

立法會
Legislative Council

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**Report of the Panel on Administration of Justice and Legal Services
for submission to the Legislative Council**

PURPOSE

This report gives an account of the work of the Panel on Administration of Justice and Legal Services during the 2009-2010 Legislative Council ("LegCo") session. It will be tabled at the Council meeting on 7 July 2010 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

THE PANEL

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining policy matters relating to the administration of justice and legal services. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 14 members, with Dr Hon Margaret NG and Hon Albert HO elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

MAJOR WORK

Procedures to fill the vacancy of the Chief Justice of the Court of Final Appeal

4. Following the announcement by the incumbent Chief Justice of the Court of Final Appeal ("CJ") of his retirement, the Panel discussed with the Administration the procedures and working timetable to fill the anticipated vacancy of CJ.

5. Members were of the view that the process of judicial appointments should not be politicized as it would violate the fundamental principle of separation of powers. Members generally agreed that the procedure for LegCo's endorsement of senior judicial appointments as recommended by the Panel and agreed to by the House committee in 2003 should be followed in the appointment exercise for the next CJ. They were of the view that LegCo's power to endorse judicial appointments was substantive in that it could act as the final gatekeeper to stop a judicial appointment which was manifestly contrary to public interest. However, such power should only

be exercised in exceptional circumstances, and it should be a constitutional convention for LegCo to accept nominations made by the Judicial Officers Recommendation Commission ("JORC"), a body with legal professionals as members who were best equipped to consider the judicial qualities of a candidate. Members, however, stressed that the Administration should provide as much information on a recommended candidate as possible so that LegCo could consider the appointment on an informed basis.

6. Members noted that during the Panel's review of the process of appointment of judges, both the Hong Kong Bar Association and the Law Society of Hong Kong ("the Law Society") had expressed the view that it was not appropriate for the Secretary for Justice ("SJ"), being one of the Principal Officials under the Accountability System, to be a member of JORC. Some members shared the view that SJ should not participate in the appointment process of judges in view of the inherent conflict of interest. They were concerned that in the event that the candidate proposed by JORC was highly controversial, the membership of SJ on JORC might further complicate the matter. On the other hand, there was also a view that there was no problem with SJ's membership on JORC.

7. The Administration advised that apart from being the principal adviser on legal matters to the Government, SJ was also endowed with the constitutional role of being the guardian of public interest in the administration of justice and the upholder of the rule of law. In addition, SJ had the overall responsibility for the Department of Justice ("DoJ") which was one of the three major court users. It was essential that SJ remained a member of JORC to fulfil his important roles in these various respects. The former Subcommittee on Proposed Senior Judicial Appointments appointed to consider the recommended appointments of the next CJ and three non-permanent Hong Kong judges to the Court of Final Appeal had also expressed concern about the membership of SJ on JORC and had referred the issue to the Panel for follow-up.

Access to justice

8. Access to justice has all long been a major focus of work of the Panel. During the current session, issues relating to the provision of legal aid services remained high on the agenda of the Panel.

Research report on "Legal aid systems in selected places"

9. To facilitate its discussions on various aspects of the legal aid system, the Panel requested the Research and Library Services Division of the LegCo Secretariat to prepare a research report on the legal aid systems in England and Wales of the United Kingdom, the Province of Ontario of Canada and the State of New South Wales of Australia. The Panel discussed with the Administration the legal aid system in Hong Kong with reference to the experience of overseas jurisdictions covered in the research report and received views from relevant organizations on the research report.

10. Members considered it evident from the research report that the legal aid system in Hong Kong did not compare favourably with those in the selected places. Members noted that Hong Kong was lagging behind other jurisdictions in terms of public spending on legal aid. As shown in the research report, not only was its legal aid expenditure per capita the lowest among the jurisdictions covered in the research report, the grant rate of legal aid applications in Hong Kong was also significantly lower than the other jurisdictions with the exception of Ontario. Members stressed that legal aid was the pillar of the rule of law and reiterated their long-standing call for the Administration to make improvements to the legal aid system expeditiously, including raising the financial eligibility limits of the two legal aid schemes, extending the types of cases covered by the Supplementary Legal Aid Scheme ("SLAS"), expanding legal aid to cover community legal advice service and extending the discretion of the Director of Legal Aid ("DLA") to waive the upper financial eligibility limit in respect of certain proceedings such as those involving human rights and Labour Tribunal proceedings.

Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants

11. After completion of the recent five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants ("five-yearly review"), the Administration reported to the Panel on its recommendations in March 2010. The Panel held another meeting in May 2010 to receive views from relevant organizations on the Administration's recommendations.

12. While members generally welcomed the Administration's recommendation of raising the financial eligibility limit for the Ordinary Legal Aid Scheme ("OLAS") from \$175,800 by about 50% to \$260,000 and that for SLAS from \$488,400 by about 100% to \$1 million, they considered the extent of the proposed increase inadequate. Members had previously proposed raising the financial eligibility limits of OLAS to somewhere between \$500,000 and \$1 million, and that for SLAS to \$1 million to \$3 million. Members requested the Administration to explain the basis for arriving at the proposed financial eligibility limits for the two legal aid schemes. Members also considered that the Administration should explain the reasons for not adopting the Legal Aid Services Council's ("LASC") proposal of raising the financial eligibility limit of SLAS to \$1.3 million which was put forward on the basis that the average legal costs of a SLAS case that actually went to trial was \$1.297 million.

13. The Administration explained that when the financial eligibility limits were first introduced in 1992, no formula was used to arrive at the figures and there was no quantitative elaboration behind them. In considering the revised financial eligibility limits, the Administration had taken into account various factors including the percentages of cases with litigation costs below the revised financial eligibility limits, the levels of financial resources of the prospective applicants eligible for legal aid and the financial implications arising from the adjustments. The Administration stressed that the proposed levels of increases, i.e. 50% for OLAS and 100% for SLAS, aimed

to enhance significantly the financial eligibility limits to make more people eligible for legal aid. Members were dissatisfied with the Administration's explanation and noted the view of the Hong Kong Bar Association that it was important to adopt a principled approach in determining the appropriate level of financial eligibility limits as the benchmarks for future reviews. The Administration was requested to further explain in writing the rationale for the revised financial eligibility limits to assist the Panel in assessing the adequacy of the proposed levels of increase.

14. The Panel generally welcomed the Administration's recommendation of replacing the 35-percentile household expenditure with the median household expenditure as the deductible allowance in calculating disposable income. While supporting in principle the Administration's recommendation of exempting part of the savings of elderly applicants when calculating their disposable capital, members were of the view that the age requirement should be relaxed, as many people in their 50's had built up some retirement assets and it would cause them undue hardship to risk their retirement savings on litigation, bearing in mind that it might be difficult for them to rebuild their retirement assets once they were lost. A member suggested that the proposed exemption should also be extended to cover those who were chronically ill. The Administration undertook to consider members' views.

15. Members expressed grave disappointment with the Administration's recommendation not to expand the scope of SLAS to cover cases other than personal injuries or death, employees' compensation claims, and medical, dental and legal professional negligence claims. According to the Administration, any proposal for extending the scope of SLAS must not undermine or jeopardize its financial viability, given its self-financing nature. SLAS was by design aimed at cases which involved monetary claims of a reasonable size, with a high success rate and a reasonably good chance of recovering damages. The Administration also advised that if the scope of SLAS was to be extended to cover cases which did not fulfil such criteria, the Administration would not be able to raise the financial eligibility limit of SLAS to \$1 million at the same time. Members did not subscribe to the Administration's view that it was not viable to expand SLAS to cover other types of cases due to their relatively low success rates. They urged the Administration to re-consider seriously expanding the scope of SLAS with a view to enhancing the middle class' access to justice. The Panel also requested LASC, which was vested with the statutory responsibility to advise the Chief Executive on legal aid policy, to look into the issue of expansion of SLAS and revert to the Panel on its recommendations.

16. Members expressed support for the proposal of the Hong Kong Federation of Trade Unions for special assistance to be provided to employees in obtaining legal aid for recovery of wages. Members considered it unjust that employees had to give up their right to recover wages due to a lack of means and requested the Administration to come up with measures to ensure effective enforcement of Labour Tribunal ("LT") awards. It was suggested that the means test should be waived for employees for filing petitions for bankruptcy or winding up against their employers who had failed to effect payment of LT awards and for employees who had to face further litigation

when their employers appealed against the LT awards. The Administration was requested to revert to the Panel on assistance to be provided to employees in obtaining legal aid for recovery of wages and measures to be taken to ensure enforcement of LT awards.

17. The Panel considered it vitally important to grasp the opportunity of the current five-yearly review to make substantial improvements to the legal aid system to enhance access to justice. The Panel scheduled a further meeting in July 2010 to continue discussion with the Administration and relevant organizations on the five-yearly review.

Free legal advice service

18. At the Panel's request, the Administration reported to the Panel on its preliminary proposals to improve the provision of community legal advice service. Members noted that the Administration planned to enhance the support services for volunteer lawyers under the Free Legal Advice Scheme and was exploring the possibility of providing funding for an agency to strengthen the provision of free legal information to the community through the internet.

19. Members were of the view that the existing provision of free legal advice was far from adequate and urged the Administration to allocate more resources to meet the public need for such services. They considered that the measures proposed by the Administration were only a small step forward and there was still much room for improvement in the provision of free legal advice services. Some members considered that the Administration should conduct a comprehensive review on the Free Legal Advice Scheme, pointing out that the one-off general advice given by volunteer lawyers under the Scheme was not adequate to help people solve their legal problems. Some members were of the view that consideration should be given to providing legal advice service to Hong Kong people involved in litigation on the Mainland and enhancing the dissemination of basic information on Mainland laws in the community. Members were also generally supportive of the proposal that free legal advice service should be provided to persons detained by the police or other disciplinary forces.

20. The Administration advised that it would take into account members' views in examining options for addressing the demand for more extensive free legal advice services, and undertook to revert to the Panel on its recommendations for expanding free legal advice service within the current financial year.

Independent statutory legal aid authority

21. In October 2009, LASC completed its review of the need for an independent legal aid authority and reported its findings to the Administration. In the light of the review, the Panel discussed the issue of the establishment of an independent legal aid authority, which had long been championed by the two legal professional bodies, with

the Administration in January 2010 and further discussed the issue with LASC and the Administration in March 2010.

22. Members noted that LASC had concluded from its recent review that there was no pressing need to disestablish the Legal Aid Department ("LAD") and substitute it by an independent legal aid authority, in view of the very satisfactory service currently provided by LAD, the views of the LAD staff on the matter and the financial position of the Government. Nevertheless, LASC had decided to seek funds from the Administration to seek a fresh examination of the issue in late 2011/early 2012. Members also noted the Administration's view that legal aid services should continue to be operated under the existing institutional setup.

23. Some members expressed grave dissatisfaction that the independence of legal aid was retrogressing, as evidenced by the transfer of the legal aid portfolio from the Administration Wing of the Chief Secretary for Administration's Office to the Home Affairs Bureau in 2007 and the significant departure of the findings of LASC's recent review from those in its 1998 study which had recommended that an independent legal aid authority should be established in phases to provide for institutional independence of legal aid. These members were concerned that only LAD staff had been consulted in the review process and queried the basis for LASC's view that the service of LAD was very satisfactory. It was pointed out that as both DLA and members of LASC were appointed by the Chief Executive, there was a risk that legal aid matters would be subject to the interference of the Executive authorities. They stressed that it was essential to the administration of justice that legal aid services must not only be delivered independently but also seen to be so, and reiterated their support for the establishment of an independent legal aid authority. However, some other members were of the view that it was neither necessary nor urgent to establish an independent legal aid authority, as LAD had been operating well and an appeal mechanism was in place to ensure that the powers of DLA were not abused. These members considered it more important to improve access to legal aid service by raising the financial eligibility limits and expanding the scope of cases covered by legal aid.

24. Some members deplored LASC's refusal of the Panel's request to be provided with a copy of the report on its recent review on the independence issue. LASC explained that the report could not be provided to the Panel because when LAD staff were consulted, there was an agreement that their views submitted were for internal reference by LASC only and would be treated in strict confidence. LASC undertook to take into consideration the experience gained from the recent review and members' comments in handling reports of future studies.

25. Members generally agreed that LASC should advance the schedule for conducting a fresh review on the independence issue. Members were also of the view that the review should be conducted comprehensively, and the views of all relevant stakeholders, including users of legal aid services and persons whose legal aid applications had been refused, should be gauged in the process. The Panel

requested LASC to consider members' requests and views, and revert to the Panel on its consideration.

Legal aid in criminal cases

26. The Panel followed up with the Administration on the proposal to amend the Legal Aid in Criminal Cases Rules (Cap. 221D) ("the Rules") to allow legal aid to be granted in cases going to CFA not involving a conviction. Members welcomed the Administration's decision to amend the Rules to provide expressly that legal aid could be granted for cases considered by CFA and also the Court of Appeal which did not involve a conviction. The Administration was requested to consider the Law Society's proposal that a provision be incorporated into the Rules to provide for DLA's general power to grant legal aid in such circumstances as he thought fit. The Panel noted that it was the Administration's aim to seek LegCo's approval of the proposed legislative amendments within 2010.

Criminal legal aid fees system

27. The Panel continued to monitor the progress of the review of the criminal legal aid fees system (i.e. the system of payment of fees to criminal legal aid lawyers engaged by LAD) which aimed at achieving general compatibility with the prosecution fee regime adopted by DoJ and providing reasonable remuneration for assigned lawyers undertaking criminal legal aid work. The Panel had been kept informed of the progress of the discussions between the Administration and the Law Society on the fee rates for solicitors. Members noted that the Administration was making preparation for the legislative process to effect the revised criminal legal aid fees structure and rates.

Consultation Paper on Class Actions published by the Law Reform Commission

28. Under the current law, the sole machinery for dealing with multi-party proceedings in Hong Kong was a rule on representative proceedings under the Rules of the High Court (Cap. 4A) which was criticized as restrictive and inadequate by the CJ's Working Party on Civil Justice Reform in its Final Report. Arising from the incident related to Lehman Brothers' minibonds in which a large number of consumer investors would need to take legal action individually for their losses, the Panel decided to take up the issue with the Administration. At the Panel's invitation, the Chairman of the Law Reform Commission's Class Actions Subcommittee, which was tasked to consider whether a scheme for multi-party litigation (i.e. class actions) should be adopted in Hong Kong, briefed members on the recommendations contained in the Subcommittee's Consultation Paper on Class Actions published in November 2009. The Research and Library Services Division of the LegCo Secretariat also provided the Panel with a research report which studied the class action and group litigation schemes in the United States, Australia and the United Kingdom so as to facilitate members' consideration of the relevant issues.

29. According to the Class Actions Subcommittee, there was a convincing case for the introduction of a comprehensive regime for multi-party litigation to enhance access to justice. Some members expressed support for the introduction of a class action regime. However, they were concerned that class action proceedings would incur considerably higher litigation costs which might wipe out the amount of compensation to be awarded, and could be subject to potential abuse. It was suggested that sectorial funds should be set up as an initial step to fund class actions in different sectors. Members noted that the Class Actions Subcommittee proposed that in the short term, consideration could be given to expanding the scope of the Consumer Legal Action Fund to provide legal assistance in class actions proceedings in consumer claims, with additional resources to the Fund to be provided by the Administration. The existing legal aid regime could also provide a viable source of funding for class action in the short term in cases where the representative plaintiff was eligible for legal aid; but DLA would only be responsible for the costs attributable to the legally aided plaintiff. The Chairman of the Class Actions Subcommittee advised that to minimize potential abuse of the process, the court could play a major role in filtering out cases which were not suitable for class action. The Administration could also set up funds in certain sectors to test out the operation of class actions.

Development of mediation services

Recommendations made by the Working Group on Mediation

30. The Working Group on Mediation chaired by SJ was formed in early 2008 to map out how mediation could be more effectively and extensively applied in both commercial disputes and at the community level ("the Working Group"). The Panel received a briefing by the Administration on the major recommendations made by the Working Group in its Report published on 8 February 2010, covering the three important areas of accreditation and training, regulatory framework, and public education and publicity. The Working Group had recommended, inter alia, enactment of a mediation ordinance to provide a proper legal framework for the conduct of mediation, review of the establishment of a single mediation accrediting body in Hong Kong in five years' time, and enhancement of mediation education in primary, secondary and university education.

31. Some members queried the need for enacting the proposed mediation ordinance which did not seem to contain any mandatory rules governing the conduct of mediation. The Administration explained that mediation as an alternative dispute resolution was voluntary and flexible in nature and it was important that any legislation on mediation should not impose undue restraint over the mediation process. The primary objective of enacting legislation on mediation was to provide a clear and predictable legal framework for the conduct and further development of mediation. The proposed legislation would also address some of the areas in which the law was uncertain, such as confidentiality, admissibility and enforcement of agreement to mediate, to provide clarity and certainty for their operation.

32. While the Panel was generally in support of developing mediation as an alternative means of dispute resolution, some members stressed that access to court was a fundamental right of Hong Kong residents guaranteed by the Basic Law and such right should not in any way be eroded by the development of mediation. The Administration assured members that the right of access to court would not be adversely affected by the development of mediation services. The Working Group believed that at the present stage, mandatory mediation for civil disputes should not be implemented. The issue would be revisited in the light of experience in the development of mediation services.

33. The Panel also discussed a related staffing proposal for the creation of a non-civil service position of Deputy Principal Government Counsel in DoJ for a period of three years to provide the necessary support for furthering the promotion of the development of mediation, with specific reference to the recommendations of the Working Group. At the request of the Panel, the Administration provided further information and a timetable on the duties and responsibilities of the proposed post. Members noted the support of the two legal professional bodies for the proposal. The Panel generally considered it appropriate for the Administration to take a leading role in establishing a proper framework for the development of mediation in Hong Kong and expressed support for the staffing proposal.

Establishment of the Mediation Information Office in the Judiciary

34. The Panel was briefed by the Judiciary Administration ("JA") on the establishment of the Mediation Information Office within the Judiciary with effect from January 2010. Members were informed that to promote the wider use of mediation to facilitate early and satisfactory settlement of disputes, the Judiciary issued the new Practice Direction 31 on Mediation and, in support of its implementation, established the Mediation Information Office to provide litigants with relevant information on mediation, so as to assist them in considering whether they should attempt mediation in resolving their disputes. Members also noted that to maintain its independent and impartial position of the Judiciary, mediation would not be provided by its staff but by accredited mediators outside the Judiciary to be appointed by the parties themselves.

Limited liability partnerships for solicitors' practices

35. The Panel continued to monitor closely the progress of the Administration in taking forward the legislative proposal to introduce limited liability partnerships ("LLP") for solicitors' practices. To address the concerns expressed by the Panel and the Consumer Council about consumer protection measures, the Law Society submitted a paper to the Panel which elaborated on the proposed measures to safeguard consumer interests and provided relevant data on the adequacy of the existing statutory professional indemnity limit of HK\$10 million per claim in meeting the claims of ordinary consumers against solicitors. When the Administration

updated the Panel in December 2009 in respect of its discussion with the Law Society on the related policy and legislative issues, members were advised that there remained a number of outstanding issues to be resolved. These included sanctions for LLP firms that had failed to comply with the consumer protection measures, whether such measures should be placed in the primary legislation or in the subsidiary legislation, whether the Law Society should enjoy statutory immunity for errors or omissions in the supply of information under the list of LLPs, and provisions of the draft Bill requiring an LLP to maintain sufficient cash flow to cover its expenditure and liabilities, and restricting the drawing of assets from an LLP.

36. Some members were of the view that failure of LLP firms to comply with consumer protection measures should be dealt with by way of disciplinary proceedings, rather than by the incorporation of legal sanctions in the primary legislation. They considered it unfair to penalize the Law Society if the errors or omissions on the list of LLPs were not caused by its negligence. The Administration and the Law Society were urged to resolve their differences over the outstanding issues for the early introduction of the Bill. The Bill was introduced into LegCo on 30 June 2010.

Drafting of legislation

37. The Law Drafting Division of DoJ (LDD) briefed members on its initiatives to improve the quality of and accessibility to Hong Kong legislation. The major initiatives included the introduction of new drafting styles and practices, proposed changes to the format and visual design of legislation, and the proposed implementation of a verified, authenticated and searchable electronic database of Hong Kong legislation to replace the existing Loose-leaf Edition. The overall objectives were to improve the readability and comprehensibility of the laws of Hong Kong and to deliver a more effective and efficient drafting service. Members in general were supportive of the initiatives.

38. Members 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. Members considered that such distinction would have significant implications for the amendments which could be moved and were of the view that LDD should develop guidelines to ensure consistency in the drafting of the long titles of bills. For instance, there should be guidelines on when an international convention should or should not be referred to in the long title, and whether a long title should be specific or wide in scope. LDD undertook to see whether guidelines could be developed on the drafting of the long titles of bills with a view to achieving consistency as appropriate.

39. Members 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. Any views that Members might have on law drafting could also be channelled to LDD

through the working meetings. In response to members' suggestion, regular working meetings had been held between LDD and the Legal Service Division on issues relating to law drafting.

40. In the course of discussions, members expressed concern about the readability of the Chinese text of legislation. Members noted that one of the problems with the Chinese text was that it was often produced based on 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. The Panel agreed to follow up on the issue at a future meeting with reference to the concrete examples identified during the scrutiny of bills.

41. Regarding the financial proposal of implementing a verified, authenticated and searchable electronic database of Hong Kong legislation, members noted the benefits brought about by the Database and generally supported the proposal. Members were of the view that opportunity should be taken of the implementation of the Database to introduce more value-added services, such as providing historical versions of Hong Kong legislation, providing cross-references among different ordinances, and making available annotation service to provide information on case law relating to the relevant sections of legislation.

Public works projects proposed by the Judiciary

42. In order to provide adequate and appropriate court facilities for the proper administration of justice in Hong Kong, the Judiciary had carried out a comprehensive review of the Judiciary premises and mapped out a long-term accommodation strategy for the next decade that would meet the operational needs of the Judiciary. During the current session, the Panel was consulted on the following two major works projects arising from the comprehensive review conducted by the Judiciary -

- (a) construction of additional courtrooms and associated facilities in the High Court Building; and
- (b) construction of the West Kowloon Law Courts Building ("WKLCB").

43. Members supported in principle the proposed construction of additional courtrooms and associated facilities in the High Court Building. Members noted that the existing courtrooms in the High Court were insufficient to meet its operational needs, and the proposed project would 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. It would also obviate the need to use courtrooms in the District Court to hear High Court cases. At the request of the Panel, JA had provided further information on the benefits of the works project, including the impact on the waiting time for cases at different levels of courts.

44. The Panel was also briefed on the Judiciary's plan to construct a new law courts building in the West Kowloon region to meet the growing court services requirements and achieve greater operational efficiency. Members expressed support for the project in principle, having regard to the inadequacies in the existing accommodation and facilities of courts and tribunals. Members were of the view that the design of the new law courts building should be commensurate with the independent and dignified image of the court. Members also stressed that the new law courts building should be easily accessible by public transport, located at a place with spacious surroundings and provided with adequate facilities for court users. JA advised that the new law courts building was conveniently located and easily accessible via different means of public transport. The Judiciary considered the selected site suitable for meeting the 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. JA also assured members that in the invitation and selection of tenders, emphasis would be placed on the criterion that the design should reflect the dignity of the court and independence of the Judiciary.

45. Some members were concerned that the adoption of the "Design and Build" ("D&B") approach for delivery of the project would compromise the quality of design of WKLCB. The Administration advised 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. 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, as compared with other modes of project delivery such as open design competition or separate design by a consultant.

46. In response to the request of the Panel, JA had provided supplementary information on the detailed requirements of the Judiciary for the proposed WKLCB project, and how the proposed facilities in the new court building compared with the existing facilities in the law courts buildings to be re-provisioned. Members noted that the Judiciary would further consult the Panel on the design of the project in the second quarter of 2011 after the tendering process for the D&B contractor had been completed, and would seek the endorsement of the Public Works Subcommittee for approval of the Finance Committee in the second and third quarters of 2011.

Fees for transcript and record of proceedings

47. The Panel had previously requested the Judiciary to review the fees for transcript and record of proceedings so that litigants could benefit from a more equitable fee charging basis and more affordable rates. After a review, the charging basis for transcripts had since 1 February 2007 been changed from a per page basis to a per English word/Chinese character basis. The Panel received a report from JA in February 2010 on the outcome of an overall costing review of transcript and recording services conducted by JA. Members noted that on the basis of the review, JA proposed to reduce the fees for record of proceedings on Compact Disc and Digital Versatile Disc by 46% and 63% respectively.

48. Some members expressed concern that the cost of transcripts was still unaffordable to many litigants even though the charging basis had been changed to a per word/character basis. They considered that the provision of transcripts should be treated as part of the court services and charged at an affordable rate, with the court being empowered to impose a higher charge in cases of abuse or where the transcript was not necessary for the purpose of appeal. JA advised that this would be a departure from the Government's prevailing policy that fees and charges for public services should be set at a full cost recovery level, and would require discussion with the Administration. JA however undertook to follow it up as appropriate. In response to members' suggestions, JA also undertook to enhance publicity on the availability of audio record of proceedings which cost much less than a transcript and to explore the feasibility of providing softcopies of transcripts.

49. The Panel was also informed of the progress of the processing of legislative proposals to, among others, prescribe all the fees relating to transcript and record of proceedings and provide for the court's general power to waive, reduce or defer the fees for transcript and record of proceedings. The Panel noted that JA aimed at introducing the legislative proposals to LegCo in the next legislative session and requested JA to expedite the introduction of the legislative amendments.

Other issues

50. During the session, the Panel was consulted on or informed of the following legislative and staffing proposals before their introduction into LegCo or submission to the Establishment Subcommittee and Finance Committee -

- (a) Matrimonial Proceedings and Property (Amendment) Bill 2010 which sought to enable parties who had obtained a divorce decree in a jurisdiction outside Hong Kong to apply for financial relief to Hong Kong courts;
- (b) proposed amendments to the Solicitors (Professional Indemnity) Rules which sought to enable the Hong Kong Solicitors Indemnity Fund Limited to reduce the amount of professional indemnity contributions payable by all solicitor firms during an indemnity period; and
- (c) proposal for the creation of two permanent posts of Deputy Principal Government Counsel in DoJ to respectively head a dedicated team in the Civil Division to cope with the new workload arising from the Government's obligation to screen torture claims, and lead a team of court specialists in the Prosecutions Division to conduct trials and provide legal advice on triad and organized crime matters.

51. The Panel received an update from the Administration on its discussion with the stakeholders and the Mainland authorities in respect of the issue of foreign

investment enterprises choosing Hong Kong as the venue for arbitration of disputes arising from contracts to which they were parties. The Panel also discussed various issues which included the workload and manpower situation of bailiffs; the Law Reform Commission Report on Conditional Fees; and trial in the District Court which covered the discretion of SJ in determining the venue for trial, whether the jury system should be extended to the District Court and conviction rates in Hong Kong.

PANEL MEETINGS

52. From October 2009 to June 2010, the Panel held a total of 10 meetings.

Council Business Division 2
Legislative Council Secretariat
30 June 2010

Legislative Council

Panel on Administration of Justice and Legal Services

Terms of Reference

1. To monitor and examine, consistent with maintaining the independence of the Judiciary and the rule of law, policy matters relating to the administration of justice and legal services, including the effectiveness of their implementation by relevant officials and departments.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Administration of Justice and Legal Services

Membership list

Chairman	Dr Hon Margaret NG
Deputy Chairman	Hon Albert HO Chun-yan
Members	Hon James TO Kun-sun Dr Hon Philip WONG Yu-hong, GBS Hon LAU Kong-wah, JP Hon Miriam LAU Kin-yee, GBS, JP Hon Emily LAU Wai-hing, JP Hon Timothy FOK Tsun-ting, GBS, 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 Hon LEUNG Kwok-hung (up to 28 January 2010) (rejoined on 18 May 2010)
	(Total : 14 members)
Clerk	Miss Flora TAI
Legal Adviser	Mr KAU Kin-wah
Date	18 May 2010