

立法會
Legislative Council

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LC Paper No. CB(2)1887/09-10
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 26 April 2010, 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 LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Priscilla LEUNG Mei-fun
Hon IP Wai-ming, MH
Hon Paul TSE Wai-chun

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-ye, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP

Public Officers attending : Item IV
Judiciary Administration

Miss Emma LAU
Judiciary Administrator

Mr NG Sek-hon
Deputy Judiciary Administrator (Operations)

Mrs Angela LO
Assistant Judiciary Administrator (Corporate Services)

The Administration

Architectural Services Department

Mr Henry CHOI

Project Director

Mr HO Chiu-fan

Chief Project Manager

Item V

The Administration

Department of Justice

Miss Susie HO

Director of Administration and Development

Mr Simon LEE

Deputy Law Officer (Civil Law)

Items VI and VII

The Administration

Department of Justice

Mr Eamonn Moran, JP

Law Draftsman

Miss Susie HO

Director of Administration and Development

Mr Gilbert MO

Deputy Law Draftsman

(Bilingual Drafting and Administration)

Mr SUEN Wai-chung

Senior Assistant Law Draftsman

(Professional Development)

Mr Daniel CHUI

Systems Manager

- Attendance by invitation** : Item V
Hong Kong Bar Association
Mr Russell Coleman, SC
Chairman
Mr Robin Egerton
Council Member
The Law Society of Hong Kong
Ms Maureen E Mueller
Member of Mediation Committee
- 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
Ms Wendy LO
Council Secretary (2)3
Mrs Fanny TSANG
Legislative Assistant (2)3
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I. Confirmation of minutes of meeting
[LC Paper No. CB(2)1339/09-10]

The minutes of the meeting held on 22 February 2010 were confirmed.

II. Information papers issued since last meeting

2. Members noted that the letter dated 9 April 2010 from the Law Society of Hong Kong enclosing the proposed amendments to the Solicitors (Professional Indemnity) Rules [LC Paper No. CB(2)1277/09-10(01)] had been issued since the last meeting.

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3. The Chairman said that the proposed amendments sought to provide flexibility in reducing the amount of Professional Indemnity contributions payable by solicitors. It was her understanding that the Law Society aimed at bringing the amended rules into effect in September 2010.

Clerk

4. Members agreed to invite the Law Society to brief members on the proposed amendments to the Rules at a Panel meeting.

III. Items for discussion at the next meeting

[LC Paper Nos. CB(2)1349/09-10(01) to (03)]

Discussion items for the regular meeting in May 2010

5. The Chairman said that members had agreed at the last meeting to schedule a special meeting in May/June 2010 to receive views on the Administration's proposals arising from the recently completed five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants ("five-yearly review"). Given the difficulties in identifying a suitable time slot for holding the special meeting, the Chairman proposed to receive public views on the five-yearly review at the next regular meeting to be held on 24 May 2010 and deferred the items originally scheduled for discussion in May to future meetings. Members agreed. Members also agreed to invite the following organizations which had recently made submissions to the Panel on the research report on "Legal aid systems in selected places" to give views on the five-yearly review -

- (a) the two legal professional bodies;
- (b) Legal Aid Services Council;
- (c) Society for Community Organization;
- (d) Hong Kong Human Rights Monitor; and
- (e) Hong Kong Federation of Trade Unions.

Clerk

The Clerk was requested to post a notice on the Legislative Council website to invite public views on the subject.

Provision of free legal services

6. Ms Emily LAU noted that recently there were some newspaper reports on the remarks made by the Chief Justice of the Court of Final Appeal ("CJ") on the provision of free legal services in Hong Kong. CJ had remarked that he would like to see the legal profession making greater contributions in the provision of pro bono services. He had also urged the Administration to give serious consideration to providing appropriate infrastructural support for pro bono services by lawyers.

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Clerk Members agreed to request the Administration to provide information on its plan to enhance the provision of free legal services in Hong Kong, including the provision of better infrastructural support for such services as suggested by CJ. The Chairman also suggested inviting the two legal professional bodies and the local law schools to give views on the subject. The Clerk was requested to circulate for members' reference the relevant newspaper cuttings concerning the remarks made by CJ.

(Post-meeting note: The newspaper cuttings were circulated to members vide LC Paper No. CB(2)1417/09-10(01) on 28 April 2010. The paper provided by the Administration on provision of free legal services was issued to members vide LC Paper No. CB(2)1628/09-10(01) on 25 May 2010.)

Framework Agreement on Hong Kong/Guangdong Co-operation ("Framework Agreement")

Clerk 7. The Chairman informed members that the Deputy Chairman had written to her on 24 April 2010 suggesting that the Panel should discuss relevant issues relating to the implementation of the Framework Agreement at a future meeting. To facilitate the Panel's further consideration of the suggestion, the Clerk was requested to write to the Secretary for Justice requesting an information paper on the specific policies and measures under the Framework Agreement relating to the administration of justice and legal services.

IV. Proposed construction of the West Kowloon Law Courts Building
[LC Paper Nos. CB(2)1349/09-10(04) to (05)]

Briefing by the Judiciary Administration

8. Judiciary Administrator ("JA") briefed members on the proposed construction of the West Kowloon Law Courts Building ("WKLCB"), including the scope, anticipated benefits and delivery mode of the project, details of which were set out in the Judiciary Administration's paper [LC Paper No. CB(2)1349/09-10(04)]. Subject to members' views, the Judiciary Administration would invite tender for the "Design and Build" ("D&B") contractor for the development of WKLCB in the fourth quarter of 2010. It would further consult the Panel on the design of the project and would seek the endorsement of the Public Works Subcommittee for approval of the Finance Committee in the second and third quarters of 2011.

9. Members noted the letter dated 14 April 2010 from the Law Society setting out its views on the project. Members also noted the Judiciary Administration's letters dated 21 and 23 April 2010 respectively to the Law Society and the Law Society's reply dated 23 April 2010 concerning the project, which were tabled at the meeting.

(Post-meeting note: The above letters were issued to members vide LC Paper Nos. CB(2)1399/09-10(01) and (02) on 28 April 2010.)

Discussions

Design of the proposed WKLCB

10. Ms Emily LAU expressed support for the project in principle, having regard to the inadequacies in the existing accommodation and facilities of courts and Tribunals as identified in the Judiciary Administration's paper. She stressed that the design of the new law courts building should be commensurate with the independent and dignified image of the court. She was concerned that the adoption of the "D&B" approach for delivery of the project would compromise the quality of design of WKLCB.

11. Project Director, Architectural Services Department ("PD") responded that the D&B delivery mode was considered suitable for the WKLCB project as it could help achieve the Judiciary's objective of early completion of the project. The duration for project delivery by the D&B mode would be shorter as compared with other modes of project delivery, such as open design competition (a difference of about two years) or separate design by a selected consultant through bidding process and subsequent construction by a contractor through tendering process (a difference of about one year). In addition, the D&B approach also included appropriate apportioning of design-related risks to the contractor, and ensured buildable solution and better cost control; whereas in the cases of design competition or separate design by a consultant, there were more risks on buildability of design and cost control. In response to Ms Emily LAU, PD further said that he did not subscribe to the view that the adoption of the D&B mode was not conducive to innovative design. He pointed out that many large-scale Government works projects had also adopted the D&B delivery mode, such as the Government Headquarters in Tamar and the Cruise Terminal in Kai Tak. Experience of these projects showed that bidders would expend much resources to put together a design team often comprising internationally renowned architects to come up with innovative and quality designs to compete for the projects.

12. The Chairman said that during past visits to the Judiciary by the Panel, members had expressed the view that the design of court buildings should reflect the importance and dignity of the courts and the independence of the Judiciary. She stressed that the design of WKLCB should commensurate with the independent and dignified image of the court. JA assured members that emphasis would be placed on such a criterion in the invitation and selection of tenders.

13. The Deputy Chairman considered it important for the Judiciary to learn from the deficiencies in the design and layout of existing court buildings in planning the WKLCB project. By way of illustration, he said that the Eastern Law Courts Building was the most congested court building in Hong Kong with grossly inadequate lift access for the public and lawyers. He noted that the Judiciary was sharing the use of the Eastern Law Courts Building with some other Government departments such as the Social Welfare Department and Home Affairs Department. He asked whether consideration had been given to relocating the offices of these Government Departments to other places to allow the Judiciary exclusive use of the Building. He further said that he had received a complaint about the layout of the

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Kowloon City Law Courts Building. It was alleged that detainees in the Building had to be brought to the court for trial through the street. He considered such design unacceptable as it posed serious security problem.

14. JA agreed with the Deputy Chairman that the existing accommodation of the Eastern Magistrates' Courts, which was located in a joint-user building, was grossly inadequate. It was proposed that after the Coroner's Court and the Obscene Articles Tribunal had been relocated to WKLCB, the space vacated would be used for the much needed expansion of the Eastern Magistrates' Courts, including the conversion of three additional courtrooms. JA further said that even if the offices of all the other Government departments currently located in the Eastern Law Courts Building were relocated to other places, the space vacated would not be sufficient to meet the needs of the Judiciary for additional courtrooms and associated facilities. As an integral part of its long-term accommodation strategy, the Judiciary had proposed to construct a new law courts building in the West Kowloon region. Given the strategic location of the selected site, it would be practicable to list at the WKLCB many cases in the West Kowloon and north-west region of the New Territories. It was planned that the Tsuen Wan Magistrates' Courts, which had not been provided with many essential court facilities due to limited space available, would also be re-provisioned to the proposed WKLCB.

15. On the layout of the Kowloon City Law Courts Building, Deputy Judiciary Administrator (Operations) clarified that it was not necessary to bring detainees to the court for trial through the street, but the concern was about lawyers in the building having to walk across an unsheltered area in visiting detainees inside the same building. The Law Society had also raised such a concern with the Judiciary. The Judiciary Administration was exploring with the Architectural Services Department on the feasibility of installing canopies in the area concerned.

Location of the proposed WKLCB

16. The Deputy Chairman stressed that the new court building should be conveniently located. It should be easily accessible by different means of public transport without the need of multiple changes of transport. He enquired whether the new court building was located near MTR stations.

17. JA said that the proposed WKLCB would be located at the junction of Tung Chau Street and Tonkin Street West. It was a strategic location easily accessible via different means of public transport. Assistant Judiciary Administrator (Corporate Services) supplemented that the site was located near two MTR stations. It was within 10 minutes' and five minutes' walk respectively from Cheung Sha Wan MTR station in the North and the Nam Cheong MTR station in the South. Instead of walking to WKLCB from the Cheung Sha Wan MTR station, one might also take minibus no. 75 outside the Cheung Sha Wan MTR station and get off at Fu Cheong Estate opposite to WKLCB. She referred members to the information note attached to the Judiciary Administration's letter dated 23 April 2010 for detailed information on the public transport facilities serving the area nearby.

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18. Mr IP Wai-ming, however, pointed out that it was inconvenient to access the proposed WKLCB from the Cheung Sha Wan MTR station or Nam Cheong station. According to his experience, it would probably take more than 10 minutes to walk from the Cheung Sha Wan station to the proposed WKLCB. He suggested that consideration be given to constructing a pedestrian subway through Sham Mong Road connecting the Nam Cheong MTR station with Fu Cheong Estate to provide a sheltered pathway to WKLCB.

19. Dr Priscilla LEUNG said that while welcoming the proposed construction of a new court building in the region, many residents in West Kowloon considered the selected site for WKLCB inappropriate. It was her understanding that Site 6 nearby had been earmarked for the construction of residential blocks. She was concerned that the new court building would be surrounded by high residential buildings. She enquired when and how the selected site was identified.

20. JA responded that it had long been the Judiciary's plan to build a new court building in the West Kowloon region. The Planning Department had put forward a number of sites designated for "Government, Institution or Community" use for the Judiciary's consideration. After careful deliberation, the Judiciary had selected the site located at the junction of Tung Chau Street and Tonkin Street West. The Judiciary considered the selected site suitable to meet its operational needs as it was strategically located, and the area and plot ratio of the site would allow the Judiciary to optimize the utilization of the space. She added that the Sham Shui Po District Council had been consulted on the proposed construction of WKLCB at the selected site and members had expressed support.

21. Dr Priscilla LEUNG stressed that a court building should be located in spacious surroundings, as in the case of the Tsuen Wan Law Courts Building, rather than in a congested area surrounded by high buildings. The Chairman pointed out that apart from the Tsuen Wan Law Courts Building, many other existing court buildings, such as the Tuen Mun, Shatin and Kowloon City Law Courts Buildings, were also located in spacious vicinities.

22. In response, JA reiterated that the Judiciary considered the present selected site appropriate as it was strategically located and could meet the operational needs of the Judiciary. She stressed that it was the Judiciary's hope that the WKLCB project could commence as early as practicable, and identifying an alternative site would delay the project. She added that it was her understanding that Site 6 located near the selected site for WKLCB had been designated a "Comprehensive Development Area", i.e. an area for residential and commercial uses with the provision of open space and other supporting facilities.

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Facilities of the proposed WKLCB

23. Ms Emily LAU said that she shared the Law Society's view that car parks should be made available for the public and legal representatives and there should be a canteen/café in the new court building to cater for the needs of court users. Mr IP Wai-ming echoed the view that there should be a canteen in the proposed WKLCB .

24. JA responded that the Judiciary Administration was liaising with the Government Property Agency on the provision of car parking space in WKLCB for legal representatives and institutional court users. As regards the suggestion of providing a canteen/café in WKLCB, she explained that according to the prevailing Government policy, canteens/cafes were generally not provided in Government accommodation for better utilization of space therein. Such a policy as recommended by the Director of Audit and considered by the Public Accounts Committee of the Legislative Council ("LegCo") had been implemented over the past 10 years or so. In the proposed WKLCB project, the Government Property Agency had advised that the provision of canteen facilities was not justified given its convenient location.

25. While expressing support for the construction of a new court building, Ms Audrey EU considered that members had not been provided with adequate information on the WKLCB project. There was a lack of information on the detailed requirements for the design of the building and the various courtrooms/tribunals. It was also difficult to tell from Annex A to the Judiciary Administration's paper [LC Paper No. CB(2)1349/09-10(04)] whether the proposed facilities in the new court building would be adequate. For example, there was no information on the size of the waiting/consultation rooms nor facilities to be included in the proposed information and enquiry centre to be set up in the Small Claims Tribunal.

26. JA reiterated that it was the Judiciary's position that the design of the court building should be commensurate with the dignified image of the court. The Judiciary had requested the Architectural Services Department to ensure that due regard would be given to the views of the Judiciary, including judges, in selecting the design of the court building. JA further said that the Judiciary would further consult the Panel in the second quarter of 2011 after the tendering process for the D&B contractor for development of WKLCB had been completed. The Panel would then be consulted on the design of the project.

Conclusion

27. The Chairman said that members appreciated that existing court facilities were far from adequate to meet growing court service requirements and had all along been very supportive of the construction of a new law courts building for proper and efficient administration of justice. She stressed that given the costs incurred and the rare opportunity to build a new law courts building, Members expected the design of the new law courts building to be commensurate with the dignified image of the court

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and its facilities adequate to meet the operational needs of the Judiciary for the decades ahead. Members also considered it important for the new building to be easily accessible by public transport and located at a place with spacious surroundings. She expressed dissatisfaction that the Judiciary Administration had not provided members with such information on the proposed new law courts building. To facilitate the Panel's further consideration of the project, the Judiciary Administration was requested to provide a supplementary information paper setting out the detailed requirements of the Judiciary for the proposed WKLCB project (including principles for the building design, and requirements for its location and surroundings, courtrooms/tribunals therein, as well as other court associated facilities), and how the proposed facilities in the new court building compared with the existing facilities in the law courts buildings to be reprovisioned. JA assured members that the Judiciary attached great importance to the proposed the new law courts building. She informed members that a working group led by the Chief Magistrate had been set up within the Judiciary to study and draw up the requirements for all proposed facilities in WKLCB. Views of different court users had also been collected through various channels, such as focus groups, to ensure that the proposed facilities could meet their needs. She undertook to provide the requisite information to the Panel within May 2010.

Jud
Admin

V. Non-Civil Service appointment of a Deputy Principal Government Counsel in the Department of Justice for promotion of mediation

[LC Paper Nos. CB(2)950/09-10(08) and CB(2)1349/09-10(06) to (07)]

Briefing by the Administration

28. Director of Administration and Development, Department of Justice ("DAD") introduced the Administration's supplementary paper [LC Paper No. CB(2)1349/09-10(06)] providing further information and a timetable on the duties and responsibilities of the non-civil service position of Deputy Principal Government Counsel ("DPGC") at the equivalent rank of DL2 proposed to be created in the Department of Justice ("DoJ") from August 2010 for a period of three years to provide the necessary support for furthering the promotion of the development of mediation in Hong Kong, with specific reference to the recommendations of the Secretary for Justice's Working Group on Mediation ("Working Group"). Members noted that the supplementary information was provided in response to the Panel's request when the staffing proposal was discussed at the meeting held on 22 February 2010. Subject to the Panel's views, the Administration would seek the endorsement of the Establishment Subcommittee for the approval of the Finance Committee.

Views of deputations

The Hong Kong Bar Association ("Bar Association")

29. Mr Russell Coleman said that as indicated in the Administration's paper [LC Paper No. CB(2)1349/09-10(06)], the Bar Association, the Law Society as well as

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mediation service providers generally supported the creation of the proposed DPGC post. He stressed that mediation was not only used in the context of community conciliation, it also formed an integral part of the court process following the implementation of Practice Direction 31 on Mediation ("PD 31") earlier this year. Under PD 31, legal representatives had a duty to advise their clients to explore the use of mediation in resolving their disputes. As mediation had become an important part of administration of justice, the Bar Association considered it appropriate for the proposed post to be created in DoJ.

30. The Chairman said that during the discussions at the meeting on 22 February 2010, some members had queried the need for enacting a mediation ordinance, which was one of the main duties of the proposed DPGC post. She invited the Bar Association's views on the content of the proposed mediation ordinance and how it compared with the mediation laws in other jurisdictions.

31. In response, Mr Robin Egerton said that the objective was not to have a highly complicated ordinance which would impose undue constraints on the mediation process. The proposed legislation would set out the definition of key terminology such as "mediation" and "conciliation" as well as general rules governing confidentiality and privilege. Given the complexity of issues relating to confidentiality and privilege, he considered it important to set out the relevant rules in the proposed legislation to provide for legal clarity and certainty. The proposed legislation would also cover other important areas such as sanctions for breaching the rules of confidentiality and privilege, status of the mediation code and enforcement of mediation agreements. It was his understanding that mediation would tend to develop at a faster pace in places where a mediation law had been enacted, and jurisdictions which had not initially had some form of legislation on mediation had come to regret it. Mr Russell Coleman echoed the importance of establishing at an early stage a proper legislative framework within which mediation could be conducted with a view to facilitating the development of mediation. He further opined that it was important to exclude certain areas from the proposed legislation to ensure that mediation could be conducted as flexibly as might be necessary.

The Law Society

32. Ms Maureen Mueller said that the Law Society supported the staffing proposal. She further said that it was appropriate to establish the proposed post in DoJ as it would help the public see mediation as a viable pathway to justice.

Discussions

33. Mr LAU Kong-wah expressed support for the development of mediation services in Hong Kong. He considered Government support, particularly in respect of legislation and accreditation, vital to promoting more extensive use of mediation. Noting that when the Working Group was set up in November 2008, a part-time non-civil service DPGC position was created for 12 months to provide secretariat support to the Working Group followed by the creation of a six-month full-time

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non-civil service DPGC position in January 2010 to undertake the public consultation exercise, Mr LAU considered it undesirable to appoint staff on a short-term basis to take up the responsibilities of developing mediation services. In his view, the present proposal of appointing a full-time DPGC for three years was a better arrangement to afford continuous support to the development of mediation on a longer-term basis. He enquired about the manpower support to be provided to the DPGC post in discharging the various duties during the three-year period.

34. DAD responded that it was the Administration's plan to deploy or recruit on contract basis a Government Counsel at non-directorate level with mediation work experience to provide assistance to the proposed DPGC post. Depending on operational requirements, additional Government Counsel at non-directorate level could be deployed to assist the DPGC where necessary. In response to Mr LAU Kong-wah's further enquiry on supporting staff for the DPGC post, DAD said that the procedure for creating non-directorate level posts was relatively more simple. She assured members that sufficient manpower resources would be allocated through internal deployment to provide necessary support to the proposed DPGC post.

35. Noting from paragraph 3(c) of the Administration's supplementary information paper that the introduction of the proposed mediation ordinance would be subject to the outcome of the public consultation on the report of the Working Group, Mr LAU Kong-wah asked how the work of the proposed DPGC post would be affected if it was decided after the consultation exercise that legislation on mediation would not be introduced. DAD responded that according to the response received in the consultation exercise so far, the mainstream view was in support of the enactment of a mediation ordinance. She reckoned that the chance of not introducing a mediation ordinance was rather slim.

36. While appreciating the voluntary nature of mediation, Ms Audrey EU opined that, in cases where there was imbalance in bargaining powers between the parties to a dispute, consideration should be given to making mediation part of the routine process which had to be gone through before taking the cases to the court, with a view to safeguarding the interests of individual litigants who did not have financial resources to engage in litigations against big corporations. Examples of cases where there could be huge disparity in the bargaining powers of the two parties included disputes relating to sale and purchase of financial investment products (disputes on Lehman Brothers minibonds being a case in point), compulsory sale of land for redevelopment and building management.

37. Mr Russell Coleman said that with the implementation of PD 31, mediation had become a routine procedure in court process. Under PD 31, legal representatives had a duty to advise their clients on the need to explore mediation. Both the legal representatives and the clients were required to certify that they had considered the use of mediation and explain to court should they decide not to attempt mediation. In his view, such a procedure served to educate the public to give serious consideration to using mediation in resolving disputes. As regards Ms Audrey EU's suggestion of requiring parties to certain types of disputes to go through the mediation

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process, Mr Coleman considered it appropriate for the proposed DPGC post to look into the matter.

38. Ms Maureen Mueller said that while PD 31 had made it mandatory for parties to a litigation to explore the use of mediation in resolving their disputes, it was for the parties to decide whether to attempt mediation. She said that many people were willing to try mediation because it could often bring about more satisfactory outcomes. While the court could only award monetary sanctions, mediation could result in a more mutually satisfying solution which might go to business or personal interests. As regards Ms Audrey EU's concern about imbalance of bargaining power between parties to a dispute, Ms Mueller said that one of the main duties of the proposed DPGC post was to look into accreditation and training of mediators. She pointed out that training played a significant role in helping mediators identify situations where there was such imbalance of power and rendering appropriate assistance to the parties concerned. She further said that it was appropriate to create the proposed DPGC post in DoJ which have the necessary expertise to formulate the mediation legislation properly to prevent it from encroaching on the flexibility and voluntary nature of mediation.

DoJ

39. Ms Audrey EU requested the Administration to consider including as one of the duties of proposed DPGC post the study on the feasibility of making mediation part of the routine process where there was imbalance of bargaining powers between parties to a dispute. The Chairman, however, pointed out that according to the study of the Working Group, there was evidence suggesting that when mediation was conducted in cases where there was imbalance of bargaining powers between the parties concerned, the weaker party would often be placed in an even more disadvantageous position. In her view, such findings should also be taken into consideration in the study to be undertaken by the proposed DPGC post as suggested by Ms EU.

DoJ

40. While expressing support for the promotion of mediation services, the Deputy Chairman stressed that the right of access to court should not in any way be eroded by the development of mediation services and that judges should not be involved in the mediation process to maintain the independence of the judicial process. He expressed support for the Administration's staffing proposal, because it would be beneficial for the Administration to spearhead the development of mediation at the present stage to facilitate, inter alia, the establishment of a proper framework and accreditation system. He also considered that the Administration should report to the Panel on the progress of development of mediation services on a regular basis.

41. Mr TAM Yiu-chung also indicated support for the development of mediation services. While agreeing that a mechanism could be put in place to encourage parties to a dispute to attempt settlement by way of mediation, he did not consider it appropriate to make mediation a mandatory procedure, having regard to its voluntary nature. He further expressed the view that it was appropriate for the proposed post to be created in DoJ, considering that it had been co-ordinating the work relating to the development of mediation over the past years. However, the Administration could further elaborate on the need to pitch the post at the level of DL2.

42. Summing up the discussions, the Chairman said that members and the two legal professional bodies considered it appropriate for the Administration to take a leading role in establishing a proper framework for the development of mediation services in Hong Kong and had expressed support for the proposed creation of the DPGC position at the equivalent rank of DL2 in DoJ.

VI. Document design of draft legislation

[LC Paper Nos. CB(2)615/09-10(01) and CB(2)1349/09-10(05)]

Briefing by the Administration

43. Law Draftsman ("LD") briefed members on the changes proposed by the Law Drafting Division ("LDD"), DoJ, to the format and visual design of Hong Kong legislation with a view to making it more user-friendly and attractive, details of which were set out in its paper [LC Paper No. CB(2)615/09-10(01)].

Discussions

44. Mr LAU Kong-wah expressed concern that the Chinese text of legislation was often quite difficult to follow. Apart from enhancing the document design of legislation, he enquired whether LDD had also taken measures to enhance the readability of the Chinese text of legislation.

45. Deputy Law Draftsman (Bilingual Drafting and Administration) responded that LDD was aware of the wish of the public and legal practitioners to see more readily comprehensible Chinese legislation, and had adopted a number of initiatives in recent years to enhance the readability of Chinese legislation, such as using shorter sentences, placing the subject close to the action word and adopting greater flexibility in sentence structure. He further pointed out that there had been instances where law draftsmen had tried to make the Chinese text more comprehensible by departing from the sentence structure of the English equivalent, but the policy bureau concerned or Members had expressed concern that the difference in the structure of the Chinese and English texts might result in discrepancy in the meaning of the two texts. He stressed that given the different grammatical rules of the Chinese and English languages, readers should not expect the Chinese text to be a word-for-word translation of the English text. In his view, law draftsmen and readers alike should be more open-minded about the different ways of expression in the English and Chinese texts provided that there was no discrepancy in the meaning of the two texts.

46. The Chairman advised that following the Panel's discussion on law drafting at the meeting in December 2009, the Legal Service Division of the LegCo Secretariat and LDD had held regular working meetings to discuss views expressed by Members on law drafting in the course of examination of bills. The Chairman proposed that the issue of readability of Chinese text of legislation be discussed at a future Panel meeting with reference to concrete examples raised during the scrutiny of bills. Members agreed.

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47. Referring to the samples of mock-up copies of a Gazette version of bills printed in the proposed new format attached to LDD's paper, the Chairman and Ms Audrey EU sought clarification on whether the samples had already reflected the proposed larger font size of English alphabets and Chinese characters. LD replied in the affirmative.

48. Noting from the attached samples of the proposed new format that the defined terms in the definition section, unlike the text in other sections, were not indented to align with the text in the same section, Assistant Legal Adviser enquired about the reason for such difference.

49. LD explained that the proposed format would leave more space for the text in the definition section. Senior Assistant Law Draftsman (Professional Development) supplemented that the proposed format would also allow the defined terms to stand out quite clearly from the other text in the section.

50. Concluding the discussions, the Chairman said that members in general supported the proposed changes to the document design of legislation.

VII. Proposal to implement a verified, authenticated and searchable electronic database of Hong Kong legislation

[LC Paper Nos. CB(2)1349/09-10(05) and (08)]

Briefing by the Administration

51. LD briefed members on the proposal to implement a verified, authenticated and searchable electronic database of Hong Kong legislation ("the Database") to replace the existing Loose-leaf Edition; and the introduction of a Bill to give legal status to the Database and to provide for sufficient editorial powers to alter the texts of legislation to conform with current drafting practices, details of which were set out in LDD's paper [LC Paper No. CB(2)1349/09-10(08)]. On the financial implications, the implementation of the Database would require an estimated non-recurrent expenditure of \$79,395,000, non-recurrent staff costs of \$35,034,000 as well as full recurrent expenditure of \$14,860,000 per annum from 2017-2018 onwards. Subject to the views of the Panel, DoJ would seek the approval of the Finance Committee for the non-recurrent expenditure of \$79,395,000, while the non-recurrent staff costs and recurrent expenditure would be absorbed by DoJ.

Discussions

52. In response to the enquiry of the Chairman on the consultation conducted on the proposed Database, LD said that LDD had briefed the Bar Association and the Law Society on the proposal. He noted that the Law Society had written to the Panel indicating its support. He added that LDD had also conducted feedback surveys to gauge users' views on the Bilingual Laws Information System ("BLIS") early last year.

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53. Ms Audrey EU opined that the frequent change in the format of BLIS was undesirable. She considered that opportunity should be taken of the implementation of the electronic Database to introduce more value-added services. For instance, it would be useful if the Database could show past versions of relevant sections of legislation and annotation service could be made available to provide information on case law relating to the relevant sections of legislation. She also considered that the Database should provide an enhanced search function to facilitate users in searching relevant information.

54. LD responded that it was the intention of LDD to enhance the search capability of the Database and provide historical versions of Hong Kong legislation in the Database. On annotation of legislation, LD said that while it was essentially a service to be provided by legal publishers, the Database would adopt the use of an open data format which would facilitate legal publishers to provide value-added services including annotation service.

55. Ms Audrey EU asked whether consideration would be given to engaging outside contractors to provide annotation service in BLIS so that legal practitioners could use such service on payment of a fee without having to wait for the implementation of the Database. LD explained that there were technical difficulties in providing such service in BLIS which operated on the Lotus Notes platform. This in part explained the need to implement a new electronic Database, the design of which would open up opportunities for third parties, such as legal publishers, to provide value-added services including annotation service. The Chairman opined that there was a limit to what DoJ could do to encourage commercial service providers to provide such service. She believed that service providers would prefer providing such service in a verified and authenticated database rather than in BLIS. LDD was requested to provide a response, as appropriate, to Ms EU's concern after the meeting.

LDD

56. Dr Priscilla LEUNG shared the view that the Database should provide more value-added services. She suggested that a cross-referencing function be included in the Database to provide cross-references among different ordinances. LD responded that he was aware that the electronic legislation database in many overseas jurisdictions provided cross-references among different ordinances by means of hyperlinking, and LDD would seek to provide such service in the Database.

57. Noting the Administration's proposal for the introduction of a bill to, inter alia, provide for sufficient editorial powers to LDD to update existing legislation to the new format and styles, Mr LAU Kong-wah was concerned whether the exercise of such editorial powers would alter the effect of the legislation concerned. LD assured members that mechanisms would be put in place to ensure that any editorial changes would not alter the effect of the relevant legislation. Indeed, it would be written into the proposed bill that any editorial powers could not alter the effect of the legislation. In further response to Mr LAU, LD said that LDD would explore the possibility of providing a simplified Chinese version in the Database albeit it would not be an official version.

Action

58. Members generally supported the proposals put forward by LDD in relation to the Database.

VIII. Any other business

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

Council Business Division 2
Legislative Council Secretariat
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