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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 14 April 2011**

Free legal advice service

Purpose

This paper provides background information and summarizes the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the provision of free legal advice service.

Background

Free Legal Advice Scheme

2. The Free Legal Advice Scheme, one of the three legal assistance schemes under the Duty Lawyer Service ("DLS"), provides members of the public with free preliminary legal advice. DLS is managed by the two legal professional bodies through a governing council. Legal advice service under the Scheme commenced operation in 1978. It is provided by the legal profession on a pro bono basis. The Government provides the venue and referral services to enable members of the public to meet with volunteer lawyers by appointment without any means testing. The one-off advice given is of a general nature which aims at helping clients understand the nature of their problems. The Scheme does not offer any follow up or legal representation services.

3. Services under the Scheme are provided through nine Legal Advice Centres, each of which is situated in a District Office. With the exception of the Wanchai Centre which operates twice a week, all centres operate once a week in the evening. At the time of making the appointment, staff of the District Office will take down the detailed background of the client's case. Suitable cases will be sent to volunteer lawyers for preparation to give advice on the day of appointment. Each lawyer conducts interviews for five cases each evening, and each interview is allocated about 20 to 30 minutes.

4. The total number of cases handled under the Scheme in 2007, 2008 and 2009 were 6 429, 6 652 and 6 635 respectively. In the 2007-2008 and 2008-2009 financial years, the Administration had allocated some \$500,000 and \$560,000 respectively to the Scheme. The provision was used mainly for overtime payments to staff in the District Offices manning the Legal Advice Centres.

Other free legal advice service

5. Apart from the Free Legal Advice Scheme, a number of non-governmental organizations ("NGOs"), Legislative Council ("LegCo") Members and District Council members also provide legal and related services, including free legal advice service, to the general public.

Relevant discussions of the Panel

6. Issues relating to the provision of publicly funded legal advice service had been raised during the Panel's past discussions on legal aid and the 2010-2011 policy initiatives of the Home Affairs Bureau concerning legal aid. The major views/concerns raised by members during these discussions are summarized in the ensuing paragraphs.

Extension of the scope of legal aid to cover legal advice

7. Members were of the view that consideration should be given to extending the scope of legal aid from litigation to legal advice. Members noted from the research report on "Legal aid systems in selected places" (RP01/08-09) prepared by the Research and Library Services Division of the LegCo Secretariat ("RLSD") that unlike Hong Kong, the legal aid services in all the three selected places (the United Kingdom, the Province of Ontario of Canada and the State of New South Wales of Australia ("NSW")) included legal advice with the requirement of a means test (the provision of legal advice in NSW did not require a means test). Members considered the existing Free Legal Advice Scheme inadequate as it only provided preliminary legal advice but not detailed analysis of the merits of individual cases and their prospects of winning. Members also considered that with the increasing number of Hong Kong people working and living on the Mainland, they should be provided with legal advice service under legal aid if involved in legal proceedings on the Mainland.

8. At the Panel's meetings on 29 March and 22 October 2010, the Administration advised that it would not extend legal aid services to cover

litigations on the Mainland. The Administration stressed that it was not aware of any jurisdiction which had extended legal aid services to litigation matters of nationals outside their territories. Nevertheless, the Administration was exploring the feasibility of collaborating with relevant organizations to enhance the provision of legal information on the internet, which could cover information on Mainland legal issues frequently encountered by Hong Kong residents such as those relating to matrimonial matters and commercial disputes.

Review of Free Legal Advice Scheme

9. When the Panel received a progress report on the Administration's consideration of the Reports on the Consultancy Study on Demand for and Supply of Legal and Related Services in Hong Kong ("the Consultancy Study Reports") commissioned by Department of Justice ("DoJ") at its meeting on 22 June 2009, members expressed strong dissatisfaction that the Administration had not put forth any proposal for reviewing the effectiveness and adequacy of the Free Legal Advice Scheme, notwithstanding that the Consultancy Study Reports had clearly pointed to an unmet demand for legal advice service in the community, as evidenced by the findings on the considerable amount of difficult-to-solve problems faced by individuals who were not getting help from the legal services currently provided. Members considered that the Administration should not continue to rely on the legal profession providing legal advice service on a pro bono basis and should establish a properly-funded professional legal advice system. The Administration undertook to work out and report to the Panel on concrete proposals for improving the existing operation of and support to the existing free legal advice service in consultation with DoJ, the Judiciary, the two legal professional bodies and relevant NGOs.

10. At the meeting on 29 March 2010, the Administration reported to the Panel on its preliminary proposals for improving the existing Free Legal Advice Scheme. The Administration advised that it planned to enhance the support services for volunteer lawyers by providing additional resources of about \$3 million for engaging a dedicated team of 15 staff in the District Offices for appointment making and recording of case details for persons seeking advice. Members noted that the Administration was also examining options for addressing the demand for more extensive free legal advice service, such as the expansion of the scope of free legal advice from a preliminary one of general nature to more case specific advice.

11. Members considered that while the Administration had taken a step forward in enhancing the support services for volunteer lawyers under the Free Legal Advice Scheme, there was still much room for improvement in the provision of free legal advice service. They considered that the Administration

should conduct a comprehensive review on the need to extend the scope of services under the Scheme and allocate more resources to meet the public need for such services. Members also noted the views of the Hong Kong Bar Association and the Law Society of Hong Kong that the Administration should not continue to rely on the legal profession providing such service on a pro bono basis in considering the expansion of free legal advice service. The two legal professional bodies further suggested that consideration be given to granting an honorarium to volunteer lawyers for their free legal advice service with a view to attracting more lawyers to join the Scheme.

12. Members may wish to note that issues relating to the Free Legal Advice Scheme had been raised at a number of special meetings of the Finance Committee to examine the Estimates of Expenditure. To improve the operation of the Scheme, Members had suggested setting up additional service centres in other venues such as community centres to make the service more readily available, and making arrangements for clients to meet volunteer lawyers directly instead of requiring them to first meet with staff in the Legal Advice Centres.

Community legal aid services and provision of legal advice to detainees in police stations

13. During the discussion on the research report on "Legal aid systems in selected places" prepared by RLSD at the Panel meeting on 25 January 2010, members noted that the legal aid systems in all the three selected places provided funding to NGOs for provision of legal aid services, including legal advice, at the community level. A comparison table setting out the availability of legal aid services at the community level in Hong Kong and the three selected places as extracted from the research report is in **Appendix I**. Members also noted that the Legal Aid Services Council was looking into ways to enhance legal aid services at the community level, including a proposal for provision of publicly-funded legal advice service to persons detained in police stations.

14. At the meeting on 29 March 2010, the Administration reported to the Panel that it was exploring the possibility of providing funding for an agency to strengthen the provision of free legal information to the community through the internet. There was a view that apart from the internet, the Administration should consider enhancing the delivery of free legal information to the community through radio and television broadcasting.

15. Regarding the provision of publicly-funded legal advice to detainees, the Administration advised that as the proposal would have significant impact on

the legal aid policy and possible financial implications, it would need more time to consider the implications of the proposal in consultation with the relevant bureaux and stakeholders.

Assistance to unrepresented litigants

16. During their discussions on the operation of the Judiciary's Resource Centre for Unrepresented Litigants ("the Resource Centre") at the Panel meeting on 13 January 2009, members noted that the Resource Centre could only provide unrepresented litigants with information on court rules and procedural matters, and considered it important to enhance assistance to unrepresented litigants by providing them with free legal advice service. The Administration was requested to consider members' suggestion of setting up a free legal advice service, similar to that under DLS, with volunteer lawyers giving free preliminary legal advice to unrepresented litigants at an office located near the Resource Centre. The office accommodation would be provided by the Judiciary while the costs of operating such service, which involved mainly the hiring of a few administrative staff, would be borne by the Administration.

17. Upon the Panel's enquiry, the Administration advised that it would need to examine carefully the details of the suggestion and its implications in consultation with the Judiciary. The Home Affairs Bureau would revert to the Panel once it was in a position to do so.

18. At the meeting on 29 March 2010, the Administration reported to the Panel that it was exploring the possibility of providing assistance for unrepresented litigants with regard to the sustainability of the mode of operation, financial implications, and impact on the private legal service sector. The Administration would also explore the suggestion of setting up a free legal advice hotline to meet the demand. Members noted that the Law Society of Hong Kong considered that the provision of legal advice through a hotline was not adequate and it was necessary for the Administration to extend legal aid to cover legal representation in various Tribunals to ensure equality in access to justice.

Recent position

19. At the meeting on 29 March 2010, the Administration undertook to revert to the Panel on its recommendation for expanding free legal advice service before the end of the 2010-2011 financial year.

Relevant papers

20. A list of the relevant papers which are available on the LegCo website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
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Appendix I

Comparison table of major features of the legal aid systems in the three selected places and Hong Kong

	Hong Kong	England and Wales	Ontario of Canada	New South Wales of Australia
Whether legal aid services are available at the community level	LAD does not fund non-profit organizations to provide legal aid services at the community level.	Yes, the Community Legal Service is a network of LSC-funded organizations, which funds and provides civil legal advice and representation.	Yes, LAO funds non-profit community legal clinics to provide free clinic law services to low-income individuals or disadvantaged communities.	Yes, LAC administers the Community Legal Services Programme (CLSP), and the Women's Domestic Violence Court Assistance Programme (WDVCAP). CLSP funds non-government and non-profit Community Legal Centres to provide free legal services to disadvantaged people. WDVCAP assists victims of domestic violence in obtaining legal protection and accessing other support services.

Appendix II

Relevant papers on free legal advice service

Committee	Date of meeting	Paper
Finance Committee (Special meeting)	23.3.2001	Minutes
	26.3.2003	Minutes
	19 - 22.3.2007	Report on the examination of the Estimates of Expenditure 2007-2008 (Page 51)
Legislative Council	17.12.2008	Official Record of Proceedings Pages 3149 - 3157 (Oral question)
Panel on Administration of Justice and Legal Services ("AJLS Panel")	13.1.2009	Minutes
Legislative Council	11.2.2009	Official Record of Proceedings Pages 4570 - 4644 (Motion)
Finance Committee (Special meeting)	23 - 27.3.2009	Report on the examination of the Estimates of Expenditure 2009-2010 (Pages 141 to 142)
AJLS Panel	30.3.2009	Minutes
	22.6.2009 (Item VI)	Agenda Minutes
	25.1.2010	Minutes
	29.3.2010 (Item VI)	Agenda Minutes
	22.10.2010 (Item I)	Agenda Minutes

Committee	Date of meeting	Paper
Finance Committee (Special meeting)	22 - 26.3.2010	Report on the examination of the Estimates of Expenditure 2010-2011 (Page 159)

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