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 2011-2012 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 11 July 2012 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

Expansion of the Supplementary Legal Aid Scheme

4. Following its focused discussion on the expansion of the scope of the Supplementary Legal Aid Scheme ("SLAS") during the last legislative session, the Panel continued to monitor closely the progress of the Administration in taking forward the legislative proposals for the expansion of SLAS to widen the middle class' access to justice.

5. The Administration reported to the Panel on its work in taking forward the legislative proposals for the expansion of SLAS and its views on other related proposals. The Administration had given notice to move a motion to

seek the approval of LegCo to amend Schedules 2 and 3 to the Legal Aid Ordinance (Cap. 91) ("LAO") to –

(a) expand the scope of the Ordinary Legal Aid Scheme to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception was involved in respect of the sale;

(b) expand the scope of SLAS to cover claims of the following categories with claim amounts exceeding $60,000 –

(i) professional negligence claims against certified public accountants (practicing), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorised land surveyors, estate agents, and registered landscape architects;

(ii) negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products; and

(iii) monetary claims against the vendors in the sale of first-hand completed or uncompleted residential properties; and

(c) expand the scope of SLAS to cover representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal, regardless of the amount in dispute.

6. According to the Administration, after the passage of the resolution by LegCo, amendments would be made to the Legal Aid Regulations (Cap. 91A) and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) to provide for the application fee and the rates of contribution to be levied in relation to some of the new types of civil proceedings under the expanded SLAS, and to adjust the application fee and the rates of contribution for certain civil proceedings under the existing SLAS.

7. Members noted that the Administration 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. The Panel agreed to follow up on these

proposals with the Administration and the legal profession at its regular meeting in July 2012.

Provision of legal aid for judicial review cases

8. Arising from the debate in the community about possible abuses of legal aid services in certain judicial review cases, the Panel requested the Administration to brief members on the assessment criteria in processing civil legal aid applications in respect of judicial review cases and the policy/criteria of assigning lawyers to handle legal aid cases.

9. Some members enquired whether different assessment criteria were adopted for legal aid applications in respect of judicial review cases and other cases involving personal interests. The Administration advised that each legal aid application was considered on an individual basis and the applicant had to satisfy both the means and the merits tests. Regarding legal aid applications for judicial review, legal aid would be granted, subject to means, if the applicant had a sufficient interest in the matter to which the judicial review application related and the case had reasonable grounds. The Administration advised that political, social and economic implications of a case were not the considerations in granting legal aid.

10. Some members were concerned that some lawyers might persuade low income people to apply for legal aid and nominate the lawyers to act for them. They considered that the present arrangement for an aided person to nominate their counsel should be reviewed to safeguard against abuses of legal aid services and acts of touting.

11. The Administration advised that section 13(1) of LAO stipulated that the Legal Aid Department ("LAD") could assign solicitors or counsel to be selected by the aided person to act for them. In the assignment of legal aid cases, LAD adhered to the fundamental principle that the aided person's interest was of paramount importance. As long as the solicitor/counsel nominated by the aided person was legally qualified and did not have poor performance record, LAD would normally accede to and would not reject an aided person's choice of solicitor/counsel unless there were compelling reasons to do so. LAD was of the view that it was improper for the Department and would be a slur on the character and professional integrity of the nominated lawyer for LAD to enquire if the nomination was promoted by some kind of questionable conduct on the part of the lawyer concerned. In judicial review cases, any such enquiry might also be interpreted as an unnecessary and improper attempt to influence the outcome of legally aided proceedings when the lawyer nominated by the aided person was professionally qualified and had an untarnished professional record.

12. Regarding the concern of the Hong Kong Bar Association ("Bar Association") that there was a lack of institutional independence of LAD, the Administration explained that to avoid conflict of interests and to maintain the independence of LAD, all judicial reviews cases were assigned out. Independent counsel's opinion would be obtained before a decision for refusal was made, and the applicant could appeal to the Registrar of the High Court against the decision of LAD.

Free legal advice service

13. Following the Panel's indication of support for the Administration's proposal for implementing a two-year pilot scheme to provide legal advice for litigants in persons ("LIPs") on procedural matters during the last legislative session, the Administration briefed the Panel on the operational framework of the proposed scheme.

14. While members in general recognized the need for enhancing the legal advice service for LIPs in view of the pressure exerted by the growing number of civil proceedings involving LIPs on judicial time and resources, they reiterated their concern that the pilot scheme would not address adequately the needs of LIPs if the scope of service was limited to legal advice on civil procedural matters while merits of the case were not to be discussed. They noted the concern of the Bar Association and the Law Society of Hong Kong ("Law Society") that it would be difficult to differentiate advice on procedure and substantive law, and the pilot scheme might have the unintended consequence of encouraging more litigants to become LIPs to take advantage of the free service under the scheme. Some members also considered that instead of setting up a new institutional framework, consideration should be given to enhancing the provision of legal aid to LIPs under the existing Duty Lawyer Scheme.

15. The Administration advised that it had drawn reference to the experience in the United Kingdom and Australia in operating similar schemes in designing the proposed pilot scheme. As the overseas experience had demonstrated that it was possible to provide procedural-only advice in practice, the Administration would adhere to its original proposal in providing advice on procedural matters only. The Administration also considered that as different lawyers might have different legal opinion on points of law, it was the intention to introduce a pilot scheme to address the procedural problems encountered by LIPs to help relieve the strain on the judicial resources as a first-step. Measures would also be put in place to avoid the undue expectation by LIPs that the pilot scheme would run the case for them.

16. Taking into account the views of members and the two legal professional bodies that the Administration should not continue to rely on legal profession to provide the proposed service on a pro bono basis, the Administration proposed to increase the honorarium for the community lawyers under the scheme from $300 per three-hour shift to $1,000 per four-hour shift. The Administration advised that it would explore the opportunity of inviting Government solicitors/counsel to participate in the pilot scheme in their private capacity and a steering committee would be set up to oversee and advise on the operation of the scheme. The Administration undertook to provide the Panel with implementation details of the pilot scheme when they were finalized in the second quarter of 2012.

Use of Chinese in court proceedings

17. In view of the problems identified in the use of Chinese in court proceedings including the growing number of LIPs who fell short of legal knowledge and the lack of bilingual legal practitioners, the Panel invited views from the Administration, the Judiciary Administration ("JA"), the two legal professional bodies and local law schools on the work to be done for enhancing the development of a bilingual legal system and in nurturing bilingual legal talents.

18. The Panel noted from the briefings by the Department of Justice ("DoJ") and JA that a number of initiatives had been taken to enhance bilingual legal system and to facilitate the greater use of Chinese in courts. Such measures included the provision of training for officers in the use of Chinese in legal proceedings and in the drafting of legislation in Chinese; recruitment of bilingual judges and enhancement of the interpretation and translation services in courts. Some members expressed concern that given the growing number of LIPs in recent years, some of these litigants might not be permitted to use Chinese due to a lack of bilingual judges to conduct hearings in Chinese.

19. JA assured members that the Judiciary had strived to increase the number of bilingual judges and there was a sufficient pool of bilingual judges to conduct hearings which were considered suitable to be heard in Chinese. According to JA, the judge would consider a number of factors, including the language ability of the accused, the litigants and the lawyers representing the accused and the litigants, in deciding the choice of official language for the whole or part of the case. While a judge might choose to use one of the two official languages in court, a witness or party in any court proceedings had always been permitted to use whatever language he/she so wished with the assistance of a court interpreter. Similar arrangements also apply to legal representatives. Proceedings at all levels of court could now be conducted in either one of the two official languages and the percentage of Chinese hearings was on the rise.

Implementation of Civil Justice Reform

20. The Panel had been monitoring the progress of the Administration in implementing the Civil Justice Reform ("CJR") since its introduction in April 2009. At the Panel's request, JA provided an update on the second year of implementation of CJR. According to JA, the implementation of CJR for the second year continued to be smooth and satisfactory on the whole with effective measures taken leading to case settlement at an early stage. However, due to a number of factors, not confining to those arising from or related to CJR, such as the deployment of judicial manpower in specific periods, fluctuation in caseload and the challenges posed by the increasing number of LIPs, a longer time would be required to assess the full impact, benefit and effectiveness of CJR.

Role and work of the Law Reform Commission ("LRC") and reports published by LRC

Mechanism to monitor the implementation of LRC's recommendations

21. The Panel followed up with the Administration on the progress to implement the recommendations in the various reports published by LRC over the years. Members in general expressed dissatisfaction at the delay of the Administration in implementing LRC's recommendations. They considered that the recommendations put forward in LRC reports should be given full and fair consideration within a reasonable timeframe or else the validity and relevance of LRC's recommendations and the supporting research and consultation responses were likely to be diminished the longer the time the recommendations remained unimplemented.

22. The Administration advised that the Government attached great importance to the recommendations made by LRC. The Director of Administration had issued a set of guidelines in October 2011 under which bureaux and departments having policy responsibility over any LRC report were required to provide at least an interim response within six months of publication of the report and a detailed public response within 12 months of its publication. The bureaux and departments were required to give full consideration to the recommendations made by LRC and set out which recommendations they would accept, reject or intend to implement in modified form in the detailed public response. The Administration, however, pointed out that as the subject matters for law reform usually carried a certain degree of controversy and would also involve policy considerations, not all reports could be implemented within a short period of time.

23. Some members considered it a duplication of efforts for LRC and the bureaux to conduct separate public consultation exercises on the same subject matter and recommended that studies by LRC on areas which were considered controversial in nature in the light of overseas experience should be avoided in order not to waste resources or create unrealistic expectation.

24. The Administration explained that the LRC's remit was to consider for reform those aspects of the law which were referred to it by Secretary for Justice ("SJ") or the Chief Justice in order to address inadequacies in existing legislation. When selecting topics for LRC's study, consideration would also be given to whether there were relevant studies by other organizations or whether it would be done more effectively by the bureaux. Since proposals made by LRC might involve policy considerations and might draw different views from the stakeholders, bureaux might need to carry out detailed research and public consultation before introducing any bill into the legislature.

25. To avoid undue delay in implementation of the LRC's recommendations, the Chairman wrote on behalf of the Panel proposing to the House Committee the introduction of a mechanism to monitor the Government's progress in implementing the LRC's recommendations. Under the proposed mechanism, SJ would submit to the Panel for discussion an annual report flagging up the progress in respect of the LRC reports which had not yet been implemented, say, after the Policy Address in each year; and the Panel would copy the annual report to the relevant LegCo Panels to facilitate their follow-up with the bureaux and departments having policy responsibility over the respective LRC reports, and the relevant Panels to include the Administration's responses to the respective LRC reports in their lists of outstanding items for discussion, and to invite members of the Panel and all other Members to join the future discussion. The Panel's recommendation was endorsed at the House Committee meeting on 2 March 2012.

LRC Report on Hearsay in Criminal Proceedings

26. Upon the Panel's request, the Administration briefed members on its views on the Report on Hearsay in Criminal Proceedings published by LRC in November 2009. The Panel noted that the Hearsay in Criminal Proceedings Subcommittee of LRC recommended that the existing law of hearsay in Hong Kong criminal proceedings should be reformed to provide greater scope to admit hearsay evidence in specific circumstances. The Subcommittee considered that the admission of hearsay evidence, save for some specific exceptions, should be based on a single statutory discretionary power to admit hearsay evidence if it was both necessary and reliable. The Panel noted that the Administration was supportive of most of the recommendations and proposals in the Report.

27. Some members shared the view of the Bar Association that while the LRC's proposal was well thought out, the proposed scheme failed to give proper emphasis on the right of the public to cross-examine witnesses. They were concerned that the admission of hearsay evidence might complicate and create uncertainties for the criminal proceedings and thereby put the unprepared defendants at a disadvantaged position. They considered that adequate safeguards should be put in place to ensure the rights of the public who were charged with criminal offences. The Panel also noted the view of the Bar Association that the proposed discretionary power vested in the court to admit hearsay in prescribed circumstances was far too broad and might run the risk of producing inconsistent results.

28. The Administration stressed that in proposing the recommendations, the Sub-committee had drawn reference to overseas experience in reforming the hearsay rule. Before the court was able to admit hearsay evidence under its discretionary power, the court must be satisfied on a balance of probabilities that it was necessary to admit the hearsay evidence and that the evidence was reliable. The Administration would consider the views of the two legal professional bodies before reaching a conclusion on the relevant recommendations.

LRC Report on Double Jeopardy

29. The Panel also received a briefing by the Chairman of the Double Jeopardy Subcommittee of LRC on its Report on Double Jeopardy published on 28 February 2012. The Double Jeopardy Subcommittee highlighted that rapid developments in recent years in forensic science and DNA testing had raised the concern that new and compelling evidence could be brought to light after the completion of the original proceedings which pointed to the guilt of an acquitted defendant. The Subcommittee took the view that the rule against double jeopardy ("the rule") should be retained, but relaxed in exceptional circumstances. It recommended, among others, that the court should be empowered to make an order to quash an acquittal and direct a retrial when there was subsequent revelation of "fresh" and "compelling" evidence against an acquitted person in relation to a serious offence of which he was previously acquitted or an acquittal was tainted.

30. Some members queried whether the relaxation of the rule would be compatible with the International Covenant on Civil and Political Rights ("ICCPR") which provided that no one shall be liable to be tried or punished again for an offence for which he had already been finally convicted or acquitted in accordance with the law and penal procedure of each country. They were also concerned that the acquitted person would have to live in

constant fear of having to go through another ordeal of a criminal trial if the threshold for re-opening a trial was not set high. They also took the view that the police powers of investigation after acquittal should be monitored. Given the far-reaching implications of the proposed reform on the society, members considered that the public should be duly consulted on the recommendations.

31. According to the Sub-committee, it was the general consensus in other overseas jurisdictions that the right guaranteed under ICCPR and other human rights laws was not absolute and that a relaxation of the rule could be justified if there were exceptional circumstances. The presence of a series of safeguards proposed in the report could ensure that the power to quash an acquittal would not be abused.

LRC Report on Class Actions

32. During the 2009-2010 legislative session, the Panel received a briefing by the Chairman of the LRC's Class Actions Subcommittee on the Consultation Paper on Class Actions published in November 2009. The LRC Report on Class Actions proposing that a mechanism for class actions should be adopted in Hong Kong was published in May 2012. The Panel was scheduled to discuss the recommendations contained in the Report with the Chairman of the LRC's Class Actions Subcommittee at its regular meeting in July 2012.

Procedure for seeking an interpretation of the Basic Law ("BL") under Article 158(1) and 158(3) of BL

33. In view of the wide public concern over the procedure under Article 158(3) of the Basic Law ("BL") for the Court of Final Appeal ("CFA") to make a reference to the Standing Committee of the National People's Congress ("NPCSC") for an interpretation of the relevant provisions of BL in the case of *Democratic Republic of Congo & Ors v FG Hemisphere Associates LLC* (FACV 5-7/2010) ("the Congo case") and the significant bearing on the development of the legal system in Hong Kong, the House Committee had referred the issue to this Panel for follow-up. At the Panel's invitation, SJ gave a briefing to members on the mechanism and the related procedure to be followed by the Court in seeking an interpretation of BL under BL158(3); the CFA's considerations in making the judicial reference; and the implications of the CFA's substantial decision on the judicial system of Hong Kong and the Court.

34. Members noted that the *Congo* case was the first case that CFA had acted in accordance with BL158(3) to request for an interpretation of BL. The Bar Association considered that CFA's decision to act in accordance with BL158(3)

to make a reference of provisions of BL did not compromise or undermine the judicial autonomy of Hong Kong courts as CFA was obligated to make such a judicial reference once it was satisfied that a final adjudication of a case before it necessitated the interpretation of such provisions. The Administration stressed that apart from the seeking of interpretation of BL by CFA according to the procedure laid down in BL158(3), NPCSC had the power to interpret BL under BL158(1) which was originated from Article 67(4) of the Constitution of the People's Republic of China. The Court also took the view that the power of interpretation conferred by BL158(1) was in general and unqualified terms, and was legally binding on Hong Kong courts.

35. Some members noted the procedures for judicial reference adopted by CFA in the *Congo* case and enquired whether CFA or the Administration would work out a mechanism for such judicial reference in the future given that no specific procedure was stipulated under BL as to how a letter of referral by CFA was to be transmitted to NPCSC. The Administration explained that the transmission procedure adopted in the *Congo* case was not meant as the set rule for a future case. CFA should be given flexibility in adopting a different procedure in a future case, if it considered appropriate.

36. At the Panel's request, the Administration further briefed the Panel on the previous occasions where NPCSC made interpretations of certain provisions of BL pursuant to the power under BL158(1), and the procedures adopted in seeking the interpretation and the justifications for such requests. Some members considered that while NPCSC had the general power to interpret BL under BL158(1), it should not exercise its power to interpret BL when a relevant case was being heard by the Hong Kong courts and it was undesirable for NPCSC to make any interpretation to overrule the decision of CFA. They also considered that the procedure to be followed in the interpretation should be made more transparent and the participation of the pubic in the process should be explored. Some members stressed that while NPCSC had adopted a cautious approach in making interpretation of BL on previous occasions, it was the general consensus in the community that interpretation of BL should only be sought where there was a real need to do so.

Issues and public work projects relating to the Judiciary

Judicial manpower situation

37. The Panel continued to monitor the judicial manpower situation following its discussion on the subject during the last legislative session. Members and the two professional bodies in general expressed concern about the judicial manpower shortage. The Bar Association and the Law Society

pointed out that insufficient manpower would give rise to longer court waiting time at various levels of court, and considered that JA should engage more temporary judicial resources to help maintain the court waiting times at reasonable levels. They considered that prior to the substantive appointment of Judicial Officers ("JJOs") to fill the vacancies at the Court of First Instance ("CFI") of the High Court, CFI judges should not take on extra-judicial duties so that they could concentrate on their primary duty. They also called on the Administration to review the remuneration and conditions of service for JJOs to attract legal professionals joining the Judiciary. Some members also considered that there was room for improvement in the service of Probate Registry.

38. JA briefed members on the existing judicial manpower situation, judicial training for judges, the progress of the conduct of recruitment exercises for filling the vacancies at various levels of courts including the recruitment of CFI judges, and engagement of temporary judicial manpower to alleviate the fluctuations in workload. According to JA, the Chief Justice had agreed to continue to engage temporary manpower resources to relieve the pressure on listing. A basket of factors had to be taken into account in reviewing the remuneration and conditions of services of JJOs. With the present remuneration package, the Judiciary had not encountered any recruitment problem in recent years.

39. Some members reiterated their concern about the statutory and non-statutory appointments of judges for extra-judicial functions. JA assured members that it was the Judiciary's approach in recent years to request the Administration to look for a suitable person who was not a serving judge to take up extra-judicial duties in the first place and JA would agree to make a serving judge available only where no other suitable person was available. Where both serving and retired judges were eligible for appointment, consideration would be given to appointing retired judges if suitable candidates could be identified. At the Panel's request, JA agreed to provide information on the work of Probate Registry for the Panel to monitor the effectiveness of its services.

2011-2012 Judicial Service Pay Adjustment

40. When the Panel was briefed on the Administration's proposal for the 2011-12 judicial service pay adjustment, members observed that the proposed judicial pay increase recommended by the Standing Committee on Judicial Salaries and Conditions of Service ("Judicial Committee") did not meet with the increase sought by the Judiciary with the difference being 0.01%. The Panel was of the view that there should be a consensual mechanism for judicial

remuneration review. JA advised that different percentages of judicial pay increase proposed by the Judiciary and recommended by the Judicial Committee were the result of the different arithmetical approaches adopted in calculating the judicial pay increase and did not represent any fundamental differences regarding matters of principle. With the experience of the 2011-2012 judicial remuneration review, the Judiciary would adopt the same calculation method as adopted by the Judicial Committee in a similar situation in future.

Proposed construction of the West Kowloon Law Courts Building

41. Following the support of the Panel for the construction of the West Kowloon Law Courts Building ("WKLCB") in the 2009-2010 legislative session, the Administration briefed the Panel on the details of the design, location and accessibility of WKLCB. Some members expressed concern that the design of WKLCB could not reflect the importance, independence and dignity of the court and the proposed location of WKLCB in old district would undermine the image and public perception of the court. They also raised various issues relating to the facilities at WKLCB, such as the provisions of courtrooms for the Coroner's Courts, courtrooms of larger sizes to accommodate parties to the case and witnesses, library facilities, public gallery and resource centre for LIPs.

42. According to JA, it emphasized a high degree of accessibility and the provision of sufficient infrastructure in the choice of location. JA would maintain a close liaison with the Architectural Services Department and departments concerned with a view to enhancing the accessibility of WKLCB for court users. The Panel raised no objection to the construction plan and the project was endorsed by the Public Works Subcommittee and approved by the Finance Committee respectively.

Relocation of CFA to the site of the former LegCo Building

43. The Panel kept in view the Judiciary's plan for relocating CFA to the site of the former LegCo Building. Members noted that the conversion works at the former LegCo Building were expected to be completed by end 2014 so that the relocation of CFA could take place in the first half of 2015. Following an update by JA on the relevant developments in November 2011, the Panel was scheduled to receive a briefing by JA and the Architectural Services Department on the proposed facilities of CFA to be provided at the Building and the works programme at the regular meeting in July 2012.

The role of the Judiciary in the adjudication system under the Control of Obscene and Indecent Articles Ordinance

44. It had been the long-standing request of the Judiciary that the administrative classification function (i.e. making an interim classification and, upon appeal, a final classification on a submitted article) should be removed from the Obscene Articles Tribunal ("OAT"), leaving it to deal only with its judicial function (i.e. determining whether an article is obscene or indecent upon referral by a court or a magistrate arising from a civil or criminal proceeding). At the Panel's request, the Commerce and Economic Development Bureau reported to the Panel on the latest progress of the review of the Control of Obscene and Indecent Articles Ordinance (Cap. 390) ("COIAO") and its review on the role of the Judiciary in the adjudication system under COIAO.

45. The Panel noted that during the first round of public consultation on the review of COIAO conducted from 3 October 2008 to 31 January 2009, the Judiciary had made a strong view that the present statutory institutional set-up of OAT under COIAO was highly unsatisfactory as the exercise of an administrative function by a judicial body would undermine the fundamental principle of judicial independence. The separation of the administrative and judicial functions of OAT was strongly supported by the legal profession. Members expressed strong dissatisfaction at the Administration's failure to address the Judiciary's concern for such a long time.

46. The Administration explained that the proposals to revamp OAT or to replace OAT with a government-appointed classification system had met with strong objection from some political parties in 2000. The general public offered little feedback on the OAT's institutional set-up during the first round public consultation. For those who commented on whether to reform the existing adjudication system, their views were diverse. The Administration undertook to formulate viable options for reforming the institutional set-up of OAT for public deliberation in the second round public consultation as soon as possible.

47. The Administration launched the second round public consultation in April 2012. Two proposed options were put forward in the relevant consultation paper – both involving taking the administrative classification function away from the Judiciary. Under the first option, OAT would only deal with judicial determination upon referral by a court or a magistrate in civil or criminal proceedings. Under the second option, the administrative classification function would be abolished altogether and OAT would continue to be responsible for determining whether or not an article was obscene/indecent in criminal and civil proceedings.

Implementation of the scheme for granting higher rights of audience to solicitors

48. Following the enactment of the Legal Practitioners (Amendment) Bill 2009 on 20 January 2010 which sought to provide the necessary legal framework for granting higher rights of audience to solicitors before the High Court and CFA in civil and criminal proceedings, the Panel followed up on the review of the scheme. At the Panel's request, the Higher Rights Assessment Board ("the Board") which had been empowered to make rules in relation to applications for higher rights of audience and determination of such applications gave a briefing to members on the progress of the implementation of the scheme.

49. Members noted that it was the plan of the Board to set up examining panels to assess the applications in the autumn in 2012 after the Higher Rights of Audience Rules proposed by the Board came into operation. Members were concerned that there would be a high number of outstanding applications after the first year of the scheme due to the large number of applications received in the first few years and the limited applications that could be processed each year. The Board assured members that while it was difficult to estimate the number of applications, the Board was empowered by the law to set up the required number of examining panels to work in parallel to handle the applications. It was envisaged that a substantial proportion of applications would be made under the exemption rules as applicants had required relevant experience to apply for exemptions and the first batch of certificated solicitors were expected to exercise higher rights of audience in the High Court by the end of 2012.

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

50. When the Administration briefed the Panel on the implementation of measures concerning co-operation on legal matters under the Framework Agreement on Hong Kong/Guangdong co-operation ("the Framework Agreement") during the last legislative session, the two legal professional bodies had raised various issues relating to the development of legal services under the Framework Agreement and the Mainland and Hong Kong Closer Economic Partnership Arrangements. The Panel followed up on the Administration's responses to these issues and the initiatives to be undertaken by the Administration in facilitating the provision of legal and arbitration services in Qianhai, Shenzhen by Hong Kong service providers.

51. Members noted the various proposals put forward by the Bar Association and the Law Society, including to develop the mode of association of Hong

Kong and Mainland law firms towards the form of partnership in the Mainland; to facilitate the provision of legal services by Hong Kong lawyers in the Mainland market; to permit the employment of Mainland lawyers by representative offices of Hong Kong law firms in the Mainland; to establish a mechanism for the verification of Hong Kong law and to develop the program of "Amicus Curiae" in the Mainland. The Administration advised that it had relayed the concerns raised by the Panel and the two legal professional bodies to the Mainland authorities and would continue to explore the ways of resolving them.

Other issues

52. During the session, the Panel was consulted on the following legislative, financial and staffing proposals before their introduction into LegCo or submission to the Establishment Subcommittee and Finance Committee –

(a) Statue Law (Miscellaneous Provisions) Bill 2012 which sought to, among others, abolish the common law presumption that a boy under 14 was incapable of sexual intercourse;

(b) Supplementary Provision of $86.61 million to Head 92 – DoJ Subhead 234 – Court costs for meeting the estimated shortfall in 2011-2012; and

(c) Proposal for the creation of a supernumerary post of Deputy Principal Government Counsel in the Legal Policy Division of DoJ to handle the legal work in respect of constitutional development and electoral affairs with effect from April 2012 for a period of five years.

53. The Panel also received a briefing from the Administration on the editorial amendments recorded in Editorial Record 1 of 2012 which was compiled in accordance with section 2B of the Laws (Loose-leaf Publication) Ordinance 1990.

Meetings held and visit conducted

54. From October 2011 to June 2012, the Panel held a total of nine meetings and conducted a visit to the Judiciary.

Council Business Division 2
Legislative Council Secretariat
5 July 2012

Appendix I

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.

Appendix II

Panel on Administration of Justice and Legal Services

Membership list for 2011-2012 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-yee, 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	13 October 2011