

立法會
Legislative Council

Ref : CB2/PL/AJLS

LC Paper No. CB(2)931/09-10
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 15 December 2009, at 4:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
Dr Hon Priscilla LEUNG Mei-fun
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun
- Public Officers attending** : Item IV
Department of Justice
Mr Eamonn Moran, JP
Law Draftsman
Mr Gilbert MO
Deputy Law Draftsman
(Bilingual Drafting and Administration)
Mr SUEN Wai-chung
Senior Assistant Law Draftsman
(Professional Development)

Item V

Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Mrs Angela LO
Assistant Judiciary Administrator (Corporate Services)

Item VI

Department of Justice

Miss Susie HO, JP
Director of Administration and Development

Mr Kevin Zervos, SC
Deputy Director of Public Prosecutions

Ms CHEUNG Kam-wai, Christina
Deputy Law Officer (Civil Law)

Item VII

Department of Justice

Ms WAN Ping-siu, Adeline
Senior Assistant Solicitor General

Mr LEUNG Moon-keung, Thomas
Senior Government Counsel

Mr YUE Chi-hong, Bernard
Government Counsel

**Attendance by
invitation**

:

Item IV

Hong Kong Bar Association

Ms Liza Jane Cruden
Council Member

Mr P Y LO
Council Member

Item VI

Hong Kong Bar Association

Ms Liza Jane Cruden
Council Member

Item VII

Hong Kong Bar Association

Mr Russell Coleman, SC
Chairman

Ms Liza Jane Cruden
Council Member

The Law Society of Hong Kong

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

Mr David Hirsch
Member of the Working Party on Limited Liability
Partnerships

Ms Heidi CHU
Deputy Secretary General and Secretary of the Working
Party on Limited Liability Partnerships

Consumer Council

Mr Simon CHUI
Senior Legal Counsel

Mr Angus SHUM
Legal Counsel

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

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

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)506/09-10]

The minutes of the special meeting held on 22 October 2009 were confirmed.

II. Information papers issued since last meeting

2. Members noted that the Law Reform Commission's Report on "Hearsay in Criminal Proceedings" published on 30 November 2009 had been issued since the last meeting. Members also noted that the Panel had discussed the relevant Consultation Paper at its meeting on 23 January 2006.

3. As the proposed reform in the law of hearsay was significant and controversial, the Chairman proposed to include the Report in the Panel's list of outstanding items for discussion. Members agreed.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)512/09-10(01) - (03)]

4. Members noted that according to the work plan of the Panel, the following three items had originally been scheduled for discussion at the next regular meeting on 25 January 2010 -

- (a) Transcript fees;
- (b) Pre-trial interviewing of witnesses by prosecutors; and
- (c) Non-civil service appointment of a Deputy Principal Government Counsel in the Department of Justice (DoJ) for implementation of the recommendations of the Working Group on Mediation.

5. Regarding item (c) referred to in paragraph 4 above, the Chairman informed members that DoJ had requested to defer its discussion to the regular meeting in February 2010 as more time was required to finalise the staffing proposal. DoJ had further advised that, subject to the views of the Panel, discussion of the item of "Pre-trial interviewing of witnesses by prosecutors" (item (b) above) could be deferred to the regular meeting in May 2010. Upon the enquiry of the Legislative Council (LegCo) Secretariat, the Judiciary Administration had advised that discussion of the item of "Transcript Fees" (item (a) above) could be deferred to the regular meeting in February 2010.

Action

6. In the light of the above, the Chairman suggested and members agreed that the following legal aid related items originally scheduled for the special meeting on 15 January 2010 at 4:30 pm be discussed at the regular meeting on 25 January 2010, and that the special meeting on 15 January be cancelled -

- (a) Research report on "Legal aid systems in selected places;
- (b) Independent statutory legal aid authority; and
- (c) Legal aid in Criminal Cases Rules.

IV. Drafting of legislation

[LC Paper Nos. CB(2)512/09-10(04) and (05), and CB(2)545/09-10]

Briefing by the Administration

7. Law Draftsman (LD) briefed members on the recent steps taken by the Law Drafting Division (LDD) to improve the quality of and accessibility to Hong Kong's legislation and the Division's continuing initiatives for the professional development of counsel, details of which were set out in its paper (LC Paper No. CB(2)512/09-10(04)).

8. Deputy Law Draftsman (Bilingual Drafting and Administration) (DLD) said that LDD was keenly aware of the wish of Members and the public to see more readily comprehensible Chinese legislation. In this regard, a number of initiatives had been adopted to enhance the readability of the Chinese text, such as using shorter sentences, placing the subject close to the action word, and greater flexibility in sentence structure. In addition, the effect of the extensive adoption of plain language drafting skills to enhance the comprehensibility of the English text would also be reflected in the Chinese text. He assured members that LDD would make its best endeavour to continue its work in improving the readability of the Chinese text.

Views of the Hong Kong Bar Association

9. Mr P Y LO said that the Bar Association supported LDD's commitment to plain language drafting and was open-minded about the recent initiatives taken by LDD to improve the quality of legislation. Noting that the changes would be applied to both new legislation and amending legislation, he was concerned that in the latter case, the co-existence of new and old drafting styles and practices in the same piece of legislation might cause problems in interpretation. Referring to paragraph 16 of the Administration's paper, he also expressed reservation about the new practice of discontinuing the use of expressions such as "unless the context otherwise requires". In his view, while legal practitioners would readily appreciate that words and expressions in a statute were understood in their context even without this express

Action

qualification, this might not be the case for readers who were laymen. In respect of the use of reader aids, Mr LO pointed out that should intrinsic aids such as notes and examples be used, it would be necessary for the relevant Bills Committees to study these notes and examples in detail during the scrutiny process.

Discussions

Collecting Members' views on law drafting

10. Ms Emily LAU said that the quality of legislation, in particular the Chinese text, had been a long-standing concern of Members. Noting that LDD had briefed the two legal professional bodies on its initiatives to improve the quality of and accessibility to legislation, she enquired whether LDD had exchanged views with the Legal Service Division of the LegCo Secretariat on the views which had been raised by Members on law drafting during the scrutiny of bills. She also considered it important for LDD to collate Members' views in an organised manner with a view to conducting a comprehensive review to improve the quality of law drafting.

11. LD responded that while he had not specifically spoken to the Legal Service Division on the matter, he had every intention to do so. Indeed, the purpose of making public the drafting rules and guidelines which LDD operated on in drafting legislation was to assist bodies like the LegCo Secretariat to understand why a particular approach was taken in drafting certain clauses in a bill. He further said that from time to time, law draftsmen would inform him of issues raised during meetings of Bills Committees, and it would be useful if such information was shared among the drafting counsel. To this end, LDD was working on knowledge sharing initiatives to facilitate the sharing of knowledge and experience within the Division in a systematic manner. He added that he would be happy to work out a structured way of having discussion with Members on matters relating to law drafting.

12. The Chairman suggested that LDD could consider holding regular working meetings with the Legal Service Division of the LegCo Secretariat to discuss any views expressed by Members on law drafting during the scrutiny of bills. The clerks of individual Bills Committees could assist in collating the relevant views raised by Members in the course of examining the bills. Such views should be followed up at the working meetings. Any views that Members might have on law drafting could also be channelled to LDD through the working meetings. LD said that he would be happy to set up regular working meetings with the Legal Service Division of the LegCo Secretariat on issues relating to law drafting.

LDD

Long title and explanatory memorandum of bills

13. Ms Audrey EU noted that while the long title of some bills was couched in broad terms, there were bills where the long title was drafted in a very detailed manner. She pointed out that such distinction would have significant implications for the amendments which could be moved. She was concerned that the political purpose

Action

behind having a detailed long title was to limit the scope of amendments which could be made by Members. She asked whether there were any guidelines on the drafting of the long title and explanatory memorandum of bills, and whether LDD had any control over the format and wording of the long title of a bill.

14. LD responded that in drafting the long title of a bill, the law draftsman would have regard to Rule 50(3) of the Rules of Procedure (RoP) of LegCo which stipulated that a long title was to set out the purposes of a bill in general terms. The policy bureau concerned would have its views on what should and should not be included in the long title which, like other parts of a bill, had to be settled within the Administration. In his view, the principle in RoP 50(3) should generally be complied with and a long title should not become so detailed as to contravene the principle. As for the explanatory memorandum, it was a general outline of the intention of a bill and a summary of its provisions prepared by LDD. Generally, the more detailed the explanatory notes the better as it would help members of the public to get a better understanding of what the legislation was about.

15. Ms Audrey EU said that for bills seeking to give effect to international conventions, while such objective was clearly spelt out in the long title of some bills, it might not be the case for others. She was concerned that such difference would have implications on the interpretation of the ordinances by the court. In her view, a consistent approach should be taken in drafting the long title of bills of similar nature.

16. LD responded that whether or not a particular international convention should be mentioned in the long title depended on the purpose of the bill. Where the purpose of a bill was to implement fully a particular international convention, there would generally be good reasons for making reference to it in the long title. However, there might also be cases where an international convention was implemented with modifications in which cases it could be misleading to refer to the convention in the long title. He stressed that each case had to be considered in its own context.

17. Ms Audrey EU considered that LDD should develop guidelines to ensure that there were consistencies in the drafting of the long titles of bills. For instance, there should be guidelines on when an international convention should and should not be referred to in the long title, and whether a long title should be specific or wide in scope.

18. The Chairman said that in the course of vetting bills, Members had seen many instances of inconsistencies in the drafting style of the long titles of bills. She agreed that there should be general principles for the drafting of long titles of bills against which future bills could be measured. LD agreed that there should be consistency in consistent cases and undertook to see whether guidelines could be developed on the drafting of the long titles of bills.

Action

Readability of Chinese legislation

19. The Chairman said that many Members had found the Chinese text of legislation difficult to follow and had expressed the need to enhance the readability of the Chinese texts. She asked what measures had been taken to enhance the Chinese drafting skills of the law drafting counsel.

20. DLD responded that junior law draftsmen were learning Chinese drafting skills on the job, and their supervising officers would discuss with them any issues identified in their drafting. He added that LDD recognised that there was still much to be done in enhancing the Chinese drafting skills of the law draftsmen and would strive to make further improvements in this regard.

21. Noting that LDD had recently engaged the services of a Legislative Editor to ensure grammatical accuracy and uniformity of style in the English text, the Chairman suggested that consideration be given to engaging a Legislative Editor for the Chinese text.

22. Ms Miriam LAU said that one of the problems with the Chinese text was that it was often produced based on the English text. She elaborated that in Hong Kong, the practice of bilingual drafting in most cases was that the English text would be prepared first, and the Chinese text was practically only a translation of the English text. In preparing the Chinese text, law draftsmen tended to follow the English text as closely as possible, which might sometimes make the Chinese text unnatural and not easily readable. To address such problem, it had been suggested some years ago that parallel drafting be adopted. She enquired whether such initiative had been tried out.

23. DLD responded that one of the practical difficulties faced by law draftsmen was that drafting instructions were invariably issued in English. In most cases, the instructing officers would request that the initial draft be produced in English to facilitate their consideration as to whether the policy objectives as stated in the drafting instructions had been accurately reflected in the draft legislation, which explained why LDD always prepared the English text first, to be followed by the Chinese text.

24. In response to Ms Miriam LAU's enquiry on whether it was feasible for LDD to request for drafting instructions to be given in Chinese, DLD said that he reckoned that even if LDD made such a request, the bureau concerned would still prepare the drafting instructions in English and have it translated into Chinese, which would shorten the time available for LDD to draft the legislation. DLD further said that there were instances where law draftsmen tried to make the Chinese text more comprehensible by departing from the sentence structure of the English equivalent, but Members had commented that the Chinese and English texts did not match and had expressed concern that there might be discrepancy in interpreting the meaning of the two texts.

Action

25. The Chairman said that insofar as the drafting of legislation was concerned, Members' views were only suggestions and it was for the law draftsmen to decide how legislation should best be drafted to ensure that they reflected the policy intent accurately and were clear and comprehensible.

26. Ms Miriam LAU suggested that LDD could test the comprehensibility of a draft Chinese text by having it read by a general member of the public with no legal background to see whether he/she was able to understand it. After all, the objective of law drafting was to ensure that the law was accessible to the general public.

Drafting practices

27. Ms Audrey EU asked whether there were any guidelines on the use of active and passive voices in drafting legislation. LD responded that for the English text, there was a preference for using the active voice as it was a clearer way of imposing obligations. DLD supplemented that in preparing the Chinese text, law draftsmen would, where appropriate, modify a passive construction in the English text into an active construction where such change accorded with the grammatical rules of the Chinese language and would help enhance the clarity and comprehensibility of the Chinese text without affecting the intended legal effect. There were diverse views on the appropriateness of using passive voice in the Chinese language and he was aware that some Members had strong views against the use of certain passive constructions in Chinese legislation. Internet research, however, indicated that the passive construction was commonly found in the law of the Mainland and Taiwan.

28. Noting that LDD had already started to apply new drafting styles and practices when amending existing legislation, the Chairman was concerned that the same piece of legislation might contain both new and old drafting styles. She enquired whether any action had been/would be taken to harmonise the drafting style of amending legislation.

29. LD said that he was aware that the issue of the use of both "shall and "must" to impose an obligation in the same piece of legislation had been raised in some recent Bills Committee meetings. Some Members had expressed concern about the use of "must" to impose an obligation in an enactment in which "shall" had been used for the same purpose. He was confident that this would not lead to any interpretation problem. LDD, however, would look for opportunities in amending exercises to make consequential amendments to change "shall" to "must" (especially in provisions in the proximity of those in which "must" was used) for the sake of tidiness.

Design of legislation

30. LD said that LDD had proposed to make changes to the format and visual design of legislation to make it more user-friendly and attractive, and was keen to get members' feedback on the proposed new format of bills (a sample of which was attached to the Administration's paper) which was targeted for introduction in the next

Action

LDD legislative session. The Chairman said that LDD could solicit members' views on the new format when it reverted to the Panel on the issues and suggestions raised by members at this meeting.

(Post-meeting note: After the meeting, LDD had further provided an information paper on the document design of draft legislation, which was issued to members vide LC Paper No. CB(2)615/09-10(01) on 24 December 2009.)

V. Proposed construction of additional courtrooms and associated facilities in the High Court Building

[LC Paper No. CB(2)512/09-10(06)]

31. Judiciary Administrator (JA) briefed members on the proposed construction of additional courtrooms and associated facilities in the High Court Building, details of which were set out in the Judiciary Administration's paper (LC Paper No. CB(2)512/09-10(06)). The estimated cost of the project was \$50.9 million in money-of-the-day prices. Subject to the Panel's views, the Judiciary Administration planned to seek the endorsement of the Public Works Subcommittee (PWSC) on 20 January 2010 for the approval of the Finance Committee (FC) on 5 February 2010.

32. Referring to the layout plan of the proposed facilities in Annex A to the Judiciary Administration's paper, the Chairman enquired whether the three judges' chambers had windows. JA responded in the affirmative, adding that greening works would be undertaken in the area outside the three judges' chambers to develop it into a landscape open area. Noting from the layout plan that Courtroom 1 was not located near the three judges' chambers, the Chairman asked how the judges would access the Courtroom from their chambers. JA explained that there would be a separate access from within the restricted area for judges to enter Courtroom 1. The restricted area is not accessible to members of the public. Assistant Judiciary Administrator (Corporate Services) informed members that each of the locations marked with a small red cross within a circle in Annex A would have a door with access control that prevents members of the public from entering the restricted area behind.

33. Ms Emily LAU said that she supported in principle the proposed construction of additional courtrooms and associated facilities in the High Court Building. She sought elaboration on the benefits expected to be brought about by the proposed works project, particularly in respect of shortening of waiting time for court cases.

34. JA explained that the existing 36 criminal/civil courtrooms and seven masters' courtrooms in the High Court were insufficient to meet the operational needs of the High Court, resulting in the use of one to three courtrooms in the District Court at Wanchai for hearing of High Court cases. Consequentially, one court of the Small Claims Tribunal had to be used for hearing of District Court cases; and at times, District Court cases were heard in the Eastern Magistrates' Courts at Sai Wan Ho.

Action

The construction of the proposed three additional courtrooms would not only obviate the need to use courtrooms in the District Court to hear High Court cases, but would also provide flexibility for the Judiciary to appoint more deputy judges to help shorten the waiting time for court cases when there was an increase in caseload in future.

35. The Chairman agreed on the need to construct more courtrooms. She said that many legal practitioners had expressed concern about the problem of insufficient courtrooms, particularly in respect of the District Court and the Small Claims Tribunal.

36. Ms Emily LAU said that it appeared that the proposed addition of courtrooms in the High Court Building would not help much in shortening the waiting time for cases in the High Court. She pointed out that while it would obviate the need for using courtrooms in the District Court to hear High Court cases, there would not be any net increase in the number of courtrooms being used for hearing High Court cases. She, however, noted that the proposed works project would benefit the District Court, as courtrooms which had been used for hearing High Court cases would be freed up for hearing District Court cases. To facilitate members' consideration of the proposal, she requested the Judiciary Administration to quantify the benefits of the proposed works project, including the impact on waiting time for cases in different levels of courts.

37. JA explained that there was an overall shortage of courtrooms in the Judiciary. She reiterated that the proposed project would benefit the High Court in that it would provide flexibility for the Judiciary to appoint more deputy judges to help shorten the waiting time for court cases where there was operational need to do. Moreover, with the provision of the proposed three additional courtrooms in the High Court Building, it would no longer be necessary to use courtrooms in the District Court to hear High Court cases or to use the court in the Small Claims Tribunal to hear District Court cases. Hence, the project would also benefit the District Court and the Small Claims Tribunal. At the request of the Chairman, JA agreed to provide in writing the information sought by Ms Emily LAU in the preceding paragraph for the Panel's reference before the proposal was submitted to PWSC for consideration.

Jud Admin

VI. Proposal for creation of two permanent posts of Deputy Principal Government Counsel in the Department of Justice
[LC Paper No. CB(2)512/09-10(07)]

38. Director of Administration and Development, DoJ (DAD) introduced the Administration's paper on the proposed creation of two permanent posts of Deputy Principal Government Counsel (DPGC) in DoJ with effect from 1 April 2010. One of the DPGC posts was to head a dedicated legal team in the Civil Division to cope with the new and additional workload arising from the Government's obligation to screen the claims lodged under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (torture claims); whereas the other

Action

was to lead a team of court specialists in the Prosecutions Division to conduct trials and provide legal advice on triad and organised crime matters. Subject to the Panel's views, the Administration would seek the endorsement of the Establishment Subcommittee (ESC) in January 2010 for the approval of FC in February 2010.

39. The Chairman said that the Administration's paper had provided a very detailed explanation on the complexity of torture claim cases which involved a wide spectrum of legal issues such as constitutional law, domestic law and international law. She enquired about the cost of the proposed DPGC post to deal with torture claim related work. DAD responded that the proposed creation of the two DPGC posts in DoJ would bring about an additional notional annual salary cost at mid-point of \$3,036,000. The full annual average staff cost, including salaries and on-cost, was \$4,384,992, i.e. about \$2.2 million for each DPGC post.

40. Noting from the Administration's paper that a full-fledged team comprising Senior Government Counsel (SGC) and Government Counsel (GC) would be needed on a long-term basis to work on torture claim related work, the Chairman sought information on the staff costs of SGC and GC. DAD explained that under the current tide-over arrangement, a supernumerary DPGC post had been created in October 2009 for a period of six months to head the dedicated team of a smaller scale comprising three SGC and two GC. It was the Administration's plan to add no less than 10 counsel to the team in future through the allocation of new resources and internal deployment. The levels of counsel for these additional posts had yet to be finalised. She undertook to include relevant information on the staffing plan of the team in the Administration's papers to be submitted to ESC and FC.

DoJ

41. Ms Emily LAU considered it unfair that the Administration, on the one hand, found it necessary to appoint a DPGC at directorate level with an annual average staff cost of \$2.2 million to tackle torture claim related work in view of the complexity of such work; but, on the other hand, was willing to remunerate duty lawyers at merely some \$670 per hour under the new scheme for providing publicly funded legal assistance to torture claimants. She shared the concern expressed by the two legal professional bodies that the proposed remuneration would not be sufficient to attract lawyers of the calibre and experience required to handle torture claims competently.

42. DAD responded that the remuneration of the proposed DPGC post and that of duty lawyers providing legal assistance to torture claimants were not directly comparable, given that the scope of work to be undertaken by the dedicated legal team to be led by the proposed DPGC post was much wider than that of duty lawyers. Apart from providing legal support to torture claim cases, the dedicated legal team would also handle other immigration related cases, relevant judicial review cases and provide advice on issues relating to the proposed legislation to create a statutory torture claim mechanism, among others. She further said that as she had not participated in the discussions between the Security Bureau and the Duty Lawyer Service (DLS) on the remuneration for duty lawyers under the new scheme of legal assistance to torture claimants, she was not in a position to respond to issues concerning the level of the proposed fee rates.

Action

43. Ms Emily LAU reiterated her view that having regard to the complexity of legal issues involved in torture claims as elaborated in the Administration's paper, the proposed remuneration for duty lawyers was inadequate to attract members of the legal profession with the requisite expertise and experience to handle such claims. While indicating support for the proposal for creation of the two DPGC posts in DoJ, Ms LAU requested the Administration to include in its papers to be submitted to ESC and FC the relevant background information relating to the issue of remuneration for duty lawyers for provision of legal assistance to torture claimants. DAD agreed. The Chairman said that when the torture claim screening mechanism was discussed at the meeting of the Panel on Security at its meeting on 1 December 2009, a member had queried why torture claim cases were civil, and not criminal cases. She requested the Administration to also explain the matter in its papers to be submitted to ESC and FC.

DoJ

DoJ

44. The Chairman asked what sort of background and experience DoJ would look for in recruiting counsel for the legal team dedicated for handling torture claim related work. Deputy Law Officer (Civil Law) said that preference would be given to counsel with expertise and experience in handling immigration related cases. As torture claim cases involved wide spectrum of issues relating to constitution law, domestic law and the relevant international law or conventions which applied to Hong Kong, counsel with relevant experience in these areas of law would also be accorded prior consideration.

45. In view of the complexity of torture claim cases, the Chairman agreed that the dedicated team in DoJ handling such cases should be led by a senior staff at the level of DPGC and was supportive of the staffing proposal. But on the other hand, she was critical of the proposed remuneration for duty lawyers under the new scheme of legal assistance to torture claimants which would not be sufficient to attract lawyers with the requisite expertise to handle such cases. She was concerned that it would result in a situation where the torture claimants would be represented by a far less experienced lawyer than the Administration and there would not be equality of arms between the two parties.

46. While expressing support for the Administration's staffing proposal, Ms Miriam LAU shared the concern about whether legal assistance to torture claimants should be provided through DLS and queried whether the duty lawyers currently serving on DLS had the requisite experience to handle torture claims. She also echoed the concern about the lack of equality of arms between the torture claimants and the Administration. In her view, a panel of lawyers which had been specially trained and possessed the necessary expertise should be established to handle torture claim cases.

VII. Limited liability partnerships for legal practice

[LC Paper Nos. CB(2)512/09-10(08) and (09)]

47. Senior Assistant Solicitor General (SASG) briefed members on the latest progress in taking forward the legislative proposals for the introduction of limited liability partnerships (LLP) for legal practice, details of which were set out in the Administration's paper (LC Paper No. CB(2)512/09-10(08)). Members noted that in November 2009, the Administration sent a draft bill to the two legal professional bodies, the Judiciary and the Consumer Council to seek their views. The Administration received the comments of the Law Society of Hong Kong (Law Society) on 25 November 2009 and that of the Consumer Council on the day before the Panel meeting. The Administration was still awaiting responses from the Bar Association and the Judiciary and would take into account the views of all consultees in finalising the legislative proposals. It was expected that the Bill would be introduced into LegCo in the second half of the current legislative session.

48. In response to the Chairman's enquiry on the delay in introducing the Bill, SASG explained that the Administration had originally intended to introduce the Bill into LegCo in February 2010. However, given that responses from certain bodies on the draft Bill were yet to be received and further discussion had to be held with the Law Society, the introduction of the Bill would be delayed for a few months. The Administration expected that the Bill would be introduced before July 2010.

49. Noting from paragraph 5 of the Administration's paper that some issues concerning consumer protection measures had yet to be resolved before the draft Bill could be finalised, the Chairman sought elaboration on the consumer protection measures. SASG explained that the consumer protection measures referred to those set out in paragraphs 3(b) to 3(g) of the Administration's paper, such as the requirements that an LLP must include the term LLP in its name, and must exhibit its name at or outside its office and in all its correspondence, notices, invoices, websites, etc. in a clearly visible and legible manner.

50. On the issue of sanctions for LLP firms which had failed to comply with the consumer protection measures, the Chairman said that a solicitors' firm operating under general partnership was under a duty to ensure the transparency of its operation and failure to do so would constitute a breach of professional code of conduct and lead to disciplinary proceedings. In her view, as in the case of general partnerships, failure of LLP firms to comply with the consumer protection measures should be dealt with by way of disciplinary proceedings, rather than incorporating legal sanctions for such misconduct in the primary legislation. She sought clarification as to whether it was one of the main issues of contention yet to be resolved.

Action

51. SASG said that at the Panel meeting on 25 May 2009, members had expressed the view that steps should be taken to ensure that consumers were made aware of the status of law firms practising as LLPs to facilitate them in making informed choices. In the light of members' view, the Administration had been considering the appropriate sanctions to be imposed on LLP firms that failed to comply with the consumer protection measures such as including the term LLP in its name. The Administration was still discussing the matter with the Law Society and would revert to the Panel once it had come to a view on the matter.

52. Mr Joseph LI, Council member and Chairman of the Working Party on LLP of Law Society, said that the Law Society had no objection to the proposal that an LLP must include the term LLP in its name. On the question of sanctions for LLP firms that had failed to comply with the consumer protection measures, the Law Society held the view that such matters should be dealt with by way of disciplinary proceedings. The Law Society had made reference to the LLP legislation in other jurisdictions. Most of these legislation did not provide for the imposition of civil sanctions for failure of an LLP firm to include the term LLP in its name, the state of New York of the United States being one of the few exceptions. In any case, he believed that there would only be very few cases where an LLP failed to include the term LLP in its name. Mr LI further said that in response to the Panels' request made at the meeting on 25 May 2009, the Law Society submitted a paper in July 2009 which elaborated on the proposed measures to safeguard consumer interests and provided relevant data on the adequacy of the existing statutory professional indemnity limit in meeting the claims of ordinary consumers against solicitors. He highlighted that from the 1994-1995 indemnity year to 2 July 2009, only 1.6% of the claims on the Hong Kong Solicitors Indemnity Fund had sought HK\$10 million or more. Of the claims in which the Fund had paid HK\$10 million, only one claim was brought by an individual and the others by corporations. He added that the Law Society had already provided its comments on the Administration's draft Bill and would continue discussion with the Administration to iron out the differences as far as practicable.

53. Referring to paragraph 5 of the Administration's paper, the Chairman asked whether the Consumer Council was of the strong view that consumer protection measures should be incorporated in the primary legislation. Mr Simon TSUI, Senior Legal Counsel of the Consumer Council, responded that as LLP was a new business entity for the legal practice, it was important to ensure that adequate safeguards for consumers be put in place with the introduction of LLPs. Incorporating the consumer protection measures in the primary legislation rather than the subsidiary legislation would facilitate consumers in understanding their rights when using services of LLPs. The Chairman further asked whether the Consumer Council considered disciplinary proceedings insufficient and that legal sanctions should be put in place for LLP firms which had failed to comply with the consumer protection measures. Mr TSUI said that the Consumer Council recognised the need to strike a proper balance between safeguarding consumer interests and limiting professional liability in the LLP proposal and would further consider the matter.

Action

54. Ms Miriam LAU considered the legislative proposals for the introduction of LLP as set out in paragraph 3 of the Administration's paper fairly straightforward. She expressed concern about the delay in the introduction of the Bill and stressed that there should be no further delay. She invited the Law Society's view as to how long it would take to resolve the outstanding issues stated in paragraph 5 of the Administration's paper.

55. Mr Joseph LI considered that the issues stated in paragraph 5 of the Administration's paper were not contentious. The Law Society had all along supported the proposal that an LLP firm should disclose its LLP status clearly to customers. The statutory immunity enjoyed by the Law Society in various matters had been provided for in relevant legislation and it should likewise enjoy statutory immunity for errors and omissions in the supply of information under the list of LLPs. In his view, the real issues of contention lay in the relevant provisions in the draft Bill requiring an LLP to maintain sufficient cash flow to cover its expenditure and liabilities, and placing restrictions on the drawing of assets from an LLP. While recognising that such provisions were to protect consumer interests, he pointed out that no such restrictions applied to general partnerships or corporations and similar provisions were not found in the LLP legislation of other jurisdictions.

56. Noting that the Administration received the Law Society's comments on the draft Bill on 25 November 2009, the Chairman sought explanation on why the real issues of contention referred to by Mr Joseph LI in the preceding paragraph were not mentioned in the Administration's paper issued to members in December 2009. The Chairman said that the LLP proposal involved relatively straightforward legislative amendments and the Panel had already discussed the proposal at a number of Panel meetings. She expressed dissatisfaction at the delay in introducing the Bill.

57. SASG said that since the Secretary for Justice had undertaken to promote a bill to provide for LLP for solicitors firms in December 2008, DoJ had been working at full steam to prepare the drafting of the legislative proposals. In the past year, DoJ had held several meetings with the Law Society to discuss the proposals and a draft Bill was prepared in November 2009 for the comments of the two legal professional bodies, the Judiciary and the Consumer Council. As quite a number of issues had been raised in the Law Society's response on the draft Bill, the Administration needed more time to consider and sort out the issues with the Law Society. She further said that when the LLP proposal was last discussed by the Panel, the Consumer Council had expressed concerns about protection of consumer interests, and there was a need for the Administration to strike a right balance between limiting professional liability and safeguarding consumer interests in the LLP proposal. The Administration would strive to resolve the outstanding issues with the Law Society and the Consumer Council in the coming few months and was committed to introducing the Bill into LegCo within the current legislative session.

Action

58. The Chairman said that in response to the concerns of the Consumer Council, the Law Society had proposed a number of measures to protect consumer interests in its submission to the Panel in July 2009. She reiterated her view that failure of LLP firms to comply with consumer protection measures should be dealt with by disciplinary proceedings which, in serious cases, could result in suspension from practice of the solicitors concerned. As regards the issue of whether the Law Society should enjoy statutory immunity for errors or omissions in the supply of information under the list of LLPs, she believed that the Law Society would be conscientious in ensuring the accuracy of the list and considered it unfair to penalise the Law Society if the errors or omissions were not caused by its negligence. She urged all parties concerned to make their best endeavour to resolve their differences over the outstanding issues for the early introduction of the Bill.

59. Mr Russell Coleman, Chairman of the Bar Association, shared the view that the LLP proposal was a relatively straightforward piece of amending legislation. He expected that the Bar Association would revert to the Administration on the draft Bill soon.

VIII. Any other business

60. There being no other business, the meeting ended at 6:27 pm.

Council Business Division 2
Legislative Council Secretariat
10 February 2010