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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 27 April 2015**

**The Law Society of Hong Kong's proposal to introduce
a common entrance examination in Hong Kong**

Purpose

This paper provides an account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the The Law Society of Hong Kong ("the Law Society")'s proposal to introduce a common entrance examination in Hong Kong.

Background

The present system of legal education and training in Hong Kong

2. The present system of legal education and training in Hong Kong is similar to that of England and Wales. It involves an academic stage (i.e. Bachelor of Laws ("LLB") or Juris Doctor ("JD")), followed by a vocational course (i.e. Postgraduate Certificate in Laws ("PCLL")) and a workplace apprenticeship known as the training contract. Overseas lawyers and those from Mainland China are able to transfer into the Hong Kong profession by a separate assessment (i.e. Overseas Lawyers Qualifying Examination ("OLQE")). The framework for qualification and admission to practice is governed by legislation: the Legal Practitioners Ordinance (Cap. 159) ("the Ordinance"), which permits the Law Society to create a number of subsidiary rules.

3. In 2008, the Law Society produced a position paper on Legal Education and Training ("the Position Paper") which set out the following underlying principles:

- (a) that a commitment to education and training is a defining characteristic of a profession;

- (b) that legal education is a lifelong process;
- (c) that each phase of the process of legal education must be provided to the highest possible standards;
- (d) that solicitors qualified through such process must be equipped with the knowledge and skills to support a high standard of service to clients;
- (e) that solicitors acquire knowledge and skills in both the day to day practice of law and through formal educational activities; and
- (f) that this policy, and the provision of the various phases of legal education and training, should be reviewed periodically in order to ensure the maintenance and improvement of standards.

Although the remit of this investigation is the single issue of a common entrance examination ("CEE"), because that CEE, if adopted, could occur at any of several stages in the qualification system, it is important to set out in some detail the existing qualification system for intending solicitors in Hong Kong.

The Hong Kong qualifying law degree

4. The four-year undergraduate law degree is the default means of entry to the professions of solicitor and barrister in Hong Kong. In its Position Paper, the Law Society stated that the aim of a qualifying law degree should be to permit students to acquire:

- (a) general transferable intellectual skills;
- (b) knowledge and understanding of the general principles, nature and development of law, and of the making and interpretation of common law and legislation;
- (c) legal values, including a commitment to the rule of law, justice, fairness and high ethical standards;
- (d) knowledge and understanding of the contexts in which law operates;
- (e) knowledge and understanding of the role of the legal system in serving the needs of the community, thereby inculcating a sense of social responsibility; and

(f) knowledge and understanding of the legal system of China.

5. In order to provide access to the second pre-qualification stage (i.e. PCLL), a Hong Kong qualifying law degree ("HKQLD") must cover 11 mandatory core topics:

- (a) Business Associations;
- (b) Civil Procedure;
- (c) Commercial Law;
- (d) Constitutional Law;
- (e) Contract;
- (f) Criminal Law;
- (g) Criminal Procedure;
- (h) Equity;
- (i) Evidence;
- (j) Land Law; and
- (k) Tort.

HKQLDs can currently be offered only by the University of Hong Kong ("HKU"), City University of Hong Kong ("CityU") and, as a later entrant, the Chinese University of Hong Kong ("CUHK").

6. All three HKQLD-awarding universities also offer a two-year JD programme for postgraduates (in any discipline) which also enables entry to the PCLL and CityU also offers a JD/MBA award. Joint degrees are also available (for example, the HKU/KCL double degree in English and Hong Kong Law which is a qualifying law degree for both jurisdictions).

7. In the Hong Kong Qualification Framework, the LLB is placed at level 5 and the JD at level 6.

Other law degrees available in Hong Kong

8. Other institutions in Hong Kong may offer non-degree programmes; offer law-based modules in undergraduate degrees in Business or Business/Law degrees or offer postgraduate degrees in law. Graduates of such courses cannot obtain exemption from the HKQLD without taking or retaking subjects as a visiting student at one of the three HKQLD universities or completing the PCLL conversion examination.

9. Institutions which do not offer a HKQLD themselves may provide routes into non-Hong Kong LLBs such as those of Mainland China or Australia (e.g. Hong Kong Shue Yan University). Graduates of non-Hong Kong common law LLBs may, in principle, proceed to the PCLL, although they may have to "top up" required missing subjects.

Hong Kong conversion examination for PCLL admission

10. Graduates of common law degrees other than the HKQLDs are required to demonstrate equivalence in two ways:

- (a) The 11 core subjects; and
- (b) The "top up subjects" of Hong Kong Constitutional Law; Hong Kong Land Law and Hong Kong Legal System.

11. It would, of course, be possible for a law degree, or similar qualification such as the Graduate Diploma in Law, offered in another jurisdiction to cover both criteria, although access to the PCLL would then be filtered through the admission criteria of the relevant PCLL course providers.

12. If core or top up subjects are missing, they can be acquired through a number of routes:

- (a) Taking a JD with one of the three HKQLD providers;
- (b) Taking the Graduate Diploma in English and Hong Kong Law;
- (c) Becoming a "visiting student" with one of the three HKQLD providers for those subjects only; or
- (d) Completing the Hong Kong PCLL Conversion Examination.

13. The conversion examination is overseen by the Conversion Examination Board of the Standing Committee on Legal Education and Training ("the Standing

Committee"). There is no required preliminary course (although some are available from e.g. HKU Space and IP Learning; and through websites).

14. Papers are offered only in the three top up subjects and in Civil Procedure, Criminal Procedure, Commercial Law, Evidence and Business Associations. A candidate who has not covered, for example, Criminal Law or Land Law in their prior study, cannot therefore use this route to achieve access to the PCLL. There is no limit to the number of attempts to pass. Assessment is on a pass/fail basis at "the standard of an LLB degree awarded in Hong Kong" (i.e. Hong Kong Qualification Framework level 5). Subjects need not all be taken at one sitting and can be taken prior to completion of an undergraduate degree.

15. Candidates who have already covered one or more of the core or top up subjects otherwise than through a HKQLD are required to seek exemption from the examination, or part of it, such applications being dealt with by the Conversion Examination Board. It has, however, been recommended that, presumably for consistency, the Board could liaise with both the three providers and the legal profession to help determine "whether a particular degree or qualification would be recognized as a law qualification for the purpose of the entry requirements for PCLL". In 2012, two sittings of the assessment were held and 1 543 candidates took one or more papers, with an aggregate average pass rate of 75%.

The PCLL

16. Successful completion of the PCLL is required of all entrants other than those entering through the OLQE or those working and training to be foreign lawyers in Hong Kong. The three providers of the PCLL are defined in the Ordinance and are the same three institutions as for the HKQLD. At present, two of the providers offer both full- and part-time courses.

17. In order to apply for a place on the PCLL, applicants must normally have obtained at least a high 2:2 (i.e. Lower Division of Second Class Honours) at degree level. In addition, all applicants, whether native English speakers or not, must obtain an International English Language Testing System certificate with a score of at least 7. In addition, applicants must satisfy the admission criteria of their chosen institution. In the case of applicants with qualifications other than the HKQLDs, this involves a requirement that that qualification is recognized and acceptable to the relevant PCLL providers.

18. There is clearly much interest in application to the PCLL, with substantially more applications than places awarded. However the numbers of potential PCLL students may be different from the corresponding numbers of training contracts offered by employers. Currently, available public data on graduates' destinations

after the PCLL provides some indications of the split between training contracts and other legal sector work.

The training contract in Hong Kong

19. The Position Paper identifies the aim of a training contract in Hong Kong as being to provide:

"...the opportunity to gain experience in the basic skills and characteristics associated with the practice and profession of a solicitor of the High Court."

20. Under the Trainee Solicitors Rules, a training contract must last for two years (although up to six months may be deducted for relevant prior experience). Some secondment to in-house practice or outside Hong Kong is permitted. The supervisor of a trainee must, under section 20 of the Ordinance be at least five years qualified. Forms of trainee contract prescribed by Practice Direction E made under Rule 8 of the Trainee Solicitors Rules require trainees to be given the opportunity to learn the principles of professional conduct and to practise a range of skills and to have training in at least three of a specified range of practice areas.

Other legal professions in Hong Kong

21. Qualification for the Bar in Hong Kong mirrors the solicitors' route at least until the compulsory elements of the PCLL are complete. Intending barristers are then required to specialize at the elective stage of the PCLL. Solicitors with at least three years' post-qualification experience and overseas lawyers who have completed the Barristers Qualification Examination then all proceed to the pupillage stage.

22. The Barristers Qualification Examination involves five papers (individuals may be exempted from one or more):

- (a) Civil Law, Procedure and Evidence, Professional Conduct and Advocacy;
- (b) Contract and Tort;
- (c) Criminal Law, Procedure and Evidence;
- (d) Hong Kong Legal System; Constitutional and Administrative Law, Company Law; and
- (e) Property, Conveyancing and Equity.

23. Subject to reduction for prior experience, pupillage is of one year divided into two periods of six months, completion of each of which is on submission of a completed pupillage logbook signed by the pupilmaster. After the first six months has been completed, a limited practising certificate can be obtained, with a full practising certificate on completion of the full period. Minimum requirements for the content of the experience, which is expected to include both civil and criminal exposure, are provided.

24. Several institutions offer courses for legal executives. The Law Society provides a detailed set of benchmarks for legal executive courses, including learning outcomes. In contrast to the benchmarks established for the PCLL, the outcomes for legal executive courses are prescribed in some detail. Although a number of the mandatory topics overlap with the HKQLD and PCLL, it is clear from the language of the outcomes that their minimum level is envisaged as being lower than the HKQLD/PCLL (Hong Kong Qualification Framework level 4). There are routes from legal executive professional diplomas into non-Hong Kong LLBs, into the Graduate Diploma in English and Hong Kong Law and possibly, for mature students, into HKQLDs.

25. Some legal executive courses, such as the Diploma in Legal Studies offered by HKU Space are also clearly intended to accommodate paralegals. Overseas institutions may also offer courses and accreditation to those working in Hong Kong.

26. Hong Kong notaries must have prior qualification as a solicitor. The Hong Kong Institute of Patent Attorneys allows some exemption from its own assessments for LLB/JD/PCLL graduates, solicitors and barristers (but the reverse is not true). The Hong Kong Institute of Trade Mark Practitioners accepts membership from solicitors, barristers and others practising in the field and through a Certificate in Hong Kong Trade Mark Law and Practice which has been offered by HKU Space.

Past discussions

27. The Panel received views from the Faculty of Law of the HKU, the Faculty of Law of the CUHK, the School of Law of the CityU, the Hong Kong Bar Association ("the Bar Association") and the Law Society on the Law Society's proposal to introduce a common entrance examination in Hong Kong at its meeting held on 16 December 2013.

28. Major views/concerns expressed by members are set out in the ensuing paragraphs.

Routes of entry into the legal profession in Hong Kong

29. Members noted that at present, a law degree and PCLL qualification were required for admission to the legal profession. According to the benchmarks set by the Law Society, applicants admitted to the PCLL programmes should attain a minimum of a high 2:2 standard in their law qualification or equivalent.

30. On the reasons for proposing CEE, the Law Society explained that changes had taken place in the last decade or so. For instance, the number of PCLL course providers had increased, applicants for PCLL programmes were in possession of more diversified qualifications, the services provided by solicitors had widened in scope, there was growing presence of foreign lawyers and law firms in Hong Kong. Whilst foreign lawyers who had been admitted to practice in overseas countries and who intended to practise in Hong Kong would take the OLQE administered by the Law Society, the vast majority of local applicants holding local or non-local qualifications were required to take the PCLL programmes offered by the three law schools and pass the PCLL examination held by the respective law school. The Law Society envisaged that the introduction of a common examination would bring about consistency in assessments and standards for all candidates seeking admission to the profession.

31. A member opined that the study programmes and examination for preparing law graduates to qualify for professional admission should not differ between the solicitor and barrister branches of the legal profession, as a solicitor might later decide to qualify as a barrister and vice versa. He considered it necessary for the Law Society to consult the Bar Association on the feasibility of the proposed CEE. The Law Society advised that the proposed CEE would not affect the entry to the barrister branch of the profession as it was not proposed to abolish the PCLL qualification.

32. Concern was raised as to whether graduates who failed to get admitted to PCLL programmes because they had not attained a high 2:2 in a qualifying law degree would unlikely succeed in any second attempt to apply for admission to PCLL programmes. In some other cases, the graduates might need to take up a full-time job and could not afford to study full-time PCLL programmes. A member considered that a public examination, such as the proposed CEE, in which the examination scripts were marked anonymously would ensure greater fairness than PCLL examinations conducted within the three universities. Another member pointed out that in England, students might be eligible for admission to the legal profession by either securing the required qualifications from law schools or passing the Common Professional Examination. These members were of the view that the proposed CEE might provide an additional route for young people to pursue a career in the legal profession in Hong Kong.

33. A member opined that in implementing CEE as an additional route of entry to the legal profession, the total number of graduates qualifying under the PCLL examinations and CEE should be consistent with the manpower demand of the legal profession.

34. The Law Society advised that the proposed CEE might also provide a second chance for students who failed in the PCLL examinations to attain a qualification for entrance to the legal profession.

35. The Bar Association pointed out that consideration should be given to whether candidates would be required to take any courses to prepare for the proposed CEE as the CEE might be conducted in parallel to the existing PCLL examinations.

Issues related to existing PCLL programmes

36. Some members were concerned whether PCLL had become a bottleneck for admission to the legal profession. The Law Society advised that the proposal of introducing a CEE was not driven by the need to address any bottleneck situation arising from the limited number of PCLL places.

37. On the suggestion of increasing the number of PCLL places at the three law schools or allowing more PCLL course providers, the Law Society was concerned that it might not have the sufficient capacity to monitor the quality and delivery of additional PCLL programmes. Further, if the number of PCLL course providers was to be increased, amendments to the relevant legislation would be required.

38. Members noted that in response to a question raised by a member at the Council meeting of 23 October 2013, the Education Bureau ("EDB") had provided some statistical information regarding the PCLL programmes offered by the three law schools in Hong Kong. According to EDB's information, 44% of applications based on local law qualifications were admitted to PCLL programmes in the 2011-2012 school year. At the same time, 43% of applications based on non-local law qualifications were admitted. Concern was raised as to whether students with local law qualifications would be disadvantaged by the admission of a comparable proportion of students with non-local qualifications. Due to limited places, many otherwise qualified candidates were unable to get admitted to PCLL programmes and hence, denied access to the legal profession; while an increasing number of foreign lawyers were admitted to the professional practice in Hong Kong. A member opined that the three law schools were not supportive of the Law Society's proposal probably because of the need to protect their vested interest. The member suggested that the Administration should explore the feasibility of increasing the number of PCLL programme providers, such as allowing other University Grant Committee("UGC")-funded institutions to offer PCLL programmes.

39. The Faculty of Law of the HKU advised that applicants could not get admitted to PCLL programmes mainly because they had not fulfilled the minimum admission requirements set by the profession. If certain eligibility criteria were specified for taking the proposed CEE, there would still be candidates who could not sit for the examination because they could not meet these criteria.

40. The Faculty of Law of the CUHK advised that according to the statistics of CUHK for the 2013-2014 school year, only 15% of the students admitted to PCLL programme held non-local qualifications while 85% of the students admitted were local graduates. Whilst PCLL programmes could break even, they did not bring about huge income to the universities.

41. The School of Law of the CityU advised that the admission of non-local students by individual universities was related to the internationalization policy for the higher education sector. In this regard, a member pointed out that his concern was the admission of local candidates holding non-local qualifications to the PCLL programmes. Currently, the admission of non-local students to UGC-funded institutions was already subject to a cap, i.e. 20% of the approved places.

42. A member noted that according to his understanding, the curriculum of the prevailing PCLL programmes appeared to be an extension of the LLB degree programme, and primarily focused on academic aspects rather than practical training. In this regard, the Faculty of Law of the CUHK responded that the academic components of PCLL programmes were rolled back to the LLB programme to make room for more practice training. The PCLL programmes were skills-based to prepare law graduates to embark on further traineeship.

43. Members were of the view that if the quality of PCLL graduates was an issue of concern, the Law Society should work in collaboration with the law schools to enhance the standard of the PCLL programmes.

44. The Law Society advised that it was not questioning the quality of the entrants to the solicitors' profession holding PCLL qualification, but was concerned about the inconsistency in standards among the PCLL examinations of the three law schools. According to the Law Society, the crux of the matter was that students of the three law schools were tested by different examinations and standards. The proposal to introduce a CEE would enable students from different universities to compete fairly in a single examination.

45. A member considered that the three law schools and the two professional bodies might consider the feasibility of requiring the PCLL students of the three law schools to be assessed by a common examination.

Comprehensive review to be conducted by the Standing Committee

46. Members noted that in 2012-2013, about 10 years after the publication of the Roper-Redmond consultancy report, the Standing Committee had decided to launch another major review of legal education. The Standing Committee was in the process of appointing the consultants for the impending review. Some members were of the view that the Standing Committee would be the appropriate platform to deliberate on issues like the proposed CEE. Members sought information on the progress and timetable for the comprehensive review in question.

47. The Faculty of Law of the CUHK advised that the Standing Committee had met recently and agreed on the terms of reference of the panel responsible for the review. Whilst no timetable had yet been worked out for the review, the Standing Committee had a preliminary discussion on the composition of the review panel, the engagement of consultant and the possible source of funding for conducting the review.

48. In reply to members' enquiry about the terms of reference of the Standing Committee's comprehensive review, the Law Society advised that since different stakeholders were represented on the Standing Committee, the terms of reference formulated by the Standing Committee after careful deliberation should be comprehensive and acceptable to the stakeholders.

49. The Administration advised that the Standing Committee had been exploring the feasibility of making use of the resources of the company that currently administered the PCLL Conversion Examination. Nevertheless, the possibility of government funding had not been ruled out. Whilst the Administration was open as to whether there should be a CEE, it was aware that a number of issues would need to be examined, including the justifications for the proposed CEE, its relationship, if any, with the existing PCLL programmes.

Latest position

50. At the meeting of the Panel on 27 April 2015, the Panel will receive views from the Faculty of Law of the HKU, the Faculty of Law of the CUHK, the School of Law of the CityU, the law students and law graduates and relevant stakeholders on the legal education and training in Hong Kong.

Relevant papers

51. A list of the relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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Appendix

The Law Society's proposal to introduce a common entrance examination in Hong Kong

List of relevant papers

Date	Meeting	References
16 December 2013	Panel on Administration of Justice and Legal Services	<p>Paper provided by the Law Society (English version only) LC Paper No. CB(4)225/13-14(03)</p> <p>Joint submission from the Faculty of Law of The University of Hong Kong, Faculty of Law of The Chinese University of Hong Kong and School of Law of City University of Hong Kong) (English version only) LC Paper No. CB(4)234/13-14(01)</p> <p>Minutes of meeting LC Paper No. CB(4)497/13-14</p>

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