

立法會
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by the Administration)

Panel on Administration of Justice and Legal Services

**Minutes of special meeting
held on Thursday, 21 July 2011, at 4:00 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)
Dr Hon Priscilla LEUNG Mei-fun (Deputy Chairman)
Hon Albert HO Chun-yan
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
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yea, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
- Non-Panel Member attending** : Hon WONG Kwok-hing, MH
- Public Officers attending** : Item I
Mr Benedict LAI
Law Officer (Civil Law)
Mr Simon LEE
Deputy Law Officer (Civil Law)
Ms Sou CHIAM
Deputy Principal Government Counsel

Item II

Ms Grace LUI Kit-yuk
Deputy Secretary for Home Affairs

Miss Christine CHOW Kam-yuk
Principal Assistant Secretary for Home Affairs

Ms Aubrey FUNG
Assistant Secretary for Home Affairs

**Attendance by : Item I
invitation**

Hong Kong Bar Association

Mr Robin Egerton

The Law Society of Hong Kong

Ms Sylvia SIU

Item II

Hong Kong Bar Association

Mr H Y WONG

Ms SZE Kin

The Law Society of Hong Kong

Mr Anthony Upham
Member of the Criminal Law and Procedure Committee

Duty Lawyer Service

Mr HAU Kwan-kin
Chief Court Liaison Officer

Society for Community Organization

Mr TSOI Yiu-cheong

Hong Kong Unison Limited

Ms WONG Wai-fun

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

Staff in attendance : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3

Miss Ivy LEONG
Senior Council Secretary (2)3

Ms Wendy LO
Council Secretary (2)3

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I. Draft Mediation Bill

[LC Paper Nos. CB(2)2389/10-11(01) to (02) and CB(2) 2415/10-11(01) to (02)]

Briefing by the Administration

At the invitation of the Chairman, Law Officer (Civil Law) briefed members on the objectives and main aspects to be covered by the proposed Mediation Bill ("the proposed Bill") as set out in the Administration's paper (LC Paper No. CB(2)2389/10-11(01)). The Chairman expressed dissatisfaction on behalf of members that the Administration's paper provided very little information on the proposed Bill and members could only find the proposed provisions of the Bill in the submissions made by the two legal professional bodies. Mr WONG Kwok-hing shared the view saying that the information provided in the Administration's paper was grossly inadequate.

2. Law Officer (Civil Law) explained that the proposed provisions referred to in the submissions of the Hong Kong Bar Association ("Bar Association") and the Law Society of Hong Kong ("Law Society") were working drafts only which were provided to the legal profession for consultation purpose. As the contents of the working drafts might be different from those of the proposed Bill, the Administration did not include the provisional provisions in the Administration's paper. Members noted that it was the Administration's plan to introduce the proposed Bill into the Legislative Council ("LegCo") towards the end of 2011. Members also noted the background brief prepared by the LegCo Secretariat on the subject (LC Paper No. CB(2)2415/10-11(01)).

Views of deputations

The Bar Association

3. Members noted a copy of the Bar Association's submission to the Mediation Task Force of the Department of Justice ("DoJ") (LC Paper No. CB(2)2389/10-11(02)). Mr Robin Egerton said that the Bar Association welcomed the proposal of setting up an umbrella accrediting body. In light of the fast development of the mediation industry and the experience of overseas jurisdictions (such as Australia and the United States) in advancing the role of mediators, he considered that a board and non-restrictive definition of mediation should be adopted to allow flexibility in the development of mediation. Regarding confidentiality of mediation communications and admissibility of mediation communications in evidence, Mr Egerton was of the view that confidentiality was the essence of success in the mediation process and would be conducive to the reaching of an agreement in mediation as the parties involved were allowed to explore freely different options in the process with the comfort that their discussions would remain confidential. As the mediated settlement agreement was an open document which could be admissible in evidence at court, it might give rise to the issue on the extent of the mediation communication that could be disclosed for the purpose of enforcing a mediated settlement.

The Law Society

4. Members noted a copy of the Law Society's submission to DoJ (LC Paper No. CB(2)2415/10-11(02)). Ms Sylvia SIU said that the Law Society in principle supported the enactment of a Mediation Ordinance which should be drafted in a user-friendly manner to facilitate public's understanding. The Law Society considered that the views consolidated in the last public consultation exercise on the recommendations in the Report of the Working Group on Mediation ("Working Group") should be widely adopted by the Administration in enacting the legislation. Ms SIU particularly highlighted the need to differentiate between family mediations and non-family mediations in the proposed Bill given that a mediator was required to consider the interests of the children of the marriage whilst conducting family mediations. On the establishment of the Hong Kong Mediation Accreditation Association Limited ("HKMAAL"), a single industry-led accrediting body, she opined that more mediation practitioners should be allowed to participate in its operation.

5. Ms SIU further expressed concern that the proposed clause 9 of the proposed Bill (i.e. confidentiality of mediation communication) provided too many statutory exceptions to the confidentiality rules and it would undermine

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the important rule of confidentiality for mediations. Regarding partial immunity for mediators, the Law Society took the view that as mediators and arbitrators appointed under the newly enacted Arbitration Ordinance were entitled to partial immunity, the same provision should be added to the future Mediation Ordinance to ensure the consistency of the policy on immunity.

6. In response to the Chairman, Law Officer (Civil Law) advised that HKMAAL would be a non-statutory industry-led accrediting body to be set up in the form of a company limited by guarantee, the Memorandum of Association of which was being finalized. It was expected that such accrediting body could be established shortly and the preliminary Chinese name of HKMAAL would be 香港調解評審組織協會.

Discussion

Development of the regulatory framework

7. Mr Albert HO expressed support for the enactment of a Mediation Ordinance. Noting that the proposed Bill would not make provisions for the establishment of HKMAAL, Mr HO made the following enquiries –

- (a) whether practicing accredited mediators would be required to seek accreditation again after the establishment of HKMAAL;
- (b) whether the system of accrediting mediators would be solely developed by HKMAAL without the participation of other existing accrediting bodies;
- (c) how HKMAAL would perform its role in the absence of statutory powers; and
- (d) which organization would oversee the implementation of the Hong Kong Mediation Code ("the Code") in future and whether that regulatory body could take disciplinary actions against mediation practitioners for breaching the Code, e.g. the unauthorized disclosure of mediation communications.

8. Law Officer (Civil Law) advised that the Working Group initially recommended that the possibility of establishing a single mediation accrediting body should be reviewed in five years. The views received during the public consultation exercise, however, urged that such a body should be set up as soon as possible. In view of the time constraint, the Administration considered it an efficient approach to set up an industry-led accrediting body in the form of a

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company limited by guarantee, instead of a statutory organization, to provide for flexibility in the development of mediation. He said that the Administration had no intention at the current stage to set up a statutory accrediting body. Amendments would have to be made to the Mediation Ordinance if such a statutory body was to be established in future.

9. Law Officer (Civil Law) further advised that the company's Memorandum of HKMAAL was being finalized to prescribe the membership of the organization and the accreditation criteria. He added that since the Code was commonly adopted by the mediation industry, the Administration considered that there was no need to make the Code statutory so as to facilitate its revision when necessary. He envisaged that the proposed industry-led accrediting body would take disciplinary actions against any breach of the Code. The proposed Bill, therefore, would not set out sanctions in that respect.

10. Mr Albert HO enquired whether the existing accrediting bodies would be allowed to continue their operations and accredit mediators after the establishment of HKMAAL. Law Officer (Civil Law) responded that the issue, which was still under consideration, was related to the recognition of an accrediting body. He believed that mediation practitioners would like to join an accrediting body that was widely recognized in the industry.

11. Noting there were a number of accrediting bodies operating in the market and that the proposed industry-led accrediting body would not enjoy an exclusive status, Ms Audrey EU queried whether the mediation service providers would be willing to join in an effort to form such a single accrediting body. She also queried the need for enacting a Mediation Ordinance which, in her view, seemed to have no particular impact on the general public. The Chairman echoed her view.

12. Law Officer (Civil Law) confirmed that the proposed Bill would not contain provisions governing the establishment of the proposed industry-led accrediting body. He reiterated that the Working Group considered it appropriate to set up a non-statutory industry-led accrediting body to allow flexibility in the development of mediation. The Administration had no intention at the current stage to set up a statutory accrediting body. He further advised that the proposed Bill would set out the meaning of mediation, key terminology, rules of confidentiality and admissibility of mediation communications in evidence etc. A prominent impact to be brought about by the proposed Bill would be the inclusion of sanctions for breaching the rules of confidentiality. He stressed that the proposed Bill should not be drafted in a manner more elaborate than necessary, in order to allow flexibility in the

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mediation process. The provisions of the Mediation Ordinance could be revisited in future taking into account the latest development of mediation in Hong Kong.

13. Ms Audrey EU invited Mr Robin Egerton's views on the experience of overseas jurisdictions in the development of mediation, in particular whether mediation could always bring about the signing of mediation settlement agreements and whether mediation users would initiate litigation to overturn the agreements. She also enquired about cases of breaching the mediation settlement agreements which led to further litigations.

14. Mr Robin Egerton considered that Hong Kong had a unique opportunity to put in place an umbrella accrediting body with the enactment of a Mediation Ordinance as a foundation. He pointed out that overseas jurisdictions, such as Australia, the United Kingdom and the United States, had now encountered difficulties in establishing such an umbrella accrediting organization to embrace different modes of mediation as a result of the fast development of the industry. In comparison, Hong Kong had a clear advantage over other jurisdictions in developing timely a statutory framework for the conduct of mediation. Mr Egerton added that users of mediation in Hong Kong had a high chance to reach agreements after mediation as they had confidence in the high level of credibility of mediators and the confidentiality of mediation communications. In disputes involving substantial issues, written and open agreements which were enforceable by virtue of laws could normally be reached by the parties after seeking legal advice. That written agreement could be a stand-alone document or might form part of a consent order in litigation. Similar to other kinds of agreement, there could be arguments over the enforcement of mediation agreements afterwards.

15. In response to Ms EU, Mr Egerton further clarified that mediation agreements could be reached without seeking legal advice, depending on the significance of the issues. It was recommended under the Code, however, that legal advice should be sought to assist the parties coming to informed decisions in dealing with important issues.

Mediation cost

16. Mr WONG Kwok-hing said that the community would welcome the enactment of a Mediation Ordinance because the public would like to resolve disputes by way of mediation in order to save the high litigation costs and avoid complicated legal procedures. Expressing concern over the possible cost of mediation, he asked whether the Administration would incorporate provisions monitoring the cost of mediation and setting benchmark on the charges in the proposed Bill.

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17. Law Officer (Civil Law) advised that the Working Group had considered the cost of mediation with a view to facilitating its wider use in the community. According to the existing practice, the fees charged for mediation was mutually agreed upon by the two parties concerned. Although it had not been decided whether a monitoring mechanism on the mediation cost should be introduced in the proposed Bill, the policy inclination was to maintain the current market practice.

18. Mr Robin Egerton said that given the diverse users and disputes involved in mediation, it was difficult to set a precise fee for mediation which would be acceptable to all users. He considered it practical to leave the matter to the market to allow flexibility for the parties concerned to agree upon an appropriate fee.

19. Ms Sylvia SIU shared a similar view, saying that it was difficult to decide whether the mediation fee should be charged according to the qualification of mediators, the number of cases handled by the mediators or the service rendered. She considered it appropriate to leave it to the market and mediators to set the charges. Ms SIU assured members that the cost of mediation would definitely be lower than that of litigation given the limited and shorter time spent in the mediation process.

Legislative timetable

20. Noting the Administration's plan to introduce the proposed Bill into LegCo towards the end of 2011, Mr WONG Kwok-hing asked whether the Administration had kept in view the progress of the drafting work. Law Officer (Civil Law) replied that having regard to the current workload, the Administration was confident that the proposed Bill could be drafted and introduced into LegCo by the end of 2011 as scheduled. It was envisaged that the proposed Bill would be scrutinized and enacted by the end of the current LegCo term. The Chairman urged the Administration to introduce the proposed Bill to LegCo as soon as possible in order to allow adequate time for the scrutiny work.

II. Free legal advice service

[IN19/10-11, IN20/10-11, IN21/10-11, LC Paper Nos. CB(2)2415/10-11(03), CB(2)1480/10-11(06) to (07) and IN10/10-11]

21. Members noted the Administration's paper on "Free legal advice service" (LC Paper No. CB(2)1480/10-11(06)), the three information notes on "Free

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legal advice services" in England and Wales, Scotland, and the Netherlands respectively prepared by the Research Division of the LegCo Secretariat (LC Paper Nos. IN19/10-11, IN20/10-11 and IN21/10-11), and the background brief prepared by the LegCo Secretariat on the subject (LC Paper No. CB(2)1480/10-11(07)).

Views of deputations

The Bar Association

22. Members noted a copy of the Bar Association's submission to the Panel on the operation of the Bar Free Legal Service Scheme ("BFLSS") (LC Paper No. CB(2)2415/10-11(03)). Ms SZE Kin, Co-ordinator of BFLSS, briefed members on the details of the scheme, including the scope of service, application and assessment procedure, number of applications received and number of legal advice/representation provided. In gist, BFLSS sought to provide free legal advice and representation in cases where legal aid was not available or where the applicant was unable to afford legal assistance and the case was considered to be one where assistance should be given. Ms SZE stressed that as the principal expertise of a barrister was to represent clients at hearings at courts, the scheme was specializing in offering free legal representation instead of free legal advice service. Given the limited manpower and resources, BFLSS could only provide limited free legal advice to the public. Ms SZE added that to avoid dispute with applicants, applicants would not normally be given the detailed explanation on why their cases could not be further pursued under the scheme.

23. On the number of cases where advice had been given as referred to in the annual reports of the scheme, Ms SZE explained that in handling requests for free legal advice, those meritorious applications would normally be referred to Legal Aid Department ("LAD") for consideration. For some special cases where legal advice on specific matter was sought, the applicants might be provided with a written advice given by barristers to facilitate their application for legal aid or BFLSS would approach LAD direct on behalf of the applicants. Legal advice on how the cases could be followed up might also be given in some simple cases.

24. Mr H Y WONG supplemented that BFLSS sought to provide a safety net to the public. BFLSS would help referring those meritorious cases to LAD for reconsideration in the first place. If the cases were not granted legal aid, BFLSS might be able to provide free legal assistance to applicants with the help of voluntary barristers as the last resort.

The Law Society

25. Mr Anthony Upham, member of the Criminal law and Procedure Committee of the Law Society said that the Law Society recognized the need for provision of free legal advice on a pro bono basis and had all along been encouraging its members to provide such service to the public. However, he was concerned that the existing Free Legal Advice Scheme could not meet the need of the public given that only preliminary legal advice could be provided during the limited time for each interview. He considered that the scheme should offer follow up service to the applicants. He also considered that the Administration should review the honorarium to volunteer lawyers and attract more experienced lawyers to join the Scheme.

26. Mr Upham added that more work should be done to address the need for provision of free legal advice to unrepresented litigants involved in civil proceedings in the District Court and the High Court in view of the growing pressure exerted by such civil proceedings on judicial time and resources. Regarding legal representation for persons under custody in police stations, he said that consideration should be given to extending the scope of service of the existing Duty Lawyer Scheme ("DLS") to enable lawyers to go to police station whenever needed to provide the requisite service to detainees to protect their rights.

Duty Lawyer Service

27. Mr HAU Kwan-kin, Chief Court Liaison Officer emphasized that the Free Legal Advice Scheme under DLS sought to provide preliminary legal advice to the public but not detailed analysis of merits of individual cases. The one-off advice was of a general nature which aimed at helping clients understand the nature of their problems and their legal rights and responsibilities.

Society for Community Organization

28. Mr TSOI Yiu-cheong said that in order to protect the rights and entitlements to persons under custody in police stations, legal advice service for detainees should be enhanced with reference to overseas experience. He urged the Administration to respond to the suggestion regarding the provision of publicly-funded legal advice to detainees. He echoed the view of the Law Society that the Administration should consider expanding the scope of DLS to provide free legal advice service to persons under custody.

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29. Mr TSOI also considered that the service scope of the Free Legal Advice Scheme and the free legal advice and representation services provided by the Bar were limited. He pointed out that the staff in the District Offices ("DOs") responsible for appointment making and liaising with volunteer lawyers under the scheme did not have any legal training and only preliminary advice could be provided by the lawyers. He called on the Administration to enhance the provision of legal advice services at the community level taking into account the overseas experiences in delivering similar services, thereby reducing the litigation costs and the strain on legal resources on the whole.

Hong Kong Unison Limited

30. Ms WONG Wai-fun briefed members on the submission of the Hong Kong Unison Limited on the Free Legal Advice Scheme (LC Paper No. CB(2)2415/10-11(03)). Ms WONG highlighted that due to the language barriers, cultural differences, weak sense of their rights, abuse of police power, unprofessional interpreting services and lack of legal information, ethnic minority residents were not treated equally under the law. She urged the Administration to consider the recommendations put forward by Hong Kong Unison Limited which included establishing a publicly-funded professional legal advice service to replace the present pro bono service provided by the legal profession; expanding the scope of the service to cover all levels of court; extending the service from only giving preliminary legal advices to more case-specific advices; developing and subsidizing quality professional interpreting services to support the publicly-funded professional legal advice service and promoting the legal advice services to the ethnic minority communities.

31. Ms WONG particularly highlighted that ethnic minorities under custody in police stations had little confidence in the services rendered by the duty lawyers under DLS as the lawyers did not have the racial and cultural sensitivity to protect the rights of the ethnic minorities. She said that professional training should be provided to the duty lawyers and judicial officers to increase their knowledge on the concepts of equal opportunities and discriminations.

32. On the remark of Ms WONG that the interviews between the duty lawyers and ethnic minorities brought before the Magistrates Courts was short and limited, Mr HAU Kwan-kin, Chief Court Liaison Officer clarified that the interviews could commence only with the presence of court interpreters and there was no time limit on such meetings. The duty lawyers would ensure the accused's understanding of the procedures before appearance at hearings. He assured Ms WONG that cases would be assigned to duty lawyers according to

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their relevant experience and all duty lawyers came from the same pool of practising professionals in the market with at least two years' post-qualification litigation experience.

Administration's response

33. Deputy Secretary for Home Affairs ("DSHA") said that the Administration appreciated the pro bono legal advice services rendered by the legal professionals over the years. The Administration had all along provided subvention for various pro bono legal advice services as a supplement to the existing legal aid services. Such initiatives included the subvention of \$100 million for the implementation of DLS, the enhancement of the Tel-Law Scheme with DLS, the provision of sponsorship to enhance the services of the Community Legal Information Centre in collaboration with the University of Hong Kong, and the proposed pilot scheme to provide legal advice for litigants in persons ("LIPs") on procedural matters.

34. Regarding the concern about the limited legal advice service provided to ethnic minorities under DLS, DSHA advised that the Administration would discuss with DLS to explore whether interpreting service could be included in the Free Legal Advice Scheme provided through DOs to cater for the needs of ethnic minorities. On the legal advice services provided to persons under custody in police stations, DSHA advised that while the Administration had not formulated its policy in this area at the present stage, it had invited DLS to convert legal information on criminal law and the rights of citizens upon arrest and questioning provided through the Tel-Law into pamphlets and posters. Consideration would be given in publishing the pamphlets and posters through different languages in addition to the Chinese and English versions having regard to the views of Hong Kong Unison Limited.

35. The Chairman invited views from the legal professionals and the deputations on the free legal advice services in England and Wales, Scotland, and the Netherlands as detailed in the information notes, particularly on the provision of free legal advice to persons under custody at police station in England and Wales and the Netherlands, and the legal advice service provided at the community level in Scotland. She also suggested that the two legal professional bodies might consider promoting concepts of equal opportunities among the legal practitioners and enhancing their knowledge on anti-discrimination laws in view of the problems faced by ethnic minorities.

Discussion

36. Mr Albert HO was of the view that clients should be allowed to nominate lawyers to act for them under DLS in certain circumstances so that the

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most suitable lawyers could be assigned to assist the clients. He suggested the Hong Kong Unison Limited to make such requests. Mr HAU Kwan-kin affirmed that the accused persons with reasonable grounds could request certain lawyers to act for them and DLS would accede to such requests if possible. However, DLS had also to ensure the evenly distribution of cases among volunteers to avoid cases being taken up by certain lawyers.

37. Mr Albert HO suggested that the Administration might consider arranging in-house lawyers of government departments to provide legal advice to the public in specific areas, such as the provision of legal advice to owners' corporation by the departmental lawyers of Home Affairs Department ("HAD") in the past. He considered that LAD should expand its scope of legal advice services and extend its services to the community or the Administration should consider allocating funding to some organizations for provision of free legal advice services at the community level.

38. Regarding the operation of BFLSS, Mr Albert HO considered that more co-ordinators could be engaged to manage case intake so that the barristers could concentrate on the core legal matters, such as the handling of legal aid appeal, to enhance the efficiency of the scheme. Ms SZE Kin, however, stressed that since BFLSS was not specializing in offering free legal advice to clients and only applicants who were ineligible for legal aid could apply for its services, BFLSS could only provide limited free legal advice to the public.

39. Mr TSOI Yiu-cheong said that the existing free legal advice scheme provided through DOs could not provide immediate and in-depth legal advice to the public given the limited opening hours of the Offices. He considered that the Administration should not continue to rely on the legal profession providing free legal advice service on a pro bono basis. In his view, the Administration should provide subvention to DLS or other organizations to provide free legal advice at the community level. Regarding the operation of BFLSS, he considered that solicitors should be engaged to assist the documentation work so that the barristers could concentrate on the part of litigation. He hoped that there would be increasing collaboration between the two legal professional bodies to enhance the pro bono legal advice services.

40. Ms Emily LAU considered that the Administration should allocate more resources to provide the legal advisory services needed by the ethnic minorities. She pointed out that many requests from public for free legal advice were received by offices of LegCo Members. She called on the Administration to explore work to be done in providing legal advice to the public. Ms LAU also expressed concern about the difficulty in recruiting volunteer lawyers to provide free legal advice service at the community level.

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41. DSHA replied that the Administration appreciated that there was great need for the Free Legal Advice Scheme under DLS and was finding ways to improve the service. As detailed in the Administration's paper, the Administration would provide additional resources to HAD for engaging dedicated staff in DOs to be responsible for appointment making and recording of case details for the persons seeking service. The recruitment of para-legals to assist with these works was in progress. Besides, the Administration would extend the service at the Wan Chai DO from twice a week to thrice a week to cater for the public need. The proposed pilot scheme to provide legal advice for LIPs on procedural matters was also another means to serve the public. Regarding the view that the public should be provided with immediate legal advice, DSHA said that it was the view of legal profession that detailed background of the client's case should be prepared by supporting staff in advance to facilitate the preparation of the volunteer lawyers to give advice on the day of appointment.

42. On the recruitment of volunteer lawyers, DSHA advised that the Administration had explored with the Law Society on the publicity of the Free Legal Advice Scheme and decided to offer a \$300 travelling allowance to volunteer lawyers under the Scheme for each pro bono legal advice session as a token of appreciation to the volunteer lawyers. The Administration also planned to launch a commendation scheme under which qualified volunteer lawyers would receive an award certificate to recognize the pro bono services they had offered to the community.

43. Ms WONG Wai-fun, however, considered that there was an unmet demand for legal advice service in the community including the ethnic minorities and enquired whether the Administration would consider establishing a publicly-funded legal advice service at community level to provide for a more comprehensive service. She also stressed that the supporting staff who were engaged to assist in case intake should be able to communicate with the ethnic minorities groups so as to effectively deal with their requests.

44. Ms Audrey EU enquired whether provision of legal advice and information on the Internet would be explored for future development, based on the successful experience of the Mainland on such development since the last decade. In her view, this would greatly enhance the provision of free legal advice service to more persons in need of assistance.

45. Mr Upham of the Law Society saw merit in the suggestion of Ms EU. He considered that it would save travelling time of volunteer lawyers and should be further explored together with the application of video-conferencing technology as adopted in some overseas countries for the provision of education information.

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46. Ms SZE Kin said that while the Bar Association would respond to some general enquiries received through e-mails, they would usually make referrals to DLS if the requests should involve more specific legal advice given that the eligibility for BFLSS would require passing a means test.

47. The Chairman envisaged that there would be practical difficulties in the provision of written legal advice in connection with the issue of legal liability of volunteer lawyers. Instead of meeting the demand for service on a pro bono basis, Mr LEUNG Kwok-hung urged that the Administration should allocate more resources to provide free legal advice service which, in his view, would be conducive to promoting the rule of law to safeguard human rights; and a more comprehensive legal advice service would help reduce the burden on the legal aid system. The Chairman shared the view. She requested the Administration to consider a review on its approach on the provision of service having regard to the relevant development in overseas countries.

48. DSHA said that there was a comprehensive legal aid system in place to provide legal advice and representation to those in need and litigants could obtain the service subject to the means test and the merits test. She noted, however, that the provision of legal advice service in some overseas countries was fee-charging and applications would be subject to a means test etc. Meanwhile, the Administration was examining options for addressing the demand for more extensive free legal advice service, such as legal advice on the Internet and tele-conferencing, and the implication regarding the legal liability of and the support service (including the provision of indemnity insurance) for volunteer lawyers had to be fully considered. She said that the proposed trial scheme for LIPs would be delivered by a new mode of service jointly participated by lawyers remunerated on full-time/part-time basis as well as volunteer lawyers on a pro bono basis. She also undertook to consider the views of members and deputations expressed at the meeting when reviewing its service in future.

Way forward

49. Concluding the discussion, the Chairman appreciated the efforts of the Administration in providing a platform for the provision of pro bono legal advice services as a supplement to the existing legal aid services; as well as the service operators of various free legal advice schemes. She said that an earlier suggestion of bringing the provision of free legal advice service under an umbrella body might be considered for on-going development. The Chairman suggested that the Administration should conduct a comprehensive review of the free legal advice service to fulfill the needs and aspirations of the

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community having regard to relevant development in overseas countries. The Administration was also requested to look into the broader issues of expanding the scope of legal aid system to the proposed inclusion of free legal advice service, as well as providing publicly-funded legal advice service to persons under custody in police stations to ensure equality in access to justice.

III. Any other business

50. There being no other business, the meeting ended at 6:40 pm.

Council Business Division 2
Legislative Council Secretariat
24 August 2012