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**Panel on Administration of Justice and Legal Services**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 27 February 2012**

**Free legal advice service – A two-year pilot scheme  
to provide legal advice for litigants in person**

**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 two-year pilot scheme to provide legal advice for litigants in person ("LIPs").

**Background**

2. In response to the marked increase in the number of civil proceedings involving LIPs in the High Court ("HC") and District Court ("DC"), and the pressure exerted by the increasing number of LIPs on judicial time and resources, the Resource Centre for Unrepresented Litigants ("the Resource Centre") was set up in HC in 2003 to provide LIPs with advice on court rules and procedural matters in civil proceedings in HC and DC except matrimonial, lands, employees' compensation and probate matters, assistance for which is provided by the staff of the respective registries. The services and facilities include general enquiry counters, oaths and declaration service, brochures and videos on civil proceedings, sample court forms, computers and other ancillary facilities such as a writing area and self-service photocopying machines.

3. Members have expressed concern that the services provided by the Resource Centre were inadequate to meet the needs of LIPs and one of the main reasons for such concern is that the Resource Centre could not provide LIPs with legal advice. According to the Judiciary Administration, the Resource Centre should not offer any legal advice or comment on the merits of any case in order to maintain the impartiality and neutrality of the Judiciary. It is the Judiciary's view that the Executive Authorities and/or the legal profession would be in a more appropriate position to provide such service.

4. Members have all along urged the Administration to fund a free legal advice service for LIPs, similar to the Free Legal Advice Scheme under the Duty Lawyers Service ("DLS"), at an office near the Resource Centre.

### **Previous discussions on a pilot scheme to provide legal advice to LIPs**

#### The Administration's recommendations

5. The Administration briefed the Panel at its meeting on 19 April 2011 on a two-year pilot scheme to provide assistance to LIPs who had initiated legal proceedings but were not qualified for legal aid assistance and who required advice on the rules and procedures relating to court proceedings ("the pilot scheme"). The Administration advised that subject to resource availability, the LIP scheme was proposed to be made available on a "first-come-first-served" and non-means tested basis to those who had commenced or were parties to legal proceedings in DC, HC and Court of Appeal and who were not qualified for legal aid assistance. Assistance and advice would be provided on the civil procedural matters only for different stages of the proceedings.

#### Scope of service

6. Some members shared the view of the Hong Kong Bar Association ("the Bar Association") and the Law Society of Hong Kong ("the Law Society") that the legal advice to be provided under the pilot scheme should not be restricted to procedural matters only and a 45-minute-session would not be adequate for providing proper advice to LIPs. They considered that users would be disappointed if the lawyers would not explain the legal concepts and principles to them. Some members, however, were of the view that it would be appropriate to restrict the provision of free legal advice to LIPs to procedural matters as it would be difficult for lawyers to offer any comment on the merits of the case given the short duration of an interview session. It was suggested that follow-up interview sessions should be provided to meet the need of the public.

7. The Administration advised that in designing the framework for the pilot scheme, reference had been made to the Free Legal Advice Scheme under DLS. The Administration had also consulted the Home Affairs Bureau, the Legal Aid Department and the Judiciary Administration, and paid a visit to the Royal Courts of Justice Advice Bureau in the United Kingdom which provided legal and other advice services to unrepresented litigants. The Administration considered that it would not be feasible to answer all the questions of LIPs in an interview session. The Administration hoped that the service operator engaged to operate the pilot scheme would have its resident lawyers who would provide service to the users together with volunteer lawyers recruited. In determining

the duration for an interview session, the Administration had made reference to similar practice of overseas countries where the duration of each session was around 45 minutes.

8. Some members enquired whether the provision of legal advice to LIPs could be enhanced to cover legal proceedings on the Mainland. It was suggested that the Administration could provide sponsorship to non-governmental organizations ("NGOs") which had the expertise in this area to offer free legal advice to meet the public need for such service. Some members, however, considered that with the limited legal resources in Hong Kong, it would not be practicable for lawyers to also provide free legal advice to LIPs on procedural matters for the proceedings on the Mainland.

9. The Administration advised that given the limited time for each interview and manpower constraint, it was considered appropriate to provide free legal advice on procedural matters relating to litigations in Hong Kong for LIPs 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.

#### Operation of the scheme

10. Members noted the views of the Bar Association and the Law Society that the Administration should not continue to rely on the two professional bodies to provide legal advice service for members of the public on a pro bono basis. The two legal professional bodies considered that the Administration should conduct a comprehensive review on the provision of legal advice and representation to members of the public, especially for LIPs.

11. Some members enquired whether the Administration had any particular service operators in mind and whether it would consider providing sponsorship to NGOs which were currently offering free legal advice services to the community. There was also a view that given that DLS had already been operating four legal assistance schemes (viz the Duty Lawyer Scheme, the Free Legal Advice Scheme, the Tel-Law Scheme and the Convention Against Torture Scheme), the Administration should re-consider whether the LIP scheme should also be operated by DLS.

12. The Administration advised that it would consider any suitable service operators for the pilot scheme. As the Government currently provided subvention for DLS to run the Free Legal Advice Scheme, DLS could be one of the possible service operators. The Administration would also consider operating the scheme by the Government through employing duty lawyers direct to provide free legal advice to LIPs.

### **Recent development**

13. The Administration briefed the Panel at its meeting on 28 November 2011 on the operational framework of the pilot scheme. According to the Administration, a LIPs office would be set up under the pilot scheme which would be staffed by a Centre-in-charge, resident lawyer(s) (one full-time or two part-time), members of the two legal professional bodies and interested law firms/chambers ("the community lawyers"), a para-legal and a clerical assistant and a provision of \$6 million was sought for the operation of the scheme for a period of two years. The community lawyers would be required to have at least two years' post-qualification experience.

14. Members generally reckoned the need for enhancing the legal advice service for LIPs given that the growing number of civil proceedings involving LIPs had exerted pressure on judicial time and resources and it would be unfair to the other party to the proceedings with legal representation if they had to pay more legal costs arising from prolonged proceedings. However, they were not convinced that the pilot scheme as currently proposed by the Administration would effectively meet the needs of LIPs.

15. Members considered that LIPs would be disappointed at the scope of service as it was limited to legal advice on civil procedural matters and merits of the case were not to be discussed. It was suggested that the pilot scheme should be operated under DLS so that the scope of service could be expanded. Members also noted the concern expressed by the representative of the Hong Kong Bar Association that it was not practicable to expect a lawyer having only two years of experience to have the sufficient knowledge and expertise to deal with all sorts of enquiries relating to civil procedural matters. It was suggested that the qualification requirement in respect of community lawyers should be reviewed.

16. While both the Bar Association and the Law Society of Hong Kong supported in principle the pilot scheme, the Law Society shared members' concern about the scope of service. The Law Society also considered the proposed rate of \$300 for a three-hour shift unreasonably low and suggested that the Administration might consider operating the service under DLS so as to bring the remuneration to a reasonable level.

17. The Administration advised that the pilot scheme was geared to the needs of those who had not been granted legal aid services. In drawing up the scheme, the Administration had considered overseas practices offering similar service, including Australia and the United Kingdom, where the service proven to be effective in providing assistance to LIPs. It was the Administration's

intention to introduce the scheme as a trial as soon as possible to help relieve the strain on the judicial resources as a first step. The Administration further advised that the service was a means to promote the culture of providing pro bono legal advice by the legal profession, and the amount of \$300 was meant to cover incidental expenses such as transportation cost.

18. In view of the concerns expressed at the meeting, the Administration was requested to revisit its proposal having regard to views of members and the two legal professional bodies. The Administration was also requested to provide information on how similar schemes had operated successfully in overseas jurisdictions. The Administration is scheduled to revert to the Panel at its meeting on 27 February 2012.

### **Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
22 February 2012

## Appendix

### Relevant documents on free legal advice service – A two-year pilot scheme to provide legal advice for litigants in person

Committee	Date of meeting	Paper
Panel on Administration of Justice and Legal Services	13.1.2009 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	19.4.2011 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	28.11.2011 (Item IV)	<a href="#">Agenda</a>

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