

**立法會**  
**Legislative Council**

LC Paper No. CB(4)94/14-15  
(These minutes have been seen  
by the Administration)

Ref : CB4/PL/AJLS

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

**Minutes of meeting**  
**held on Tuesday, 24 June 2014, at 4:30 pm**  
**in Conference Room 1 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 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 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
- Members Absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon LEUNG Kwok-hung

**Public Officers attending** : Item III

Judiciary Administration

Miss Emma LAU  
Judiciary Administrator

Mr Arthur NG  
Deputy Judiciary Administrator (Operations)

Mr Tony LEUNG  
Assistant Judiciary Administrator (Corporate Services)

Item IV

Mr TSANG Tak-sing, GBS, JP  
Secretary for Home Affairs

Mr Thomas Edward KWONG  
Director of Legal Aid

Ms Gracie FOO, JP  
Deputy Secretary for Home Affairs (1)

Ms Aubrey FUNG  
Principal Assistant Secretary for Home Affairs  
(Civic Affairs) 2

**Attendance by invitation** : Item IV

Hong Kong Bar Association

Mr Ruy BARRETTO, SC

Mr Raymond LEUNG, SC

**Clerk in attendance** : Ms Debbie YAU  
Chief Council Secretary (4)5

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

Ms Shirley TAM  
Council Secretary (4)5

Ms Linda MA  
Legislative Assistant (4)

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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 -

(LC Paper No. CB(4)784/13-14(01) -- Letter from Hon Dennis KWOK requesting for inclusion of an item on "Review on the implementation of Civil Justice Reform" (Chinese version only)

LC Paper No. CB(4)853/13-14(01) -- Administration's paper on "Draft Live Television Link (Witnesses outside Hong Kong) Rules and Draft Rules of the High Court (Amendment) Rules")

2. The Chairman advised that a letter from Mr Dennis KWOK requesting for inclusion of an item on "Review on the implementation of Civil Justice Reform" in the list of outstanding items for discussion had been circulated to members vide LC Paper No. CB(4)784/13-14(01) on 6 June 2014. Members agreed to include the item in the list of outstanding items for discussion.

3. Members noted the Administration's paper on "Draft Live Television Link (Witnesses outside Hong Kong) Rules and Draft Rules of the High Court (Amendment) Rules"(LC Paper No. CB(4)853/13-14(01)). Given the possible implications and significance of the Rules, the Chairman suggested and members agreed that the Administration be invited to brief the Panel on Administration of Justice and Legal Services ("the Panel") on the issue as appropriate.

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

(LC Paper No. CB(4)822/13-14(01) -- List of outstanding items for discussion

LC Paper No. CB(4)822/13-14(02) -- List of follow-up actions)

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4. Members agreed to discuss the following items at the next regular meeting scheduled for 22 July 2014 at 4:30 pm –

- (a) Development of mediation services in Hong Kong; and
- (b) Provision of accommodation support for law-related organizations in the West Wing of the former Central Government Offices and the former French Mission Building.

5. Members noted that the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") would also be invited to brief the Panel on issues relating to the HKMAAL (item 2 of the List of outstanding items for discussion) under item 4(a) above. In response to Mr Dennis KWOK's suggestion of inviting deputations to give views at the next regular meeting under item 4(b) above, such as the Hong Kong International Arbitration Centre and the Law Society of Hong Kong, the Chairman advised that the Secretariat would make the necessary arrangements accordingly.

6. Dr Elizabeth QUAT enquired whether the Judiciary had responded on the issue raised by the Panel at its visit to the Judiciary on 3 December 2013 on the provision of protective screens for victims of sexual offence cases during court proceedings. The Chairman advised that she had followed up the matter with the Judiciary and its initial response, which was issued to members vide LC Paper No. CB(4)824/13-14(01) on 17 June 2014, was that the matter was now under consideration within the Judiciary.

**III. Proposed creation of judicial posts and a non-civil service position in the Judiciary and strengthening of the directorate structure of the Judiciary Administration**

(LC Paper No. CB(4)822/13-14(03) -- Judiciary's paper on "Proposed Creation of Judicial Posts and a Non-civil Service Position in the Judiciary and Strengthening of the Directorate Structure of the Judiciary Administration"

LC Paper No. CB(4)822/13-14(04) -- Paper on "Judicial manpower situation at various levels of court" prepared by the Legislative Council Secretariat (background brief))

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7. Members noted that the Judiciary's written responses on issues relating to the mechanism for handling complaints against judicial conduct raised by the Panel at the meetings on 23 July 2013 and 25 February 2014 was issued to members vide LC Paper No. CB(4)840/13-14(01) on 18 June 2014.

Presentation by the Judiciary Administration

8. At the invitation of the Chairman, the Judiciary Administrator ("JA") briefed members on the Judiciary's paper on "Proposed Creation of Judicial Posts and a Non-civil Service Position in the Judiciary and Strengthening of the Directorate Structure of the Judiciary Administration" (LC Paper No. CB(4)822/13-14(03)).

9. JA advised that the comprehensive establishment review of judicial manpower conducted in early 2013 had concluded that the creation of additional judicial (and associated support staff) posts at various levels of court would be needed to cope with the increasing workload at the High Court ("HC") and to cover the absence of Judges and Judicial Officers ("JJOs") at all levels of court for attending training and dealing with judicial education matters.

10. JA supplemented that the Judiciary considered that an addition of three posts of Justice of Appeal ("JoA") of the Court of Appeal ("CA") of the HC would be required to ensure that the listing arrangements in the CA would be working effectively. JA said that the Judiciary further considered that for providing "protected time" for JJOs for dealing with judicial education matters (which would include planning, preparation and delivery of such training as appropriate) and attending judicial training activities, four additional judicial posts would be required, namely, one post of Judge of the Court of First Instance of HC ("CFI"), one post of Judge of the District Court ("DJ") and two posts of Magistrate.

11. JA further advised that starting from 2013, the former Judicial Studies Board had been replaced by the Hong Kong Judicial Institute ("JI") for enhancing judicial skills and knowledge for all JJOs. The JI comprised a Governing Body ("GB") and an Executive Body ("EB"). The proposed initial complement for the EB was that it would be staffed by ten legally qualified professionals, with Executive Director of the JI ("ED(JI)"), a non-civil service position pitched at D3 level as its head.

12. JA also said that the Judiciary further proposed to create one post of Chief Systems Manager ("CSM") (D1) to head the Information Technology Office (Technical) ("ITOT") of the Judiciary Administration to meet operational needs relating to the implementation of the Information Technology Strategy Plan ("ITSP"), and to upgrade an existing post of Senior Treasury Accountant ("STA") (MPS 45-49) to the rank of Chief Treasury Accountant ("CTA") (D1) to head the

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Finance Section of the Judiciary Administration to enhance the financial management of the Judiciary as a whole.

Discussion

*Creation of additional judicial posts*

13. Mr WONG Yuk-man expressed concern that the Administration had created 4 797 additional posts in the last two years (including 90 directorate posts and 4 707 non-directorate posts) incurring an additional expenditure of \$3.6 billion each year but greatly reduced the financial relieving measures in its Budget. He stressed that the Legislative Council ("LegCo") should closely monitor Government's expenditure and exercise prudence and care in considering its proposals for creating additional posts, including those in the Judiciary. Highlighting the need to maintain a fair judicial system and judicial independence, Mr WONG considered it necessary to ensure that there were adequate judicial manpower resources to provide efficient and effective professional judicial services to the public. He emphasized that justice should not be compromised due to resources restrictions, as illustrated by his serious reservation on the proposed abolition of civil appeals as of right to the Court of Final Appeal ("CFA") under the Hong Kong Court of Final Appeal Ordinance (Cap. 484) due to resources considerations, the amendment of which had been considered at the meeting of the Bills Committee on the Administration of Justice (Miscellaneous Provisions) Bill 2014 on 3 June 2014. He considered that more substantial justifications should be given to support the abolition of the as of right appeal mechanism.

14. Mr WONG Yuk-man was in support of the Judiciary's proposals to create additional judicial posts and to strengthen the directorate structure of the Judiciary Administration. Referring to paragraph 8 of the Judiciary's paper, Mr WONG remarked that it was unsatisfactory for a substantial number of CFI judges to sit as additional judges of the CA to help reducing the latter's waiting times in 2012 and 2013, as this would affect both the quality of service provided by the CA and the work of the CFI, since the CFI had already accumulated a substantial number of caseload. He expressed concern about the Judiciary's view that looking at the caseload figures alone without taking into account the complexity of the cases could be misleading. Mr WONG also cast doubt on the view of the Chief Judge of the HC ("CJHC") that cases handled by CA were getting increasingly complex in recent years as many trials and interlocutory matters in the CFI were getting increasingly long and complicated. He held the view that according to the common law principle of *stare decisis*, a Latin phrase which meant "to stand by that which was decided", when a court made a decision, it established a legal precedent that would be used by subsequent courts in their deliberations, and as judges based their opinions on the judicial interpretation of previous laws, their workload should not be increased even if more cases were heard. He urged the

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Judiciary to conduct a review on the system instead of merely creating additional judicial posts to solve the problem of increasing caseload of the CA.

15. JA advised that the Judiciary also regarded the deployment of a substantial number of CFI judges to sit as additional judges of the CA in the past two years unsatisfactory. Regarding long court waiting times, JA said that hearings were not listed at the CA on Mondays which were set aside as "reading days" for judges to do the pre-hearing preparation and post-hearing work. Having regard to the increasing number of complex cases, more "reading days" on top of the normal reading days were required by the JoAs to make good pre-hearing preparation and write judgments. As a result of setting aside more "reading and writing days", the number of days available for listing of hearings had been correspondingly reduced. This had a direct impact on the lengthy waiting times. In this connection, the Judiciary considered that putting forward the proposal for creating additional judicial posts of JoAs could help ease these two concerns.

16. At the CFI level, JA said that with the introduction of new legislation and the establishment of new tribunal such as the Competition Tribunal for hearing cases relating to the new Competition Ordinance, and the amendment of existing legislation, more judges would be needed to cope with these changes. The Civil Justice Reform introduced in 2009 was heading towards the direction of streamlining court procedures and reducing court waiting times with a view to increasing efficiency in conducting court proceedings. These measures included the introduction of mediation as a means of alternate dispute resolution and procedures to discourage unnecessary interlocutory applications. With Members' support, the Finance Committee ("FC") of LegCo approved the funding application for the implementation of a whole range of projects under the Judiciary's ITSP in May 2013 to increase the efficiency and effectiveness of the services provided by the Judiciary.

17. Noting that a large number of deputy judges had been appointed to hear cases at the CFI, Mr Dennis KWOK enquired about the reason(s) for creation of only one additional CFI Judge post. JA advised that with the proposed addition of three JoA posts, it was expected that a greater proportion of the cases heard at the CA would be conducted by divisions constituted solely by substantive JoAs than at present, thereby releasing judicial manpower at the CFI back to that level of court to handle trials. In fact, recruitment of CFI judges to fill existing vacancies would be conducted in the second half of 2014. The Judiciary would keep its judicial establishment and manpower situation under constant review having regard to operational needs. Mr Dennis KWOK urged the Judiciary to take measures to fill the judicial vacancies as soon as practicable so as to reduce court waiting times and the heavy workload of judges.

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18. Mr Dennis KWOK was in support of providing "protected time" to JJOs for dealing with judicial education matters and attending judicial training activities and sought more details of the proposal. JA advised that at present, JJOs were generally not provided with "protected time" to engage in judicial education matters and they were doing so on top of their normal judicial responsibilities. The Judiciary had completed a comprehensive review on judicial education in early 2013. Upon the instruction of the Chief Justice, Mr Justice Frank STOCK, the then Vice-President of the CA, conducted the above study, making reference to the experiences in other jurisdictions. The study revealed that to maintain a well-structured and sustainable development of judicial education, additional judicial resources should be sought for providing "protected time" for JJOs for dealing with judicial education and attending such activities. The Judiciary considered that JJOs at different court levels should be given "protected time" to take part in judicial education activities according to their respective needs, and highly-experienced judges should be expected to take an active role in the development and participation of the enhanced programmes of judicial education. Hence, the proposal to create four additional judicial posts was to cater for the provision of "protected time" to JJOs for judicial education.

19. In response to Mr Dennis KWOK's suggestion of extending the "protected time" to JJOs for writing judgments, JA advised that currently, JJOs might apply to their court leaders for the provision of additional "protected time" to write judgments on a case by case basis, if such needs could not be catered for within their normal judicial work schedules. Such needs might arise if more time for writing judgments would be required as a result of the complexity of cases and exceptional heavy workload. Mr KWOK suggested that the Judiciary should consider providing "protected time" to judges for writing judgments on a routine basis, for example, a certain period of time be allocated to individual judges every year without the need for JJOs to make specific applications in each case. JA advised that indeed, CJHC had given general instructions that when listing cases for individual judges, consideration should be given to allowing appropriate buffer time required by individual judges in writing the judgments. She would relay Mr KWOK's suggestion to the CJHC for a written response.

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20. Mr Albert HO shared the concern of Mr Dennis KWOK on providing "protected time" for judges to write judgments as some judgments were delivered six months or more after the trials. Mr HO also expressed grave concern on the heavy caseload and workload of judges. He said that the hearing of a family court case he happened to know had been extended beyond the estimated trial times and the timetable of the judge concerned was so tight that the case was heard for more than 10 days over a span of six months. He also highlighted the extra time required by judges to hear cases involving litigants in person, and pointed out that if the restrictions on granting legal aid to litigants could be relaxed, more litigants could be legally represented to enable court time to be more efficiently used.



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21. JA advised that the Judiciary noted the impact of the heavy workload of JJOs, in particular family judges, as matrimonial proceedings often involved numerous post-hearing applications. The Judiciary Administration had briefed the Panel recently on the review of Family Procedure Rules, which would also have an impact on the requirement of judicial resources. The Judiciary Administration would revert with proposals on judicial manpower in the context of this review at the appropriate juncture.

22. The Chairman expressed grave concern on the shortage of judicial manpower and urged the Judiciary to recruit additional JJOs to provide "protected time" to judges for dealing with judicial education matters. JA advised that the proposed addition of three posts of JoAs was to ensure that there would be sufficient manpower to handle the required court work and for JoAs to participate in judicial education matters. The proposed addition of one post of CFI Judge, one post of DJ and two posts of Magistrate was to provide JJOs with "protected time" to deal with judicial education matters and to attend judicial training activities.

23. In response to the Chairman's enquiry about the scheme of Judicial Assistants ("the Scheme"), JA advised that the objective of the Scheme was to provide enhanced support to appellate judges through conducting legal research, analyzing and writing memoranda on appeals and drafting memoranda on legal points etc. However, Judicial Assistants did not take part in drafting appeal judgments, which was solely the duty of appellate judges. She said that having examined its effectiveness in consultation with the appellate judges, the Chief Justice concluded that the Scheme had met its objectives and should continue to operate on its existing terms. JA said that while it was planned that up to six Judicial Assistants might be recruited each year, with suitable candidates the Judiciary had offered appointment to seven Judicial Assistants this year. The Chairman further enquired about measures to attract local talents to join the Judiciary. JA advised that the judicial posts of CFI Judge, DJ, Magistrate and Special Magistrate were all filled via open recruitment.

*Creation of a non-civil service position in the Judiciary to head ED of JI*

24. Mr WONG Yuk-man did not support the proposed creation of the position of ED(JI) and the post of Director of Research. He questioned why the EB would be providing professional support on matters relating to legal research to the JJOs who, in his opinion, should maintain impartiality when hearing the trials. As regards legal research support to be provided by the Director of Research, Mr WONG considered that the relevant reports could readily be obtained from academic institutions in Hong Kong. JA clarified that the EB of JI needed to be staffed by legally qualified professionals, who would conduct research and

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provide executive support on training for the enhancement of judicial skills and knowledge of JJOs.

25. Mr Albert HO supported the proposed creation of the position of ED(JI). He opined that the EB of JI could provide systematic training programmes for JJOs, which would enhance their professionalism and exchanges with overseas counterparts. Experienced lawyers who were newly appointed to the Bench also required training but he did not support the provision of a mandatory professional training course to JJOs as in some other jurisdictions. JA explained that JI was a newly set up body led by the Chief Justice for providing judicial education to JJOs. The Chinese translation of JI (司法學院) might have caused some confusion but it was not an educational institute.

26. Apart from inviting tertiary institutions to provide training to JJOs, the Chairman enquired whether the Judiciary had considered inviting local retired judges and experts from other jurisdictions to provide such training. JA advised that the GB of JI had various strategic plans for providing judicial education. Apart from inviting tertiary institutions to provide training to JJOs, overseas experienced judges would also be invited to share their experience with local JJOs on some specific subjects or legal areas. At the same time, JJOs had sometimes participated in overseas seminars and meetings which focused on specific topics or areas.

27. In response to the Chairman's enquiry on the target rank of JJOs for receiving judicial training, JA advised that to cater for the different needs of JJOs at various levels of court, Education Committees were set up at different levels of court to take care of the specific needs of JJOs concerned. Given that the number of magistrates and the number of cases they handled was the highest among the different ranks of JJOs, magistrates would certainly be included in the programmes of judicial education. This applied to JJOs at other levels of courts. As the GB of JI had been set up in 2013 to provide strategic steer for judicial education, it was imperative to set up the EB of JI to provide the necessary executive support to the GB on judicial training activities.

28. Mr Dennis KWOK enquired about the structure of JI. JA advised that the JI comprised the GB and the EB. The GB was chaired by the Chief Justice and comprised members including a Permanent Judge of the CFA, court leaders of all levels of court, i.e. the CJHC, the Chief District Judge, the Chief Magistrate, and other judges nominated by the Chief Justice. The GB chaired by the Chief Justice would provide strategic direction of the development of judicial education. The CJHC, the Chief District Judge and the Chief Magistrate would head the Education Committees at their respective court levels to identify the education needs of respective JJOs.

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*Strengthening the directorate structure and organization of the Judiciary Administration*

29. Mr Dennis KWOK was in support of the proposed creation of the post of CSM (D1) and the proposed upgrade of the existing post of STA to the rank of CTA (D1). In view of the implementation of the ITSP in the Judiciary, he opined that the creation and upgrade of such posts were insufficient. JA advised that apart from the two proposed posts which required the endorsement of the Establishment Subcommittee ("ESC") and the approval of the FC, the Judiciary also proposed to create new non-directorate support staff posts to meet increasing operational needs.

30. In response to Mr Dennis KWOK's enquiry on the timeframe for implementing e-filing system by the Courts to enable perusal of documents by electronic means in court proceedings, JA advised that the first step was to build up an Integrated Court Case Management System, which was essential in supporting the introduction of e-services for court users on many fronts. The Judiciary intended to use the system in the DC as well as for summons cases in the Magistrates' Courts first. In this regard, the overall IT architecture and systems of the Judiciary would be revamped and implemented in a holistic but incremental manner. The implementation of projects under the ITSP was under a Six-year Action Plan and the Judiciary would also plan to implement the e-filing system in the courts from 2016 onwards. Small-scale pilot scheme on the use of e-submissions in proceedings in the DC had been initiated in mid-June 2014. Deputy Judiciary Administrator (Operations) supplemented that when considered appropriate, documents submitted by such electronic means to portals for the pilot scheme included legal representatives' submissions in relation to skeleton arguments and lists of authorities.

Conclusion

31. Summing up, the Chairman urged the Judiciary to expedite the recruitment of JJOs and ensure that sufficient manpower was available to enable JJOs to participate in judicial education. The Chairman concluded that the Panel supported in principle for the Judiciary to submit the proposed creation of judicial posts and a non-civil service position in the Judiciary, and strengthening of the directorate structure of the Judiciary Administration to the ESC for consideration and endorsement.

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**IV. Implementation of the measures to strengthen the governance and operational transparency of the Legal Aid Department and related issues**

(LC Paper No. CB(4)822/13-14(05) -- Administration's paper on "The Legal Aid Services Council's Recommendations on the Independence of Legal Aid"

LC Paper No. CB(4)854/13-14(01) -- Submission from the Hong Kong Bar Association on "The need and benefits of having an independent legal aid authority" (English version only))

Paper for reference:

(LC Paper No. CB(4)822/13-14(06) -- Administration's paper on "Progress Report on the Review of the Supplementary Legal Aid Scheme and operation of the Two-year Pilot Scheme to Provide Legal Advice for Litigants in person"

LC Paper No. CB(4)822/13-14(07) -- Paper on "Implementation of the measures to strengthen the governance and operational transparency of the Legal Aid Department" prepared by the Legislative Council Secretariat (background brief))

Briefing by the Administration

*Legal Aid Services Council*

32. At the invitation of the Chairman, the Secretary for Home Affairs ("SHA") briefed members on "The Legal Aid Services Council's Recommendations on the Independence of Legal Aid" (LC Paper No. CB(4)822/13-14(05)). SHA advised that the Legal Aid Services Council ("LASC") had the statutory duty to oversee the administration of legal aid services provided by the Legal Aid Department ("LAD"). LASC had recently set up a Task Force on Dissemination of Legal Aid Information ("the Task Force") with a view to, inter alia, making recommendations

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on the enhancement of LAD's operational transparency.

33. SHA said that the Task Force was chaired by LASC Chairman, and comprised members of LASC and external experts from the financial information dissemination, information technology and statistics collection fields. The way forward proposed by the Task Force included improvement on the release of legal aid information, classification and statistics of cases handled, case assignment to external counsel and the arrangements under Section 9 of the Legal Aid Ordinance (Cap. 91) ("LAO") on the referral of applications to external counsel or solicitors for opinion on any question of law arising from the applications. The Administration would continue to support LASC's work in overseeing the delivery of quality legal aid services and the strengthening of governance and operational transparency of LAD within the existing legal framework.

*Independence of Legal Aid*

34. SHA advised that LASC had submitted its recommendations on the feasibility and desirability of the establishment of an independent legal aid authority ("ILAA"), together with the consultancy report of the study, to the Chief Executive on 30 April 2013 (LC Paper No. CB(4)747/12-13(02)). At the meeting of the Panel on Administration of Justice and Legal Services ("the Panel") of the Legislative Council ("LegCo") on 25 June 2013, LASC and deputations were invited to brief members on its recommendations and present their views respectively. Having considered the views of members and the relevant stakeholders, and examined the institutional, financial, operational and governance dimensions of LAD, the Administration decided to accept in principle LASC's recommendation that there was no immediate need to establish an independent ILAA, as the degree of independence upheld and exercised by LAD was considered sufficient. LAD should remain a government department and the perception that LAD lacked independence could be addressed by introducing improvement measures without having to fundamentally change LAD's institutional structure.

35. SHA supplemented that although the Home Affairs Bureau ("HAB") oversaw policy matters on legal aid, it was not involved in the day-to-day operation of or the handling of individual cases by LAD. Sufficient safeguards in statute and in practice were in place to ensure LAD's operational independence. Specifically, the statutory means and merits tests had been the only criteria provided by LAO in assessing legal aid applications, which were not subject to the Administration's policy considerations or financial constraints. There was currently a statutory appeal mechanism under the LAO which provided that appeals against LAD's decisions in civil legal aid applications could be lodged with the Registrar of the High Court, whose decision shall be final.

36. SHA further advised that the Administration accepted in principle the

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recommendation of LASC to transfer LAD back to report to the Chief Secretary's Office ("CSO") and the Director of Legal Aid ("DLA") should report directly to the Chief Secretary for Administration ("CS"). On the timing of transfer, it would be reviewed in the light of various commitments of CSO in this term of Government. Moreover, as HAB was currently undertaking various reviews including the review on criminal legal aid fees, the on-going reviews on the scope and financial eligibility limits of the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS") as well as the way forward on the provision of legal advice for litigants in person ("LIPs"), the timing of transfer could be determined subject to the satisfactory progress of the above reviews for better continuity.

Presentation by the Hong Kong Bar Association

37. At the invitation of the Chairman, Mr Ruy BARRETTO of the Hong Kong Bar Association presented their views. Mr BARRETTO pointed out that the Administration's paper for the current meeting supported the views of the Hong Kong Bar Association ("HKBA") and the Law Society of Hong Kong ("the Law Society") that the LAD expenditure was *de facto* capped, which meant that there was no obstacle to establish an ILAA. A reason given by the Government for rejecting the establishment of an ILAA in 1998 was that funding accountability was needed. It was said that because there was no cap on the LAD budget for legal aid services, no independence could be granted as financial controls were needed over expenditure. The corollary would be that an authority, having a cap or similar controls and similar funding accountability, would then be eligible for independence.

38. Mr Ruy BARRETTO said that HKBA had recently requested LASC to deal with the criticisms it had raised last year on the consultant's study regarding the independence of legal aid (attached to LC Paper No. CB(4)854/13-14(01)). LASC's response was that as the methodology adopted was the usual practice of a consultant, the study results were therefore considered reliable. HKBA considered that LASC had not responded specifically to the concerns and issues raised by HKBA, and that there was no commitment from LASC on improving their work using the right criteria. Under Section 4(5)(b) of the Legal Aid Services Council Ordinance (Cap. 489) ("LASCO"), LASC had the statutory duty to advise on the feasibility and desirability of the establishment of an ILAA. As such duty had not been performed adequately by LASC given the previous flawed consultant report, LASC would need to continue with its work on the establishment of an ILAA.

39. Mr Ruy BARRETTO supplemented that HKBA considered that the Administration's papers submitted for discussion at the meeting were disappointing, one-sided and inadequate in the facts and analysis, and LASC had downplayed the real reasons for independence of legal aid without reasons.

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HKBA opined that the justifications advanced by the legal profession were omitted by the Administration and some key justifications, such as increase in flexibility and the ability to deal with the needs of the changing society, including the unmet needs of the elderly for legal aid, were not addressed. One of the benefits of being independent was for the legal aid authority to move from a moribund government department to a vibrant living institution.

40. Mr Ruy BARRETTO opined that according to the Administration's paper, performance evaluation of legal aid staff by LASC might affect their promotion prospect. In this regard, he said for staff in anticipating promotion and transfer to other Government departments, it would be unrealistic to expect that they would exercise independent thinking and decision making on key issues of legal aid applications which were against the interest of the Administration. This would be an argument in support of establishing an ILAA with legal aid staff independent of the civil service. He added that LASC had failed to address issues raised by the legal profession on the flawed consultant report. Noting that there was no progress on the issue of establishment of an ILAA in the past two years, he urged the Panel to pass a motion that a further review of the independence of the legal aid authority be conducted without the shortcomings of the previous ones in the coming year without further delay.

41. Regarding the progress report on review of SLAS and operation of the two-year pilot scheme to provide legal advice to LIPs provided by the Administration, Mr Ruy BARRETTO remarked that there was no foresight of progress by the Administration on the review of SLAS. He referred the Panel to a checklist attached as Enclosure 1 to a statement dated 26 September 2012 prepared by HKBA relating to the desirability of having an ILAA and the current situation being an impediment to access to justice for persons of limited means and "the sandwich class" (attached to LC Paper No. CB(4)854/13-14(01)). The checklist contained the status of reform on the causes of action covered by SLAS. Some claims had been accepted by HAB in the reform, such as the professional negligence claims, while some claims had somehow been rejected by HAB despite LegCo's support, such as the claims against Incorporated Owners. He added that some claims had also been deferred, such as derivatives claims involving cases like Lehman Brothers, where the "sandwich class" had been the main victims to such products. The checklist was a comprehensive and compact document contributed by HKBA, the Law Society and LegCo Members with refined and improved suggestions made in 2012. HKBA urged the Administration to review the checklist with LAD with a view to making some real progress on the SLAS review within the next few months.

42. Regarding the review on criminal legal aid fees, Mr Ruy BARRETTO said that it should not be a mechanical exercise of revising fee rates. The scope of work involved needed to be reviewed due to changes in judicial requirements. Documents such as written submissions of legal counsel sometimes required by

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judges would increase the efficiency and save court times, and thus needed to be charged for. These documents should have specific itemized allowance in the relevant schedule of the Legal Aid in Criminal Cases Rules (Cap. 221D).

Discussion

*Establishment of an independent legal aid authority*

43. Mr Dennis KWOK shared the concern of HKBA regarding the independence of legal aid authority, the issues relating to LAD and the expansion of the scope of SLAS. He was in support of the transfer of LAD back to CSO but opined that it would be more ideal to establish an ILAA. Mr Albert HO said that there had been long standing calls for the establishment of an ILAA, which had been supported by some LegCo Members, the two professional bodies and many other stakeholders. He did not understand why the Administration had taken the stance that there was no immediate need to establish an ILAA. He said that improvements were necessary in some aspects of delivering legal aid services. For example, in respect of seeking expert opinion in medical negligence cases against public hospitals, overseas expert opinion should be allowed to avoid giving the public the perception that LAD was defending the interest of the Government as expert opinion were mainly obtained from the Hospital Authority.

44. Mr Albert HO opined that LAD's expenditure was "*de facto* capped" by budget and departmental controls, and procedure and law. SHA advised that the Administration acknowledged HKBA's submission regarding the expenditure control of legal aid but it did not agree with the viewpoint therein, for example, the description of civil servants as "asking for more are no longer in an Oliver Twist situation of being a supplicant begging before a supervisor with power over him" showed disrespect to civil servants and did not reflect the real situation. As pointed out in HAB's information paper on legal aid costs issued in September 2013, the Administration did not agree with HKBA's observation that LAD's budget was "*de facto* capped" as the provision of legal aid services would not be affected by financial constraints. SHA stated that as legal aid services were supported by public funding, LAD, being a government department, had to maintain financial discipline and comply with the necessary procedures for obtaining resources. It would be erroneous to equate these procedures with having a "*de facto* capped" budget. The paper by HKBA, as a body representing the interests of legal professionals, had wishfully thought that if an ILAA managed by legal professionals was established, it would have a higher chance of successfully obtaining the necessary resources from the Financial Secretary.

45. SHA noted the focus of HKBA's submission for the establishment of an ILAA, with the above emphasis, was not that LAD could not uphold justice or that it had been subject to interference from the Administration. The processing of individual legal aid applications was totally independent from the Administration



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and DLA would continue to exercise the statutory functions in an impartial, transparent and accountable manner. SHA further drew members' attention to the fact that in recent years, several overseas jurisdictions had reverted their ILAAs back to government agencies due to poor governance and financial management. He added that in recent years, there had been criticism from the public and LegCo Members of suspected abuse of the legal aid system by a small number of legal professionals to profit from public funds, such as the judicial review case of the Hong Kong-Zhuhai-Macao bridge and the minibus and taxi drivers' traffic accident insurance claims cases, which necessitated SHA's response at LegCo to clarify LAD's impartial and transparent practices. It would be doubtful whether the establishment of an ILAA managed by legal professionals would be in a better position to gain public trust and support. Mr Albert HO objected to SHA's allegation against legal professionals as a whole on possible abuse of the legal aid system and opined that SHA should report his allegations to the relevant authorities as appropriate. He understood that the legal aid case relating to Hong Kong-Zhuhai-Macao bridge project was approved by SHA. Access to justice was a right conferred by the Bill of Rights and the Basic Law. The allegations made by SHA that the submissions made by the legal profession on expansion of the scope of legal aid service etc. were to protect the interest of its profession were totally unfounded. SHA responded that he was only stating the fact that the public and some LegCo Members had criticised such suspected unscrupulous practices.

46. Mr TAM Yiu-chung was in support of reverting LAD back to report to CSO. He considered that it would be necessary to cap legal aid costs and use public money prudently. He shared a similar concern with SHA and referred to the question he raised at a recent LegCo meeting on the increasing number of torture claims raised by refugees some of which had applied for legal aid to lodge claims against their removal from Hong Kong to another country on applicable grounds. Those refugees or their legal representatives had delayed the process by, for example, failing to attend scheduled interviews without reasonable excuse. Mr TAM requested the Administration to take measures to prevent such abuse. DLA advised that LAD had monitored the progress of torture claim cases, in particular those assigned to external practitioners, and would take follow-up actions if any intentional delays had been identified. In response to Mr TAM's concern about the setting up of ILAA might give rise to champerty cases and possible abuses of legal aid system, DLA advised that a working group had been formed with the Independent Commission Against Corruption to review the assignment of legal aid cases to private practitioners. LAD had also discussed with the Law Society on how to combat possible champerty cases.

47. In response to Mr Steven HO's enquiry about the arrangements on legal aid costs, DLA advised that the costs paid to private practitioners handling legal aid cases were actually on the increase, the amounts spent over the past three years were \$463 million in 2011-2012, \$512 million in 2012-2013 and \$570 million in

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2013-2014. LAD had an uncapped budget and its annual estimates were drawn up holistically at the beginning of each financial year taking into account past actual expenditure and estimated costs. If the legal aid costs exceeded the approved provisions within a financial year, LAD could obtain supplementary provision through the established mechanism. Supplementary provision had been obtained previously when the legal aid costs unexpectedly increased substantially when LAD was handling the Vietnamese refugees cases. Mr HO noted that if ILAA was established with a capped budget, there was no guarantee that supplementary provision could be obtained from LegCo in situations of insufficient funding. The operational and financial sustainability of ILAA, if established, might be affected by the efficiency of LegCo in scrutinizing financial proposals. DLA advised that in some overseas jurisdictions with an ILAA, such as the Netherlands, the scope of legal aid services was reduced in order to cope with insufficient funding for legal aid. Mr HO did not support the establishment of an ILAA as the lack of supplementary provision might affect legal aid services.

*Appointment of Director and Deputy Directors of Legal Aid*

48. Referring to paragraph 4(c) of the Administration's paper (LC Paper No. CB(4)822/13-14(05)), Mr Dennis KWOK noted the consultant's recommendation that LASC be given the power to nominate candidates eligible for the appointment of Director of Legal Aid ("DLA") and Deputy Directors of Legal Aid to the CS, who would make the final decision on their appointments, and that the performance of these officers should be evaluated by LASC. Mr KWOK urged the Administration to devise an independent and transparent mechanism in appointing DLA and Deputy Directors of Legal Aid to ensure their impartiality when discharging their duties, and that their decisions were not subject to the interference of the Government.

*Expansion on the scope of Supplementary Legal Aid Scheme*

49. In response to Mr Dennis KWOK's enquiry about the expansion of the scope of SLAS, DLA advised that LASC was conducting a review on the scope of SLAS and would take into account suggestions made by HKBA. LASC had recently formed a working group to follow up on this matter. The Administration would revert to the Panel on the progress of the review in due course.

50. The Chairman requested the Administration to expand the scope and types of cases covered by SLAS so that more people could become eligible for legal aid. She enquired about the possibility to provide a certain cap of funding on each individual legal aid case to enable more people who were eligible to obtain legal aid. DLA advised that most of these landmark cases involved multiple parties and appeals pursuant to counsel's advice, which incurred counsel's costs, and were heard in more than one level of courts. This explained the high legal costs incurred in some of these cases. DLA supplemented that there was no current

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plan to provide a cap on the legal costs for any individual legal aid case.

*(At this juncture, the Chairman extended the meeting for 15 minutes beyond the appointed ending time to deal with unfinished business on the agenda.)*

51. Dr CHIANG Lai-wan recalled that she had expressed concern at the Panel meeting on 16 December 2013 about the possible hardship faced by middle-class litigants who were not eligible for legal aid and had to pay exorbitant legal costs for services provided by lawyers. She enquired about the measures taken by the Administration to improve the situation. DLA advised that as LASC was conducting a review on the scope of SLAS, the Administration would relay the concern to LASC for consideration.

Summary by the Hong Kong Bar Association

52. Mr Ruy BARRETTO of HKBA summarized that SHA had supported HKBA's submission that there were good financial controls over LAD's expenditure, equally there would also be good controls over the budget of ILAA upon its establishment, so there would be no obstacle to the accountability point for future independence of legal aid. Regarding the point on impediment to access to justice for "sandwich class", HKBA considered that great potential improvement was expected from LAD and that the Administration should address the points raised in the checklist attached as Enclosure 1 to the statement made by HKBA on 26 September 2012.

Conclusion

53. The Chairman concluded that the Panel requested for expansion on the scope and types of cases covered by SLAS to ensure the availability of legal aid service to more people, including the "sandwich class". The Panel would continue to follow up on legal aid issues as in previous LegCo sessions.

**V. Any other business**

54. There being no other business, the meeting ended at 6:40 pm.