about the position of solicitor partners of LLP who also worked for other firms offering a variety of professional services such as accounting and legal services. Specifically, Ms EU sought clarification on whether these solicitor partners would also be covered by limited liability when providing services to such firms. DSG responded that to his understanding, there were no mixed professional practices of the sort described by Ms EU in Hong Kong. He further said that under the Administration's proposal, only solicitor firms with not less than two partners could be registered as LLP. After the enactment of the bill, new solicitor firms could apply to be registered as LLP, while existing ones operating under general partnership could apply for conversion into LLP subject to the partners reaching an agreement to do so. He added that there was no intention on the part of the Administration to permit mixed practices to operate as LLP under its proposal.

42. The Chairman said that in face of the financial tsunami, many legal practitioners were concerned about their exposure to unlimited liability under general partnership and had been awaiting eagerly for the early introduction of LLP. To facilitate members' consideration, the Chairman requested the Administration to provide the Panel with more information on the LLP proposal, including whether solicitor partners should be held personally liable for ordinary debts of the business, partners' liabilities for acts and omissions of assistant solicitors and of consultants under LLP, insurance requirements on LLP, the position of international law firms which had already been operating under LLP in other countries, specific proposals in the Administration's draft bill and how far the proposals in the draft legislative amendments prepared by the Law Society in 2005 had been incorporated therein. The Chairman also requested the Law Society to advise the Panel of its current position on solicitor corporations and whether it would continue its work on drafting the rules on solicitor corporations should LLP be introduced. The Chairman further requested the Administration and the Law Society to revert to the Panel on the requested information in two months' time.

DoJ

Law
Society

VII. Solicitors' rights of audience

[LC Paper Nos. CB(2)438/08-09(09) and (10) and CB(2)393/08-09(01)]

Briefing by the Administration

43. DSG briefed members on the Administration's paper outlining the legislative proposals to implement the recommendations made in the Final Report of the Working Party on Solicitors' Rights of Audience to grant higher rights of audience to solicitors. He said that DoJ had prepared a draft bill for consultation with the two legal professional bodies in July 2008 and their comments would be reflected in the revised draft bill which was currently under preparation. The two legal professional bodies would be further consulted on the revised draft Bill. It was expected that the bill would be introduced into LegCo by June 2009.

Views of the legal profession

The Bar Association

44. Mr Rimsky YUEN said that the Bar Association had already submitted its preliminary views to DoJ on the draft bill, which was not controversial. The Bar Association was of the view that during the next stage of the consultation, the relevant draft subsidiary legislation should be made available for comment together with revised draft bill, so as to facilitate consideration on which provisions should be spelt out in primary and subsidiary legislation respectively. The Bar Association would provide its initial views on the draft Code of Conduct for Solicitor-Advocates (Code of Conduct) prepared by the Law Society by mid January 2009.

The Law Society

45. Mr Lester HUANG said that the Law Society had already drawn up the draft Code of Conduct (LC Paper No. CB(2)393/08-09(01)), which was based on the Code of Advocacy prepared by the Solicitors Regulation Authority of England and Wales, for the Panel's consideration. Members noted that a marked-up version of the draft Code of Conduct provided by the Law Society, which highlighted the differences between the draft Code of Conduct and the Code of Advocacy in England and Wales, was tabled at the meeting.

(Post-meeting note: The paper was subsequently issued to members vide LC Paper No. CB(2)518/08-09 on 19 December 2008.)

46. Mr HUANG further said that the relevant primary and subsidiary legislation as well as the Code of Conduct should be examined together as an integrated package. The Law Society hoped that both the primary and subsidiary legislation could be introduced within the current legislative session. In response, DSG said that it was the Administration's plan to introduce the relevant primary legislation by June 2009. He further said that under the Administration's proposal, the relevant subsidiary legislation were to be drawn up by the Law Society.

47. Mr Peter Barnes, Chairman of the Working Party on Higher Rights of Audience of the Law Society, said that the proposal on granting higher rights of audience to solicitors was a modest rather than a radical proposal. It was put forward after extensive consultation and was supported by both branches of the legal profession. He pointed out that it was important that a margin of discretion should be given to the proposed Higher Rights Assessment Board in deciding whether a solicitor should be granted higher rights of audience so as to allow some flexibility in the decision-making process. The Assessment Board would be chaired by a senior judge, and consist of members of the Judiciary, solicitors, Senior Counsel, a representative of DoJ and a lay member. He further pointed out that under the proposal, applicants for higher rights of audience must have at least five years of post-qualification practice, as compared to the requirement of three years in UK.

Issues raised by members

48. Dr Priscilla LEUNG expressed reservation about extending solicitors' rights of audience as it would make the Bar a less attractive option for fresh entrants and law students in deciding which branch of the profession they should join, thereby weakening the Bar as an institution. She was concerned that while the rights of audience for solicitors would be extended, there was no corresponding proposal to extend the scope of work which could be undertaken by barristers. She considered it necessary to review the future development of the Bar.

49. Mr Rimsky YUEN said that the concerns raised by Dr LEUNG had been considered by the Bar Association when examining the proposal to grant higher rights of audience to solicitors a few years ago. The Bar Association recognized that should higher rights of audience be granted to solicitors, there was a real possibility that many law graduates would choose to become solicitors rather than barristers. As a matter of fact, the Bar Association was already facing this problem now. Many bright law students had chosen to become solicitors because of the attractive remuneration package offered by large law firms to trainee solicitors. Mr YUEN further said that the Bar Association had also debated the question of whether barristers should be allowed to take up some of the work which could only be done by solicitors, such as conveyancing work. After thorough discussions, the Bar Association came to the view that to maintain their professionalism in advocacy work, barristers should not branch into other areas of work. The Bar would also like to see new comers joining the profession because of their aspiration for the work.

50. Dr Priscilla LEUNG said that there were often complaints from members of the public that they could not engage the services of a barrister directly and had to do so through a solicitor, which added to the legal costs involved. Dr LEUNG further said that Hong Kong would inevitably have to face the question of whether the two branches of the legal profession should be fused in the long run, in line with the developments in many common law jurisdictions.

Action

51. On the approach to take forward the legislative work, the Chairman remarked that if important issues, such as the powers and criteria of assessment of the Higher Right Assessment Board, had been provided for in the bill, the scrutiny of the relevant subsidiary legislation could be a fairly straightforward exercise requiring little time. On the other hand, if the principal legislation was briefly drafted and much important details were left to the subsidiary legislation, the relevant Bills Committee might request to examine the draft subsidiary legislation as well so as to get a full picture of the legislative proposals, and that would lengthen the scrutiny process.

VIII. Any other business

52. There being no other business, the meeting ended at 6:45 pm.

Council Business Division 2
Legislative Council Secretariat
11 February 2009