

**For discussion on
28 November 2011**

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

**Pilot Scheme to Provide Legal Advice for
Litigants in Person**

PURPOSE

This paper sets out the operational framework of a pilot scheme to provide legal advice for litigants in person (“LIPs”).

BACKGROUND

2. In recent years, an increasing number of LIPs has posed a challenge to the Hong Kong civil justice system. Few LIPs know the court rules and procedures. This causes them, the court and other parties in the proceedings difficulties in progressing and trying the case. The difficulties generally faced by LIPs include –

- (a) Lack of knowledge of the rules of procedural and substantive law;
- (b) Lack of knowledge as to how to present their case at the interlocutory stages and at the trial;
- (c) A sense of inequality and being disadvantaged where the other party has legal representation; and
- (d) In some cases, a sense of grievance induced by perceived judicial irritation at having to deal with an unrepresented litigant unfamiliar with the law and court procedures.

3. Members of the Legislative Council, the Hong Kong Bar Association (“Bar Association”), the Law Society of Hong Kong (“Law Society”), the Judiciary and other stakeholders have proposed that legal advice be given to LIPs.

4. We see the need to provide a service for those who have initiated or are parties to legal proceedings but have not been granted legal aid, and who require advice on the rules and procedures relating to court proceedings. Towards this end, we are planning to launch a two-year pilot scheme to provide legal advice for LIPs (“the Scheme”).

OPERATIONAL FRAMEWORK

A. The Scheme

5. We aim to launch the Scheme in partnership with the two legal professional bodies and with support from members of the profession and the interested law firms/chambers. The objectives of the Scheme are to –

- (a) provide legal advice on procedural matters to assist LIPs who cannot afford private legal services and who lack knowledge of their rights and responsibilities; and
- (b) promote the culture of providing pro bono legal advice by the legal profession.

The legal advice to be provided under the Scheme is summarized at **Annex A**.

6. The Scheme will be –

- (a) available to those who have commenced or are parties to legal proceedings in the District Court, Court of First Instance and Court of Appeal of the High Court, and Court of Final Appeal;
- (b) available to those who have not been granted legal aid;
- (c) served on a “first-come-first-served” basis; and
- (d) providing advice on the civil procedural matters only for different stages of the proceedings.

7. A steering committee¹ will be set up to oversee and advise on the operation of the Scheme, and to review the work and services provided.

B. Staffing of the LIPs Office

8. The LIPs office will be funded by the Home Affairs Bureau. It will be headed by a Centre-in-charge and supported by resident lawyer(s) (one full-time or two part-time), members of the two legal professional bodies and interested law firms/chambers (hereinafter referred to as "community lawyers"), a para-legal and a clerical assistant.

(a) The Centre-in-charge

9. There will be a full-time Centre-in-charge with legal qualification to manage and oversee the operation of the Scheme. The main responsibilities of the Centre-in-charge are to monitor the day-to-day operation of the LIPs office and supervise the work of the resident lawyer(s), para-legal and clerical assistant. In addition, he will be responsible for deciding whether advice should be provided to a client, and whether the client should be seen by a community lawyer or resident lawyer. He will also conduct reviews of the written records prepared by the community/resident lawyers to ensure that proper advice has been given. In addition, he will work with the two legal professional bodies and interested law firms/chambers to manage the recruitment of community lawyers and arrangement of the duty roster.

(b) The resident lawyer(s)

10. As the Scheme may have to "compete" with other agencies (such as the Free Legal Advice Scheme) for their service, a full-time resident lawyer or two part-time resident lawyers will be employed under the Scheme for handling urgent cases and overseeing the general operation of the Scheme for each session of appointment. If a community lawyer is

¹ The steering committee will be responsible for advising the Secretary for Home Affairs on the policy and operation of the Scheme, including –

- (a) the formulation of strategies and programmes for the Scheme;
- (b) the implementation of work and services provided under the Scheme;
- (c) the evaluation and review of work and services provided under the Scheme; and
- (d) the future arrangements with regard to provision of legal advice to the LIPs.

unable to attend a scheduled session, the resident lawyer may also stand in for him where practicable.

(c) Other support staff

11. The Scheme will be supported by a para-legal and a clerical assistant. The para-legal will be responsible for taking the case background of clients and handling general enquiries. He should also ensure as far as possible, a case will not be assigned to a community lawyer if it is apparent from the court papers supplied that the community lawyer to be assigned comes from the firm which is representing the opposite parties in the proceedings which the client is involved in. For the clerical assistant, he will be responsible for documentation, filing and maintaining of records of the advice sessions.

C. The Community Lawyers

12. Lawyers who have at least two years' post-qualification experience can join the Scheme in their personal capacity or in the capacity of a law firm (i.e. in the firm's name) on a pro bono basis. The law firms of the community lawyers will be required to appoint a coordinator to liaise with the Centre-in-charge on the preparation of a duty roster of community lawyers.

13. New community lawyers will be given a handbook which gives an overview of the operation of the Scheme, and the frequently asked questions by LIPs. Arrangement will also be made with the two legal professional bodies and the interested law firms/chambers in providing training courses on civil litigation and procedures to the junior lawyers or those who have little or no litigation experience but are willing to enrol in the Scheme.

D. Insurance

14. Given that the legal advice to be given under the Scheme will be of a pro bono nature, the applicant will be required to sign an undertaking to waive his claims, if any, against the Scheme before any community lawyer will be assigned to advise him. In any case, any claims against the Centre-in-charge, the resident lawyer(s), the para-legal and the clerical assistant in their discharge of duties under the Scheme will be

covered by the Government. Besides, the Scheme will also take out professional indemnity insurance to cover possible claims made against the community lawyers in their discharge of services under the Scheme. It is expected that the number of claims will be small as only procedural advice will be given to the clients.

E. Expenses

15. In partnership with the two legal professional bodies and the interested law firms/chambers which will provide community lawyers to serve the Scheme, we expect that some 9,000 interview slots could be made available to the LIPs per year². A provision of around \$6 million (around \$3 million per year) will be set aside to operate the Scheme for a period of two years to cover the staff cost³, honoraria for community lawyers (\$300 per shift)⁴, insurance cost, and other operating costs.

F. Operation of the Scheme

(a) Making appointment

16. With the agreement of the Judiciary, the LIPs office will be housed in the High Court Building. The proposed operating hours of the office will be from Monday to Friday (8:30 am - 5:30 pm) (except public holidays). Clients will be required to attend the office personally to make appointments with the lawyers.

(b) Taking of case background

17. The para-legal who is attending to the client will ask him to fill in an application form and make a declaration for providing information

² The operating hours of the LIPs office will be from 8:30 am to 5:30 pm Monday to Friday (i.e. 9 hours per day). A community lawyer will work for 3 hours per shift and on average be able to serve 4 clients per shift (each interview slot will last up to 45 minutes). A total of 3 community lawyers will be engaged to work in parallel in one shift. In other words, we expect that some 9,000 interview slots could be made available to the LIPs per year (36 slots per day x (5 days per week x 52 weeks per year - 13 days of public holiday)).

³ The total staff cost will be around \$2.4 million per year.

⁴ An honorarium of \$300 per shift will be provided to each community lawyer for a 3-hour shift. In other words, a total of around \$700,000 per year will be earmarked for payment of honoraria to the community lawyers (\$300 per shift x 3 lawyers per shift x 3 shifts per day x (5 days per week x 52 weeks per year - 13 days of public holiday)).

of –

- (a) his means;
- (b) whether he has applied for legal aid;
- (c) his case background and at which stage of proceedings his case is; and
- (d) the advice that he is seeking.

18. The client will be required to sign on a document which sets out the terms and conditions (**Annex B**) based on which the legal advice is provided to him.

(c) Arranging appointment with lawyer

19. The para-legal will pass the application form to the Centre-in-charge for his consideration. The Centre-in-charge will make an assessment as to whether the client should be given advice by a community/resident lawyer. If it is considered that advice should be provided to the client, the para-legal will arrange an appointment with the community/resident lawyer and inform the client of the date of appointment.

20. In order to ensure that more people can have access to the service of the Scheme and to prevent abuse, the number of sessions for each client is subject to a cap to be determined by the Centre-in-charge having regard to resources available.

(d) Withdrawing service

21. If it is found that the client has means to pay for legal advice privately, the Centre-in-charge can refuse to provide service to him. Broadly speaking, the Scheme will not assist companies other than sole proprietors, and will not take on cases in which lawyers have already been instructed.

(e) Preparing for appointment

22. After the appointment is arranged, the client will be requested to supply the necessary documents to the para-legal immediately. The para-legal will arrange delivery of the necessary documents together with the case background to the community/resident lawyer at least 7 days before the scheduled appointment for his perusal. Subject to resources availability, priority will be given to urgent cases.

23. Should the lawyer find that there is a conflict of interest after reading the papers, he must inform the Centre-in-charge and return the papers to the LIPs office immediately. The para-legal will then arrange another lawyer to take up the case.

(f) Appointment with lawyer

24. The meet-the-lawyer session will be conducted at the LIPs office in the High Court Building. During the scheduled appointment, the community/resident lawyer will give advice on procedural matters to the client. Each interview session will last up to 45 minutes. Translation service will be provided to clients/lawyers as necessary.

25. In order to avoid touting activity and to avoid creating the false impression that a lawyer and client relationship has been established between the client and the community/resident lawyer, the name of the community/resident lawyer will not be given to the client. The community/resident lawyer is not allowed to provide his name card to the client. He is also not encouraged to represent the client in the same case subsequently though he may represent the client in other cases on a private basis. The community/resident lawyer is not allowed to refer the client to any particular lawyer or suggest any choice of lawyer.

(g) Case recording

26. After the appointment, the community/resident lawyer will put his advice given in writing for record. They will be required to complete a prescribed form which sets out the following –

- (a) details of the case;
- (b) the advice given; and
- (c) the follow-up action to be taken, if any.

(h) Follow-up appointment

27. For subsequent or follow-up appointment, it is not intended that the same community/resident lawyer be assigned for the same client, so as to avoid creating a false impression to the client that a lawyer and client relationship has been in place between him and the community/resident lawyer.

28. A file will be opened for each and every client interviewed. The file will contain records of interview, advice given and time spent on each session. The Centre-in-charge will conduct regular checks on the case files, and will also prepare periodic review reports on the operation of the Scheme.

29. If the client wants legal representation or free legal advice on the merits of his case, the client may be referred to the Bar Free Legal Service Scheme run by the Hong Kong Bar Association and/or other parties.

CONSULTATION

30. At the Panel meetings held in April and July 2011, we briefed the Panel and the two legal professional bodies on the provision of legal information and free legal advice service to members of the public, including the proposed framework of the Scheme. We are sounding out the Bar Association and the Law Society on the Scheme. We expect that the Scheme will be welcomed by the Judiciary, the LIPs and the public-at-large.

WAY FORWARD

31. We plan to launch the Scheme in the 2nd quarter of 2012. The success of the Scheme will hinge on support from the legal profession. We sincerely hope that the legal profession can continue to demonstrate their spirit of corporate social responsibility and encourage more legal professionals to participate in the Scheme.

**Home Affairs Bureau
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Annex A**Legal Advice Provided under the Scheme**

- (a) explaining court rules and procedure including Practice Direction;
- (b) giving general advice on court documents, order and the various interlocutory applications that may be taken out by or against the litigants in person;
- (c) giving advice on general matters that require attention when preparing court documents such as pleadings, list of documents, affirmations, witness statements with sample court forms for reference;
- (d) explaining the hearing/trial procedure including all preparatory work required for court hearing or trial (such as preparation of hearing or trial bundles;
- (e) explaining the costs involved in proceedings and the taxation of costs;
- (f) explaining the procedures on execution of a judgment or an order; and
- (g) explaining the procedures for launching an appeal.

Annex B**Terms and Conditions of the Scheme**

- (a) Client interviews will last up to 45 minutes;
- (b) The Centre-in-charge has the right to refuse to provide services;
- (c) Services will not be provided to clients who in the opinion of the Centre-in-charge have the means to pay for legal advice;
- (d) The Scheme will not provide advice in relation to matters where lawyers are already instructed or to individuals who have been granted legal aid;
- (e) The Scheme will not take on the conduct of litigation, nor will it act as lawyers on the record, and will not pay court fees or photocopy documents for inclusion in bundles for hearings;
- (f) Clients will remain responsible at all times for the running of their own proceedings;
- (g) The Scheme will not provide an advocacy service or represent clients at hearings;
- (h) All correspondence or other contact between clients and lawyers must take place via the Scheme; and
- (i) Clients must make available to the Scheme all documents which the lawyer might require. These will be photocopied as necessary and the originals will be returned to the clients.