

立法會
Legislative Council

Ref : CB4/PL/AJLS

LC Paper No. CB(4)75/17-18
(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

**Minutes of meeting
held on Monday, 24 April 2017, 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 Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-jiu, JP
Hon Holden CHOW Ho-ding
Hon CHEUNG Kwok-kwan, JP
Hon HUI Chi-fung

Member attending : Dr Hon Yiu Chung-yim

Members absent : Hon CHUNG Kwok-pan
Hon YUNG Hoi-yan

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public officers
attending**

: Item III

Home Affairs Bureau

Mr Laurie LO
Deputy Secretary for Home Affairs (1)

Ms Karyn CHAN
Principal Assistant Secretary for Home Affairs
(Civic Affairs) 2

Legal Aid Department

Mr Thomas KWONG
Director of Legal Aid

Ms Alice CHUNG
Deputy Director of Legal Aid (Policy and
Administration)

Legal Aid Services Council

Dr Eric LI Ka-cheung
Chairman

Item IV

Judiciary Administration

Miss Emma LAU, JP
Judiciary Administrator

Mrs Erika HUI, JP
Deputy Judiciary Administrator (Operations)

Mr Wilson CHIU
Assistant Judiciary Administrator
(Quality and Information Technology)

Item V

Judiciary Administration

Miss Emma LAU, JP
Judiciary Administrator

Mrs Erika HUI, JP
Deputy Judiciary Administrator (Operations)

Mrs Connie NGAN
Assistant Judiciary Administrator (Corporate Services)

Attendance by invitation : Item III

Hong Kong Bar Association

Mr Ruy BARRETTO, SC

Mr Nicholas F.F. PIRIE

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Miss Joyce CHING
Senior Council Secretary (4)2

Ms Jacqueline LAW
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

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

Members noted that the following information paper had been issued since the last meeting.

LC Paper No. CB(4)870/16-17(01) -- Letter of The Law Society of Hong Kong dated 12 April 2017 with a paper entitled "Solicitors (Professional Indemnity) (Amendment) Rules 2017"

II. Items for discussion at the next meeting

LC Paper No. CB(4)817/16-17(01) -- List of outstanding items for discussion

LC Paper No. CB(4)817/16-17(02) -- List of follow-up actions

2. Members agreed to discuss the following items at the next regular meeting scheduled for 22 May 2017 at 4:30 pm:

- (a) Proposed Arrangement with the Mainland on Reciprocal Recognition and Enforcement of Judgments on Matrimonial and Related Matters;
- (b) Handling of prosecution works before the Magistrates' Courts; and
- (c) Launch of Hong Kong e-Legislation

3. Mr Dennis KWOK suggested to invite the Hong Kong Bar Association ("Bar Association") and the Law Society of Hong Kong to join the discussion of the item "Launch of Hong Kong e-Legislation". Members agreed.

III. Review of the Supplementary Legal Aid Scheme

LC Paper No. CB(4)817/16-17(03) -- Home Affairs Bureau ("HAB")'s paper on "Review of the Supplementary Legal Aid Scheme"

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- LC Paper No. CB(4)718/16-17(04) -- Updated background brief on "Review of the Supplementary Legal Aid Scheme" prepared by the Legislative Council ("LegCo") Secretariat
- LC Paper No. CB(4)897/16-17(01) -- Submission on "Review of the Supplementary Legal Aid Scheme" from the Hong Kong Bar Association (English version only)

Briefing by the Administration

4. At the invitation of the Chairman, Deputy Secretary for Home Affairs ("DSHA") (1) briefed members on the recommendations made by the Legal Aid Services Council ("LASC") on the proposed expansion of the Supplementary Legal Aid Scheme ("SLAS") and the Administration's position on this matter. DSHA(1) advised that the Administration had decided to –

- (a) accept LASC's recommendation on expanding the scope of SLAS to cover monetary claims exceeding \$60,000 –
 - (i) for professional negligence against financial intermediaries licensed for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities by the Securities and Futures Commission ("SFC"); and
 - (ii) for proceedings in derivatives of securities, currency futures or other futures contracts when fraud, deception or misrepresentation was involved at the time of purchase;
- (b) accept LASC's recommendation that the scope of SLAS should not be expanded to cover claims against the incorporated owners of a multi-storey building, claims for property damage from accidents involving small marine boats, claims against property developers by minority owners in compulsory sales, trusts, disputes between limited companies and their minority shareholders, sale of goods and provision of

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services, class actions and defamation proceedings and election petitions;

- (c) accept LASC's proposal that no change was to be made to the level of financial eligibility limit ("FEL") for SLAS for the time being and that the FEL be monitored and reviewed annually; and
- (d) maintain the age-related exemption of assets for means test for the Ordinary Legal Aid Scheme ("OLAS") and SLAS at age of 60.

5. Dr Eric LI, Chairman of LASC, briefed members that, at the invitation of the Administration, LASC formed a working group to further review SLAS (i.e. Working Group on Expansion of SLAS). The working group was led by a barrister and supported by, among others, a solicitor. The barrister and the solicitor had been nominated by the Hong Kong Bar Association and the Law Society of Hong Kong respectively to join LASC. Upon LASC's request, the two legal professional bodies provided their views on the review of SLAS in November 2015. Having carefully considered the views, LASC finalised its recommendations on the expansion of SLAS and submitted it to the Chief Executive in July 2016. LASC also copied its submission to the two legal bodies for information and asked the Administration to help circulate the report to relevant bureaux/departments. Dr LI remarked that some outstanding issues under the current review remained to be explored and revisited in future, for instance, issues related to anti-competition and class actions. He said that LASC would revisit these issues when the law governing these areas became available or well formulated.

Discussion

The view of the Bar Association

6. Mr Ruy BARRETTO and Mr Nicholas PIRIE of the Bar Association presented the views detailed in its submission. In gist, the Bar Association opined that there were significant unmet needs for legal aid, with a high proportion of cases unrepresented, and that progress of the reform in legal aid had been slow. It was claimed that the current proposal by LASC had been made without proper consultation. Among others, many issues as listed in the submissions from the Bar Association had not been addressed.

7. On the scope of SLAS, the Bar Association pointed out that its suggestions including claims against the incorporated owners of a multi-storey

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building, claims against property developers by minority owners in compulsory sale, claims for minority oppressed share owners and class action under SLAS had not been taken into account by LASC. In particular, the Bar Association raised concerns about claims for bid-rigging and building maintenance claims being excluded. The Bar Association pointed out that individuals had no right to sue for bid-rigging under the Competition Ordinance (Cap. 619) and opined that claims for improprieties by incorporated owners should be covered by SLAS. The Bar Association also pointed out that when there was a compulsory sale, a sale price would be assessed and thus this should be covered by SLAS as monetary claims too. Moreover, the Bar Association proposed to reduce the age related exemption for assets test from 60 to 55.

Expansion of Scope of SLAS

8. Mr CHEUNG Kwok-kwan expressed that the LegCo and the two legal professional bodies had been urging the Administration to review the scope of SLAS. Mr CHEUNG pointed out the need to further enhance the access to justice for the middle class who was poorly sandwiched between the needy stratum who had easier access to legal aid and the financially able echelon who could comfortably afford legal expenses.

9. Mr Dennis KWOK and Mr Holden CHOW welcomed the proposed expansion of the scope of SLAS. Mr KWOK hoped that the scope of SLAS could be further expanded to include more types of cases.

Sale of Goods and Provision of Services

10. Mr CHEUNG Kwok-kwan was disappointed that LASC had recommended not including claims arising out of the sale of goods and the provision of services under SLAS. He was unconvinced that the prohibition for unfair trade practices deployed by trades against consumers set out under the Trade Descriptions Ordinance ("TDO") (Cap. 362) was one of the considerations for making the above recommendation. Mr CHEUNG opined that even with the prohibition set out under TDO, provision of legal assistance was still necessary to enhance protection of consumers' rights and access to justice, especially for the sandwich class. The Chairman expressed a similar view. Mr Holden CHOW enquired about the Administration's plan to further review the above mentioned issues. Mr CHEUNG then sought further elaboration on the justifications for the above recommendation.

11. In reply, DSHA(1) advised that, the TDO was not the sole factor for consideration. When considering this issue, the Administration was mindful that claims arising out of the sale of goods and the provision of services

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generally had a lower success rate when compared with other types of proceedings under the SLAS and a higher cost-to-damage ratio, and the inclusion of this type of claims might compromise the financial viability of the Supplementary Legal Aid Fund.

12. Director of Legal Aid ("DLA") added that LASC would further study the feasibility of including claims arising out of the sale of goods and the provision of services under SLAS. He further advised that under the current regime for consumer protection, the Consumer Legal Action Fund was available to give consumer access to legal remedies by providing financial support and legal assistance.

Claims Against the Incorporated Owners of a Multi-storey Building and Claims Against Property Developers by Minority Owners in Compulsory Sales

13. Mr Dennis KWOK was disappointed that LASC had recommended not to include claims against the incorporated owners of a multi-storey building and claims against property developers by minority owners in compulsory sales under SLAS and that he was unconvinced about the justifications given by the LASC in making this recommendation. Mr KWOK pointed out that interests in property were involved in the above two types of claims and that property was valuable asset of many Hong Kong citizens. He opined that the above mentioned interests should be well protected. The Chairman and Mr LEUNG Kwok-hung shared Mr KWOK's view. Mr KWOK also opined that the Bar Association's view in this regard should be taken into account for further consideration.

14. DLA advised that most of the claims against the incorporated owners were related to the issue of bid-rigging and thus monetary claims might not be involved. Moreover, the proceedings under SLAS already included claims involving personal injuries or death against an incorporated owner. Given the above, LASC considered that the claims against the incorporated owners should not be included in SLAS for the time being and the issue might be revisited in future review. DLA further advised that since the Lands Tribunal's orders for compulsory sales normally did not involve monetary claims, LASC considered that claims against property developers by minority owners in compulsory sales did not meet the principle of SLAS and should not be covered by SLAS.

15. Mr Alvin YEUNG also raised concern over the claims against the incorporated owners of a multi-storey building. Mr YEUNG pointed out that there were many solid claims relating to building maintenance cases brought under the Building Management Ordinance. District Offices under the Home Affairs Department ("HAD") had been handling cases in this area. Many

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claims against incorporated owners also involved the issue of bid-rigging. Despite the Competition Ordinance (Cap. 619), which was in force to penalize bid-rigging cartel members, the proceedings under this regime could only be brought about by the Competition Commission and that individuals had no right to sue for bid rigging. Mr YEUNG further said that, the Administration should make reference to the Bar Association's view, with a view to include claims against the incorporated owners under SLAS so as to enhance protection for individual owners.

16. DSHA(1) responded that relevant government departments and related agencies had been working closely and taking a multi-pronged approach to combat and prevent bid-rigging in building maintenance works. At present, the Police, the Independent Commission Against Corruption and the Competition Commission had been handling relevant investigation and enforcement work. HAD would continue to provide support services to incorporated owners and individual owners and carry out publicity work in this regard.

17. Mr Ruy BARRETTO of the Bar Association urged the Administration to set a timetable for further review on this issue and take forward the matter relating to the further expansion of the scope of SLAS in an expeditious manner.

Class Action

18. Noting that LASC would further consider the proposal to include class action under SLAS and that the Bar Association also supported this proposal, Mr Holden CHOW asked for a concrete timetable for further review.

19. DSHA(1) advised that since the Working Group on Class Actions and its Sub-committees were deliberating on the details of the proposed class action scheme, the Administration considered it pre-mature to set a timetable at present before any proposed reform to permit class action had taken shape.

Election Petitions

20. Mr LEUNG Kwok-hung requested the Administration to consider including election petitions under SLAS so as to protect the constitutional rights of legislators.

21. DLA advised that litigants of cases involving Bill of Rights issues were entitled to legal assistance under Legal Aid Ordinance ("LAO") (Cap.91) and that DLA might waive the FEL imposed on the applicant for Bill of Rights

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related cases if he was satisfied that the criteria as stipulated in LAO had been met. Moreover, when deliberating on new categories of cases to be covered by SLAS, one of the guiding principles was that the cases should involve monetary claims.

Waiving of FEL of the means tests

22. Mr Dennis KWOK noted that in the past years, DLA had exercised his discretion to waive the FEL and enquired about the circumstance under which such discretion was exercised.

23. DLA responded that, for the applications under Ordinary Legal Aid Scheme, DLA might waive the FEL imposed on the applicant if the civil proceedings involved a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) or if there was an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong was an issue. For criminal proceedings, the consideration for the exercise of such discretion would be "in the interest of justice".

Approval rate of applications under SLAS

24. Referring to table A in the Annex of the HAB's paper (LC Paper No. CB(4)817/16-17(03)) which indicated that the number of applications received under SLAS in 2014 was 238 applications whereas the number of certificates granted was only 175, Mr POON Siu-ping asked for the breakdown of the types of cases and the respective approval rate.

25. DLA responded that the approval rate for cases relating to personal injuries or death under SLAS in 2016 was about 73% while that for cases relating to medical negligence was about 85%. The approval rate for other types of cases (including cases relating to representing employees in Labour Tribunal appeals) was 40%.

Legislative timetable to implement the proposals on expansion of SLAS

26. Noting that the Administration had planned to introduce the legislative amendments into LegCo in the 2017-2018 legislative year to implement the proposals on expansion of SLAS, Mr POON Siu-ping asked for the detailed plan and concrete implementation timetable.

27. DSHA(1) responded that the Administration planned to consult the Panel on the proposed legislative amendments after the summer recess in 2017. Subject to the endorsement by the Panel, the proposed amendments to the

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relevant ordinance and subsidiary legislation would be tabled at the LegCo for positive and negative vetting respectively. The proposals on expansion of SLAS were targeted to be implemented in the second quarter of 2018.

Institutional arrangement of Legal Aid Department

28. In response to Mr Dennis KWOK's enquiry of whether the Administration had planned to put Legal Aid Department under the purview of the Chief Secretary for Administration's Office ("CSO") instead of HAB, DSHA(1) responded in the affirmative. DSHA(1) advised that the Administration had decided that the policy responsibilities for legal aid should be vested with CSO. The implementation timetable for the transfer of the legal aid portfolio from HAB to CSO would be reviewed in the light of various commitments of CSO and the progress of various ongoing reviews undertaken by HAB.

Conclusion

29. In conclusion, the Chairman said that members had consensus on a number of areas with regard to that expansion of the scope of SLAS, including claims against the incorporated owners of a multi-storey building and claims arising out of the sale of goods and the provision of services. The Chairman urged the Administration to set a timetable for re-visiting these issues.

30. DSHA(1) advised that in considering whether the above two types of claims could be included under SLAS in future, there were outstanding issues remained to be resolved, including legal issues and the principles of SLAS. That said, the Administration was open to all possible options with a view to further expanding the scope of SLAS on an incremental basis.

IV. Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal

LC Paper No. CB(4)817/16-17(05) -- Judiciary Administration's paper on "Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal "

LC Paper No. CB(4)817/16-17(06) -- Updated background brief on "Review of the Civil

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"Jurisdictional Limits of the District Court and the Small Claims Tribunal" prepared by LegCo Secretariat

31. Judiciary Administrator ("JA") briefed members on the proposed increases in the civil jurisdictional limits of the District Court ("DC") and the Small Claims Tribunal ("SCT"). JA advised that, after having conducted a review of the civil jurisdictional limits of the DC and the SCT and consulted the stakeholders, the Judiciary proposed to increase the general financial limit of the civil jurisdiction of the DC from \$1 million to \$3 million; increase the financial limit for land matters of the DC from \$240,000 to \$320,000 in terms of the annual rent or the rateable value or the annual value of the land; increase the limit for the equity jurisdiction of the DC where the proceedings do not involve or relate to land from \$1 million to \$3 million; and increase the limit for the equity jurisdiction of the DC where the proceedings wholly involve or relate to land from \$3 million to \$7 million. The Judiciary also proposed to increase the limit for SCT from \$50,000 to \$75,000.

Discussion

Review of the jurisdictional limit of the SCT

32. Members generally recognized the SCT as a popular, quick and less costly avenue for resolving disputes. The Chairman, Mr Alvin YEUNG, Mr Dennis KWOK, Mr Holden CHOW and Mr Paul TSE expressed support for the proposed increase in the limit of the SCT to \$75,000.

33. Owing to the cumulative inflation over the past years, Mr Alvin YEUNG enquired whether there would be room to further increase the limit of the SCT to a higher limit, say \$100,000. The Chairman, Mr Holden CHOW and Mr Paul TSE also asked the Judiciary to consider setting a higher limit for SCT.

34. JA advised that, in considering the proposed increase in jurisdictional limit for SCT, a basket of factors had been taken into account. JA further advised that, in assessing the changes in economic situation, the Composite Consumer Price Index was one of the indicators, but not the sole indicator, for reference. JA remarked that there might be suppressed demand arising from cases which would otherwise not be commenced if not for the lower litigation costs to be incurred in the SCT. Hence, the Judiciary decided to adopt a more prudent approach in adjusting the new limit to \$75,000 to ensure smooth operation.

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35. In order to ascertain the suppressed demand and assess whether the proposed new limit was reasonable, Mr Paul TSE requested the Judiciary to provide statistics on the number of claims filed with the SCT in the past five financial years, with breakdown for the claim amount, including the number of cases for which the claim amount was exactly \$50,000, i.e. the jurisdictional limit. Mr TSE then suggested the Judiciary to keep statistics for the cases for which the claim amount was exactly \$75,000, i.e. the jurisdictional limit after the implementation of the proposed increase. JA said that the Judiciary would consider keeping the relevant statistics as suggested by Mr TSE.

(*Post-meeting note:* The Judiciary's response was issued to members vide LC Paper No. CB(4)1037/16-17 on 16 May 2017.)

Civil jurisdictional limits of the DC

36. Mr Dennis KWOK enquired on the basis for proposing to increase the general financial limit of DC to \$3 million and the projected number of caseloads to be transferred from the High Court ("HC") to the DC after the implementation of the proposed increases in jurisdictional limits of the DC.

37. JA advised that various stakeholders were consulted on the proposed increase and that the said proposed increase to \$3 million for the general financial limit of the DC had been proposed by the Law Society of Hong Kong. Having assessed the capabilities of the DC to handle cases with higher claims amount, the Judiciary considered that the DC would be able to handle cases with the claim amount of up to \$ 3 million.

38. JA further advised that, after taking into account the overall impact arising from the proposed increases in the various limits of the DC and SCT as a whole, the aggregate impact on the DC in respect of the number of civil cases filed, the number of papers application processed, the number of interlocutory hearings listed and the number of trials listed was expected to increase by 5%, 10%, 28% and 24% per year respectively. Nevertheless, JA supplemented that the DC would be capable of handling the proposed changes with resources commensurate with the workload.

Timeframe for the next review on jurisdictional limits

39. Mr Alvin YEUNG pointed out that the last review on the jurisdictional limits was conducted in 2003. In response to the request of Mr YEUNG,

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JA agreed that this subject matter should be reviewed regularly and more frequently in future though no definite timeframe had been set.

Workload of judges

40. Mr Holden CHOW raised concern as to the possibly heavier workload of judges, in particular that of Adjudicators in the SCT subject to the change in jurisdictional limits. Members also enquired about the Judiciary's plan to address judicial manpower issues, including enhancement of manpower of judges and provision of professional and clerical support. The Chairman raised a similar enquiry.

41. JA acknowledged that the workload of the SCT had been constantly heavy. To ease the already heavy workload at the SCT and to support the operation of two additional courts with the commissioning of West Kowloon Law Courts Building ("WKLCB"), two additional Adjudicator posts would be created. Another two Adjudicator posts would also be created to cope with the further projected increases in workload arising from the implementation of the proposed increase in jurisdictional limit of the SCT. Moreover, with the commissioning of the WKLCB where more space and facilities were available for meetings and handling of pre-hearing procedures, each Adjudicator could now be assisted by two Tribunal Officers for mention hearing¹. JA further advised that professional and clerical support would continue to be provided for judges in areas like legal researches and court work.

Judicial training programmes

42. In response to the Chairman's enquiry about the scope of the training programmes organized by the Hong Kong Judicial Institute ("HKJI"), JA responded that the HKJI targeted at providing quality and structured training for serving judges and judicial officers ("JJOs") and deputy JJOs at various levels of courts on different aspects of their work. JA supplemented that the Judiciary had made arrangement to provide "protected time" for JJOs for judicial training purposes.

43. The Chairman suggested that, besides the provision of training for JJOs, the HKJI might also consider organizing certain programmes for potential candidates in the legal sector with a view to attracting quality people to join the Judiciary.

¹ The SCT was operating two different types of courts, namely call-over and mention courts and the trial courts.

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44. JA supplemented that through the Scheme on Judicial Assistants for the Court of Final Appeal ("CFA") and the Scheme on Judicial Associates for the HC, the Judiciary had been engaging legally qualified assistants to provide legal and professional support for judges in the CFA and HC.

Legal costs

45. Mr Paul TSE enquired about the method for ascertaining the proportion between claim amounts and legal costs.

46. JA responded that legal costs for litigations handled at the HC level were generally higher than that at the DC level. Moreover, the legal costs for the SCT cases were low since there was no legal representative. With the proposed increases in the jurisdictional limits of the DC and SCT, certain cases were expected to be transferred from the HC to the DC and some from the DC to the SCT. As a result, more cases could be handled at the DC and SCT at lower costs. Hence, the proposed increases in jurisdictional limits would help enhance the proportionality between the amount claimed and the legal costs.

47. While noting that theoretically the legal costs would be reduced as a result of the proposed increases in jurisdictional limits, Mr Paul TSE asked whether there was a formula for devising the reduction in legal costs as a result of a proposed increases in the jurisdictional limits. JA responded in the negative. JA supplemented that the legal costs for litigations handled at the DC level were generally about two thirds of those at HC level.

Enforcement of judgment

48. Mr Paul TSE said that members of the public often encountered difficulties in seeking the enforcement of judgments ordered by the SCT. Noting that execution matters were handled by the DC, Mr TSE asked whether the Judiciary would consider exploring the feasibility of the provision of "one-stop service" by the SCT in a quick and less costly manner.

49. JA responded that, for execution matters of a civil case, the litigant who obtained a judgment against the other party would not automatically obtain the remedy and it would be the responsibility of the judgment creditor to apply to the court, in accordance with the relevant legislation, for the enforcement of the judgment. Currently, the handling of execution matter was still under the purview of the DC.

50. The Chairman echoed with Mr Paul TSE's concern and urged the Judiciary to explore measures to assist members of the public in this regard.

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V. Judicial Manpower Position and Proposed Creation of Judicial Posts and a Supernumerary Directorate Post in the Judiciary

LC Paper No. CB(4)817/16-17(07) -- Judiciary Administration's paper on "Judicial Manpower Position"

LC Paper No. CB(4)817/16-17(08) -- Judiciary Administration's paper on "Proposed Creation of Judicial Posts and a Supernumerary Directorate Post in the Judiciary"

LC Paper No. CB(4)817/16-17(09) -- Updated background brief on "Judicial manpower position at various levels of court" prepared by LegCo Secretariat

Briefing by the Judiciary Administration

51. Judiciary Administrator ("JA") briefed members on the latest information on the judicial manpower situation at various levels of courts in the Judiciary and also the Judiciary's proposals to create 14 permanent judicial posts to enhance the establishment of judicial manpower at various levels of courts/tribunal. She also mentioned that one supernumerary civil service directorate post at Principal Executive Officer ("PEO") (D1) level for a period of around three years up to 31 March 2020 would be proposed to provide directorate and strategic support to the formulation and implementation of a long term accommodation strategy for the Judiciary. Subject to members' views and support, the Judiciary intended to submit the proposals to the Establishment Subcommittee ("ESC") of LegCo for endorsement and the Finance Committee ("FC") for approval.

Discussion

Engagement of temporary judicial manpower

52. Mr Holden CHOW noted from the Judiciary Administration's paper that pending the substantive filling of judicial vacancies through open recruitment, the Judiciary had been engaging and would continue to engage temporary judicial resources to help maintain the level of judicial manpower required and court waiting times at reasonable levels, and that apart from meeting the Courts' operational needs, the deputy arrangements also served to provide opportunity for private practitioners to gain some judicial experience

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for their consideration of a judicial career in the future. Mr CHOW asked about the range of duration of such deputy arrangements.

53. JA said that the duration of the sittings would vary depending on a number of factors, including the level of the deputy appointments and whether the appointments were from within or outside the Judiciary. Generally speaking, the duration for the appointment of deputies for higher judicial positions would usually be shorter, say, from 4 weeks to 6 weeks or two months. JA explained that the deputies appointed for higher levels of court would usually be very experienced legal practitioners and it would be difficult for them to leave their work in the private practice for a long period of time. JA supplemented that the same practitioner could, however, be appointed to deputize for more than once, at different periods of time. JA further said that the duration of the sittings for deputy Magistrates would usually be longer. Moreover, deputies appointed from within the Judiciary would usually sit for a longer period of time.

54. Mr Holden CHOW opined that a considerably longer period of deputy arrangement was preferable, particularly for the higher levels of court, in order to better achieve the purpose of providing opportunity for private practitioners to gain judicial experience for their consideration of a judicial career in the future. JA noted Mr CHOW's view and said that the Judiciary might welcome a longer sitting period for deputy judges at the higher levels of court, yet, in practice, the experienced practitioners might not be able to sit for a long period of time.

Judicial remuneration review

55. Mr Dennis KWOK asked whether the Judiciary would consider proposing better pay adjustment and conducting further review on the conditions of service for District Judges, say, to review the housing benefits with reference to the Judiciary Quarters Allowance ("JQA"), at an initial rate of around \$160,000, for Judges at the High Court level.

56. Regarding pay adjustment for District Judges, JA said that as a result of the 2015 Benchmark Study on the Earnings of Legal Practitioners in Hong Kong ("2015 Benchmark Study") and the annual review of judicial salary in 2016, a pay rise of 4% was granted (based on the 2015 Benchmark Study) on top of the annual pay increase of 4.85% for 2016-2017. As to the review of conditions of service, JA responded that the last review of conditions of service for JJOs had covered, among others, the review of the provision of other benefits and allowance for JJOs at District Court and Magistrates' Courts levels. For instance, enhancements to their medical benefits had been introduced.

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However, as to the review of the provision of housing benefits, the enhancement introduced was mainly for Judges at the High Court level and above. JA further said that the Judiciary had been experiencing genuine and persistent difficulties in recruitment of Judges at CFI level and thus various reviews had been conducted to address the problem. JA remarked that no such difficulties had been encountered for the recruitment of District Judges and that in reviewing the judicial remuneration of JJOs, a balanced approach had been adopted by taking into account a basket of factors.

Shortfall in court facilities

57. Mr Dennis KWOK expressed concern as to the utility of the existing court facilities. In particular, he pointed out that the High Court Building located at Admiralty had reached its maximum capacity. Mr KWOK then asked whether the Judiciary had any concrete plan to enhance the court facilities.

58. JA acknowledged the shortfall in courtrooms and facilities for both the High Court and the District Courts. In light of this, the Judiciary had been maintaining a close dialogue with the Administration with a view to devising long term plans to address the accommodation needs of the High Court and those of the District Court, the Family Court and the Lands Tribunal. JA supplemented that both sides were exchanging views on the issues relating to the subject matter.

Judicial training programmes organized by the Hong Kong Judicial Institute

59. The Chairman suggested that, besides the provision of training for serving JJOs, the Hong Kong Judicial Institute should also organize certain "supplementary programmes" which aim at, among others, attracting potential candidates in the legal sector to join the Judiciary. Besides the training areas similar to those covered by the programmes organized by the two legal professional bodies, the Chairman considered the Hong Kong Judicial Institute should also organize programmes with regard to its operation, the roles and duties of JJOs as well as the differences between the duties and career path in the Judiciary and those in the private practice. The Chairman said that the organization of the supplementary programmes suggested above could serve as a platform to attract a pool of candidates of high calibre to join the Judiciary.

60. JA responded that while the Hong Kong Judicial Institute mainly targeted at providing training for serving JJOs and deputy JJOs, some of its programmes were also open to outsiders, including private legal practitioners. In response to the Chairman's enquiry of whether the invitations for such

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programmes would be restricted to some selected groups, JA responded that members of the Hong Kong Bar Association, the Law Society of Hong Kong, and students from the law schools would usually be included in the invitation list for large-scale events such as talks.

Financial Implications of the proposed creation of posts

61. The Chairman supported the creation of posts proposed by the Judiciary. In particular, she considered that additional manpower would be required to implement the proposed increases in civil jurisdictional limits of the District Court and Small Claims Tribunal.

62. In response to the Chairman's enquiry on the annual estimated cost to be incurred, for the remuneration packages, including salary and other benefits, for the proposed creation of posts, JA responded that the financial implications of the proposed creation of the 14 permanent judicial posts would bring about an additional notional annual salary cost at mid-point of \$27,326,400 and the proposed creation of one supernumerary PEO would bring about an additional notional annual salary cost at mid-point of \$1,732,800. Moreover, the additional full average staff cost, including salaries and staff on-cost, would be \$2,392,824.

Conclusion

63. The Chairman enquired whether members supported that the staffing proposal be submitted to ESC for consideration and FC for approval. No member raised any objection. The Chairman concluded that the Panel was supportive of the Judiciary's submission of the staffing proposal to ESC for consideration and FC for approval.

VI. Any other business

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