

**立法會**  
***Legislative Council***

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LC Paper No. CB(4)511/13-14  
(These minutes have been seen  
by the Administration)

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

**Minutes of meeting**  
**held on Tuesday, 26 November 2013, at 4:30 pm**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)  
Hon Dennis KWOK (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
Hon YIU Si-wing  
Hon MA Fung-kwok, SBS, JP  
Hon Alice MAK Mei-kuen, JP  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, JP  
Hon TANG Ka-piu  
Dr Hon CHIANG Lai-wan, JP  
Hon CHUNG Kwok-pan  
Hon Tony TSE Wai-chuen

**Public Officers :**     Item III  
**attending**

Ms Kitty CHOI, JP  
Director of Administration

Mrs DO PANG Wai-yee  
Deputy Director of Administration

Item IV

Mr Peter WONG  
Deputy Solicitor General

Miss Deneb CHEUNG  
Senior Assistant Solicitor General

Ms Peggy AU YEUNG  
Senior Government Counsel

**Clerk in**                 :     Ms Anita SIT  
**attendance**                 Chief Council Secretary (4)1

**Staff in**                 :     Mr Timothy TSO  
**attendance**                 Assistant Legal Adviser 2

Ms Shirley CHAN  
Senior Council Secretary (4)1

Rebecca LEE  
Council Secretary (4)2

Ms Linda MA  
Legislative Assistant (4)1

Mandy WAN  
Administrative Assistant (4)1

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**I.     Information paper(s) issued since the last meeting**

Members noted that the following papers had been issued since the last meeting -

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- LC Paper No. CB(4)948/12-13(01) -- Reply from the Department of Justice dated 24 July 2013 to the letter from the Hong Kong Training Professionals General Union dated 4 June 2013 concerning issues related to the accreditation of mediators in Hong Kong (English version only)
- LC Paper No. CB(4)969/12-13(01) -- Letter from The Law Society of Hong Kong dated 2 September 2013 on Solicitor Corporation Rules and consequential amendments to the Legal Practitioners Ordinance (Cap. 159) (English version only)
- LC Paper No. CB(4)99/13-14(01) -- Letter from TANG Wing-chun, Kwun Tong District Councillor, dated 9 August 2013 requesting to discuss the issue of "Abolition of the common law offence of champerty" (Chinese version only)
- LC Paper No. CB(4)119/13-14(01) -- Administration's letter dated 31 October 2013 on "Review of non-commencement of ordinances/certain provisions of ordinances"

2. Regarding LC Paper No. CB(4)969/12-13(01), the Chairman advised that according to The Law Society of Hong Kong, the Chief Justice ("CJ") had granted his approval in principle to the draft Solicitor Corporation Rules and the consequential amendments to the Legal Practitioners Ordinance (Cap. 159). The matter had been included in the "List of items for discussion by the Panel". Mr Dennis KWOK opined that the matter should be discussed at an early date as the legal industry had been expecting discussion of the matter for some time.

3. On LC Paper No. CB(4)99/13-14(01), the Chairman sought members' view on whether the Panel should discuss the issue of abolition of the common law offence of champerty as suggested by Mr TANG Wing-chun, Kwun Tong District Councillor. Mr Dennis KWOK expressed support for discussing the matter at a future meeting.

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**II. Items for discussion at the next meeting**

(LC Paper No. CB(4)157/13-14(01) -- List of outstanding items for discussion

LC Paper No. CB(4)157/13-14(02) -- List of follow-up actions)

4. Members noted that the next regular Panel meeting originally scheduled for 24 December 2013 was rescheduled to 16 December 2013.

5. Members agreed to discuss the following items at the next regular meeting scheduled for 16 December 2013 at 4:30 pm -

(a) Statute Law (Miscellaneous Provisions) Bill;

(b) The Law Society of Hong Kong's proposal to introduce a common qualifying examination for solicitors to replace the postgraduate qualification programme provided by the three law schools in Hong Kong; and

*(Post-meeting note: The item was renamed as "The Law Society of Hong Kong's proposal to introduce a common entrance examination in Hong Kong".)*

(c) Judicial manpower situation at various levels of court and long court waiting times.

6. To allow sufficient time for discussion of the above three items, the Chairman suggested and members agreed to extend the end time of the regular meeting on 16 December 2013 from 6:30 pm to 7:30 pm.

7. At the suggestion of Dr CHIANG Lai-wan, the Panel agreed to follow up on the issues relating to the role and functions of the Hong Kong Mediation Accreditation Association Limited at a future meeting.

8. Mr Wong Yuk-man expressed concern about the follow-up work in relation to the mechanism of handling complaints against judicial conduct. The Chairman said that the matter had been scheduled for discussion in the first quarter of 2014. The two legal professional bodies and the other relevant organizations would be invited to give views at the meeting.

### III. 2013-2014 judicial service pay adjustment

(CSO/ADM CR 6/3221/02

-- Legislative Council Brief

LC Paper No. CB(4)157/13-14(03) -- Updated background brief on "Judicial Service Pay Adjustment" prepared by the Legislative Council Secretariat)

9. At the invitation of the Chairman, Director of Administration ("D of Admin") briefed members on the judicial service pay adjustment for 2013-2014 as detailed in the Legislative Council ("LegCo") Brief (CSO/ADM CR 6/3221/02). D of Admin advised that having considered the basket of factors mentioned in the LegCo Brief, the proposed judicial pay for 2013-2014 should be increased by 3.15% with effect from 1 April 2013. The estimated financial implication for 2013-2014 arising from a 3.15% increase in the pay for judges and judicial officers ("JJOs") was \$10.16 million.

#### Discussion

#### *Proposed rate of increase in judicial pay for 2013-2014*

10. Mr Albert HO enquired how the proposed increase of 3.15% in the pay of JJOs for 2013-14 was arrived at. D of Admin replied that the rate of increase was proposed having regard to a basket of factors including, for example, responsibility, working conditions and workload of judges vis-à-vis those of lawyers in private practice, recruitment and retention in the Judiciary, unique features of the judicial service, cost of living adjustment, general economic situation in Hong Kong, the Government's fiscal position and private sector pay levels and trends etc. As regards the last factor, the Standing Committee on Judicial Salaries and Condition of Service ("Judicial Committee") considered that direct comparison between judicial pay and legal sector pay was inappropriate having regard to the uniqueness of judicial work as there was no comprehensive pay trend survey on the legal sector. In this connection, the Judicial Committee continued to make reference to the Pay Trend Indicators ("PTIs") from the annual Pay Trend Survey. The Judicial Committee considered it appropriate to subtract the cost of increments for JJOs from the gross PTI for the upper salary band to arrive at a private sector pay trend indicator suitable for comparison with judicial pay, since the gross PTIs included merit and in scale increment in the private sector. After the subtraction (i.e. the relevant gross PTI at 3.38% less the consolidated cost increments for JJOs at 0.23%), the private sector pay trend indicator as adjusted by the cost of increments for JJOs was +3.15% in 2013. Having considered

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the basket of factors, the Judicial Committee recommended that judicial pay for 2013-14 should be increased by 3.15%.

*Judicial manpower situation and long court waiting times*

11. Referring to paragraph 7 of the aforesaid LegCo Brief that the number of external deputy/temporary JJOs stood at 20 as at 31 March 2013, Mr WONG Yuk-man enquired:

- (a) how the Judiciary would be able to attract new blood to join the bench given the relatively low remuneration of JJOs as compared to the remuneration of private legal practitioners; and
- (b) how the Administration would address the problem of insufficient manpower resources of the Judiciary.

12. D of Admin responded that the Judicial Committee noted that the Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs. According to the Judiciary, it had not encountered any undue recruitment and retention problem in recent years. Up to 31 March 2013, a total of 45 judicial appointments were made in a recruitment exercise launched in June 2011. Amongst those 45 appointees, 18 were elevated from within the Judiciary while 27 joined from the outside. While there might be short-term constraints in deployment of judicial manpower as a result of the elevation of judges to higher positions at various levels of courts, there was a substantial increase in strength of JJOs in recent years. The number of external deputy/temporary JJOs decreased from a total of 39 as at 31 March 2012 to 20 as at 31 March 2013. Furthermore, according to the Judiciary, apart from helping with the increasing workload, the deployment of external deputy/temporary JJOs also served the need for private solicitors and barristers to gain actual experience in the Judiciary before making a decision on whether to join the bench. The Judiciary would continue to deploy deputy JJOs to help maintain court waiting time at reasonable level.

13. On Mr WONG Yuk-man's concern about the effect of retirement age of JJOs on the manpower situation of the Judiciary, D of Admin advised that while the statutory normal retirement age for JJOs was 60 or 65 depending on the level of courts, it could be extended for some judicial offices. For instance, the retirement age of the CJ and the Permanent Judges of the Court of Final Appeal ("CFA") might be extended to 71 whereas that of Judges and Registrar of the High Court might be extended to 70.

14. At the request of Dr CHIANG Lai-wan, D of Admin undertook to provide a breakdown by the types of previous legal practice of the 27 new appointees

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who joined the Judiciary from the outside, and details about the rates of the Non-accountable Cash Allowance for JJOs.

15. Mr Dennis KWOK queried whether the Judicial Committee understood the actual manpower situation of the Judiciary. He opined that the appointment of five retired Judges as Deputy Judges at the High Court and the deployment of a non-permanent judge at the CFA to hear court cases at the High Court, coupled with the fact that most court waiting times did not meet the relevant targets, reflected the Judiciary's insufficiency of manpower resources.

16. Ms Emily LAU noted from paragraph 6 of the aforesaid LegCo Brief that as of 31 March 2013, 164 of the 191 judicial established posts were substantively filled, and queried why there were so many vacancies in the Judiciary.

17. D of Admin advised that open recruitment exercises for judges were usually conducted approximately every three years in the past. The Judiciary had reviewed the frequency of conducting recruitment exercises for the Judges of the Court of First Instance (CFI). Noting that the recruitment trawl might not match the timing for some interested parties to join the service, CJ considered that CFI recruitment exercises should be conducted regularly on a yearly basis. Hence, since the last round of recruitment exercises for CFI Judges conducted in March 2012, the latest recruitment exercise was launched in July 2013.

18. D of Admin also advised that among the 27 vacancies in the Judiciary, 13 vacancies would not or could not be filled for the time being for the following reasons –

- (a) there was operational requirement for seven Principal Magistrates only (one each for the seven Magistrates' Courts) and the remaining two Principal Magistrate vacancies would not be filled for the time being; and
- (b) the number of vacancies at the Magistrate level that could be filled was constrained by the number of available courtrooms in the Magistrates' Courts. Due to this constraint, 11 Permanent Magistrate vacancies could not be filled for the time being pending the completion of the West Kowloon Law Courts Building.

19. As regards court waiting times, D of Admin advised that the respective court waiting time targets for the CFA, the District Court, the Family Court and the Magistrates' Courts and specialized courts and tribunals had generally been met. The waiting times for civil cases in the Court of Appeal and the Court of

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First Instance had exceeded their targets in most of the cases. Ms Emily LAU asked which court had the longest court waiting time. D of Admin said that against the target waiting time of 180 days, the average waiting time for the Civil Fixture List under the CFI of the High Court was 244 days in 2012. She remarked that the Chief Judge of the High Court was giving top priority to deploying judicial resources for hearing criminal appeals.

*Staff and other support for JJOs*

20. Mr Dennis KWOK expressed concern about the lack of staff and other support for JJOs. By way of illustration, he said that some judges and magistrates had to work overtime at their offices without the supply of air-conditioning during weekends. He hoped that D of Admin would relay his concern to the Judiciary. D of Admin agreed to convey Mr KWOK's concern to the Judiciary Administrator.

21. Mr Ronny TONG echoed Mr Dennis KWOK's view that the current support for JJOs was inadequate. He pointed out that judges were not provided with sufficient support in preparing judgements, especially judgements in the Chinese language, and some judges had to make use of their leisure time to prepare judgements. Mr TONG pointed out that in the United States, some special professionals were employed to assist the judges in preparing judgements and conducting relevant research. Mr LEUNG Kwok-hung and Mr Martin LIAO expressed similar concerns.

22. D of Admin stressed that whilst the Administration was not in a position to comment on the actual running of the courts, the Administration had provided adequate resources to the Judiciary to facilitate judges to discharge their duties.

23. Mr Martin LIAO said that in some overseas common law jurisdictions, judges were supported by a team of qualified barristers serving as judges' clerks to alleviate judges' workload. He considered that there was a need to review the judicial establishment with a view to providing more resource support to the judges in discharging their duties. D of Admin advised that the Judiciary had started the Scheme on Judicial Assistants ("the Scheme") in 2010 to provide enhanced support to appellate judges in discharging their duties. The objectives of the Scheme were:

- (a) to provide assistance to appellate judges in the CFA and the Court of Appeal of the High Court in conducting research on law points and assisting in other work of the court; and



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- (b) to enable fresh and bright law graduates who were about to embark upon careers in the legal profession to acquire an insight into the appellate process and to benefit from working with appellate judges.

24. The Chairman requested more information about the Scheme, e.g. the number of Judicial Assistants appointed since the Scheme was adopted and whether the Scheme would be formalized as a regular programme.

*Others*

25. At the request of Mr Martin LIAO, D of Admin undertook to provide a written response on whether there was any "double pension" arrangement for judges, and if so, the relevant details.

26. The Chairman remarked that as the Panel would discuss judicial manpower situation at various levels of court and long court waiting times at the next meeting, she requested that the Judiciary/Administration to provide the following information to facilitate members' discussion:

- (a) statistics on the court waiting times at various levels of court in the past three years;
- (b) the number of Judicial Assistants appointed since the launch of the relevant pilot scheme in 2010, and the number of Judicial Assistant posts in the current establishment of the Judiciary; and
- (c) the number of external deputy/temporary judges and judicial officers in the past three years; and how many of the relevant posts have been substantively filled.

27. Ms Emily LAU opined that to facilitate members' discussion as well as to answer members' enquiries, representatives from the Judiciary Administration should also be present at future meetings of such discussion. Mr Ronny TONG and the Chairman supported this view.

28. In concluding the discussion, the Chairman said that members generally had no objection to the proposed pay adjustment.

*(Post-meeting note:* The Administration's response to the issues raised at the meeting was issued to members on 10 December 2013 vide LC Paper No. CB(4)223/13-14(01).)

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**IV. Proposed Contracts (Rights of Third Parties) Bill**

(LC Paper No. CB(4)157/13-14(04) -- Paper provided by the Administration

LC Paper No. CB(4)176/13-14(01) -- Consultation Paper on Contracts (Rights of Third Parties) Bill 2013

LC Paper No. CB(4)157/13-14(05) -- Submission from the Hong Kong Bar Association

LC Paper No. CB(4)176/13-14(02) -- Submission from The Law Society of Hong Kong)

29. At the invitation of the Chairman, Deputy Solicitor General ("DSG") briefed members on the legislative proposal to implement the recommendations of the Law Reform Commission of Hong Kong ("LRC") in its report on "Privity of Contract" published in September 2005. Details of the legislative proposal were set out in the Administration's paper (LC Paper No. CB(4)157/13-14(04)).

Discussion

*Progress of implementation of LRC's recommendations on reform of doctrine of privity*

30. Mr Dennis KWOK expressed concern on the slow progress made by the Administration in implementing LRC's proposal to reform the doctrine of privity of contract as recommended in its report in 2005. He said that a lot of common law jurisdictions, including the United Kingdom, Australia and New Zealand, had already reformed the doctrine of privity. The Administration should expedite the implementation of LRC's recommendations in this regard. Mr Ronny TONG echoed Mr KWOK's view, and sought details of the work plan to take forward LRC's recommendations to reform the existing doctrine of privity.

31. DSG explained that the Administration had been actively following up the various recommendations made by LRC. However, there was a need to prioritize the relevant measures taking into account public views and the availability of resources.

32. Regarding the reform of the doctrine of privity, DSG advised that at the moment, one aspect of the doctrine was that a person could not acquire and enforce rights under a contract to which he was not a party. This prevented

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effect from being given to the contracting parties' intention to benefit a third party. LRC recommended reforming the general rule that only the parties to a contract might enforce rights under the contract by way of a legislative scheme. Under such legislative scheme, subject to the manifest intention of the contracting parties, the parties could confer legally enforceable rights on a third party under a contract. The Administration had decided to implement LRC's recommendations in full and had prepared a draft of the Contracts (Rights of Third Parties) Bill ("the Consultation Bill"), on which various stakeholders were consulted in October 2012. Subject to members' view on the legislative proposal, the Administration aimed to finalize the legislative proposal with a view to introducing the relevant bill into the Legislative Council ("LegCo") in early 2014.

*Impact of the legislative proposal*

33. Dr CHIANG Lai-wan enquired about the right of a third party to initiate legal proceedings against one of the contracting parties under the Consultation Bill. Quoting an example of a decoration worker who was injured in the course of working at a property, Dr CHIANG asked whether this worker, who was a third party to the contract signed between the property owner and the decoration contractor, had the right to sue the property owner for negligence.

34. DSG replied that the existing rights of third parties under the current laws in Hong Kong would not be affected under the Consultation Bill. Claims for negligence brought by decoration workers against property owners in relation to construction works in properties could be handled under the existing tort law. That said, under the Consultation Bill, if it was the intention of the property owner and the decoration contractor to benefit the decoration worker under certain circumstances and this was expressly provided for in the contract, the decoration worker could enforce the relevant term.

35. Regarding the right of a third party to enforce a contract, DSG explained that the Consultation Bill set out the limits within which a third party could enforce a contract. It provided for a two-limb test and the satisfaction of either limb would permit a third party who was not a party to the contract to enforce it : (a) a third party might enforce the contract if the contract contains an express term to that effect; or (b) if the contract contained a term which purported to confer a benefit on the third party, that party might enforce that term unless on a proper construction of the contract, the contracting parties did not intend that the third party might do so. The contracting parties could expressly exclude the application of this new legislative scheme in their contracts.

36. Mr Ronny TONG enquired about the defences available to a promisor in proceedings brought by a third party to enforce a contractual term under the

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Consultation Bill. DSG referred to paragraph 13 of the Administration's paper and advised that the Consultation Bill provided that the promisor might rely on (a) any defence or set-off which arose from or in connection with the contract and was relevant to the term, and would have been available to the promisor had the proceedings been brought by another party to the contract by whom the term was enforceable; or (b) any defence, set-off or counterclaim not arising from the contract, which would have been available to the promisor had the third party been a party to the contract.

37. Mr YIU Si-wing enquired who was a third party under the Consultation Bill. DSG advised that the Consultation Bill provided that a third party should be expressly identified by name, as a member of a class or as answering a particular description. Rights might also be conferred on a third party who was not in existence at the time when the contract was made, such as an infant not yet born.

38. Mr YIU Si-wing said as different people might have different views on who a third party was, he was worried that the enactment of the proposed legislative scheme might prompt unnecessary multi-party claims. In order to avoid misunderstanding on who had a right to enforce the terms of a contract, he urged the Administration to exercise great care in drafting the relevant bill, in particular, the interpretation of the term "third party". DSG agreed to take into account Mr Yiu's concern in finalizing the legislative proposal.

*Views from various stakeholders*

39. Mr Dennis KWOK urged the Administration to consider carefully the views from various stakeholders, especially the view expressed by the Hong Kong Bar Association ("HKBA") that consideration be given to excluding contractual obligations contained in Deeds of Mutual Covenants ("DMCs") from the scope of the proposed legislative scheme and the comments from the Law Society of Hong Kong on the drafting aspects.

40. Mr Martin LIAO said that if the Administration was inclined to include DMCs in the scope of application of the proposed legislative scheme, a study on the possible policy and social implications should be conducted before making the final decision. Mr Albert HO enquired about the HKBA's rationale for excluding obligations contained in DMCs from the scope of the Consultation Bill.

41. DSG explained that as far as he understood, HKBA was of the view that the obligations contained in a DMC, which was a unique feature in Hong Kong's system of conveyancing with its own special rules on enforcement by third parties, was a paradigm case for exemption from application of the

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proposed legislative scheme. HKBA opined that this was in line with the Administration's rationale for excluding certain contracts from the application of the proposed legislative scheme where the existing law had already developed a special set of rules governing the rights of third parties and that it was undesirable for the proposed legislative scheme to impinge upon those classes of contracts where there might be special policy implications which called for a different treatment.

42. DSG further advised that the Administration was carefully considering HKBA's suggestion and those of some other sectors which also proposed to exclude certain types of contracts or sectors from the application of the proposed legislative scheme. It was noted that most of the overseas common law jurisdictions did not exclude DMCs from the relevant statute law. LRC was of the view that it might not be desirable to identify the types of contracts to be excluded from the proposed legislative scheme in a piecemeal manner, as contracting parties were allowed to opt out of the new statutory scheme if they so wished. DSG assured members that the Administration would take into account the views and suggestions from various stakeholders in the course of finalizing the legislative proposal.

43. Mr Albert HO said that as far as he knew, a property owner could not directly initiate proceedings against another property owner for breach of DMC, unless the action was taken by the relevant owners' corporation. He enquired whether the current proposal contemplated any effect on this current arrangement.

44. DSG replied that the current legislative proposal did not contemplate to affect the existing contracts. As DMCs were also classified as contracts, a third party might have the right to enforce a contractual term if the contract contained an express term to that effect after the passage of the proposed legislative scheme.

45. The Chairman said that she could see the benefits of reforming the doctrine of privity of contract under the common law so as to protect the rights of third parties. She pointed out that DMCs were one of the most common types of contracts encountered by the public in everyday life. The Administration should explain to the public, in simple language, details of the legislative proposal so that the public could be well aware of their rights and liabilities when signing contracts. Apart from DMCs, the Administration should also consider the situations of other affected sectors and allow more time for them to prepare for the changes brought about by the proposed statutory scheme.

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46. DSG reassured members that in the course of taking forward the legislative proposal and after the LegCo's enactment of the relevant bill, the Administration would allow sufficient time for various stakeholders to make due preparations for the new statutory scheme.

**V. Any other business**

47. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 4  
Legislative Council Secretariat  
27 March 2014