

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 2010-2011 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 13 July 2011 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 13 members, with Dr Hon Margaret NG and Dr Hon Priscilla LEUNG Mei-fun elected as Chairman and Deputy Chairman respectively. The membership of the Panel is in **Appendix II**.

MAJOR WORK

Access to Justice

4. Access to justice has all along been a matter of great concern to the Panel. Issues relating to the provision of legal aid services continued to be the main focus of the Panel during the current session.

Five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants and expansion of the Supplementary Legal Aid Scheme

5. During the current session, the Panel held five meetings to discuss the progress of the Administration in implementing its recommendations on the

five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants ("five-yearly review") and the Administration's proposal for expansion of the Supplementary Legal Aid Scheme ("SLAS").

6. Having regard to the views expressed by members during the last legislative session, the Administration reported to the Panel on the legislative amendments to implement the following proposals arising from the recent five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants, which were put into effect on 18 May 2011 –

- (a) the median monthly household expenditure be used to replace the 35-percentile household expenditure as a deductible component in calculating disposable income of legal aid applicants;
- (b) savings of an amount equivalent to the financial eligibility limit ("FEL") of the Ordinary Legal Aid Scheme ("OLAS") be disregarded when calculating the disposable capital of the elderly legal aid applicants who had reached the age of 60, irrespective of their employment status; and
- (c) the FEL for OLAS be raised from the present \$175,800 to \$260,000 and that for SLAS from \$488,400 to \$1.3 million.

7. In his 2010-2011 Policy Address delivered on 13 October 2010, the Chief Executive ("CE") announced that to complement the SLAS review being conducted by the Legal Aid Services Council ("LASC"), and to benefit more people from the middle class, the Government would earmark \$100 million for injection into the SLAS fund when necessary to expand the scheme to cover more types of cases.

8. Members generally supported the proposed injection of \$100 million into the SLAS Fund to increase its reserve for use as necessary. The Administration advised that the proposal to inject \$100 million into the SLAS Fund was made after taking account of the previous injection of \$27 million into the Fund in 1995. It was the Administration's view that the proposed sum of \$100 million should presumably be sufficient, having regard to the self-financing nature of SLAS and given that the injection was to provide a cushion for cash flow to support the proposed expansion of the scheme.

9. The Panel continued to monitor closely the progress on expansion of the scope of SLAS. Members noted that the LASC's Interest Group completed its study on expansion of SLAS in November 2010. According to the recommendations of LASC, SLAS should be extended on an incremental basis,

starting with cases of lower risk profile. It also recommended that SLAS be divided into Part I (the existing scheme) and Part II to be administered and monitored separately, with the new types of claims to be included under Part II for which a higher contribution rate would be payable; and that the entire sum of \$100 million earmarked by the Administration for injection into the SLAS fund should be set aside for SLAS Part II and handed over to the Director of Legal Aid ("DLA") as soon as possible.

10. While generally welcoming LASC's proposed expansion of SLAS, some members considered the LASC's proposals too conservative both in terms of the scope and the pace of the reform. Members noted the LASC's recommendation that claims against developers in the sale of new flats should be introduced at a later stage, pending the Government's introduction of new legislation to strengthen regulation over the sale of new flats which would assist in the proof of liability. Some members considered that such cases should be included in the first batch, rather than at a later stage as recommended by LASC. These members pointed out that irrespective of whether new legislation would be introduced, the general public could hardly afford to take legal action against developers if they had no recourse to legal aid.

11. Some members expressed disagreement with LASC's recommendation that claims arising out of the sale of goods and provision of services should not be included under SLAS on the ground that such claims could be covered under the Consumer Legal Action Fund administered by the Consumer Council. Some members also suggested that SLAS should also be extended to cover monetary claims between buyers and sellers arising from the sale of flats (such as those involving forfeiture of deposits), compulsory land sale cases under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545), provision of legal assistance to Hong Kong residents involved in litigation on the Mainland, and cases where whistleblowers were being sued for defamation and there was great disparity in the financial resources between the two parties.

12. The Administration subsequently briefed the Panel on its proposals for expanding the scope of SLAS. The Administration proposed that claims of the following categories, with claim amounts exceeding \$60,000, be covered under the expanded SLAS using an enhanced rate of application fee and contribution –

- (a) professional negligence claims against Certified Public Accountants, Architects, Registered Professional Engineers, Registered Professional Surveyors, Authorized Land Surveyors, Registered Professional Planners, Landscape Architects and Estate Agents;

- (b) claims arising from sale of insurance products; and
- (c) claims against developers in the sale of first-hand residential properties.

13. Members noted that while the Administration would not seek to expand SLAS to cover derivative claims in the coming exercise, it would conduct a study on amending the Legal Aid Ordinance (Cap. 91) with a view to enabling money claims in derivatives of securities, currency futures or other futures contracts be covered under OLAS when fraud, misrepresentation/deception was involved at the time of purchase. The Administration, however, did not support other proposals for expanding the scope of SLAS to cover claims against property developers by minority owners in respect of compulsory sales of building units, claims against sale of goods and provision of services, claims in respect of trusts, property damage claims against incorporated owners, claims against small marine boat accidents and claims involving disputes between limited companies and their minority shareholders.

14. The Administration subsequently advised that it would introduce the legislative proposals for expansion of SLAS into LegCo in the latter half of 2011 for LegCo's scrutiny. Members agreed that the Panel should continue to monitor closely the work of the Administration in taking forward the legislative proposals and other proposals not supported by the Administration, particularly the proposed inclusion of claims against property developers by minority owners in respect of compulsory sales of building units and claims against sale of goods and provision of services under SLAS, in the next legislative session.

15. Members noted with concern that some applicants had turned down the grant of legal aid and represented themselves in court as they could not afford the cost involved. They sought clarification on whether any adjustments would be made to the contribution rates under OLAS and SLAS following the adjustments of FELs. Some members considered that DLA should be given the discretion to waive the payment of contribution in cases where the legally aided applicants had financial difficulties in making such payment. They also suggested that consideration be given to setting different contribution rates for different types of cases.

16. Some members expressed concern about the interim contribution payable for employee claims on appeal from the Labour Tribunal ("LT") proposed for inclusion under SLAS Part I. Members noted that while the interim contribution payable under SLAS (currently calculated at 25% of the FEL for OLAS, or \$43,950) would be refunded to an aided person who was successful

in his proceedings, the aided person was still liable for the legal expenses which were not recoverable from the other party, and this might amount to tens of thousands of dollars. Given the relatively small size of employee claims on appeal from LT, members urged the Administration to consider waiving the payment of interim contribution for such claims. There was also a view that legal aid should be granted unconditionally to employees for employee claims on appeal from LT, given that legal representation was not allowed in LT and appeals against LT awards were made on a point of law, and having regard to the implications of the judgments on later cases.

17. After consideration of members' views, the Administration agreed to revise the application fee and rates of contribution for the new types of cases to be covered under the expanded SLAS as follows –

- (a) the application fee be increased to \$5,000;
- (b) the interim contribution rate be set at 10% of the assessed financial resources of the aided person, but in any event not less than the current interim contribution payable by the aided persons under SLAS as set out in Regulation 14(a) of the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B); and
- (c) the final contribution rate be increased to 20% of the value of property recovered, and to 15% where a claim is settled prior to delivery of a brief for attendance at trial to counsel.

18. Regarding the interim contribution for employee claims on appeal from LT, the Administration advised that it proposed to cover employees' claims on appeals from LT, regardless of the criteria on claim amounts (i.e. the general requirement that the claim amount should exceed \$60,000), under the expanded SLAS using the existing rates of application fee and contribution. The Administration agreed with the LASC's recommendation to exempt this type of cases from the increased rates of application fee and contribution. The Administration, however, would not further waive the requirement for interim contributions as this would violate the self-financing principle of SLAS and would have significant read-across implications on other types of SLAS claims.

Criminal legal aid fees system

19. Following the completion of the review on criminal legal aid fees in January 2010, the Panel was briefed by the Administration on its proposal for expanding the existing scope of legal aid in criminal cases by amending the Legal Aid in Criminal Cases Rules to allow legal aid to be granted in cases considered by the Court of Appeal ("CA") and the Court of Final Appeal

("CFA") which do not involve a conviction, and the revised fee structure and the fees payable to assigned solicitors handling criminal legal aid cases.

20. While some members shared the view of the Law Society of Hong Kong ("the Law Society") that the revised fee rates for solicitors were still inadequate, the Panel was generally in support of the Administration's proposal and requested the Administration to expedite the legislative process in order to respond to the long standing call for review of the criminal legal aid fees system. The Administration assured the Panel that the revised fee structure would be reviewed after two years of implementation and it was the Administration's aim at that time to seek LegCo's approval of the proposed legislative amendments by the end of the current session.

Implementation of Civil Justice Reform

21. Following the introduction of the Civil Justice Reform ("CJR") in April 2009, the Administration briefed members on the findings on the first year of implementation of CJR. Members noted that since the reforms were implemented, progress had been made in achieving a change in culture in the conduct of court proceedings and of dispute resolution on the part of judges and the legal profession. The impact of the reforms in other aspects, such as the saving of litigation costs, reduction in the number of interlocutory applications and effectiveness of adoption of mediation in civil cases, however, had to be further observed given the implementation of CJR for a short time only.

22. Members shared the view of the Hong Kong Bar Association ("the Bar Association") that the trend of increasing number of unrepresented litigants had added burden to the operation of the courts. The Administration advised that the increasing number of unrepresented litigants had indeed presented a challenge to the courts. The Judiciary would make its best efforts to provide assistance to unrepresented litigants on procedural matters. However, in order not to compromise the courts' impartiality, assistance which the courts could give to unrepresented litigants would be limited. The Administration considered that the expansion in legal aid, the attempt of mediation in appropriate cases and the pro bono services provided by the legal profession would help contribute to the solution.

Free legal advice service

23. The Administration briefed the Panel on the progress in enhancing the support services for volunteer lawyers under the Free Legal Advice Scheme and its recommendation for implementing a two-year pilot scheme to provide assistance for unrepresented litigants who had commenced legal proceedings in

the District Court, High Court and CA but were not qualified for legal aid assistance. Under the Administration's initial proposal, assistance and advice would be provided to unrepresented litigants on the rules and procedures relating to court proceedings by a service provider sponsored by the Home Affairs Bureau.

24. While some members considered it appropriate to provide free legal advice under the pilot scheme on procedural matters only, other members shared the view of the Bar Association and the Law Society that the scope of legal advice should be further enhanced to cover more case specific advice. There was also a view that the legal advice service should cover legal proceedings on the Mainland. The Administration advised that given the limited time for each interview, manpower constraint, and that the existing Judiciary's Resources Centre for Unrepresented Litigants could only provide users with information on court rules and procedural matters, the Administration considered it appropriate to provide free legal advice on procedural matters relating to litigations in Hong Kong for unrepresented litigants under the pilot scheme. The Administration would continue to encourage relevant organizations to enhance the provision of legal information to cover information on Mainland legal issues.

25. Some members echoed the concern of the two legal professional bodies that the Administration should not continue to rely on volunteer lawyers to provide the proposed service on a pro bono basis. It was also suggested that the Administration should review the operation and effectiveness of the Free Legal Advice Scheme with a view to attracting more lawyers to join the Scheme. The Panel agreed to schedule a further meeting in July 2011 to further discuss related issues with the Home Affairs Bureau, the legal profession, service operators of various free legal advice schemes and non-governmental organizations which were frequent users of such services.

Development of mediation services and mediation service for building management cases

26. The Panel continued to follow up with the Administration on the progress to implement the recommendations in the Report published in February 2010 by the Working Group on Mediation chaired by the Secretary for Justice ("SJ"). Members noted that the Administration would concentrate its work in the coming two years on developing the system of accrediting mediators, initiating the legislative process for the proposed Mediation Ordinance and taking forward the various public education and publicity initiatives recommended by the Working Group.

27. On the resources for the development of mediation, members noted that a mediation task force had been set up to advise on and assist in the implementation of the Working Group's recommendations. Where necessary, the Administration would seek additional resources if needs were identified during the implementation process. The Administration stressed that while it was vital for the Government to spearhead the development of mediation in the initial stage, its sustainable development would depend on market demand for the service and availability of quality service to meet the service demand. The Panel noted that it was the plan of the Administration to introduce the Mediation Bill into LegCo by the end of 2011. The Administration would brief the Panel on the draft Mediation Bill at the special meeting scheduled for July 2011.

28. The Panel was also briefed by the Administration on the measures and mediation services available to owners and Owners' Corporations in resolving building management disputes and Government's efforts in encouraging the use of these services. Members considered that free mediation service should be provided by the Administration to facilitate resolution of building management disputes at an early stage. Members were informed of the schemes implemented by the Lands Tribunal and the Development Bureau to promote the use of mediation in resolving disputes relating to building management cases and that a Building Management Mediation Co-ordinator's Office had been set up by the Judiciary in the Lands Tribunal to facilitate the parties in seeking mediation services. Members also noted that the Home Affairs Bureau was planning to provide more suitable community venues free of charge for the conduct of mediation by pro bono mediators and would continue to organize publicity programmes to promote effective building management among Owners' Corporations.

Issues relating to drafting of legislation and proposal for a new numbering system for bills

29. Members had expressed reservations about the proposal of the Law Drafting Division ("LDD") of the Department of Justice ("DoJ") for adopting a new decimal numbering system for the Companies Bill which was a particularly voluminous bill. Members were also concerned about the use of "examples" in the Motor Vehicle Idling (Fixed Penalty) Bill and the use of "notes" in the Companies Bill during the scrutiny of the relevant Bills Committees. The Panel discussed with LDD of DoJ the merits for adopting these new initiatives.

30. While members did not have a strong view on the use of notes in the legislation which sought to assist readers to understand the relevant provisions and had no legislative effect, members in general expressed reservations about any extensive use of examples in legislation and the adoption of a new numbering system for voluminous bills. These members considered that the use of examples in bills was neither exhaustive nor conclusive to assist readers to understand the legislative provisions. They were also concerned that the use of examples in legislation would give rise to controversies in situation where different interpretations of the examples were applied and would further lengthen the time for scrutiny of a bill as a result. Instead of including examples in a legislative provision, some members considered it more appropriate to use examples in relevant practical guidelines and explanatory leaflets to facilitate the understanding of the public. On the proposed new numbering system, members considered that as the existing numbering system had all along been functioning well, it was not worth adopting a new numbering system for voluminous bills at the present stage. LDD was requested to take into account the views of the Panel when considering the way forward.

31. The Panel was also briefed by LDD on the measures taken to improve the readability of Chinese legislation. Members noted the recent steps taken by LDD to improve the quality of Hong Kong legislation and that it was the policy of LDD to draft law in plain language with a view to enhancing the comprehensibility of legislation.

Membership of SJ in the Judicial Officers Recommendation Commission

32. During the deliberation of the former Subcommittee on Proposed Senior Judicial Appointments to consider the proposed appointments of the Chief Justice and three non-permanent Hong Kong judges to CFA, some members expressed reservations about the membership of SJ on the Judicial Officers Recommendation Commission ("JORC"). The Panel followed up with the Administration on the issue.

33. Some members were of the view that it was not appropriate for SJ, being a political appointee, to serve on JORC. These members shared the view of the Bar Association that, to ensure the independence of the Judiciary, it was more appropriate to have a representative of DoJ, rather than SJ himself, serving as a member of JORC. They considered it inappropriate for a political appointee to sit on JORC as it would give the perception that the appointment of judges could be subject to political influence and would provide a channel for CE to influence judicial appointments through SJ's membership on JORC.

34. Some other members did not consider it necessary to make any change to SJ's membership on JORC. These members pointed out that as SJ was only one of the nine members of JORC and given that senior judicial appointments required the endorsement of LegCo, there were adequate institutional safeguards to prevent abuse and injustice. There was also no evidence of unfairness resulting from SJ's membership in JORC so far. They stressed that as judicial appointments were ultimately made by CE, it was not inappropriate for SJ, being the principal adviser on legal matters to CE, to be involved in making recommendations to CE on judicial appointments.

35. The Administration maintained its view that it was appropriate and necessary for SJ to continue to serve on JORC. The Administration pointed out that as the head of DoJ which employed a large number of lawyers and briefed out a great deal of work to the private sector, SJ had considerable knowledge to contribute to JORC's deliberations in respect of judicial appointments. The Administration also stressed that the politically appointed status of SJ did not prevent him from being able to carry out his duties as a JORC member without fear or favour. Since the establishment of the Political Appointment System, senior judicial appointments had been made on a number of occasions, the appointment process of which had been smooth and no major problem had been encountered.

An independent Director of Public Prosecutions and prosecution policy and practice

36. Arising from the discussion in the community about an independent Director of Public Prosecutions ("DPP"), the Panel held a discussion with SJ, Mr Kevin Zervos, the newly appointed DPP, Mr Grenville Cross, the former DPP, legal profession and a legal academic on the subject. The Panel was also briefed by the Administration on the prosecution policy and practice, as well as initiatives to improve the quality and efficiency of the work of the Prosecutions Division of DoJ by the newly appointed DPP.

37. Some members shared the views of deputations that the existing arrangement of having SJ, a political appointee, to control prosecutions would undermine the public perception of the prosecutorial independence. They considered that the power to make prosecutions should rest with an independent DPP to ensure that prosecution decisions were free from political interference. Some other members, however, took the view that it was not permissible to abdicate SJ from his constitutional responsibility to control criminal prosecutions as stipulated in Article 63 of the Basic Law ("BL 63") and considered that the control of prosecutions should continue to be rested with SJ.

38. The Panel noted that in the United Kingdom ("UK"), a protocol between the Attorney General and the prosecuting departments was drawn up setting out when, and in which circumstances that the Attorney General would or would not be consulted on prosecution decisions and how the Attorney General and the Directors of the prosecuting departments would exercise their functions in relation to each other. The Administration was suggested to consider whether a similar protocol should be adopted in Hong Kong.

39. The Administration explained that BL 63 provided that DoJ should control criminal prosecutions free from any interference. As head of DoJ and guardian of the public interest, SJ was required to act independently in respect of prosecutions and had a legitimate interest in prosecution decisions. The Administration stressed that as head of DoJ under the constitution, SJ could not abdicate from his constitutional duty by a complete transfer of his prosecution responsibilities to the DPP or otherwise. The Administration further advised that it was common for Attorneys General and Ministers of Justice in other common law jurisdictions to combine the roles of a member of the government and an independent Law Officer in relation to prosecutions. The Protocol in UK also did not suggest that prosecutions should be made independently by prosecuting authorities without any involvement of the Attorney General who still remained as superintendent of the prosecuting authorities. The Administration maintained the view that the existing system in Hong Kong worked well and complied with BL 63.

Appointment of serving Justices of Appeal as non-permanent judges of CFA and judicial manpower situation in CFA and other levels of courts

40. During the deliberations of the Subcommittee on Proposed Senior Judicial Appointments, members expressed concern about the policy issues of appointing serving Justices of Appeal as non-permanent judges of CFA and of judicial manpower situation in CFA and other levels of courts. At the request of the Panel, the Administration provided relevant information and reported to the Panel on the two issues.

41. Members expressed concern about the manpower situation of the Judiciary. They were concerned whether adequate manpower resources were deployed at various levels of courts and whether the recent open recruitment exercises could identify suitable candidates to fill the vacancies arising from retirements and elevation of staff to higher levels of courts. The Panel also noted the view of the Bar Association that the arrangement of appointing serving Justices of Appeal as non-permanent judges of CFA would erode public

confidence in the administration of justice even though these non-permanent Hong Kong judges would not hear appeals from cases in which they had sat.

42. The Administration advised that as at 1 June 2011, the establishment of judges and judicial officers stood at 189 with 38 vacancies at various levels of courts. The Administration assured the Panel that having regard to the prevalent workload, the current establishment of the judicial manpower could be regarded as being generally sufficient to cater for the operational needs of the Judiciary. According to the Administration, the conduct of open recruitment exercises was effective in recruiting suitable candidates to fill vacancies in the Judiciary and a new round of recruitment exercises would soon be launched for all levels of courts to address the manpower need.

43. On the issue of appointing serving Justices of Appeal as non-permanent judges of CFA, the Administration stressed that given that a non-permanent Hong Kong judge was only one of five judges constituting the CFA when hearing and determining appeals and a judge would not be required to sit in any appeal from a decision of CA in which he was a member, there should be no objection as a matter of policy and principle for serving Justices of Appeal to be appointed as non-permanent Hong Kong judges to sit in the CFA. According to the Administration, only very few cases were heard by former Justices of Appeal who were appointed as non-permanent judges of CFA.

Co-operation on legal matters

Reciprocal recognition / enforcement of arbitral awards with Macao

44. The Panel discussed with the Administration its proposed arrangement on mutual enforcement of arbitral awards between Hong Kong and Macao which sought to foster closer legal co-operation with Macao. Members noted that while no such arrangement existed at present, arbitral awards made in Macao could be summarily enforced in Hong Kong under section 2GG of the Arbitration Ordinance (Cap. 341) and Hong Kong awards could also be enforced in Macao under the Decree Law 55/98M and Code of Civil Procedure.

45. Some members considered that while the government authorities in the two places and the arbitration profession were eager to pursue such an arrangement, the Administration should further consult the relevant organizations, in particular organizations doing business with Macao, on the proposed arrangement, and justify the societal needs for establishing such arrangement. The Administration advised that it would be beneficial to Hong Kong as a whole to enter into a separate arrangement with Macao which would add certainty to the enforceability of Macao arbitral awards in Hong Kong and

vice versa. It was the Administration's plan to conduct wider consultation with relevant stakeholders including users of arbitration services in parallel with the conduct of discussion with the Macao authorities on the direction of the proposed arrangement. The Administration undertook to revert to the Panel on the matter after the consultation.

Reciprocal recognition/enforcement of matrimonial judgments with the Mainland

46. In the light of the significant increase in the number of cross-boundary marriages in recent years, the Administration briefed members on its initial discussion with the Mainland authorities to explore the feasibility of establishing a mechanism for reciprocal recognition and enforcement of matrimonial judgements between the Mainland and Hong Kong, in particular for recognition of divorce decrees and enforcement of orders for maintenance and orders for child custody and access in both places.

47. Members in general agreed on the need to enter into an arrangement on co-operation in matrimonial matters. They considered that the Administration should expedite its discussion with the Mainland authorities with a view to reaching agreements and principles on matters of urgency, such as the issues relating to parental child abduction and custody of children across the borders, having regard to the practice in the international context. The Administration was requested to revert to the Panel on its progress on developing the proposed arrangement with the Mainland.

Framework agreement on Hong Kong/Guangdong co-operation relating to co-operation on legal matters

48. Following the signing of the Framework Agreement on Hong Kong/Guangdong Co-operation in April 2010 ("Framework Agreement"), the Administration updated the Panel on the implementation of measures concerning cooperation on legal matters under the Framework Agreement, including new opportunities to promote Hong Kong legal services arising from the Closer Economic Partnership Arrangement between Hong Kong and the Mainland and the Qianhai Development Plan.

49. Members and the two legal professional bodies raised a number of issues concerning the cooperation on legal matters between Hong Kong and the Mainland, in particular the issues encountered in the Qianhai Development Plan such as the lack of mechanisms on the partnership of law firms of both sides and the difficulties in engaging Mainland lawyers by Hong Kong law firms. The Administration assured members that it would continue to convey to the

Mainland authorities the concerns raised by the Panel and the two legal professional bodies.

Other issues

Proposed amendment to the Enduring Powers of Attorney Ordinance

50. The Panel was consulted on the Administration's proposed amendments to the Enduring Powers of Attorney Ordinance (Cap. 501) ("EPA Ordinance") which sought to implement certain recommendations in the relevant report of the Law Reform Commission ("LRC") published in March 2008. In particular, the Administration solicited the Panel's views on two alternative recommendations put forward by LRC, i.e. whether the existing requirement in section 5(2) of the EPA Ordinance that an EPA be signed before a medical practitioner should be abolished ("Recommendation 1") or whether the requirement should be relaxed by allowing the donor and the solicitor to sign the EPA within 28 days after it had been signed by a medical practitioner ("Recommendation 2").

51. While members had indicated different preferences on whether Recommendation 1 or Recommendation 2 should be adopted, no member had expressed objection in principle to the policy intent of relaxing the existing certification requirements proposed under Recommendation 2. The Administration subsequently introduced the Enduring Powers of Attorney (Amendment) Bill into LegCo in the current session.

Reports published by the Law Reform Commission

52. The Panel was briefed by the Security Bureau on its stance on the LRC Report on "The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse" recommending the abolition of the common law presumption. According to the Bureau, the Administration considered the proposal of LRC justifiable and worth supporting. Subject to the response from the community and the legal profession, the Administration would take forward the relevant legislative amendments to implement the proposal.

53. At the request of the Panel, LRC provide an information paper on its role and work including the state of implementation of the Commission's recommendations made in its reports published during the last 15 years. Members noted with concern that many of these recommendations had not yet been followed up. The Panel planned to hold a discussion with SJ, the Chairman of LRC, on his role in the law reform of Hong Kong and the work of the Commission in the next legislative session.

Solicitor Corporation Rules

54. The Panel followed up with the Administration on the progress of implementation of the incorporation of solicitors' practices. Members noted that the Administration was supportive of the draft Solicitor Corporation Rules made by the Law Society to enable solicitors to incorporate their practices as solicitor corporations. The Law Society informed members that it aimed to introduce the Rules into LegCo for negative vetting within 2012. At the suggestion of the Panel, the Law Society agreed to follow up on the education work to clearly explain to the public the relevant impact of the implementation of the Solicitor Corporation Rules.

Staffing proposal

55. The Panel was consulted on a staffing proposal for creating a new rank of Assistant Principal Government Counsel and the creation of posts in DoJ which was put forward by the Administration to enhance the overall effectiveness and efficiency of DoJ and the Legal Advisory Division (Works) of the Development Bureau. With the support of the Panel, the staffing proposal was endorsed by the Establishment Subcommittee and the Finance Committee.

PANEL MEETINGS

56. From October 2010 to June 2011, the Panel held a total of 10 meetings. The Panel has scheduled another meeting in July 2011.

Council Business Division 2
Legislative Council Secretariat
8 July 2011

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 for 2010-2011 session

Chairman Dr Hon Margaret NG

Deputy Chairman Dr Hon Priscilla LEUNG Mei-fun, JP

Members Hon Albert HO Chun-yan
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, 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
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung

(Total : 13 members)

Clerk Miss Flora TAI

Legal Adviser Mr KAU Kin-wah

Date 4 July 2011