立法會
Legislative Council

Ref : CB4/PL/AJLS

LC Paper No. CB(4)355/14-15
(These minutes have been seen by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 24 November 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 James TO Kun-sun Hon CHAN Kam-lam, SBS, JP Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, GBS, JP Hon Ronny TONG Ka-wah, SC Hon Alan LEONG Kah-kit, SC Hon NG Leung-sing, SBS, JP Hon Steven HO Chun-yin Hon MA Fung-kwok, SBS, JP Dr Hon Elizabeth QUAT, JP Hon Martin LIAO Cheung-kong, SBS, JP Hon TANG Ka-piu, JP Dr Hon CHIANG Lai-wan, JP
Members absent	**:**	Hon Albert HO Chun-yan Hon TAM Yiu-chung, GBS, JP Hon Starry LEE Wai-king, JP Hon Paul TSE Wai-chun, JP Hon LEUNG Kwok-hung Hon WONG Yuk-man Hon Alice MAK Mei-kuen, JP Hon CHUNG Kwok-pan

Public Officers attending :

Item III

Department of Justice

Mr Peter WONG
Deputy Solicitor General

Mr Byron LEUNG
Acting Assistant Solicitor General

Mr Bernard YUE
Acting Senior Government Counsel

Item IV

Department of Justice

Ms Adeline WAN
Senior Assistant Solicitor General

Miss Selina LAU
Senior Assistant Law Draftsman (Acting)

Ms Bianca CHENG
Senior Public Prosecutor

Ms Anthea LI
Senior Government Counsel

Mr Christopher NG
Senior Government Counsel

Item V

The Administration

Ms Kitty CHOI
Director of Administration

Mrs DO PANG Wai-yee
Deputy Director of Administration

Attendance by invitation	**:**	Item IV Hong Kong Bar Association Mr James H M McGOWAN The Law Society of Hong Kong Mr Stephen HUNG President Mr Kenneth NG Chairman of Criminal Law and Procedure Committee Mr Kenneth FOK Director of Practitioners Affairs Department Item V Hong Kong Bar Association Mr James H M McGOWAN The Law Society of Hong Kong Mr Stephen HUNG President Mr Kenneth NG Chairman of Criminal Law and Procedure Committee Mr Kenneth FOK Director of Practitioners Affairs Department
Clerk in attendance	**:**	Miss Mary SO Chief Council Secretary (4)2
Staff in attendance	**:**	Mr Timothy TSO Assistant Legal Adviser 2 Ms Cindy CHAN Senior Council Secretary (4)2

Ms Rebecca LEE
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

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

Members noted the following papers issued since the last meeting:

LC Paper No. CB(4)995/13-14	--	Referral arising from the meeting between Legislative Council ("LegCo") Members and Heung Yee Kuk Councillors held on 20 March 2014 requesting the Panel to follow up on the views expressed at the meeting regarding the recommendations made by the Law Reform Commission ("LRC") on adverse possession *(Restricted to members)*
LC Paper No. CB(4)123/14-15(01)	--	Judiciary Administration's paper entitled "Allowances for jurors and witnesses"

II. Items for discussion at the next meeting

LC Paper No. CB(4)172/14-15(01)	--	List of outstanding items for discussion
LC Paper No. CB(4)118/14-15(01) *(English version only)*	--	Letter from Hon Dennis KWOK dated 30 October 2014 requesting to discuss the issue of "Recovery of Costs in Pro Bono Cases"

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LC Paper No. CB(4)172/14-15(02) -- List of follow-up actions

2. The Chairman sought members' views on whether or not to discuss the issue of "Recovery of Costs in Pro Bono Cases" proposed by Mr Dennis KWOK in his letter dated 30 October 2014. Members agreed to include the issue in the Panel's list of outstanding items for discussion.

3. Dr CHIANG Lai-wan proposed to follow up on the issues raised during the discussion of the Law Society of Hong Kong ("the Law Society")'s proposal to introduce a common entrance examination in Hong Kong at the Panel meeting held on 16 December 2013. The Chairman said that the issues could be followed up during the discussion of the issue of "Legal education and training in Hong Kong" on the Panel's list of outstanding items for discussion. The Chairman suggested to discuss the issue of "Legal education and training in Hong Kong" as early as practicable in 2015, and to invite various stakeholders in the law community, such as representatives from the Standing Committee on Legal Education and Training and the three law schools in Hong Kong, law students and law graduates, to give views on the matter. Members did not raise any queries.

4. Members agreed to discuss the following items at the next regular meeting to be held on 22 December 2014 at 4:30 pm:

(a) LRC Report on Adverse Possession;

(b) LRC Report on Excepted Offences under Schedule 3 to the Criminal Procedure Ordinance (Cap. 221); and

(c) Proposed creation of one Permanent Post of Deputy Principal Government Counsel in the Civil Division of the Department of Justice ("DoJ").

III. Proposed Arbitration (Amendment) Bill 2015

LC Paper No. CB(4)172/14-15(03) -- Administration's paper entitled "Proposed Amendments to the Arbitration Ordinance (Cap.609)"

LC Paper No. CB(4)177/14-15(01) *(English version only)* -- Submission from the Hong Kong Bar Association

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Briefing by the Administration

5. Deputy Solicitor General ("DSG") briefed members on the proposed amendments to the Arbitration Ordinance (Cap. 609), details of which were set out in the Administration's paper (LC Paper No. CB(4)172/14-15(03)). Specifically, the legislative proposals sought to:

(a) remove some legal uncertainties relating to the opt-in mechanism provided for domestic arbitration under Part 11 of Cap. 609. The justifications for this proposal were set out in paragraphs 3 to 7 of the Administration's paper; and

(b) update the list of state parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) ("New York Convention") as set out in the Schedule to the Arbitration (Parties to New York Convention) Order (Cap. 609A).

Subject to members' views on the aforesaid legislative proposals, the Administration intended to implement these proposals by introducing into the Legislative Council a bill to amend Cap. 609 in the first quarter of 2015.

Views of the Hong Kong Bar Association ("the Bar Association")

6. Members noted from the submission of the Bar Association (LC Paper No. CB(4)177/14-15(01)) that it supported the Administration's proposed amendments to Cap. 609. However, the Bar Association suggested adding the words "by the parties" after the word "determination" in the proposed amendment to section 1 of Schedule 2 to Cap. 609 set out in paragraph 16 of Annex A to LC Paper No. CB(4)172/14-15(03), so as to expressly differentiate the situation from that where the number of arbitrators would be decided by the Hong Kong International Arbitration Centre ("HKIAC") under section 23(3) of Cap. 609.

Declaration of interest

7. The Chairman declared that she was an arbitrator of the China International Economic and Trade Arbitration Commission.

Discussion

8. The Chairman requested DSG to further elaborate the justifications for introducing the proposed amendments to Cap. 609.

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9. DSG explained that the purpose for introducing the proposed amendments relating to the opt-in mechanism provided for domestic arbitration under Part 11 of the Ordinance was to put beyond doubt that parties opting for domestic arbitration could decide on the number of arbitrators whilst retaining their rights to seek the Court's assistance on matters set out in sections 2 to 7 of Schedule 2 to Cap. 609. DSG pointed out that the arbitration sector, through the HKIAC, had expressed concern that there were legal uncertainties arising from the following provisions:

(a) section 100 of Cap. 609 provided that all of the provisions (sections 1 to 7) in Schedule 2 to Cap. 609 automatically applied to two types of domestic arbitration agreements, i.e. (i) an arbitration agreement entered into before the commencement of Cap. 609 which had provided that arbitration under the agreement was a domestic arbitration; or (ii) an arbitration agreement entered into at any time within a period of six years after the commencement of Cap. 609 which provided that arbitration under the agreement was a domestic arbitration. Section 100 of Cap. 609 was however subject to section 102 of Cap. 609. In particular, section 102(b)(ii) of Cap. 609 provided that section 100 did not apply if the arbitration agreement concerned had provided expressly that "any of the provisions in Schedule 2 applies or does not apply"; and

(b) section 1 of Schedule 2 to Cap. 609 provided that "[d]espite section 23 [of Cap. 609], any dispute arising between the parties to an arbitration agreement is to be submitted to a sole arbitrator for arbitration". Arguably, if parties specified the number of arbitrators in a domestic arbitration agreement, be it one or any number other than one, it would have the effect of expressly providing that section 1 of Schedule 2 to Cap. 609 applied or did not apply. This would arguably be caught by section 102(b)(ii) of Cap. 609, and would in turn result in dis-applying section 100. As a result, there would be doubts (and litigation) as to whether parties to such a domestic arbitration agreement would be able to seek the Court's assistance for matters set out in sections 2 to 7 of Schedule 2 to Cap. 609.

10. DSG further said that in June 2014, the Administration consulted the legal profession, chambers of commerce, trade associations, arbitration bodies, other professional bodies and interested parties on the proposed amendments. At the end of the consultation period, responses from 14 consultees were received. None of these consultees had raised any in-principle objection to the proposed amendments.

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11. Regarding the justification to update the list of state parties to the New York Convention by amending the Schedule to Cap. 609A, DSG explained that it was to comply with obligations under the New York Convention to recognize and enforce arbitral awards made by state parties so that arbitral awards made by new state parties to the New York Convention, such as Bhutan, could be enforced by Hong Kong courts and vice versa. DSG pointed out that under section 90(2) of Cap. 609, an order made by the Chief Executive in Council to declare any State or territory was a party to the New York Convention was conclusive evidence that the State or territory specified in it was a party to the New York Convention.

12. The Chairman pointed out that apart from section 100 of Cap. 609 whereby all of the provisions of Schedule 2 to Cap. 609 were automatically applied to parties to a domestic arbitration agreement, parties to an arbitration agreement might also expressly opt in any or all of the provisions in Schedule 2 to Cap. 609 under section 99 of Cap. 609. To align with the spirit of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law ("UNCITRAL Model Law") which encouraged the use of arbitration to facilitate the fair and speedy resolution of disputes without unnecessary expense and on which Cap. 609 was based, the Chairman urged the Administration to step up efforts to encourage parties who wished to use arbitration to settle their disputes not to opt for inclusion in their arbitration agreements the rights to seek the Court's assistance for matters set out in sections 2 to 7 of Schedule 2 to Cap. 609.

13. DSG responded that the limited exception provided in section 100 of Cap. 609 was made in response to some users of arbitration to retain the rights formerly granted to parties to a domestic arbitration agreement under the now repealed Arbitration Ordinance (Cap. 341) for seeking the Court's assistance on certain matters by way of an opt-in mechanism. The automatic opt-in mechanism provided under section 100 of Cap. 609 was mainly used for arbitral proceedings involving construction disputes. This automatic opt-in mechanism would no longer apply to arbitration agreements entered into after the transitional period of six years from the commencement of Cap. 609. DSG further said that to align with the spirit of the UNCITRAL Model Law, the Administration had encouraged and would continue to encourage overseas and local users of arbitration not to opt in any of the provisions in Schedule 2 to Cap. 609 to retain their rights to seek the Court's assistance for settling their disputes in their agreements.

14. In closing, the Chairman said that members did not object to the Administration introducing the amendment bill into the Council.

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IV. 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) -- Administration's paper entitled "Draft Live Television Link (Witnesses outside Hong Kong) Rules and Draft Rules of the High Court (Amendment) Rules"

Briefing by the Administration

15. Senior Assistant Solicitor General ("SASG") briefed members on the draft Live Television Link (Witnesses outside Hong Kong) Rules ("LTVL(WOHK)R") and the draft Rules of the High Court (Amendment) Rules ("RHCR") ("the Draft Rules"), details of which were set out in the Administration's paper (LC Paper No. CB(4)853/13-14(01)). Specifically:

(a) LTVL(WOHK)R set out the procedures in respect of the giving of evidence by way of a live television link under the new Part IIIB of the Criminal Procedure Ordinance (Cap. 221) ("CPO") added by section 17 of the Evidence (Miscellaneous Amendments) Ordinance 2003 ("the Ordinance"). In particular, the new section 79I in this new Part IIIB sought to empower the court to permit a person, other than the defendant, to give evidence in criminal proceedings in a Hong Kong court by way of a live television link from a place outside Hong Kong; and

(b) RHCR sought to amend Order 70 of the Rules of the High Court (Cap. 4A) to provide for the procedures for giving assistance to a court or tribunal outside Hong Kong ("requesting court") by ordering examination of a witness via a live television link in Hong Kong for the purposes of legal proceedings in the requesting court.

Sections 12 to 19, 23 and 24 in Part II of the Ordinance had not yet come into operation, pending finalization of the Draft Rules. Subject to members' views on the Draft Rules, the Chief Judge of the High Court and the Rules Committee of the High Court would be invited to make the LTVL(WOHK)R and the RHCR respectively for tabling at LegCo for negative vetting as soon as possible.

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Views of the Bar Association

16. Mr James McGOWAN said that the Bar Association had previously expressed its views on the Draft Rules to the Administration, and it had no further comments on the Draft Rules.

Views of the Law Society

17. Mr Stephen HUNG said that the Law Society had reservation about the draft LTVL (WOHK) R for the following main reasons:

(a) it was unclear what remedies the defence could have if a witness gave false evidence in criminal proceedings in a Hong Kong court by way of a live television link from a place outside Hong Kong. For example, it was unclear whether the witness could be regarded as committing an offence of perjury or contempt of court in the courtroom in Hong Kong;

(b) overseas witnesses might tend not to treat the giving of evidence seriously, in particular in cases when courtrooms in their jurisdictions did not have the necessary equipment for live television link and they had to use some other places for the purpose, such as a hotel rom. These venues lacked the "sanctity" of a courtroom in Hong Kong;

(c) the mere reluctance of a witness to come to Hong Kong to give evidence for the criminal proceedings of Hong Kong should not be a sufficient reason to justify the receipt of witness evidence from a place outside Hong Kong;

(d) permitting witnesses to give evidence in criminal proceedings in a Hong Kong court by way of a live television link from a place outside Hong Kong would accord more convenience to the prosecution and thereby tip the balance. Past experience showed that overseas witnesses for the prosecution tended not to be voluntary or willing to come to Hong Kong to give evidence. This was often not the case with overseas witness for the defence; and

(e) the defence was under no obligation to disclose his evidence in the pre-trial stage. However, if a defendant was to apply to exclude those evidence to be obtained by way of a television link, he/she would need to justify his application by, for example, disclosing his witness evidence. This was not fair to the defence.

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Discussion

18. Mr Dennis KWOK noted that the new section 79I(2)(a) to (e) of the CPO provided that the court should not grant an application to permit a person, other than a person who was a defendant in the criminal proceedings, to give evidence by way of a live television from a place outside Hong Kong if:

(a) the person concerned was in Hong Kong;

(b) the evidence could more conveniently be given in Hong Kong;

(c) a live television link was not available and could not reasonably be made available;

(d) measures to ensure that the person would be giving evidence without coercion could not reasonably be taken; or

(e) it was not in the interests of justice to do so.

In view of the views expressed by the Law Society on the draft LTVL(WOHK)R, Mr KWOK asked whether consideration could be given to making the new section 79I(2)(a) to (e) of the CPO more stringent to safeguard the interests of all parties to the criminal proceedings.

19. SASG responded as follows:

(a) there was no question of the draft LTVL(WOHK)R granting greater benefit to the prosecution side, as the defence side could also apply to the court for allowing a witness to give evidence in the proceedings concerned by way of a live television link from a place outside Hong Kong;

(b) to ensure that a witness giving evidence via a live television link from a place outside Hong Kong would not be made under coercion, rule 4 of the draft LTVL(WOHK)R provided a procedure for a party to the proceedings to give reasons to oppose an application for allowing an overseas witness to give evidence via a live television link. Rule 6(2) of the draft LTVL(WOHK)R further provided that in granting an application for an overseas witness to give evidence via a live television link, the court might, without limiting its discretion to impose any such conditions as it deemed necessary, also impose a condition that the witness was to give evidence in the presence of a person who was able and willing

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to answer under oath any question the court might put as to the circumstances in which the evidence was taken, including any question about any person who was present when the evidence was taken and any matter that might affect the giving of the evidence; and

(c) in granting an application for permitting a witness to give evidence in criminal proceedings in a Hong Kong court by way of a live television link from a place outside Hong Kong, the court must be satisfied that such permission would not undermine the interests of justice, including the interests of the defendant, and would also take into account relevant considerations such as the importance of the evidence and other relevant circumstances of the case in deciding whether it was in the interests of justice to grant the application.

20. Mr NG Leung-sing enquired about the experience of overseas jurisdictions in taking evidence from witnesses by way of a live television link in a place outside their jurisdictions, including whether there were cases whereby the evidence given by overseas witnesses turned out to be false.

21. Senior Government Counsel ("SGC") responded that whilst she did not have the information requested by Mr NG on hand, it should be pointed out under section 10 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), which came into operation on 3 March 2006 following the gazettal of the Ordinance on 4 July 2003, Hong Kong courts had, on the request of overseas authorities, taken evidence from witnesses in Hong Kong by way of a live television link for the criminal proceedings of those overseas jurisdictions. Hitherto, there was no record of any cases whereby the evidence taken from the witnesses in Hong Kong for overseas criminal proceedings turned out to be false. Requests to Hong Kong for taking of evidence under section 10 of Cap. 525 mostly came from the United States, Australia, United Kingdom, France and the Netherlands. SGC further said that witnesses who gave evidence in Hong Kong for overseas criminal proceedings under section 10 of Cap. 525 were subject to Hong Kong laws relating to contempt of court or perjury.

22. Mr NG Leung-sing asked whether witnesses, who gave false evidence by way of a live television link, would be subject to extradition.

23. SGC responded that the existence of surrender arrangements was not a pre-condition for Hong Kong's providing assistance in taking evidence by way of a live television link under Cap. 525. Whether the taking of evidence would result in a surrender request would depend on the circumstances of the case,

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including whether there was a surrender agreement between the two places.

24. Mr NG Leung-sing opined that to better safeguard the interests of justice, permitting a witness to give evidence for the criminal proceedings of Hong Kong by way of a live television link should best be confined to those cases whereby Hong Kong had extradition agreement with the foreign jurisdiction from which the witness to give evidence originated.

25. SASG responded that under the new section 79J of the CPO, the place from which a witness outside Hong Kong was giving evidence would be deemed to be part of the courtroom in Hong Kong. Hence, a witness giving evidence in the overseas location would enjoy the same privilege and would be subject to the same rules of procedure as a witness physically giving evidence in a Hong Kong courtroom. The laws of Hong Kong relating to evidence, procedure, contempt of court and perjury would apply to the proceedings since the witness would be regarded as giving evidence in Hong Kong criminal proceedings. Moreover, evidence found to be false would not be admissible in the courts in Hong Kong. SASG further said that permitting the taking of evidence from overseas witness by way of a live television link for the criminal proceedings of Hong Kong would not create an additional problem to the Hong Kong courts in case legal recourse was to be sought from such witness found to have provided false evidence. This was because Hong Kong courts could only order the extradition of an overseas witness, who came to Hong Kong to give evidence and whose evidence given turned out to be false after the witness had left Hong Kong, to face prosecution in Hong Kong, if there was an extradition agreement between Hong Kong and the overseas jurisdiction from which the witness originated.

26. Responding to Mr NG Leung-sing's enquiry on who would bear the cost for taking of evidence from overseas witnesses by way of a live television link, SGC said that such cost would be borne by the requesting party which was not high.

27. Whilst noting that the cost of using live television link was not high, Mr NG Leung-sing expressed concern that the use of a live television link to take evidence would create additional burden on public funds in that the possibility of overseas witnesses making false evidence for the criminal proceedings of Hong Kong could not be completely ruled out and this would invariably add to the already heavy workload of the judge concerned.

28. SASG responded that Hong Kong had been providing assistance to overseas jurisdictions under the MLA agreements to take evidence from witnesses in Hong Kong for the criminal proceedings of the requesting overseas authority since 2006. The implementation of the LTVL(WOHK)R would

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allow Hong Kong courts to request reciprocal assistance from overseas courts. SASG further said that at present Hong Kong had to send a team of lawyers overseas to take evidence from witnesses in those overseas jurisdictions, which was a costly endeavour.

29. The Chairman pointed out that not all overseas jurisdictions required their witnesses to give evidence under oath/affirmation as in the case of Hong Kong. The Chairman asked whether, and if so, what action(s) would be taken by Hong Kong authority to ensure that a witness, requested to give evidence at a place outside Hong Kong which did not require the giving of evidence under oath/affirmation, was keenly aware of his legal liability for not providing truthful evidence in criminal proceedings in a Hong Kong court.

30. SGC responded that depending on the law of the overseas jurisdiction and the circumstances of each case, Hong Kong courts could request overseas court to require witnesses who gave evidence for the Hong Kong criminal proceedings by way of a live television link to make a declaration that their evidence to be given was true. The Chairman hoped that consideration could be given to holding overseas witnesses liable to the offence of contempt of court or perjury in the jurisdiction of the place they gave evidence under oath/affirmation or declaration.

31. As Hong Kong did not have a MLA or an extradition agreement with the Mainland, the Chairman asked whether there was any means for Hong Kong to request legal assistance in criminal matters from the Mainland and vice versa. SGC responded that under the Evidence Ordinance (Cap. 8), Hong Kong courts could request the Mainland courts for assistance in obtaining evidence for criminal proceedings and vice versa.

Conclusion

32. In closing, the Chairman concluded members generally did not object to the Administration tabling the LTVL(WOHK)R and the RHCR at LegCo for negative vetting as soon as possible.

V. 2014-2015 Judicial Service Pay Adjustment

CSO/ADM CR 6/3221/02	--	LegCo Brief
LC Paper No. CB(4)172/14-15(04)	--	Updated background brief on "Judicial Service Pay Adjustment" prepared by LegCo Secretariat

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Briefing by the Administration

33. Director of Administration ("D of Admin") briefed members on the proposal to increase the pay of judges and judicial officers ("JJOs") by 6.77% for 2014-2015 with effect from 1 April 2014, details of which were set out in the LegCo Brief (CSO/ADM CR 6/3221/02). D of Admin also updated members that according to the Judiciary, as of November 2014, against the establishment of 193 judicial posts, 170 were filled substantively.

Views of the Law Society

34. Mr Stephen HUNG said that:

(a) to adjust judicial pay by making reference only to the overall year-on-year change of private sector pay was not enough to ensure that judicial pay was reasonably attractive to practitioners outside the Judiciary, if the baseline of judicial pay continued to be at the present level. On the other hand, although the judicial pay had been delinked from the civil service pay, a comparison of the salaries of higher court judges, such as the Chief Justice ("CJ") of the Court of Final Appeal, with those of Bureaux Secretaries could raise eyebrows;

(b) the Law Society had not been involved in the benchmark study conducted by the Standing Committee on Judicial Salaries and Conditions of Service ("the Judicial Committee") in 2010. If it had been involved, it would have given its views on the baseline of the judicial pay. As Hong Kong was experiencing an economic downturn in 2008, any determination of the baseline at that time could not be helpful. It was important to check whether judicial pay was kept broadly in line with the movements of legal sector earning over time. To ensure the validity of the benchmark study, serving JJOs should also be involved;

(c) apart from remuneration, lack of support for judges had also discouraged practitioners from joining the bench. Young lawyers should be recruited to help judges with research and court work, as judges were currently relying on legally non-qualified personnel;

(d) the recruitment and the appointment process could be widened to include not only candidates with litigation experience but also experienced lawyers who might be equally qualified;

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(e) practitioners in private practice might find it difficult to take up judicial appointments. Sufficient and reasonable advance notice should be given to candidates who were to be appointed deputy/temporary JJOs so that these candidates could better manage their diaries and arrange their work obligations before joining the bench; and

(f) the daily honorarium of, for example, a Deputy Special Magistrate, was lower than that of a duty lawyer or counsel on fiat; and should be raised.

Judicial remuneration

35. Ms Emily LAU urged the Administration and the Judiciary to carefully consider the views of the Law Society on judicial remuneration and related matters. Noting that one of the views of the Law Society was that JJOs should be consulted on judicial remuneration, Ms LAU asked whether this had been done.

36. D of Admin responded that the position of the Judiciary was one of the three factors for determining judicial remuneration. The other two factors were whether the Judicial Committee had thoroughly examined the basket of factors set out in paragraphs 3 to 19 of the LegCo Brief, and the need to ensure that judicial remuneration was sufficient to attract and retain talents in the Judiciary in order to uphold judicial independence. D of Admin further said that although she was not in a position to speak for the Judiciary, she believed that the Judiciary Administrator had consulted the views of JJOs on the previous and current proposed judicial service pay adjustments.

37. Mr TANG Ka-piu expressed support for the 2014-2015 proposed judicial service pay adjustment. Noting that one of the unique features of the judicial service was that Judges at the District Court level and above were prohibited to return to private practice after ceasing to hold office unless with the permission of the Chief Executive ("CE"), Mr TANG enquired about whether such permission had been made by the incumbent CE. D of Admin replied in the negative.

38. Mr NG Leung-sing expressed support for the 2014-2015 proposed judicial service pay adjustment. Mr NG further said that whilst maintaining a reasonably attractive judicial remuneration was vital to attract new blood and retain existing talent, making direct comparison between the judicial pay and the legal sector pay was not appropriate having regard to the uniqueness of judicial work.

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Manpower situation of JJOs

39. Although the vacancy rate of judicial posts had dropped from 20.2% as at 31 March 2014 (i.e. 40 of the 193 established judicial posts were not filled) to 11.9% as of November 2014 (i.e. 23 of the 193 established judicial posts were not filled), Mr TANG Ka-piu asked whether a vacancy rate of over 10% for judicial posts was a longstanding manpower situation in the Judiciary and whether a staff vacancy rate of over 10% was also not uncommon in other Bureaux/Departments ("B/Ds").

40. D of Admin pointed out that of the 23 vacant judicial posts, around nine could not be filled for the time being pending the completion of the West Kowloon Law Courts Building. Accordingly, the vacancy rate could not be said to be serious and was not uncommon in other B/Ds. D of Admin further pointed out that the Judiciary had kept under constant review its judicial establishment and manpower situation having regard to operational needs. For examples, eight judicial posts were created upon the completion of a comprehensive establishment review of the manpower situation of JJOs in 2008; two judicial posts were created in 2012 to cope with the increasing workload in the Lands Tribunal, two judicial posts were created in 2013 to cope with the new responsibilities arising from the establishment and operation of the Competition Tribunal under the Competition Ordinance (Cap. 619); and resources had been secured by the Judiciary in 2014-2015 to create seven judicial posts at various levels of court.

41. Ms Emily LAU expressed concern about whether the Judiciary could fill the judicial vacancies in a timely manner, so as to reduce the long court waiting times. Ms LAU noted that according to paragraph 8 of the LegCo Brief, the Judiciary had indicated, for the first time in its submission to the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service, that some initial signs of difficulties could be observed at the recruitment of the Court of First Instance ("CFI") Judge and engagement of deputy Special Magistrates. It was also said that not all vacancies could be filled at the CFI Judge level for the past two recruitment exercises conducted in 2012 and 2013. In particular, for the exercise in 2013, the number of eligible candidates found suitable for appointment was much smaller than the available vacancies. At the Magisterial level, the Judiciary said it had been encountering difficulties in inviting suitable persons from the private practice to deputize as Special Magistrates.

42. Mr NG Leung-sing said that to better cope with the growing caseload, it was necessary for the Judiciary to increase its strength of JJOs and associated support staff.

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43. D of Admin responded that with the gradual filling of judicial vacancies by substantive appointments, the number of external deputy/temporary JJOs had decreased from a total of 41 as at 31 March 2014 to 27 as at November 2014. D of Admin pointed out that upon the completion of the last round of recruitment exercises for Permanent Magistrates and Special Magistrates conducted in the first half of 2014, 16 Permanent Magistrate and five Special Magistrate appointments had been made. More Permanent Magistrate and Special Magistrate appointments would shortly be announced. D of Admin further said that the Judiciary had just launched another open recruitment for CFI Judges in October 2014. The Judiciary, the Administration and the Judicial Committee would closely monitor whether there was recruitment difficulty of CFI Judge; and if so, whether this was due to judicial remuneration and/or other factor(s).

44. Mr Dennis KWOK opined that apart from the difficulty of recruiting suitable persons from the private practice as CFI Judges, judicial remuneration, particularly at the Magisterial level, was one of the main reasons why the Judiciary had encountered difficulties in engaging outside lawyers to sit as external deputy JJOs as pointed out by the Law Society at the meeting. Another reason why suitable persons from the private practice would not consider applying for Deputy Special Magistrate was because there was no guarantee that they would be appointed as Permanent Magistrate after a tenure of, say, two years, despite good performance.

45. To enable the Judiciary to better cope with the increased workload of JJOs and to help reduce court waiting times, Mr Dennis KWOK hoped that the Administration would provide new financial resources as required by the Judiciary.

46. D of Admin responded that since 2011-2012, 100% of the new resources requested by the Judiciary were met by the Administration. Specifically, in 2014-2015, the Judiciary would be provided with the financial resources required for the creation of seven additional judicial posts at various levels of courts (including three Justices of Appeal of the Court of Appeal of the High Court, one CFI Judge, one District Judge and two Magistrates), the engagement of a team of 10 legally qualified staff to provide professional support to judicial education, and the creation of 59 net additional civil service posts in the Judiciary Administration to meet the needs arising from the increased levels of judicial and registry services. Such increased provisions would also enable the Judiciary to meet the requirements for the filling of all the existing substantive JJO posts at all levels of court, the engagement of temporary judicial manpower to help improve waiting times in some pressure areas in the interim and the employment of support staff to fill all the existing posts in the Judiciary Administration. D of Admin further said that there were not too many

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instances whereby a B/D's request for new financial resources was fully met by the Administration.

Recruitment of judges

47. The Chairman said that many capable lawyers in private practice with many years of practising experience were interested in joining the bench. The Chairman suggested that apart from conducting open recruitment, the Judiciary could consider approaching eligible legal practitioners direct and/or engaging an executive search firm to see whether these legal practitioners were wiling to join the bench.

Admin 48. D of Admin undertook to convey the Chairman's suggestions to the Judiciary for consideration.

Retirement age of judges

49. Mr TANG Ka-piu noted that the statutory normal retirement age for JJOs was 60 or 65, depending on the level of court. Beyond that, extension of service might be approved up to the age of 70 or 71, depending on the level of court and subject to consideration on a case-by-case basis. As retirement was the main source of wastage amongst JJOs, Mr TANG asked whether consideration would be given to extending the retirement age of JJOs as in the case of civil servants. Mr Dennis KWOK raised a similar question.

50. D of Admin responded that according to the Judiciary, a number of internal reviews were being conducted relating to, amongst others, the retirement ages for JJOs.

Support for JJOs

51. Mr Dennis KWOK pointed out that under the Scheme on Judicial Assistants, Judicial Assistants were only assigned to provide assistance to appellate judges. To better help JJOs to cope with the increased workload and to keep court waiting times within targets, the Judiciary should expand the scope of the Scheme to all levels of court and engage more young solicitors and barristers as Judicial Assistants. The Chairman expressed similar views.

Admin 52. D of Admin undertook to convey members' views on the Scheme on Judicial Assistants to the Judiciary for consideration.

Action

Judicial education

53. Mr Dennis KWOK said that to maintain the quality of administration of justice, it was vital for JJOs at all levels of court to undergo continuing judicial education. Mr KWOK hoped that with the set up of the Hong Kong Judiciary Institute by the Judiciary in 2013, more structured judicial education would be provided to JJOs, particularly those at the lower levels of court.

54. Mr NG Leung-sing said that to ensure that JJOs were in touch with social reality, it was necessary for JJOs to acquire knowledge and have exposure to the developments of the systems and conditions of the Mainland as well as to have good grasp of the sentiments and opinions of the people of Hong Kong.

55. Mr Dennis KWOK pointed out that the objectives of judicial education were to enhance judicial skills and knowledge.

Court facilities

56. Mr Stephen HUNG urged the Administration to consider the re-provisioning of the High Court Building, which was constructed over 30 years, to better meet growing requirements. He pointed out that due to insufficient space in the High Court Building, judges did not have their own chambers and had to be "floated" to work at different chambers.

Conclusion

57. The Chairman concluded that members generally supported the proposed judicial service pay adjustment.

VI. Any other business

58. Ms Emily LAU said that past visits to the Judiciary for members to exchange views with CJ and other JJOs on issues of public concern were very useful. Ms LAU hoped that similar visit could be arranged during the current legislative session. The Chairman instructed the clerk to follow up.

59. There being no other business, the meeting ended at 6:45 pm.

Council Business Division 4
Legislative Council Secretariat
15 January 2015