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Submission to the LegCo Panel on Administration of Justice and Legal Services

Establishment of an independent legal aid authority

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The rule of law requires equality before the courts, which in turn requires that financially disadvantaged persons be provided legal representation to enable them to enforce their legal and human rights. Natural justice requires that the body responsible for providing legal aid be independent of the government, especially in cases of constitutional issues and judicial reviews involving the Executive.

The Legal Aid Department (LAD) funds representation of low and middle income persons in the higher courts. As a Government Department, the LAD is subject to a variety of institutional controls by the Executive over its policies and operation. The Legal Aid Services Council (LASC) had rightly supported the call for an independent legal aid authority (ILAA) since 1998 until it softened its stand in 2009 and its abrupt change in position recently. The recent change in position by the LASC took the form of the endorsement of a recommendation of report by a consultant firm that “there is no immediate need to establish an independent legal aid authority”.

However, on examination of the report, such a recommendation is not supported by any cogent justifications or evidence. Nor can we see convincing argument to overturn the views of LASC’s former grounds for supporting an ILAA. We share the comments made by, a member of the LASC, Ms. Josephine PINTO, who has set out in her written comments already made available to the Panel.

The Monitor expresses its deep concern over the change position of the LASC at a time when there are increasing number of politically sensitive cases against the government, like judicial reviews of government development plans, with an growing complaints from the legal profession and applicants of delay and reluctance of the LAD in approving applications for legal aid in such sensitive cases. Out sourcing advice by the LAD for determining the merit

of an application is no answer to the criticism of “lawyer shopping” by the Department and the problems of actual and perceived conflict of interest remain unresolved.

The Monitor calls on the LASC to reverse its position to save its credibility. Or else the independence of itself is called into question as there are no cogent justifications or evidence to support such an important abrupt change on this important issue.